

Nos. 25-238, 25-566

In the
Supreme Court of the United States

CUTBERTO VIRAMONTES, et al.,
Petitioners,

v.

COOK COUNTY, et al.,
Respondents.

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

v.

RONNELL HIGGINS, et al.,
Respondents.

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

**BRIEF FOR *AMICUS CURIAE* NATIONAL
SHOOTING SPORTS FOUNDATION, INC.,
IN SUPPORT OF PETITIONERS**

LAWRENCE G. KEANE
SHELBY BAIRD SMITH
NATIONAL
SHOOTING SPORTS
FOUNDATION, INC.
400 N. Capitol St., NW
Washington, DC 20001
(202) 220-1340

ERIN E. MURPHY
Counsel of Record
NICHOLAS A. AQUART
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com

Counsel for Amicus Curiae

September 4, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT.....	3
I. Semiautomatic Rifles Are Widely Owned By Law-Abiding Citizens For Lawful Purposes	3
II. The Second Amendment Presumptively Protects Semiautomatic Rifles.....	12
III. There Is No Historical Tradition Supporting Respondents’ Bans On Common Arms.....	16
A. When It Comes to Arms Bans, the Common-Use Test Is the Governing Historical Tradition.....	16
B. The Policy Critiques That Have Been Leveled at the Common-Use Test Are Legally and Historically Misguided.....	23
CONCLUSION	30

TABLE OF AUTHORITIES

Cases

<i>Andrews v. State</i> , 50 Tenn. (3 Heisk.) 165 (1871)	18, 20
<i>Ass’n of N.J. Rifle & Pistol Clubs, Inc.</i> <i>v. Att’y Gen. N.J.</i> , 183 F.4th 211 (3d Cir. 2026).....	13, 21, 22, 25
<i>Barron v. Baltimore</i> , 32 U.S. (7 Pet.) 243 (1833).....	28
<i>Bevis v. City of Naperville</i> , 85 F.4th 1175 (7th Cir. 2023) ..	14, 18, 23, 24, 27, 29
<i>Bianchi v. Brown</i> , 111 F.4th 438 (4th Cir. 2024)	18, 20, 23, 25
<i>Caetano v. Massachusetts</i> , 577 U.S. 411 (2016).....	16, 26
<i>Cockrum v. State</i> , 24 Tex. 394 (1859).....	20
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	2, 12, 13, 16, 17, 18, 19, 21, 22, 24, 25, 26, 27, 28
<i>Friedman v. City of Highland Park</i> , 784 F.3d 406 (7th Cir. 2015).....	8
<i>Garland v. Cargill</i> , 602 U.S. 406 (2024).....	3
<i>Hanson v. District of Columbia</i> , 120 F.4th 223 (D.C. Cir. 2024)	22
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010).....	28
<i>Miller v. Bonta</i> , 542 F.Supp.3d 1009 (S.D. Cal. 2021)	9, 16

<i>N.Y. State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022).....	2, 12, 13, 14, 15, 16, 18, 19, 21, 27, 29
<i>Nat’l Ass’n for Gun Rts. v. Lamont</i> , 153 F.4th 213 (2d Cir. 2025).....	13
<i>Nunn v. State</i> , 1 Ga. 243 (1846)	21
<i>Smith & Wesson Brands, Inc.</i> <i>v. Estados Unidos Mexicanos</i> , 605 U.S. 280 (2025).....	2, 11, 12, 17
<i>Snope v. Brown</i> , 145 S.Ct. 1534 (2025).....	5, 29
<i>Staples v. United States</i> , 511 U.S. 600 (1994).....	9, 12, 17
<i>Stenberg v. Carhart</i> , 530 U.S. 914 (2000).....	3
<i>United States v. Bridges</i> , 150 F.4th 517 (6th Cir. 2025)	24
<i>United States v. Hemani</i> , 146 S.Ct. 1677 (2026).....	16
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024).....	14, 15, 19, 22
<i>Wolford v. Lopez</i> , 146 S.Ct. 2032 (2026).....	12, 13, 14, 15
Constitutional Provision	
U.S. Const. amend. II	2, 13
Statutes	
1692 Mass. Acts & Laws no. 6	19
1699 N.H. Acts & Laws ch. 1	19

1763-1775 N.J. Laws 343, ch. 540	22
1837 Ala. Acts 7	21
1837 Ga. Acts 90 (1838).....	21
1853 Comp. L. Cal. §127	21
1859 Ind. Acts 129	21
1959 Mich. Pub. Acts 249	10
1959 R.I. Acts & Resolves 260.....	10
1963 Minn. Sess. L. ch. 753.....	10
1965 Cal. Stat., ch. 33	10
1972 Ohio Laws 1866	10
1975 Va. Acts, ch. 14	10
Conn. Gen. Stat. §53-202a(1)	4
Conn. Gen. Stat. §53-202b	4
Cook Cnty., Ill. Code of Ordinances §54-211	4
Cook Cnty., Ill. Code of Ordinances §54-212(a)(1)	3
Cook Cnty., Ill. Code of Ordinances §54-511	3, 4
Pub. L. No. 103-322, 108 Stat. 1796 (1994)	11
Pub. L. No. 72-275, 47 Stat. 650 (1932)	11
Other Authorities	
<i>A Journal of the Times: Mar. 17</i> , N.Y. J., supp. 1, Apr. 13, 1769, <i>in</i> Boston Under Military Rule (O. Dickerson ed. 1936)	28
Theodore Barlow, <i>Justice of the Peace</i> (1745).....	20
John Ellis, <i>The Social History of the Machine Gun</i> (1975)	10

William English, <i>2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned</i> 20 (Georgetown Univ. Rsch., Paper No. 4109494, 2022), perma.cc/E8H9-N6RZ	6
William English, <i>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</i> (Georgetown Univ., Working Paper: Aug. 2026), perma.cc/L535-DTQF	6
<i>The Federalist</i> No. 46 (James Madison) (Jacob E. Cooke ed., 1961)	28
Stephen P. Halbrook, <i>America’s Rifle</i> (2002)	11
William Hawkins, <i>A Treatise of the Pleas of the Crown</i> (3d ed. 1739)	19, 20
<i>Hearing before the H. Comm. on the Judiciary</i> , 116th Cong. (2019), perma.cc/9MUG-UCC9	7
Nicholas J. Johnson et al., <i>Firearms Law and the Second Amendment</i> (3d ed. 2021)	8
David Kopel, <i>How the British Gun Control Program Precipitated the American Revolution</i> , 6 <i>Charleston L. Rev.</i> 283 (2012)	27
David B. Kopel, <i>The History of Firearm Magazines and Magazine Prohibitions</i> , 78 <i>Alb. L. Rev.</i> 849 (2015)	9, 11
David B. Kopel & Joseph G.S. Greenlee, <i>The History of Bans on Types of Arms Before 1900</i> , 50 <i>J. Legis.</i> 223 (2024)	20

