

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 AMICUS CURIAE CALIFORNIA RIFLE &
PISTOL ASSOCIATION, INCORPORATED, FEDERAL
FIREARMS LICENSEES OF ILLINOIS, VIRGINIA
DUNCAN, RICHARD LEWIS, PATRICK LOVETTE, DAVID
MARGUGLIO, CHRISTOPHER WADDELL, STEVEN
RUPP, STEVEN DEMBER, CHERYL JOHNSON, MICHAEL
JONES, CHRISTOPHER SEIFERT, ALFONSO VALENCIA,
& TROY WILLIS COALITION IN SUPPORT OF
PETITIONERS**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
AMICUS CURIAE STATEMENT OF INTEREST.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT	4
I. The Second Amendment Protects Common Semiautomatic Rifles and the Ordinary Means of Keeping, Using, and Maintaining Them.....	4
II. The Court’s Reasoning in These Cases Will Govern <i>Duncan</i> , and the Court Should Say So	7
A. AR-15s are protected Arms, and the magazines they are designed to use cannot be treated as constitutionally unrelated objects.....	7
B. The Court should grant and summarily reverse <i>Duncan</i> or, at a minimum, provide clear guidance that requires reversal.....	9
III. The Court’s Decision Should Be Clear Enough to Foreclose the Regulatory Evasion That Has Followed Every Prior Second Amendment Decision.....	12
A. Hostile governments have responded to every major Second Amendment decision by devising new ways to evade the right, and there is no reason to expect this case will be different.....	13
B. The Court’s holding should foreclose the most predictable avenues of evasion.....	17

CONCLUSION	18
------------------	----

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Antonyuk v. James</i> , 120 F.4th 941, 1047 (2d Cir. 2024).....	14
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	4, 6, 8, 12
<i>Duncan v. Bonta</i> , 133 F.4th 852 (9th Cir. 2025).....	7, 9
<i>Duncan v. Bonta</i> , 131 F.4th 1019 (9th Cir. 2025).....	9
<i>Duncan v. Bonta</i> , 19 F.4th 1087 (9th Cir. 2021)	11
<i>Duncan v. Bonta</i> , 695 F. Supp. 3d 1206 (S.D. Cal. 2023).....	9
<i>Ezell v. City Chicago</i> , 651 F.3d 684 (7th Cir. 2011).....	5, 6
<i>Hanson v. District of Columbia</i> , 120 F.4th 223 (D.C. Cir. 2024)	8
<i>N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen</i> , 597 U.S. 1 (2022)	3-4, 9-14, 17
<i>Smith & Wesson Brands, Inc. v. Estados Unidos</i> , <i>Mexicanos</i> , 605 U.S. 280 (2025)	4
<i>Wolford v. Lopez</i> , 609 U.S. ___, 146 S. Ct. 2032 (2026).	3, 14-15
<i>Wolford v. Lopez</i> , 116 F.4th 959 (9th Cir. 2024)	14
<i>Yates v. United States</i> , 356 U.S. 363 (1958)	10
CONSTITUTION	
U.S. Const. amend. II.....	1-13, 16-18

TABLE OF AUTHORITIES—Continued

U.S. Const. amend. VIX	6
STATUTES	
28 U.S.C. § 46	9
28 U.S.C. § 2106	10
430 ILCS 65	15
720 ILCS 5/24-1.9	2, 6, 15
Cal. Penal Code § 32310	7
Colo. Rev. Stat. § 18-12-116	15
Conn. Gen. Stat. § 53-202d	16
Mass. Gen. Laws ch. 140, § 131M	16
N.J. Rev. Stat. § 2C:58-4.2	14
N.J. Rev. Stat. § 2C:58-4.3	14
N.J. Rev. Stat. § 2C:58-4.6	14
N.Y. Penal Law § 265.00	16
N.Y. Penal Law § 265.01-e	13
N.Y. Penal Law § 400.00	13, 16
OTHER AUTHORITIES	
Sen. B. 1, Ch. 680 (Md. 2023)	14
Sen. B. 2, 2023-2024 Reg. Sess. (Cal. 2024).	14
Anders Hagstrom, <i>NY Gov. Hochul Defiant After Supreme Court Gun Decision: 'We're Just Getting Started,'</i> Fox News (June 22, 2022), https://www.foxnews.com/politics/ny-gov-hochul-defiant-supreme-court-handgun-ruling-were-just-getting-started)	13

