

Nos. 25-238, 25-566

IN THE
Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,
Petitioners,

v.
COOK COUNTY, ILLINOIS, *et al.*,
Respondents.

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

v.
RONNELL HIGGINS, *et al.*,
Respondents.

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

**BRIEF FOR *AMICUS CURIAE* THE
NRA CIVIL RIGHTS DEFENSE FUND
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE*¹

Amicus NRA Civil Rights Defense Fund (the “Fund”) is an independent trust established in 1978 to assist in the preservation and defense of the human, civil, and constitutional rights to keep and bear arms in a free society. Today, the Fund provides legal and financial assistance to individuals and organizations defending their right to keep and bear arms.

The Fund sponsors legal research and education on a wide variety of issues, including the meaning of the Second Amendment, and has participated as amicus in numerous other cases implicating the right to keep and bear arms. The Fund has a compelling interest in the Court’s resolution of this case because the arguments made by the Respondents, if affirmed by this Court, would harm millions of citizens in jurisdictions across the country. That is contrary to the mission of the Fund, created to protect the fundamental right of all law-abiding Americans to possess and carry a firearm for lawful purposes, including self-defense.

¹ Counsel certifies that no party or counsel for a party authored this brief in whole or in part. No entity, aside from the NRA Civil Rights Defense Fund, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The Second Amendment does not allow a State to ban the most popular semiautomatic rifle in the country. In *Heller*, this Court held that banning handguns violated the Second Amendment because handguns were commonly owned by ordinary law-abiding Americans—a fact that took an “absolute prohibition” “off the table.” *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008). Since then, this Court has repeatedly emphasized that any Second Amendment analysis must be properly anchored in text and history. That approach yields a clear result here: Semiautomatic rifles are plainly “arms” under any ordinary meaning of the term. And despite years of effort by lower courts and gun-control activists, nobody has found any historical tradition of categorically banning arms that Americans commonly own for lawful purposes.

Despite that clear teaching from this Court’s precedent, the Second, Fourth, and Seventh Circuits have blessed categorical bans on AR-15s and similar semiautomatic rifles. See *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023); *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024) (en banc); *Nat’l Ass’n for Gun Rights v. Lamont*, 153 F.4th 213 (2d Cir. 2025). The Fourth and Seventh Circuits first held that these firearms are not even “arms” under the Second Amendment because they are too similar to weapons used by the military. And all three circuits have wrongly equated categorically banning AR-15s with inapposite historical examples—including limited regulations on firearm use, bans on dangerous *and unusual* arms, and laws that came long after the expiration date for interpretive relevance.

Following *Heller*, lower courts justified bans on AR-15s and other common semiautomatic rifles through naked interest balancing. *See, e.g., Worman v. Healey*, 922 F.3d 26, 30-31 (1st Cir. 2019). After this Court made clear in *Bruen* that the right to keep and bear arms cannot be overridden so easily, governments seeking to impose such outright bans have innovated. They now ask courts to artificially narrow the meaning of “arms” or indulge in loose historical analogies to justify ever more brazen restrictions.

This Court should reject both practices. First, under the ordinary meaning of the Second Amendment, there is no plausible argument that AR-15s and other semiautomatic rifles are not “arms.” To conclude otherwise, the Fourth and Seventh Circuits abandoned plain meaning in favor of a purposive inquiry into what is “really” necessary for self-defense, which they claim does not include so-called “military” weapons, a category that supposedly encompasses AR-15s. This analysis defies this Court’s instruction to follow the plain text, and it makes no sense on its own terms at each step.

Second, governments cannot categorically ban arms “in common use” by millions of ordinary American citizens. *Heller* takes such prohibitions “off the table.” 554 U.S. at 636. History and tradition make clear that only “dangerous and unusual” arms can be subject to categorical bans. *Id.* at 627. That category includes only arms “particularly useful for criminal activity *and* not in common use for lawful purposes.” *United States v. Bridges*, 150 F.4th 517, 537 (6th Cir. 2025) (Nalbandian, J., concurring in part). It does not include the most popular semiautomatic firearms in the United States.