Christopher S. Koper et al., Rep. to the Nat'l Inst. of Just., <i>An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets & Gun Violence, 1994-2003</i> (2004).....	12
Frank Miniter, <i>The Future Of The Gun</i> (2014).....	8
NSSF, <i>Detachable Magazine Report, 1990-2021</i> (2024), perma.cc/4VXU-DJWA	4
NSSF, <i>Firearms Production Report</i> (2025), perma.cc/7GA3-U5XP	5
NSSF, <i>Firearms Retailer: Survey Report</i> (2021 ed.), perma.cc/N59Q-6UJJ	5, 7
NSSF, <i>Firearms Retailer: Survey Report</i> (2023 ed.), perma.cc/6PDK-9PLE	5
NSSF, <i>Modern Sporting Rifle Comprehensive Consumer Report</i> (July 14, 2022), perma.cc/A6BR-PQYV	7
NSSF, <i>Modern Sporting Rifle: Facts</i> , perma.cc/URK6-6PC5 (last visited Sept. 4, 2026)	4
NSSF, <i>NSSF Releases Most Recent Firearm Production Figures</i> (Jan. 15, 2026), perma.cc/EUG5-FDXD	5
NSSF, <i>Sport Shooting Participation in the U.S. in 2020</i> (2021), perma.cc/P549-STFN	7
<i>Poll of current gun owners</i> , Washington Post- Ipsos (Mar. 27, 2023), perma.cc/YSJ5-STNS	5, 6
Resp.'s.Br., <i>Wolford v. Lopez</i> , No. 24-1046 (U.S. Dec. 17, 2025).....	15
7 Rich. 2, c.13 (Eng. 1383).....	18

20 Rich. 2, c.1 (Eng. 1396).....	18
Robert J. Spitzer, <i>Understanding Gun Law</i> <i>History after Bruen: Moving Forward by</i> <i>Looking Back</i> , 51 Fordham Urb. L. J. 57 (2023).....	10, 23

INTEREST OF *AMICUS CURIAE*¹

The National Shooting Sports Foundation, Inc. (“NSSF”) is the firearm industry’s trade association. Founded in 1961, NSSF’s mission is to promote, protect, and preserve America’s traditional hunting and shooting heritage. NSSF has approximately 10,000 members, including manufacturers, distributors, and sellers of firearms, ammunition, and related products, public and private shooting ranges, and endemic media outlets. To promote, protect, and preserve America’s tradition of firearms use and ownership, NSSF often litigates or submits *amicus* briefs in cases that implicate Second Amendment freedoms. NSSF has a clear interest in this case. Indeed, NSSF’s members include the Nation’s leading manufacturers of the semiautomatic rifles the laws challenged here ban. NSSF is also a plaintiff in a parallel challenge to Illinois’ similar ban, which produced the Seventh Circuit precedent one of the decisions below applied. Laws like these, and decisions upholding them, pose serious threats to NSSF, its members, and the law-abiding customers they serve. When a jurisdiction categorically prohibits an entire class of arms, it harms members’ businesses and infringes on their and their customers’ constitutional rights. NSSF accordingly submits this *amicus* brief in support of petitioners, reversal, and the Constitution.

¹ Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question in these cases is whether the Second Amendment protects the right to possess “the most popular rifle in the country.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025). Under the settled precedent of this Court, and the settled historical tradition of our Nation, the answer is plainly yes. The Second Amendment secures “the right of the people to keep and bear Arms.” U.S. Const. amend. II. AR-15s and other similar semiautomatic rifles are “Arms” under every definition of that term this Court has embraced. Cook County and Connecticut thus bear the burden of identifying a historical tradition that would allow them to ban those arms. They cannot come close to shouldering that burden. Semiautomatic rifles equipped with the features respondents have singled out for opprobrium (which is to say virtually all semiautomatic rifles) have long been both lawful and commonly possessed for lawful purposes, including self-defense, in the overwhelming majority of the country. And as this Court has reiterated on multiple occasions, our Nation’s historical tradition is one of protecting the right to keep and bear arms that are in common use for lawful purposes—because it is for the people, not the government, to decide what best suits their own self-defense needs. *See District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008) (“a prohibition of an entire class of ‘arms’ that is overwhelmingly chosen by American society for [a] lawful purpose” “is invalid”); *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 47 (2022). This Court should once again give effect to the Framers’ judgment and reverse.

ARGUMENT

I. Semiautomatic Rifles Are Widely Owned By Law-Abiding Citizens For Lawful Purposes.

1. Notwithstanding respondents’ embrace of the pejorative “political term” “assault weapon[s],” *Stenberg v. Carhart*, 530 U.S. 914, 1000 n.16 (2000) (Thomas, J., dissenting), these cases are really about the single most popular class of long gun (and second most popular class of firearm) on the market today: the semiautomatic rifle. A semiautomatic rifle is a long gun that fires one projectile with each pull of the trigger, without requiring a separate user action to chamber the next round. *See Garland v. Cargill*, 602 U.S. 406, 425 (2024) (contrasting semiautomatic firearms with fully automatic firearms, which continuously fire rounds with a single function of the trigger). While these firearms have been both lawful and common in most of the country for the better part of a century, Cook County and Connecticut have joined a minority of jurisdictions in launching a broadscale attack on them.

Cook County has made it “unlawful for any person to ... acquire, carry[,] or possess any” “semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise and one or more of the following”: a pistol grip; a protruding grip that can be held by the non-trigger hand; an adjustable stock or thumbhole stock; a barrel shroud, or a muzzle brake or muzzle compensator. Cook Cnty., Ill. Code of Ordinances §54-212(a)(1) (*Viramontes* Pet.App.38a-39a); *id.* §54-511, *Assault weapon* ¶1 (*Viramontes* Pet.App.29a-30a). The law goes on to outlaw dozens of semiautomatic “rifles” by name, including the “AR-

15.” *Id.* §54-511, *Assault weapon* ¶7(A) (*Viramontes* Pet.App.31a-34a). Not content with a belt and suspenders, the law triples down, outlawing all “copies or duplicates [of] any of the enumerated rifles. *Id.* (*Viramontes* Pet.App.31a.). Connecticut’s law is materially identical. See Conn. Gen. Stat. §53-202a(1)(B), (E)(i) (*Grant* Pet.App.97a-100a); *id.* §53-202b (*Grant* Pet.App.107a-110a).