TABLE OF AUTHORITIES—Continued

Bill Summary, SB 25-003 (2025 Reg. Sess.), https://leg.colorado.gov/bills/sb25-003	15
Marcia Kramer & Dick Brennan, <i>Fresh Off Primary Win, Gov. Kathy Hochul Dives Right Into Guns</i> , CBS News (Jun. 29, 2022), https://www.cbsnews.com/newyork/news/ fresh-off-primary-win-gov-kathy-hochul- dives-right-into-guns-who-can-get-them- and-where-they-can-take-them/	13
Office of the Governor, <i>Gov. Green Signs Firearms Legislation</i> (June 2, 2023), https://governor.hawaii.gov/newsroom/off ice-of-the-governor-news-release-gov- green-signs-firearms-legislation/	15
Terry Gross, <i>How the AR-15 Became the Bestselling Rifle in the U.S.</i> , NPR (Apr. 20, 2023)	4

AMICUS CURIAE STATEMENT OF INTEREST

Founded in 1875, the California Rifle and Pistol Association, Incorporated (“CRPA”) is a nonprofit organization dedicated to defending the Second Amendment and advancing the constitutional rights of individual citizens. CRPA works to preserve the rights of gun ownership, including the rights to self-defense, to hunt, and to keep and bear arms. In service of these ends, CRPA regularly participates as a party or amicus in firearm-related litigation.¹

Virginia Duncan, Richard Lewis, Patrick Lovette, David Marguglio, Christopher Waddell, Steven Rupp, Steven Dember, Cheryl Johnson, Michael Jones, Christopher Seifert, Alfonso Valencia, and Troy Willis (collectively, the “Individual Amici”) are California residents whose rights are directly affected by California’s statewide bans on common firearms and magazines. They have challenged those bans in federal court.

CRPA and the Individual Amici are plaintiffs in pending challenges to California’s laws banning common arms. Duncan, Lewis, Lovette, Marguglio, Waddell, and CRPA are plaintiffs in *Duncan v. Bonta*, Case No. 25-198, which challenges California’s ban on magazines capable of holding more than 10 rounds and is pending before this Court on a *second* petition for certiorari. Rupp, Dember, Johnson, Jones, Seifert, Valencia, Willis, and CRPA are plaintiffs in *Rupp v. Bonta*, Case No. 19-56004 (9th Cir.), which challenges California’s prohibition on so-called

¹ No counsel for a party authored this brief in whole or in part, nor did such counsel or any party make a monetary contribution to fund this brief. No person other than the amicus parties, its members or counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

“assault weapons” and is currently stayed in the Ninth Circuit.

Federal Firearms Licensees of Illinois (“FFL-IL”) is an Illinois not-for-profit corporation representing federally licensed firearms dealers across Illinois. FFL-IL is a plaintiff in *Federal Firearms Licensees of Illinois v. Pritzker*, Case No. 24-3063 (7th Cir.), one of several cases consolidated under *Barnett v. Raoul*, Case No. 24-3060 (7th Cir.), challenging Illinois’s Protect Illinois Communities Act. That law prohibits the manufacture, sale, delivery, and possession of certain semiautomatic rifles and, notably, any “part or combination of parts designed or intended to convert a firearm into an assault weapon, including any combination of parts from which an assault weapon may be readily assembled.” 720 ILCS 5/24-1.9(a)(1)(I). FFL-IL’s members are directly harmed by these types of bans.

Amici therefore have an interest in ensuring that the Court’s decision here provides clear guidance not only on the protected status of semiautomatic rifles, but also on the constitutional consequences for laws restricting the ordinary means of acquiring, possessing, maintaining, and using those rifles, including bans on their standard magazines and component parts.

SUMMARY OF ARGUMENT

AR-15-platform and similar semiautomatic rifles are protected Arms under the Second Amendment. But that holding means nothing if it protects only the rifle while leaving governments free to prohibit the magazines they require to function, the parts needed to maintain them, and the ordinary means by which they are acquired, possessed, used, and repaired. The Second Amendment protects a functioning Arm, not merely an object that resembles one.