In short, this Court’s precedent provides clear standards to follow in Second Amendment challenges. And under those standards, the government plainly cannot ban AR-15s and similar semiautomatic rifles that are commonly owned for lawful purposes. This Court should reverse the judgments below.

ARGUMENT

I. THE AR-15 IS AN “ARM” WITHIN THE MEANING OF THE SECOND AMENDMENT.

This Court has made clear that the first step of the Second Amendment analysis must focus on the Amendment’s “plain text.” *Wolford v. Lopez*, 146 S. Ct. 2032, 2047 (2026). Courts thus “begin by asking whether the Amendment’s terms cover the conduct in question.” *United States v. Hemani*, 146 S. Ct. 1677, 1685 (2026).

1. Here, text yields an obvious answer: A categorical ban on the most popular firearm in the United States plainly implicates “the right of the people to keep and bear Arms.” After all, “the most natural reading of ‘keep Arms’ in the Second Amendment is to ‘have weapons.’” *Heller*, 554 U.S. at 582. And the right to “bear” arms “naturally encompasses public carry” of firearms. *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 32-33 (2022). The AR-15 and similar semiautomatic rifles are obviously “weapons.” So categorically banning them strikes at the very “core” of the Second Amendment, interfering with “even the mere possession of a firearm in the home for the purpose of self-defense.” *Kanter v. Barr*, 919 F.3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting).

Many courts have recognized this simple point. “[T]o the founding generation, ‘all firearms constituted “arms.”’” *Bridges*, 150 F.4th at 524 (quoting *Heller*, 554 U.S. at 581-82). “Because semi-automatic rifles are firearms, they are ‘Arms’ within the meaning of the Second Amendment. The Constitution thus ‘presumptively protects’ individuals’ right to keep and bear semi-automatic rifles.” *Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. (ANJRPC)*, 183 F.4th 211, 239 (3d Cir. 2026) (en banc) (quoting *Bruen*, 597 U.S. at 17). And so a law imposing a “ban on semi-automatic rifles” is “a ban on a *class* of arms within the scope of Second Amendment protection.” *Heller v. District of Columbia*, 670 F.3d 1244, 1288 (D.C. Cir. 2011) (Kavanaugh, J., dissenting). That is all that is needed to clear *Bruen*’s first step.

2. One might expect that the two circuits reaching a contrary conclusion would have powerful evidence for their counterintuitive view that semiautomatic rifles such as AR-15s are not “arms” within the meaning of the Second Amendment. They do not.

Purporting to look at “the ‘plain text’ of the Second Amendment,” both courts relied on what they called “baked-in prerogatives and qualifications” to that text. *Bianchi*, 111 F.4th at 447; *accord Bevis*, 85 F.4th at 1192-93. Based on these supposed “qualifications,” they divined that “the definition of ‘bearable Arms’ extends only to weapons in common use for” the “purpose” of “individual self-defense.” *Bevis*, 85 F.4th at 1193; *accord Bianchi*, 111 F.4th at 452. They then posited that the term “arms” does not include “excessively dangerous weapons ill-suited and disproportionate to” self-defense, which they took to

exclude “military-grade ... weapons.” *Bianchi*, 111 F.4th at 452; *accord Bevis*, 85 F.4th at 1193-94. From there, they conducted a functional analysis of firearm features and concluded that semiautomatic rifles like the AR-15 are “military-grade” weapons and not “arms,” because Americans do not really “need” them to defend themselves. *See Bevis*, 85 F.4th at 1194-97; *Bianchi*, 111 F.4th at 454-59.

This erroneous analysis requires (1) relying on atextual sources to contradict the ordinary meaning of the text, (2) sharply limiting an entire constitutional provision based on a dubious inference about its supposed single “purpose,” (3) extracting from that purpose a false dichotomy between “protected” and “unprotected” categories of firearms (*e.g.*, “military” weapons), and then (4) engaging in an arbitrary analysis of whether a firearm is sufficiently “military-grade” to fall outside of any protection. In no other context would such an atextual, purposivist approach qualify as a “plain text” reading of the law. Each step in the analysis is wrong.