Those are bans on semiautomatic rifles, plain and simple. NSSF is not aware of any semiautomatic rifle on the market (save those specially modified for sale in states with bans like these) that lacks “the capacity to accept a large capacity magazine detachable or otherwise.”² Nor is NSSF aware of any semiautomatic rifle sold in any meaningful numbers that lacks “one or more of the” features respondents’ laws single out. In fact, such features are so ubiquitous on the rifles most people today prefer to buy that the industry has for some time now referred to the substantial universe of semiautomatic rifles that possess them as “modern sporting rifles” or “MSRs.” See NSSF, *Modern Sporting Rifle: Facts*, [perma.cc/URK6-6PC5](https://nssf.org/perma.cc/URK6-6PC5) (last visited Sept. 4, 2026). So, evocative labels aside, the real question here is whether the Second Amendment

² The County defines “large capacity magazine” as “any ammunition feeding device with the capacity to accept more than ten rounds.” Cook Cnty., Ill. Code of Ordinances §54-211, *Large-capacity magazine* (*Viramontes* Pet.App.37a). As with “assault weapons,” that moniker is a misnomer. Magazines capable of accepting more than ten rounds of ammunition not only come standard with most semiautomatic firearms on the market, but account for the majority of magazines Americans today own. See NSSF, *Detachable Magazine Report, 1990-2021* (2024), [perma.cc/4VXU-DJWA](https://nssf.org/perma.cc/4VXU-DJWA).

protects the right of the people to keep and bear a semiautomatic rifle.

2. That is no small matter. As Justice Kavanaugh explained a few years ago, “Americans today possess an estimated 20 to 30 million” semiautomatic rifles. *Snope v. Brown*, 145 S.Ct. 1534, 1534 (2025) (Kavanaugh, J., respecting the denial of certiorari). Those figures track what NSSF has found. *See, e.g.*, NSSF, *Firearms Production Report 2* (2025), perma.cc/7GA3-U5XP (more than 32 million semiautomatic rifles were produced for the American market between 1990 to 2023).³ And NSSF is not alone in that regard.

In 2022, the *Washington Post* reported that approximately 20% of U.S. gun owners own one or more “AR-15-style” semiautomatic rifles. *Poll of current gun owners*, Washington Post-Ipsos (Mar. 27, 2023), perma.cc/YSJ5-STNS. Georgetown Professor William English, who has conducted multiple comprehensive surveys of several thousands of gun owners, found similar results. *See generally* 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*

³ *See also, e.g.*, NSSF, *NSSF Releases Most Recent Firearm Production Figures* (Jan. 15, 2026), perma.cc/EUG5-FDXD (domestic production of AR-15s and similar semiautomatic rifles accounted for nearly 13% of all firearms produced for the American market in 2023); NSSF, *Firearms Retailer: Survey Report 9* (2023 ed.), perma.cc/6PDK-9PLE (“AR/modern sporting rifle” accounted for 19.9% of domestic firearm sales in 2022); NSSF, *Firearms Retailer: Survey Report 9* (2021 ed.), perma.cc/N59Q-6UJJ (20.3% of domestic sales in 2020).

(Georgetown Univ., Working Paper: Aug. 2026), perma.cc/L535-DTQF. According to Professor English's latest survey, "30.0% of gun owners, approximately 26.4 million people, currently own at least one rifle of the type commonly classified as an 'assault weapon,' and approximately 60 million such rifles are currently owned (40 million AR-15 type rifles and 20 million similarly styled rifles)" in America. *Id.* at 37; *see also* William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned* 20 (Georgetown Univ. Rsch., Paper No. 4109494, 2022), perma.cc/E8H9-N6RZ (finding similar results through an earlier survey of gun owners).

Studies and surveys have also repeatedly shown that the overwhelming majority of these millions of semiautomatic rifles are kept and borne by law-abiding citizens for lawful purposes, including self-defense, target shooting, and hunting. In responding to the *Washington Post* survey, for instance, 91% of individuals who reported owning one or more semiautomatic rifles cited protection of self, family, and property as a reason. *Poll of current gun owners, supra*, at 1-2. 90% also cited target shooting, 74% cited the potential break down of law and order, and 48% cited hunting. *Id.* Professor English's findings are similar. *See 2026 National Firearms Survey, supra*, at 41 (home defense (77.7%), recreational target shooting (65.1%), hunting (50.2%)); *2021 National Firearms Survey, supra*, at 33 (similar).

NSSF's have been too. In 2022, NSSF published a comprehensive survey report that charted "Recreational targeting shooting" and "Home/self-

defense” as the two highest rated reasons for which individuals reported owning semiautomatic rifles. See NSSF, *Modern Sporting Rifle Comprehensive Consumer Report* 18 (July 14, 2022), perma.cc/A6BR-PQYV. Another recent NSSF report found that more than 40% of “AR-style” rifles sold by retailers across the country were purchased principally for self-defense or “Personal-protection purposes,” just under 40% principally for “Target/informal shooting,” and around 20% principally for “Hunting purposes.” *2021 Firearms Retailer Survey Report*, *supra*, at 7; see also NSSF, *Sport Shooting Participation in the U.S. in 2020*, at iii (2021), perma.cc/P549-STFN.

As these studies confirm, law-abiding citizens “rely on semi-automatic rifles” for “hunting,” “target shooting,” and “their own personal defense ... , particularly in situations where law enforcement cannot protect them.” *Hearing before the H. Comm. on the Judiciary*, 116th Cong. 8-9 (2019), perma.cc/9MUG-UCC9 (statement of Amy E. Swearer). Indeed, “successful defensive use of AR-15 style rifles is ... a recurrent theme in civilian defensive gun uses, particularly in home invasion scenarios or where an individual is outnumbered by attackers.” *Id.* at 9 & n.32 (collecting examples).

That is understandable, as there are many reasons why people may prefer semiautomatic rifles. “Because the use of recoil energy or diversion of gases in the semi-automatic action significantly reduces felt recoil, semi-automatics can be easier to use by persons who do not have great upper-body strength” compared to lever-action, bolt-action, breech-loading, or pump-action rifles that require human energy to reload a

new round into the chamber. Nicholas J. Johnson et al., *Firearms Law and the Second Amendment* 1995 (3d ed. 2021). “For all users, the reduced recoil” that the semiautomatic action facilitates “helps keep the muzzle on target, increasing the accuracy of a second shot”—which has “obvious self-defense utility.” *Id.* Indeed, even the Seventh Circuit has recognized that semiautomatic rifles “can be beneficial for self-defense because they are lighter than many [other] rifles and less dangerous per shot than large-caliber pistols or revolvers.” *Friedman v. City of Highland Park*, 784 F.3d 406, 411 (7th Cir. 2015).