That principle has immediate consequences for not just *Viramontes* and *Grant*, but also *Duncan v. Bonta*, where the Ninth Circuit has held that standard-capacity magazines are mere “accessories” or “accoutrements” unrelated to the protected arm. If AR-15s and similar semiautomatic rifles are protected, the magazines they are designed to use cannot be constitutionally severed from them. The question is not whether a magazine, considered in isolation, independently qualifies as an “Arm.” It is whether the government may prohibit an ordinary means of possessing and using an Arm that the Second Amendment protects.

The procedural history of *Duncan* demonstrates why this Court should provide clear guidance. After this Court vacated and remanded the case in light of *Bruen*, the Ninth Circuit *again* upheld California’s magazine ban. A second petition for certiorari is pending before this Court. The Court’s decision here will bear on the constitutional analysis in *Duncan*, and another open-ended remand would risk prolonging the dispute without resolving the underlying question.

The problem, however, extends beyond *Duncan* and well beyond magazines. After *Bruen*, many governments responded with new regulatory regimes that sought to burden the same conduct through different means that had to be corrected by this Court in *Wolford*. If this Court strikes down categorical bans on semiautomatic rifles without addressing the regulatory frameworks likely to replace them, those same governments may likewise shift from direct prohibition to burdensome regulation designed to achieve much the same result.

The Court should foreclose that path.

ARGUMENT

I. THE SECOND AMENDMENT PROTECTS COMMON SEMIAUTOMATIC RIFLES AND THE ORDINARY MEANS OF KEEPING, USING, AND MAINTAINING THEM

The Second Amendment protects the right of the people to keep and bear “Arms.” U.S. Const. amend. II. In *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008), this Court held that the right “extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” It also held that the Amendment protects Arms “typically possessed by law-abiding citizens for lawful purposes,” *id.* at 625. And *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 17 (2022), confirmed that the constitutionality of laws regulating Second Amendment conduct turns on the Amendment’s text and the Nation’s history and tradition. Whether an object falls within the Second Amendment’s protection—and whether a law regulating protected conduct is constitutional—are thus both questions answered by text, history, and tradition.

The AR-15-platform and similar semiautomatic rifles plainly fall within the scope of the Second Amendment. They are among the most commonly owned firearms in the United States, and they are possessed by millions of Americans for lawful purposes, including self-defense, hunting, and target shooting. *See Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025) (citing Terry Gross, *How the AR-15 Became the Bestselling Rifle in the U.S.*, NPR (Apr. 20, 2023) (“The AR-15 is the most popular rifle in the country.”)). Under *Heller*’s plain-text analysis, they are “Arms.” The government’s decision to label these rifles “assault weapons”—a wholly political designation—does not change that result.

But protecting the firearm while permitting the government to prohibit the ordinary means necessary to

operate it would protect the right only in theory. The Second Amendment protects more than the right to possess a receiver sitting inert on a shelf. It protects the right to keep and bear a functioning arm, to use it as it is designed, and to maintain it in the condition that makes such use possible.

For instance, standard AR-15s are designed to operate with detachable magazines. A compatible detachable magazine is not an optional upgrade or luxury accessory comparable to a scope or sling. It stores and feeds ammunition into the rifle's action. Without a compatible magazine, a rifle designed to operate with one cannot function as it is intended. Recognizing that the AR-15 is a protected Arm while allowing the government to prohibit the magazines with which it operates would render that protection meaningless. A law that permits possession of the rifle while prohibiting the ordinary magazines it uses thus burdens the practical ability to possess and use the protected Arm.

The same is true of restrictions on any other components integral to the operation of a semiautomatic rifle. The Second Amendment protects the right to "keep" Arms for lawful purposes, and the right to keep an Arm cannot sensibly be understood as protecting possession of an object while permitting the government to prohibit the ordinary means necessary to keep that object functional. Parts wear out and break, and they must be replaced. If the government may prohibit the ordinary replacement parts needed to keep a firearm functional, it can ultimately deprive the owner of the practical ability to keep the firearm at all. If a component is part of the ordinary operation or maintenance of a protected Arm, a law prohibiting that component burdens the same right as a law prohibiting the firearm itself.