First, the courts’ exclusive reliance on atextual sources is misplaced. To determine whether the right to bear arms is implicated, this Court has admonished courts to stay focused on the plain text and avoid “launch[ing] into a lengthy discussion of historical materials.” *Wolford*, 146 S. Ct. at 2049. At most, courts should “look to history that ‘elucidates how contemporaries understood ... the phrase “bear arms.”’” *Id.* at 2054 (Barrett, J., concurring). But broader arguments about historical practices or restrictions on bearing arms are “out of place” at this threshold stage. *Id.* at 2049 (majority op.).

Stated differently, whether a particular firearm falls within the textual meaning of the term “arms,” is logically distinct from whether history or tradition might justify a *restriction* on the right to bear such arms. At the first step, to determine what the text means when it refers to “arms,” this Court has been clear that “normal and ordinary as distinguished from technical meaning” controls. *Heller*, 554 U.S. at 576. Keeping and bearing arms simply means owning and carrying weapons, including firearms. And in no universe does the ordinary meaning of the term “arms” turn on whether a firearm is necessary for self-defense, much less whether it qualifies as “military-grade.”

The plain and ordinary meaning of “arms” is confirmed by virtually every Founding-era dictionary, whether ordinary or legal. See, e.g., 1 Samuel Johnson, *Arms, A Dictionary of the English Language* (4th ed. 1773) (“Weapons of offence, or armour of defence”); Thomas Dyche & William Pardon, *Arm* (v.), *A New General English Dictionary* (14th ed. 1771) (“all manner of warlike instruments”); 1 John Ash, *Arms, The New and Complete Dictionary of the English Language* (1775) (“Weapons of offence, armour of defence”); N. Bailey, *A Universal Etymological English Dictionary* (25th ed. 1783) (“all manner of weapons for fighting”); 1 Timothy Cunningham, *Armour or Arms, A New and Complete Law Dictionary* (3d ed. 1783) (“In the understanding of law, are extended to any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.”); Noah Webster, *Arms, A Compendious Dictionary* (1806) (“The ensigns of a family, weapons, war”).

That plain meaning of “arms” persisted through the ratification of the Fourteenth Amendment. *See, e.g.*, 1 Noah Webster, *Arms, An American Dictionary of the English Language* (1828) (“Weapons of offense, or armor for defense and protection of the body”); 1 John Boag, *Arms, A Popular and Complete English Dictionary* (1848) (“Weapons of offence, or armour for defence and protection of the body.”).

Glaringly absent from the historical record is *any* definition of “arms” that would exclude firearms. While *Heller* rejected “idiomatic meaning[s],” 554 U.S. at 586, courts that would read “arms” to exclude semiautomatic firearms lack even that.

Second, it is wrong to limit the Second Amendment to a single “purpose” of self-defense. That “the inherent right of self-defense has been central to the Second Amendment right,” *Heller*, 554 U.S. at 628, does not limit the scope of constitutional protection to that purpose, *see, e.g.*, *N.L.R.B. v. Noel Canning*, 573 U.S. 513, 579 (2014) (Scalia, J., concurring in judgment) (criticizing “the folly of interpreting constitutional provisions” on “narrow-minded assumptions” about what “their only purpose is”). It is “not the role of courts to extrapolate from the words of the [Second] Amendment to the values behind it, and then to enforce its guarantees only to the extent they serve (in the courts’ views) those underlying values.” *Giles v. California*, 554 U.S. 353, 375 (2008) (opinion of Scalia, J.). Indeed, the conclusion that a semiautomatic rifle is not an “arm” illustrates how “climb[ing] up th[e] ladder of purposes” allows an interpreter to “change the text according to the level of generality he has chosen.” Antonin Scalia & Brian A. Garner, *Reading Law* 19 (2012).

Third, even on historical grounds, any supposed constitutional dichotomy between “military” weapons and “self-defense” weapons is a false one. Long before and through the Founding, militias formed the backbone of policing and national defense in places like the colonies, which were distant from the central government. See Robert Leider, *The State’s Monopoly of Force and the Right to Bear Arms*, 116 N.W.U. L. Rev. 35, 50-52 (2021). And because the “traditional militia was formed from a pool of men bringing arms in common use at the time,” the “weapons used by militiamen and weapons used in defense of person and home *were one and the same*.” *Heller*, 554 U.S. at 624-25 (emphasis added).