And the self-defense utility of a semiautomatic rifle is enhanced when it is equipped with the kinds of features Connecticut and Cook County have singled out for opprobrium—*i.e.*, pistol grips, components like forward grips and barrel shrouds that allow users to hold the firearm without being burned, adjustable stocks that allow users to ensure a comfortable fit, and so on. Semiautomatic rifles equipped with these features are not just reliable, accurate, and easy to use; they are generally more reliable, more accurate, and easier to handle than handguns, shotguns, and other rifles, which makes them uniquely suited for self-defense. *See* Johnson, *supra*, at 1997. Rifles like “[t]he AR-15 [are] so user-friendly that a group called ‘Disabled Americans for Firearms Rights’ ... says the AR-15 makes it possible for people who can’t handle a bolt-action or other rifle type to shoot and protect themselves.” Frank Miniter, *The Future Of The Gun* 35, 46-47 (2014); *see also id.* (AR-15s “are popular with civilians ... around the world because they’re accurate, light, portable, and modular” and because they are “easy to shoot and ha[ve] little recoil”).

3. Semiautomatic rifles not only are exceedingly common today, but “have been widely accepted as lawful possessions” in this country almost since their inception. *Staples v. United States*, 511 U.S. 600, 603, 612 (1994). Indeed, until “the 1990’s, there was no national history of banning weapons because they were equipped with furniture like pistol grips, collapsible stocks, ... or barrel shrouds.” *Miller v. Bonta*, 542 F.Supp.3d 1009, 1024 (S.D. Cal. 2021).⁴ That was not for lack of opportunity. Semiautomatic firing marked a quantum leap in firearms technology. But that leap occurred more than a century ago. The first semiautomatic rifles came on the market in the 1890s, and it did not take long for them to achieve commercial success. Yet, for the better part of a century, neither the federal government nor any state outlawed them, regardless of what features or ammunition capacity they had. See David B. Kopel, *The History of Firearm Magazines and Magazine Prohibitions*, 78 Alb. L. Rev. 849, 855, 864-65 (2015).

That history is particularly notable given the starkly different way in which the people reacted to the advent of *fully* automatic firearms. While fully automatic technology developed at roughly the same time as semiautomatic technology, it was not until the 1920s that the Thompson submachine gun, the first automatic firearm that could be carried and fired by one person, was developed. See Robert J. Spitzer, *Understanding Gun Law History after Bruen: Moving Forward by Looking Back*, 51 Fordham Urb. L. J. 57,

⁴ *vacated and remanded*, 2022 WL 3095986 (9th Cir. Aug. 1, 2022).

61 (2023). And while the Tommy gun quickly proved “an unqualified success” with “criminal[s]” and “gangster organizations,” it “was a failure from the start” among law-abiding citizens looking for arms for individual self-defense—likely because it is difficult to ensure that one will both hit the intended target and avoid collateral damage with a firearm that is designed to fire indiscriminately. *Id.* at 61-63; see John Ellis, *The Social History of the Machine Gun* 155 (1975).

Instead of clamoring to buy these new firearms, the people swiftly acted to severely restrict them: At least 32 states banned automatic firearms between 1925 and 1934, and Congress made them prohibitively expensive in 1934—all with virtually no challenge. Spitzer, *supra*, at 64-66. Yet while semiautomatic firearms had by then been growing in popularity among civilians for decades, almost no jurisdiction imposed comparable restrictions on them. No state ever banned either semiautomatic handguns or semiautomatic rifles, and the few laws that swept in even subsets of semiautomatic firearms were either repealed entirely or replaced within a few decades with laws regulating only fully automatic firearms.⁵ And far from questioning whether semiautomatic technology is appropriate for civilians, the federal government sold hundreds of thousands of its surplus semiautomatic rifles to civilians in the 1960s after transitioning the military to newly available select-

⁵ See 1959 Mich. Pub. Acts 249, 250; 1959 R.I. Acts & Resolves 260, 260, 263, *amended by* 1975 R.I. Pub. Laws 738, 738-39, 742; 1963 Minn. Sess. L. ch. 753, at 1229; 1965 Cal. Stat., ch. 33, at 913; 1972 Ohio Laws 1866, 1963; 1975 Va. Acts, ch. 14, at 67.

fire rifles capable of firing automatically. *See* Kopel, *supra*, at 859 n.88; Stephen P. Halbrook, *America's Rifle* 198 (2002).

Things did not change when Armalite's model 15 rifle came onto the market in 1963. Named after the small-arms manufacturer that originally designed the platform, the AR-15 swiftly became "the most popular rifle in the country." *Smith & Wesson*, 605 U.S. at 297; *see* Kopel, *supra*, at 859-60 & n.90. Yet no jurisdiction imposed restrictions on AR-15s (or any other MSRs) for the next 25 years. The earliest law deeming semiautomatic technology and features typical to AR-15s and other MSRs sufficient to render a rifle an unlawful "assault weapon" dates back only to 1989.⁶ *See* Kopel, *supra*, at 867. Congress briefly prohibited the sale of some semiautomatic rifles and other similar firearms shortly thereafter, Pub. L. No. 103-322, §§110101-06, 108 Stat. 1796 (1994), but it allowed that law to expire in 2004 after a Justice Department study found that it had produced "no discernible reduction" in firearm violence, Christopher S. Koper et al., Rep. to the Nat'l Inst. of Just., *An Updated Assessment of the Federal Assault Weapons Ban*:

⁶ The only arguable exception is the District of Columbia's 1932 law, which banned possession of *all* firearms (not just rifles) that "shoot[] automatically or semiautomatically more than twelve shots without reloading." Pub. L. No. 72-275, §§1, 14, 47 Stat. 650, 650, 654 (1932), *repealed by* 48 Stat. 1236 (1934), *currently codified as amended at* 26 U.S.C. §§5801-72. While it is not entirely clear what that law was originally intended to capture, after the District achieved home rule in 1975, the new D.C. government interpreted it to "outlaw[] all ... semiautomatic handguns," Kopel, *supra*, at 866. This Court, of course, invalidated that provision in *Heller*.

Impacts on Gun Markets & Gun Violence, 1994-2003, at 96 (2004).

It was not until the past few decades that an increasing number of states and localities began banning most or all semiautomatic rifles (along with, in some instances, several popular semiautomatic handguns and shotguns as well). And even now, that approach is very much a minority one: Semiautomatic rifles in general, and AR-style rifles in particular, are legal in the vast majority of states, as they have been for most of their existence. It thus remains the case today that semiautomatic rifles “traditionally have been widely accepted as lawful possessions,” *Staples*, 511 U.S. at 612, are “widely legal and bought by many ordinary consumers,” *Smith & Wesson*, 605 U.S. at 297; and are “typically possessed by law-abiding citizens for lawful purposes,” *Heller*, 554 U.S. at 625.