The Seventh Circuit recognized a related principle in *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011),

holding that “[t]he right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use.” *Heller* itself observed that the right to bear arms “implies something more than the mere keeping; it implies the learning to handle and use them.” 554 U.S. at 617-18. The ability to exercise the right necessarily includes the ability to keep the protected Arm in a condition that permits its ordinary use. If the government may prohibit the components needed for routine maintenance, it can defeat the right itself. Nothing in the Second Amendment’s text, history, or tradition authorizes that result.²

In short, the constitutional analysis cannot turn on whether the legislature chose to target the entire firearm or just its parts.

The Court’s decision in these cases will not occur in a vacuum. It will govern how lower courts evaluate related restrictions on protected Arms, including California’s magazine ban challenged in *Duncan*, as well as other regulatory schemes governing the acquisition, possession, use, and maintenance of semiautomatic rifles. If AR-15s are protected Arms, the government cannot avoid the Second Amendment’s requirements simply by prohibiting the ordinary magazines or other components with which those

² On the contrary, the tradition runs the other way. Americans have built, repaired, and modified their own firearms since before the founding. Local gunsmiths manufactured muskets for the Continental Army when imports could not meet demand. Eliphalet Remington began making rifles by hand in 1816. Eli Whitney, famous for the cotton gin, also began making interchangeable firearm parts. Samuel Colt’s manufacturing innovations armed the military and civilians alike.

By the time the Fourteenth Amendment was ratified, the private manufacture, repair, and modification of firearms for personal use was a deeply rooted American tradition. Laws that prohibit “[a]ny part or combination of parts designed or intended to convert a firearm into an assault weapon, including any combination of parts from which an assault weapon may be readily assembled,” 720 ILCS 5/24-1.9(a)(1)(I), are inconsistent with that tradition.

rifles are designed to operate. The Court should make this clear now, because history tells us that governments that lose on outright bans will turn next to parts restrictions and oppressive regulatory schemes designed to achieve the same result, and lower courts have been willing to let them.

II. THE COURT’S REASONING IN THESE CASES WILL GOVERN *DUNCAN*, AND THE COURT SHOULD SAY SO

A. AR-15s are protected Arms, and the magazines they are designed to use cannot be treated as constitutionally unrelated objects.

California prohibits the possession of magazines capable of holding more than ten rounds. Cal. Penal Code § 32310. The rifles at issue in *Viramontes* and *Grant* are ordinarily designed to accept detachable magazines—including magazines capable of holding more than ten rounds. If the Court holds that AR-15-platform rifles are protected Arms, that holding necessarily bears on similar bans on the magazines commonly used with those rifles. The question isn’t really whether a magazine, considered in isolation, independently qualifies as an “Arm.” It is whether the government may prohibit an ordinary means of possessing and using an Arm that the Second Amendment protects. As argued above, it may not.

The Ninth Circuit, sitting en banc, reached the opposite conclusion. *Duncan v. Bonta*, 133 F.4th 852, 865 (9th Cir. 2025) (en banc). It upheld California’s magazine ban by holding that the banned magazines are not even “Arms” within the Second Amendment’s meaning, characterizing them as optional “accessories” or “accoutrements” and reasoning that the Founders chose “to protect the right to bear ‘arms,’ not ‘arms and accoutrements.’” *Id.* at 867. Because a firearm can operate as intended without a “large-capacity magazine,” the court held, the magazine falls outside the Amendment’s plain text. *Id.* at 865.

That reasoning cannot be reconciled with the functional nature of the right. A magazine is not an accessory to a semiautomatic rifle in the way a scope or sling is an accessory. It is the component that stores and feeds ammunition to the rifle's action. Without one, an AR-15 designed to operate from a detachable magazine cannot function in its ordinary configuration. The Ninth Circuit's distinction between "arms" and "accoutrements" has no basis in *Heller*, which defined the scope of the right by reference to "all instruments that constitute bearable arms," 554 U.S. at 582, not by reference to whether a component can be physically separated from the receiver.

The D.C. Circuit has recognized as much. In *Hanson v. District of Columbia*, 120 F.4th 223, 232 (D.C. Cir. 2024), the court held that magazines "very likely are 'Arms' within the meaning of the plain text of the Second Amendment" because "[a] magazine is necessary to make meaningful an individual's right to carry a handgun for self-defense." The court warned that "[t]o hold otherwise would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at the component level, such as a 'firing pin.'" *Id.* That is precisely what California and other states and cities have done.