As *Heller* recognized, courts long connected the right to keep and bear arms with weapons that likewise happened to be associated with the military. See, e.g., *Aymette v. State*, 21 Tenn. 154, 157 (1840); see also *United States v. Miller*, 307 U.S. 174, 179 (1939). Indeed, protecting the right to keep and bear firearms that could be put to military use is “precisely the way in which the Second Amendment’s operative clause furthers the purpose announced in its preface.” 554 U.S. at 625. The prefatory clause refers to “[a] well regulated Militia, being necessary to the security of a free State.” U.S. Const. amend. II. And “[l]ogic demands that there be a link between th[at] stated purpose” and the type of “arms” protected by the Second Amendment’s operative clause. *Heller*, 554 U.S. at 577-78. It is thus obvious that the individual right to “keep and bear arms” covers at least some firearms that could be used by a “Militia” for military purposes. *Id.* at 587-88. The text of the Second Amendment would make no sense otherwise.

The contrary view expressed by the Fourth and Seventh Circuits contradicts both the prefatory clause of the Second Amendment and the history of colonial militias. Since the individual right to keep and bear arms has long been understood to be a key guarantor of having firearms available for military use by the Militia, it would be nonsensical to limit the scope of protected “arms” to “non-militaristic weapons.” *Bevis*, 85 F.4th at 1199; *see also Bianchi*, 111 F.4th at 448 (wrongly holding that the Second Amendment necessarily excludes “weapons that are most useful in military service”).

The Fourth and Seventh Circuits could conclude otherwise only by pronouncing, erroneously, that “the Supreme Court *severed* th[e] connection” “between the prefatory clause, which refers to the Militia, and the operative clause, which refers to the right.” *Bevis*, 85 F.4th at 1188 (emphasis added). That is plainly wrong. The Court merely held that the right to bear arms is not limited to militia service; it did not say that there is no connection. *Heller* repeatedly held that “bear arms’ did not refer *only* to carrying a weapon in an organized military unit” and that “[k]eep arms’ was simply a common way of referring to possessing arms, for militiamen *and everyone else*.” 554 U.S. at 583, 585 (first emphasis added). In other words, *Heller* held that “arms” encompassed both weapons used by soldiers *and* “weapons that were not specifically designed for military use and were not employed in a military capacity.” *Id.* at 581. The clear upshot is that the right to keep and bear arms necessarily includes the right to possess some arms with military uses, even though the right is not *limited* to possessing arms for military service.

Finally, even on its own terms, the military/nonmilitary dichotomy is both under- and over-inclusive. For one thing, the U.S. military has long relied on handguns as service weapons. *See, e.g.*, U.S. Dep’t of Army, *Department of War Confirms Modular Handgun System (MHS) is Safe and Reliable*, PAE Maneuver Ground (Aug. 7, 2026), <https://perma.cc/5X5E-JJDJ> (confirming that over 400,000 Sig Sauer-based M17 and M18 pistols are in service across the military). But that cannot make handguns unprotected “military” weapons: *Heller* squarely held that handguns *are* protected. *See* 554 U.S. at 629. Likewise, AR-15s are typically *not* used by the military because they are only semiautomatic, not *fully* automatic. Indeed, “[n]o army in the world uses a service rifle that is only semiautomatic.” *Bevis*, 85 F.4th at 1222 (Brennan, J., dissenting). And because handguns have more “military use” than AR-15s, a “military use” test that bans only the latter makes no sense.

Because the military does not use AR-15s but millions of civilians do, the lower courts could not exclude them based on any straightforward “military use” test. Instead, they have concocted an arbitrary set of criteria to divine “whether the AR-15 and comparable weapons fall on the military or civilian side of the line.” *Bevis*, 85 F.4th at 1197. These arbitrary criteria include what type of “internal piston firing system” a firearm has; the “ammunition it uses”; its magazine “compatib[ility],” “lack of recoil,” “kinetic energy,” “muzzle velocity,” and “effective range”; and whether it has “a threaded barrel” for attaching accessories. *Bianchi*, 111 F.4th at 454-56; *Bevis*, 85 F.4th at 1195-96.