II. The Second Amendment Presumptively Protects Semiautomatic Rifles.

As this Court recently reiterated, the first question “in a Second Amendment case” is “whether the law before [the Court] clashes with the ‘plain text’ of the Amendment’s language.” *Wolford v. Lopez*, 146 S.Ct. 2032, 2043 (2026). If it does, then it implicates the Second Amendment, and the government bears the burden of proving that it is “consistent with [our] Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 17. Answering that threshold question does not require “a lengthy discussion of historical materials and precedents” to determine the full scope of the right the Second Amendment protects. *Wolford*, 146 S.Ct. at 2049. It requires only a straightforward inquiry into “how contemporaries

understood the text” of the Amendment. *Id.* at 2054 (Barrett, J., concurring).

Notwithstanding lower courts’ persistent efforts to complicate it, the threshold inquiry here is about as easy as it gets. There is no dispute that respondents’ laws restrict the ability of “the people” to “keep and bear” most semiautomatic rifles. *See* U.S. Const. amend. II. The only question, then, is whether those rifles fit within the Founding generation’s conception of “Arms.” This Court already answered that question in the affirmative nearly two decades ago when it concluded that the term “Arms” was understood at the Founding (as it is today) to cover “any thing that a man ... takes into his hands, or useth in wrath to cast at or strike another.” *Heller*, 554 U.S. at 581; *see also*, e.g., *id.* at 582 (“[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms.”). Semiautomatic rifles fit comfortably within that definition. Indeed, “[e]ven the narrowest Founding-era definition of ‘Arms’ addressed by the *Heller* Court ‘stated that all firearms constituted ‘arms.’” *Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J. (ANJRPC)*, 183 F.4th 211, 239 (3d Cir. 2026) (en banc) (quoting *Heller*, 570 U.S. at 581-82). “The Constitution thus ‘presumptively protects’ individuals’ right to keep and bear semi-automatic rifles.” *Id.* (quoting *Bruen*, 597 U.S. at 17).

The Second and Seventh Circuits resisted that proposition (as have some other lower courts). While the Second Circuit was at least somewhat equivocal, *see Nat’l Ass’n for Gun Rts. v. Lamont*, 153 F.4th 213, 234-35 (2d Cir. 2025) (deeming it “not necessary” to decide whether semiautomatic rifles “are bearable

arms within the meaning of the Second Amendment”), *cert. granted sub nom. Grant v. Higgins*, No. 25-566 (U.S.), the Seventh Circuit had no such compunctions. In *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023), the court insisted that *Heller* and *Bruen* could not *really* have meant that the Second Amendment presumptively protects all firearms because that would mean that it protects “machineguns” and “portable nuclear weapons.” *Id.* at 1193.

That reflects a fundamental misunderstanding of how the analysis this Court laid out in *Bruen* works. The threshold textual inquiry (*i.e.*, “*Bruen*’s first step”) simply determines whether something is *presumptively* protected by the Second Amendment, such that the government must justify efforts to restrict it. *Wolford*, 146 S.Ct. at 2047-49. It does not answer the *ultimate* question of what can be restricted consistent with the Second Amendment. That is the point of the historical-tradition inquiry: to determine when something that is presumptively protected may nevertheless be restricted “consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 17.

To be sure, history is relevant to both of those inquiries. But “it plays a different ‘rol[e]’ at each [step].” *Wolford*, 146 S.Ct. at 2054 (Barrett, J. concurring) (first alteration in original) (quoting *United States v. Rahimi*, 602 U.S. 680, 738 (2024) (Barrett, J., concurring)). Courts “look to history that ‘elucidates how contemporaries understood the text—for example, the meaning of the phrase “bear Arms”—at *Bruen*’s first step.” *Id.* (quoting *Rahimi*, 602 U.S. at 738-39). Courts “save ‘historical gun regulations,’

however, for *Bruen*’s second step.” *Id.* (quoting *Rahimi*, 602 U.S. at 739). A contrary approach would make nonsense of *Bruen*’s two-stage inquiry. After all, if demonstrating that something is *presumptively* protected by the Second Amendment required proving that it is *in fact* protected, then the distinct inquiries *Bruen* articulated would collapse into each other—and the government would never bear the burden of proving that restrictions on arms-bearing conduct are “consistent with our Nation’s historical tradition of firearms regulation.” *Bruen*, 597 U.S. at 17.

To the extent *Bruen* left any doubt about how narrow a purchase that threshold inquiry has, *Wolford* foreclosed once and for all efforts to “smuggle additional limits, drawn from our regulatory tradition, into the plain-text stage of the inquiry.” *Wolford*, 146 S.Ct. at 2054 n.1 (Barrett, J., concurring). Hawaii devoted pages upon pages of its briefing to arguing that its ban on carrying handguns on private property open to the public without the owner’s express consent did not implicate the Second Amendment *at all* because it was (supposedly) consistent with various historical laws, sources, and principles. *See* Resp.’s.Br.13-27, *Wolford v. Lopez*, No. 24-1046 (U.S. Dec. 17, 2025). This Court dispensed with that lengthy argument in two sentences: “We will discuss all these authorities, but they are out of place at *Bruen*’s first step. At that stage, as we have explained, the question is simply whether a challenged law falls within the Second Amendment’s ‘plain text.’” 146 S.Ct. at 2049.

If anything, the answer to that question is even easier here than it was in *Wolford*: Rifles do not cease

to be “bearable arms” because they operate semiautomatically, take a 15-round magazine, and “[a]re equipped with furniture like pistol grips, collapsible stocks, ... or barrel shrouds.” *Miller*, 542 F.Supp.3d at 1024. A ban on keeping or bearing semiautomatic rifles thus plainly implicates the plain text of the Second Amendment. Efforts to justify that ban by reference to historical laws, cases, and sources must come, naturally, at the historical-tradition stage.

III. There Is No Historical Tradition Supporting Respondents’ Bans On Common Arms.

To defend their bans on keeping and bearing presumptively protected semiautomatic rifles, Connecticut and Cook County must show that their laws are “consistent with th[is] Nation’s historical tradition of firearm regulation.” *United States v. Hemani*, 146 S.Ct. 1677, 1685 (2026) (quoting *Bruen*, 597 U.S. at 24). They cannot carry that burden.