If the Court permits a protected Arm to be constitutionally severed from the ordinary means of keeping and using it, the scope of the Second Amendment will depend on the level of abstraction at which a court describes the government's regulation. A prohibition directed at a protected rifle can be recast as a prohibition on its magazine, a necessary component, or a replacement part, and the constitutional right would shrink with every step. The Court should reject that approach. Once the Second Amendment protects an Arm, the government cannot evade constitutional scrutiny by prohibiting the ordinary components necessary to possess and use that Arm.

B. The Court should grant and summarily reverse *Duncan* or, at a minimum, provide clear guidance that requires reversal.

Duncan has been before this Court before, and its procedural history illustrates why another open-ended remand would be inadequate. After the Ninth Circuit upheld California’s magazine ban in 2021, this Court granted certiorari, vacated, and remanded the case for reconsideration in light of *Bruen*. The ensuing proceedings did not resolve the constitutional question.

The en banc court returned the case to the district court, which again (correctly) held that the ban is unconstitutional. *Duncan v. Bonta*, 695 F. Supp. 3d 1206 (S.D. Cal. 2023). California appealed, and the same en banc panel reassembled to hear the new appeal, retaining jurisdiction under 28 U.S.C. § 46(c) rather than allowing the case to proceed to a newly constituted panel or en banc court. *Duncan v. Bonta*, 131 F.4th 1019, 1026 (9th Cir. 2025). Several dissenting judges objected that this procedure was irregular, noting that the prior en banc court had issued a mandate and that reassembling the same panel circumvented the ordinary process for en banc rehearing. *Id.* at 1047 (R. Nelson, J., dissenting); *id.* at 1068-70 (Bumatay & VanDyke, JJ., dissenting).³ The significance of that history is not merely procedural. It demonstrates why another open-ended remand would be a poor fit.

To the surprise of almost no one, the en banc majority again reversed the district court and upheld the ban. *Duncan*, 133 F.4th at 865. Thus, after this Court’s first GVR, the plaintiffs obtained another district-court judgment declaring the ban unconstitutional, only to have that

³ One dissent put it bluntly: the majority “didn’t just butcher the Second Amendment and give a judicial middle finger to the Supreme Court. It also spurned statutory procedure for en banc proceedings.” 133 F.4th at 890 (R. Nelson, J., dissenting).

judgment reversed on appeal by an en banc panel. The same magazine prohibition remains in place.

That history, coupled with the Ninth Circuit's broader record in Second Amendment cases, counsels against another open remand if this Court's decision in *Viramontes* and *Grant* forecloses the reasoning underlying *Duncan*. If this Court holds in *Viramontes* and *Grant* that AR-15s and similar semiautomatic rifles are protected Arms and that their standard magazines cannot be constitutionally severed from them, the Ninth Circuit's holding that magazines are mere "accessories" outside the Second Amendment cannot stand. No further development would be necessary to resolve the legal question on which the Ninth Circuit's judgment rests. The constitutional question the Ninth Circuit decided in *Duncan* will have been answered by this Court, and the answer will be the opposite of the one the Ninth Circuit reached.

The *Duncan* plaintiffs' second petition for certiorari, No. 25-198, is pending before this Court. This Court should grant that petition and reverse with directions. This would avoid another round of proceedings in which the lower court could attempt to preserve the same result under a different rationale. The Court has already given the Ninth Circuit an opportunity to reconsider its judgment in light of *Bruen*. If (as it should) this Court's decision here forecloses the constitutional premise of the Ninth Circuit's *Duncan* decision, there is no reason to require the parties to repeat that process. The Court has exercised its supervisory power in this way before. *See, e.g., Yates v. United States*, 356 U.S. 363, 368 (1958). And it has the statutory authority to do so under 28 U.S.C. § 2106.

If the Court declines to reverse *Duncan* with clear directions for its disposition, it should, at a minimum, ensure that its opinion here leaves no room for the Ninth Circuit to sustain California's magazine ban on the theory it adopted below. The issues are inextricably linked. The

“assault weapons” bans at issue define the prohibited firearms, at least in part, by their capacity to accept detachable magazines holding more than a specified number of rounds, while California’s magazine ban prohibits the very magazines the banned rifles are designed to use. If semiautomatic rifles are protected Arms and their ordinary possession and use cannot be burdened without historical justification, the government cannot evade that protection by prohibiting the magazines with which those rifles are designed to operate.

The Court should not leave this question to a circuit that has demonstrated, time and again, that it will manage to sustain firearm restrictions even after this Court has rejected the legal framework supporting them. The Ninth Circuit’s record in Second Amendment cases is—to borrow from one of its own judges—an “undefeated, 50-0 record against the Second Amendment.” *Duncan v. Bonta*, 19 F.4th 1087, 1167 n.8 (9th Cir. 2021) (VanDyke, J., dissenting). That record did not improve after *Bruen*. And it will not improve after *Viramontes* and *Grant* unless the Court’s holding leaves no room for the Ninth Circuit to preserve the same restrictions through a different rationale.

If the Court declines to resolve *Duncan* directly, it should make clear in its opinion that:

1. AR-15 and similar semiautomatic rifles are protected Arms;
2. Second Amendment protection extends to the ordinary means of possessing and using those rifles, *including the magazines with which they are designed to operate*; and
3. Any restriction directed at the ordinary components of a protected Arm cannot evade the Second Amendment’s text-and-history analysis

merely because the restriction is directed at the component.

An opinion that resolves the rifle question while leaving the component question unanswered would permit the Ninth Circuit's distinction between protected Arms and their ordinary functional components to persist. The Court should not leave that question unresolved at this late stage.

III. The Court's Decision Should Be Clear Enough to Foreclose the Regulatory Evasion That Has Followed Every Prior Second Amendment Decision

This Court's Second Amendment decisions have produced a troubling, recurring pattern. After *Heller* confirmed the individual right to keep and bear arms, lower courts spent more than a decade applying interest-balancing tests to uphold virtually every challenged gun law. After *Bruen* jettisoned those tests, some governments refused to accept the result. Instead, they enacted new regulatory regimes designed to restrict the very rights the Court had just recognized.

If this Court holds that AR-15s and similar semiautomatic rifles are protected Arms but does not address the regulatory frameworks waiting in the wings, the government will treat the holding as an invitation to replace categorical bans with oppressive regulatory regimes designed to achieve the same result.

The question is not whether governments will attempt to evade the Court's decision; it is whether this Court deny them the tools to succeed as a part of its decision to uphold the Second Amendment.

A. Hostile governments have responded to every major Second Amendment decision by devising new ways to evade the right, and there is no reason to expect this case will be different.

After *Bruen* invalidated “may-issue” carry licensing, state legislatures moved quickly, not to comply with the decision, but to devise new ways of restricting the right the Court had just recognized. In the wake of the Court’s seminal ruling in *Bruen*, many state officials who are antagonistic to gun rights made their disapproval known. New York Governor Kathy Hochul called the decision “reckless” and “reprehensible.”⁴

New York soon passed the euphemistically named Concealed Carry Improvement Act, a first-of-its-kind law that severely restricted public carry by designating broad categories of places as “sensitive.” Under the CCIA, carry in New York was effectively limited to “some streets” and sidewalks, according to Governor Hochul herself.⁵ The law also imposes, *inter alia*, 16 hours of mandatory training, in-person interviews, social media review, character references, and a list of over 20 “sensitive places,” while adopting a default ban on carrying on private property.⁶ N.Y. Penal Law §§ 265.01-e(2), 400.00(1), (19).

⁴ Anders Hagstrom, *NY Gov. Hochul Defiant After Supreme Court Gun Decision: ‘We’re Just Getting Started,’* Fox News (June 22, 2022), <https://www.foxnews.com/politics/ny-gov-hochul-defiant-supreme-court-handgun-ruling-were-just-getting-started>).

⁵ Marcia Kramer & Dick Brennan, *Fresh Off Primary Win, Gov. Kathy Hochul Dives Right Into Guns*, CBS News (Jun. 29, 2022), <https://www.cbsnews.com/newyork/news/fresh-off-primary-win-gov-kathy-hochul-dives-right-into-guns-who-can-get-them-and-where-they-can-take-them/> (Hochul responds to reporter’s question about where carry would still be permitted by saying “probably some streets.”).