A. When It Comes to Arms Bans, the Common-Use Test Is the Governing Historical Tradition.

1. “Drawing from th[e] historical tradition” of laws that “prohibited the carrying of ‘dangerous and unusual weapons,’” this Court concluded in *Heller* that the Second Amendment protects “weapons that are ... ‘in common use at the time,’ as opposed to those that ‘are highly unusual in society at large.’” *Bruen*, 597 U.S. at 47 (quoting *Heller*, 554 U.S. at 627); *see also Caetano v. Massachusetts*, 577 U.S. 411, 412 (2016) (per curiam). That was no stray dicta. While much of *Heller* focused on whether the Second Amendment protects an individual right, the ultimate question before the Court was whether the District of

Columbia’s handgun ban was constitutional. The Court thus “*ha[d]* to consider ... *what* types of weapons” the Second Amendment protects. 554 U.S. at 624 (first emphasis added). And it concluded that “the sorts of weapons protected [a]re those ‘in common use at the time’” “for lawful purposes like self-defense.” *Id.* at 624, 627.

To be sure, the Court did not need to decide precisely what marks the dividing line between arms that are “in common use” for lawful purposes and arms that are “not typically possessed by law-abiding citizens for lawful purposes,” *id.* at 624-25, because D.C. had banned “an entire class of ‘arms’ that is overwhelmingly chosen by American society for th[e] lawful purpose” “of self-defense,” *id.* at 628-29. But the Court most certainly did have to identify the constitutional rule that governs arms bans. And the rule it identified is that the government may not ban arms that are “‘in common use at the time’ for lawful purposes like self-defense.” *Id.* at 624.

Application of that rule is equally straightforward here, as semiautomatic rifles are by no stretch of the imagination “highly unusual in society at large,” *id.* at 627. This Court opined three decades ago that “semiautomatic weapon[s]” in general, and “the AR-15 rifle” in particular, have “traditionally have been widely accepted as lawful possessions” in this country. *Staples*, 511 U.S. at 603, 612. More recently, the Court unanimously confirmed not only that “[t]he AR-15 is the most popular rifle in the country,” but that AR-style rifles are “widely legal and bought by many ordinary consumers.” *Smith & Wesson*, 605 U.S. at 297. And every serious effort to ascertain how many

people own such rifles and why they do so has confirmed that upwards of 26 million people own them, principally for self-defense and other lawful purposes. *See supra* pp.5-8. If that does not qualify as “typically possessed by law-abiding citizens for lawful purposes,” *Heller*, 554 U.S. at 624-25, it is difficult to imagine what rifle does.

2. Unable to seriously claim that semiautomatic rifles do not satisfy the common-use test, courts that have upheld laws like respondents’ laws have attacked the test. *See, e.g., Bevis*, 85 F.4th at 1198-99; *Lamont*, 153 F.4th at 232-34; *Bianchi v. Brown*, 111 F.4th 438, 460 (4th Cir. 2024) (en banc). But the states and municipalities that have enacted “assault weapons” bans in recent years have uniformly failed to identify any historical tradition that supports banning arms that are in common use for lawful purposes.

As the history *Heller* and *Bruen* extensively considered reflects, “[t]he line between dangerous and unusual weapons, on the one hand, and common weapons, on the other, ... has deep roots in our tradition.” *Bianchi*, 111 F.4th at 515 (Richardson, J., dissenting); *see also, e.g., Andrews v. State*, 50 Tenn. (3 Heisk.) 165, 179 (1871) (recognizing that “the right to keep and thus use” arms secures “the right to keep ... the usual arms of the citizen of the country” against state efforts at disarmament). That tradition traces its origins to medieval laws that prohibited carrying “such weapons as the ‘launcegay,’ a 10- to 12-foot-long lightweight lance.” *Bruen*, 597 U.S. at 41; *see* 7 Rich. 2, c.13 (Eng. 1383); 20 Rich. 2, c.1 (Eng. 1396). Because “weapons like launcegays ... were generally worn or carried *only* when one intended to engage

in ... combat or ... to breach the peace,” the act of carrying them outside the battlefield context was itself considered a breach of the peace. *Bruen*, 597 U.S. at 41 (emphasis added). What distinguished such weapons, then, was that they were *not* typically kept and carried by civilians for lawful purposes, but were instead typically kept for conduct in which people may not lawfully engage outside of formal combat.⁷

Drawing on that tradition, and the related “common-law prohibition on affrays,” *Rahimi*, 602 U.S. at 697, a number of early American jurisdictions made it unlawful to carry “*dangerous and unusual* Weapons, in such a Manner as will naturally cause a Terror to the People,” 1 William Hawkins, *A Treatise of the Pleas of the Crown* 135 (3d ed. 1739) (emphasis added); see, e.g., 1692 Mass. Acts & Laws no. 6 at 11-12; 1699 N.H. Acts & Laws ch. 1. But those early-American “prohibitions on going armed and affrays,” *Rahimi*, 602 U.S. at 697, were never understood to outlaw carrying the common arms of the day. Quite the opposite: Members of the political community (“Persons of Quality”) were “in no Danger of Offending against th[ese] Statute[s] by wearing common Weapons ... for their Ornament or Defence,” because simply carrying common arms conveyed no “Intention to commit any Act of Violence or Disturbance of the

⁷ That people were still permitted to possess such weapons is likely owing to the fact that the line between military service and other forms of sanctioned combat on the one hand, and civilian life on the other, was much more blurred for much of the relevant historical period. See, e.g., *Heller*, 554 U.S. at 595-96. It thus was not uncommon for people to keep in their homes both arms that they used in their day-to-day lives and arms that they needed only for state-sanctioned combat.

Peace.” Hawkins, *supra*, at 136; *see also Andrews*, 50 Tenn. at 178 (Second Amendment encompasses “the right to purchase and use [arms] in such a way as is usual, or to keep them for the ordinary purposes to which they are adapted”). To be sure, someone who carried a common arm in a peace-breaching manner, or put a common arm to some actual misuse, of course could be punished. *See Theodore Barlow, Justice of the Peace* 12 (1745). But the bare act of carrying common arms was no breach of the peace, because only arms *not* commonly used for licit purposes implied illicit intentions. *See Bianchi*, 111 F.4th at 505 (Richardson, J., dissenting).

The nineteenth century saw myriad developments in weaponry, including the advent of a variety of concealable arms. But the historical tradition of protecting the right to keep and bear the common arms of the day endured. The principal example typically offered to claim otherwise—the Bowie knife—proves the point. A majority of states and territories enacted restrictions on the use of Bowie knives between 1837 and 1893. *See David B. Kopel & Joseph G.S. Greenlee, The History of Bans on Types of Arms Before 1900*, 50 J. Legis. 223, 296-327 (2024). But setting aside the problem that respondents have provided almost “no evidence that Bowie knives were in common use for lawful purposes,”⁸ nearly all of

⁸ While the Texas Supreme Court described the “bowie-knife” as a “weapon[] in common use” in *Cockrum v. State*, that case is of no help to respondents, as that is precisely why the court went to hold that “[t]he right to carry a bowie-knife for lawful defense [was] secured.” 24 Tex. 394, 402-03 (1859); *see Bianchi*, 111 F.4th at 534 (Richardson, J., dissenting) (discussing *Cockrum*).

those laws were limited to restricting concealed carry. *ANJRPC*, 183 F.4th at 244-45 & n.37 (citing statutes). This Court has already concluded that restrictions on concealed carry cannot justify carry bans, *see Bruen*, 597 U.S. at 48-49, 53-55, let alone possession bans, *see Heller*, 554 U.S. at 628-29.