⁶ The default rule, also sometimes called a “vampire provision,” banned carry even on private property unless the property owner expressly invites those who wish to carry. Even

New Jersey, Maryland, California, Hawaii, and Massachusetts followed with their own post-*Bruen* regimes, each layering new training mandates, fees, sensitive-place designations, and default private-property bans onto what were nominally “shall-issue” frameworks.⁷ In each case, the legislative response to *Bruen* was not to accept the decision but to devise new mechanisms for achieving the same restrictive result.

This Court addressed one such mechanism in *Wolford v. Lopez*, 609 U.S. ___, 146 S. Ct. 2032 (2026). After *Bruen* invalidated discretionary carry licensing, Hawaii did not accept the result. Instead, it “responded by replacing its old law on carry permits with new laws that achieved a similar result.” *Id.* at 2040. It adopted an expansive list of so-called “sensitive places” and enacted a default rule making it a misdemeanor to carry a firearm on any private property without the owner’s express permission. *Id.* The Governor’s office described the legislation as intended “to mitigate the harm arising from the Supreme Court

before this Court’s recent decision striking Hawaii’s vampire rule in *Wolford*, New York’s vampire provision was the only CCIA-designated “sensitive place” the Second Circuit struck down. *Antonyuk v. James*, 120 F.4th 941, 1047 (2d Cir. 2024).

⁷ New Jersey replaced its invalidated “justifiable need” standard with new disqualifiers, a liability insurance requirement, and its own expansive list of sensitive places. N.J. Rev. Stat. §§ 2C:58-4.2, -4.3, -4.6 (enacted Dec. 22, 2022).

Maryland passed the Gun Safety Act of 2023, adding extensive training, comprehensive background checks, and sensitive-place bans. Sen. B. 1, Ch. 680 (Md. 2023).

California enacted SB 2, designating dozens of categories of sensitive places and adopting its own vampire rule. Sen. B. 2, 2023-2024 Reg. Sess. (Cal. 2024). The Ninth Circuit rejected California’s version of the vampire rule. *Wolford v. Lopez*, 116 F.4th 959, 995 (9th Cir. 2024), *rev’d and remanded on other grounds*, 146 S. Ct. (2026) (consolidated with *May v. Bonta*, 9th Cir. Case No. 4356; *Carralero v. Bonta*, 9th Cir. Case No. 4354).

decision.”⁸ The Court examined Hawaii’s private-property default rule in light of its actual operation and our Nation’s historical tradition and held that the rule violates the Second Amendment. *Id.* at 2050-53. Clearly, the State could not avoid constitutional scrutiny simply by changing the mechanism by which it regulated the right.

Wolford addressed public-carry restrictions. The same pattern is now appearing in laws governing the acquisition and possession of protected Arms.

For example, Colorado has created a narrow pathway for acquiring “specified semiautomatic firearms.” Colo. Rev. Stat. § 18-12-116. Under that law, an applicant must obtain a sheriff-issued eligibility card, complete at least 12 hours of training over two days, score at least 90% on an examination, submit to a background check, and pay a fee set by the sheriff—who ultimately makes a discretionary determination⁹ whether the applicant is dangerous. *Id.*; see also Bill Summary, SB 25-003 (2025 Reg. Sess.), <https://leg.colorado.gov/bills/sb25-003>.

Illinois layers possession licensing under its FOID Card Act, 430 ILCS 65, with firearm-specific registration requirements under the Protect Illinois Communities Act, 720 ILCS 5/24-1.9(d). So citizens must first obtain government permission to possess any firearm at all, and then they must separately register every firearm designated as an “assault weapon.” *Id.* But even then, the registered owner may possess the firearm only (1) at home, (2) “on private property that is not open to the

⁸ Office of the Governor, *Gov. Green Signs Firearms Legislation* (June 2, 2023), <https://governor.hawaii.gov/newsroom/office-of-the-governor-news-release-gov-green-signs-firearms-legislation/>.

⁹ “The sheriff may deny an application if the sheriff has a reasonable belief that documented previous behavior by the applicant makes it likely the applicant will present a danger to themselves or others if the applicant holds a Firearms Safety Course Eligibility Card.” Colo. Rev. Stat. § 18-12-116(5) (b)(VI)(C)

public with the express permission of the” owner, (3) at a licensed dealer for lawful repair, or (4) at a licensed firing range. *Id.* And they must always transport it unloaded and enclosed between those locations. *Id.*

The owner may not carry the arm ready for self-defense outside the home. And they may not sell or transfer it to any other Illinois resident. The right to “keep” the firearm is thus little more than a “right” to store it at home for as long as the owner lives, after which the arm must leave the state or be surrendered. That is not the regulation of a constitutional right. It is the managed extinction of one.¹⁰

These are but examples of the many creative regulatory schemes some jurisdictions have devised to evade this Court’s Second Amendment decisions. But they make the point. A government that cannot ban protected arms still has a host of regulations to choose from. It may impose excessive taxes and fees, dozens of hours of training, testing requirements, background checks, registration, permitting, and regular renewals, discretionary review, and geographic restrictions. The cumulative weight of those requirements operate as a ban.

But the government may not accomplish through licensing, registration, taxes, fees, or other regulation what the Second Amendment’s text and historical tradition do not permit it to accomplish directly. A law does not become constitutionally permissible merely because it leaves some pathway open while burdening protected conduct through

¹⁰ Similarly, several states have adopted transfer restrictions and closed registration windows that function as prospective bans. Under these schemes, owners who possessed covered firearms before an arbitrary statutory deadline may register them and retain possession. But no new registrations are accepted after the deadline, no new acquisitions are permitted, and registered arms may usually be transferred only under narrow conditions. *See, e.g.*, Conn. Gen. Stat. § 53-202d; Mass. Gen. Laws ch. 140, § 131M(b); N.Y. Penal Law §§ 265.00(22), 400.00(16-a).

a different mechanism. The Court should not wait for such schemes to be challenged one by one in the lower courts. It should address them now, while it has the opportunity and the reason to do so.

B. The Court's holding should foreclose the most predictable avenues of evasion.

The examples above demonstrate what hostile jurisdictions will do with any ambiguity this Court leaves in its holding. Three points, stated clearly now, would deprive them of the tools they will otherwise use.

First, this Court should confirm that *Bruen's* discussion of objective public-carry licensing in footnote 9 is not a safe harbor for the sorts of oppressive regulatory schemes described in Section III.A, *supra*. Footnote 9 observed that "shall-issue" regimes applying objective criteria to carry permits are not inconsistent with the Second Amendment's historical tradition. *Bruen*, 597 U.S. at 38 n.9. That observation was about public-carry licensing. It did not hold that the government may condition the acquisition or possession of a protected Arm on government permission. It did not bless multi-layered licensing, registration, training, and testing requirements imposed on the right to possess a firearm in one's own home.

Second, courts must evaluate the regulatory scheme as a whole rather than examining each requirement in isolation. Fees, mandatory training, testing, background checks, registration, renewal obligations, discretionary review, and geographic restrictions may each appear modest on their own. But together, they can render the right to acquire and possess a protected Arm effectively void. The constitutional analysis must therefore account for the scheme as it operates as a whole.

Third, a State cannot convert a constitutional right into a government-issued privilege. The right to possess protected Arms cannot become merely a right to apply for

permission to possess them. When the regulatory scheme itself becomes the mechanism by which government determines who may exercise the right and who may not, it is no longer regulation. It is prohibition by another name.

The Court should therefore adopt a principle broad enough to govern the cases that follow this one, not merely the statutes before it now. The Court need not invalidate every licensing, registration, taxation, or regulatory scheme in the country. But it should make it unmistakably clear that once the Second Amendment protects an Arm and the conduct at issue falls within the Amendment's plain text, the government may not evade the Amendment's requirements by replacing a direct prohibition with regulations that, individually or in combination, restrict the ordinary acquisition, possession, maintenance, or use of that Arm.

That rule would give lower courts a workable standard for evaluating the regulatory schemes that will inevitably follow this decision. It would prevent legislatures from simply redrafting invalidated restrictions under new labels. It would prevent the Ninth Circuit from repeating the cycle that has defined *Duncan*. And it would preserve the line between legitimate regulation of the right to keep and bear Arms and regulation designed to ensure that virtually no one may exercise it.

CONCLUSION

The Court should take this opportunity to establish a rule clear enough to govern what comes next. A holding that merely says "AR-15s are protected Arms" but leaves governments free to prohibit the ordinary means of possessing and using them will invite the very evasion that constitutional adjudication exists to prevent. It falls to this Court to tell lower courts and legislatures what the Constitution requires when the government regulates

protected Arms after this Court has confirmed that those Arms are protected.

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