Some laws did not even go that far, and instead just banned carrying Bowie knives and other arms with intent to do harm, *see, e.g.*, 1859 Ind. Acts 129, or imposed heightened punishments for crimes committed with those weapons, *see, e.g.*, 1837 Ala. Acts 7; 1853 Comp. L. Cal. §127. And one of the only laws that likely *did* actually ban Bowie knives (along with pistols and an array of other items) is the same 1837 Georgia law that was promptly held unconstitutional other than as applied to concealed carry—because it was too restrictive to comply with the Second Amendment. *See* 1837 Ga. Acts 90, §1 (1838); *Nunn v. State*, 1 Ga. 243 (1846); *cf. Bruen*, 597 U.S. at 54 (singling out *Nunn* as “particularly instructive” on the Second Amendment’s meaning). The only other bans that have been invoked to try to divine a tradition of restricting the keeping or bearing of “unusually dangerous” *common* arms are late-1800s laws from the same territories or handful of states that this Court has already concluded were not abiding by our Nation’s historical tradition of firearms regulation at the time. *See Bruen*, 597 U.S. at 64-70.

For most of the twentieth century, the story was much the same. While respondents point to bans on fully automatic weapons, those arms never gained purchase with the people as weapons of self-defense. The far more relevant historical datapoint is that

semiautomatic rifles have been around even longer than fully automatic arms, yet no one tried to ban them for nearly a century, and few jurisdictions do so even today. *See supra* pp.9-12. That has remained the case as those common arms have evolved in ways that have made them even easier to more accurately fire. People undoubtedly appreciate that such advancements inevitably make firearms attractive to those set on using them unlawfully too. But millions of law-abiding citizens have concluded that that does not make semiautomatic rifles any less suited for lawful purposes like self-defense.

As for the remaining commonly proffered analogues, *Heller* already explained that Founding-era gunpowder-storage laws were enacted as “fire-safety” measures, not to address firearm violence. 554 U.S. at 632. “The suggestion that they limited the Second Amendment right to keep and bear arms is silly.” *Hanson v. District of Columbia*, 120 F.4th 223, 235 (D.C. Cir. 2024). And analogies to laws restricting “trap guns,” *i.e.*, firearms rigged to discharge when a wire is tripped, *see, e.g.*, 1763-1775 N.J. Laws 343, ch. 540, §10, fare even worse. Those laws did not prevent people from owning any class of arms. They just made it unlawful to use common arms in an unusually dangerous way—*i.e.*, by rigging firearms “to engage in automatic and indiscriminate shooting outside of their presence.” *ANJRPC*, 183 F.4th at 243 n.34. Far from helping respondents’ cause, those laws underscore that our Nation’s historical tradition is one of prohibiting the “misus[e] [of] weapons to harm or menace others,” *Rahimi*, 602 U.S. at 693, not of prohibiting common arms just because they are capable of being misused.

In short, the line between “common [arms]” and “dangerous and unusual” ones does not just have “deep roots,” *Bianchi*, 111 F.4th at 515 (Richardson, J., dissenting); it is this Nation’s unbroken tradition.

**B. The Policy Critiques That Have Been
Leveled at the Common-Use Test Are
Legally and Historically Misguided.**

1. It should come as little surprise, then, that most critiques of the common-use test sound more in policy arguments than historical ones. Most notably, some have objected to the test as “circular,” on the theory that it leaves constitutional protection dependent on how quickly new types of arms are banned. *See, e.g., Bevis*, 85 F.4th at 1190 (positing that “[m]achine guns aren’t commonly owned for lawful purposes today because they are illegal,” while “semi-automatic weapons with large-capacity magazines are owned more commonly because, until recently (in some jurisdictions), they have been legal”). Even if that kind of unadorned policy argument could override historical tradition, it is flawed in several respects.

The first problem with the circularity critique is that it assumes that the people’s decisions about what arms to possess are driven entirely by what they may legally purchase. History teaches a very different lesson. Tommy gun manufacturers tried mightily to persuade people to purchase their submachine guns after neither the military nor the police wanted them. But the people did not want them either. Spitzer, *supra*, at 61-62. The only groups with which they were “an unqualified success” were “criminal[s]” and “gangster organizations.” *Id.* Fully automatic weapons thus are uncommon because the people did

not see their utility as self-defense weapons *before* they were banned, not because states “outlawed [them] quickly” enough to prevent people from making that judgment. *Bevis*, 85 F.4th at 1211 (Brennan, J., dissenting).

As that real-world test case reflects, it simply is not the case that people will purchase any arm someone tries to sell them. Law-abiding citizens are, by and large, sensible people who do not want to defend themselves with arms that are less accurate and more likely to harm the very people and property they want to protect. *That* is why machineguns, grenades, and bazookas have never been commonly owned for lawful purposes (and why “portable nuclear weapons” never will be). It is not because Congress or the states were sneaky enough to quickly deprive people of the right to assess the utility of those arms for themselves.

The second problem with the circularity critique is that it assumes that any arm that is “common” is necessarily protected, such that, if enough of a particular arm is sold, then it cannot be banned. But the common-use test does not focus on numbers alone; it asks whether arms are “typically possessed by law-abiding citizens *for lawful purposes*.” *Heller*, 554 U.S. at 625 (emphasis added). Thus, “deciding whether weapons are ‘unusual’ requires more than simply contrasting the number of that kind of weapon against the total number of firearms.” *United States v. Bridges*, 150 F.4th 517, 526 (6th Cir. 2025). It also requires assessing who owns a particular type of arm and why. If machineguns had reached more common numbers, but the majority of those who purchased

them were criminals planning to use them illegally, then the government could likely prove they are not in common use “for lawful purposes.”

That does not mean, as some lower courts have posited, *see, e.g., Bianchi*, 111 F.4th at 460, that people must actually use a particular type of arm regularly to confront threats to life or limb for it to qualify as “in common use.” Most people are fortunate enough never to have to use *any* arm to confront an attacker, so if that were the standard, then all manner of common arms could lose constitutional protection. But it does mean that arms must be commonly put to the types of uses the Second Amendment protects—*e.g.*, kept and/or carried “in case of confrontation,” *Heller*, 554 U.S. at 592, or used for hunting, target shooting, and the like, *see ANJRPC*, 183 F.4th at 234, 241 (observing that “Founding-era Americans commonly used weapons for hunting in addition to self-defense” and that Americans today use semiautomatic rifles of the sort respondents have outlawed for “target shooting” as well). Arms thus will not satisfy the common-use test just because a sizable number of people buy them; how they are typically used matters too.

Conversely, the circularity critique ignores the fact that an arm must be *both* dangerous *and* unusual to fall within the “dangerous and unusual” tradition. While that excludes arms that are in common use for lawful purposes, it does not necessarily exclude all *uncommon* arms. After all, to have any content, “dangerous” must mean dangerous in some way that common arms are not—a concept that can still be assessed by examining why a particular is “typically possessed” even if that arm is not particularly

common. *See Heller*, 554 U.S. at 625. So if an arm is not owned in large numbers, but is typically put only to lawful use, then the “dangerous and unusual” tradition would not justify banning it.

Take, for instance, stun guns. One could certainly debate whether stun guns are common. *See Caetano*, 577 U.S. at 420 (Alito, J., concurring) (noting that “approximately 200,000 civilians owned stun guns’ as of 2009”). But they are widely legal, and no one has suggested that those who do choose to own them typically put them to illicit purposes. Their relative lack of popularity as compared to firearms instead appears to be owing to the fact that most people prefer a self-defense weapon that poses a greater danger to the kinds of threats they want to be prepared to neutralize. It would make scant sense to apply a tradition focused on restricting the use of dangerous and unusual arms to justify depriving those who “may have reservations about using deadly force” of a widely legal arm that is not designed to inflict it. *See id.* at 421.

Nor would that tradition justify depriving arms of constitutional protection simply because they are new, and the people have not yet had a chance to assess their utility for self-defense or other lawful purposes. In that hypothetical scenario, at the very least the government would have to identify something about that arm that makes it more dangerous than arms that *are* in common use for lawful purposes.⁹ The

⁹ That is why it ultimately makes little difference whether one conceptualizes the historical tradition as focused on “dangerous and unusual” arms or “unusually dangerous” arms. Either way, an arm does not fit within that tradition unless it is dangerous in

circularity critique is thus equally misguided in assuming that new arms lack constitutional protection unless and until enough people buy them. *See Bevis*, 85 F.4th at 1190, 1198-99.

2. Ultimately, what really seems to bother critics of the common-use test is that it leaves it to the people to decide what arms they may keep and bear. But the history of the Second Amendment forecloses any other approach.

If there is one thing on which all ought to agree, it is that the Founding generation was acutely aware of what follows state efforts to disarm the citizenry: tyranny. “In the tumultuous decades of the 1760’s and 1770’s, the Crown began to disarm the inhabitants of the most rebellious areas. That provoked polemical reactions by Americans invoking their rights as Englishmen to keep arms.” *Heller*, 554 U.S. at 594; *see also* David Kopel, *How the British Gun Control Program Precipitated the American Revolution*, 6 Charleston L. Rev. 283, 291-301 (2012). Those concerns did not dissipate with independence. “During the 1788 ratification debates, the fear that the Federal Government would disarm the people in order to impose rule through a standing army or select militia was pervasive in Antifederalist rhetoric.” *Heller*, 554 U.S. at 598; *see also The Federalist* No. 46,

some way that arms commonly used for lawful purposes are not—which common arms will never be. Hence why *Heller* “found it ‘fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons that the Second Amendment protects the possession and use of weapons that are ‘in common use at the time.’” *Bruen*, 597 U.S. at 47 (quoting *Heller*, 554 U.S. at 627).

at 299 (James Madison) (Jacob E. Cooke ed., 1961) (arguing that Americans had the “advantage of being armed,” which, together with the existence of subordinate governments, would form a “barrier” against tyranny). And while the Framers of the Second Amendment may have been focused on the threat of disarmament by the federal government, the Framers of the Fourteenth Amendment understood the profound threat to liberty that disarmament by the states poses as well. *McDonald v. City of Chicago*, 561 U.S. 742, 769-78 (2010).¹⁰

The whole point of enshrining the right “to keep arms” in the Second Amendment thus was to ensure that the government could not disarm the governed, and in doing so prevent them from providing “for their own defen[s]e.” *Heller*, 554 U.S. at 594 (quoting *A Journal of the Times*: Mar. 17, N.Y. J., supp. 1, Apr. 13, 1769, in *Boston Under Military Rule* 79 (O. Dickerson ed. 1936)); accord *id.* at 599 (“[T]he threat that the new Federal Government would ... tak[e] away” “the citizens’ ... arms was the reason that right ... was codified in a written Constitution.”). The notion that the Founding generation meant to leave to the government the single most critical question of which arms the people may keep and bear is therefore

¹⁰ That said, at least before *Barron v. Baltimore*, 32 U.S. (7 Pet.) 243 (1833), early commentators believed that the Second Amendment would “restrain[]” not only the federal government, but any “attempt” “to disarm the people” “by a state legislature” as well. *Heller*, 554 U.S. at 607 (quoting the “influential treatise” of “William Rawle, a prominent lawyer who had been a member of the Pennsylvania Assembly that ratified the Bill of Rights”).

antithetical to the enshrinement of the Second Amendment in the Constitution.

Yet that is precisely what the decisions below would usher in. Indeed, by the Seventh and Second Circuits' lights, "the legislature [i]s entitled to conclude," without even meaningful judicial scrutiny, that arms overwhelmingly chosen by law-abiding Americans for their own defense are actually ill-suited for that purpose and better "reserved to the military." *Bevis*, 85 F.4th at 1195 & n.8. But this Court has been emphatic that "judicial deference to legislative interest balancing" has no place when it comes to the right to keep and bear arms. *Bruen*, 597 U.S. at 26. It is the Second Amendment's "balance—struck by the traditions of the American people—that demands our unqualified deference." *Id.* And "[o]ur 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 the denial of certiorari). It thus is not for Cook County or Connecticut to second-guess the judgment that millions of Americans have made for the better part of a century that semiautomatic rifles are well suited to aid in protecting themselves and their loved ones.

CONCLUSION

This Court should reverse.

Respectfully submitted,

LAWRENCE G. KEANE	ERIN E. MURPHY
SHELBY BAIRD SMITH	<i>Counsel of Record</i>
NATIONAL	NICHOLAS A. AQUART
SHOOTING SPORTS	CLEMENT & MURPHY, PLLC
FOUNDATION, INC.	706 Duke Street
400 N. Capitol St., NW	Alexandria, VA 22314
Washington, DC 20001	(202) 742-8900
(202) 220-1340	erin.murphy@clementmurphy.com

Counsel for Amicus Curiae

September 4, 2026