None of this has any legal basis. Whether a firearm is “close enough” to a “military” weapon has nothing to do with whether it qualifies as an “arm” under the Second Amendment. Indeed, this type of artificial comparative analysis reflects a longstanding problem with bans on so-called “assault weapons.” The proponents of such bans typically identify a category of firearms based on “features that have little relation to dangerousness, such as folding stocks, pistol grips, bayonet mounts, flash suppressors,” and the like. Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1484 (2009). Because these criteria are largely superficial, the resulting bans target weapons that are often “no more ‘high power’ than many other pistols and rifles that are not covered by the bans.” *Id.* Indeed, to take just one example of the illogical results, AR-15s and other “semi-automatic *rifles* fire at the same rate as semi-automatic *handguns*,” which are undeniably protected. *Heller*, 670 F.3d at 1289 (Kavanaugh, J., dissenting). There is no reason the Constitution would draw such an arbitrary line.

* * *

In short, courts have excluded AR-15s from the ordinary meaning of “arms” only by ignoring the plain meaning of the Second Amendment. Instead of following the text, they have relied on arbitrary and irrelevant considerations entirely untethered from the Constitution. The result is pure judicial discretion to pick and choose which arms fall within the scope of the Second Amendment’s protection. And that is precisely the kind of standardless discretion *Heller* rejected. 554 U.S. at 634.

To be sure, the fact that the term “arms” refers broadly to all firearms does not prevent courts from considering “the historical understanding of the scope of the right the Constitution codified.” *Wolford*, 146 S. Ct. at 2049. It may well be that history and tradition could justify some restrictions on some types of arms. But that question belongs at the second step in the inquiry—not at the first step, which is focused on what constitutes an “arm” in the first place. This Court should thus reaffirm that the ordinary meaning of “arms” controls as a threshold matter.

II. THE SECOND AMENDMENT PRECLUDES BANS ON ARMS IN COMMON USE FOR LAWFUL PURPOSES.

Because keeping and bearing “arms” includes possessing and carrying semiautomatic rifles like the AR-15, the first step of the Second Amendment inquiry is satisfied and “the Constitution ‘presumptively’ protects” this conduct. *Hemani*, 146 S. Ct. at 1685 (quoting *Bruen*, 597 U.S. at 24). Overcoming the presumption of protection at the second step requires proof that the challenged firearm restriction “is consistent with this Nation’s historical tradition of firearm regulation” that “delimits the outer bounds of the right.” *Bruen*, 597 U.S. at 19, 34. This inquiry “ask[s] ‘why’ and ‘how’ States historically regulated the right” to “identify the range of permissible regulatory goals and how far States may go to achieve them.” *Wolford*, 146 S. Ct. at 2055 (Barrett, J., concurring). “The more closely a contemporary law mirrors a well-established historical analogue in purpose and operation, the more likely it is to be upheld.” *Hemani*, 146 S. Ct. at 1686.

1. While the historical inquiry “can be difficult” in some cases, *Bruen*, 597 U.S. at 25, it is straightforward here. There is no historical tradition of categorically banning the possession of any firearm commonly owned and used by Americans for lawful purposes. And since AR-15s fit that description, they cannot be categorically banned.

“During the colonial period and the Founding Era, there were no bans in the English colonies or the new nation on types of arms” at all. David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. Legis. 223, 385 (2024). The closest examples are a trio of colonial and founding-era statutes prohibiting the carry of dangerous and unusual weapons, and an earlier, short-lived prohibition in East Jersey restricting frontiersmen from carrying handguns. *Id.* Beyond that, only two outlier state laws banned most open carry of pistols, but courts held that both those laws violated the right to bear arms. See *Andrews v. State*, 50 Tenn. 165, 187 (1871); *Nunn v. State*, 1 Ga. 243, 251 (1846).

Accordingly, there is simply “no robust ... tradition of disarming law-abiding citizens of commonly owned arms.” *Duncan v. Bonta*, 133 F.4th 852, 907 (9th Cir. 2025) (en banc) (Bumatay, J., dissenting). Indeed, in the years of fierce resistance and litigation since *Heller*, nobody has “identified any law, anywhere, ... that prohibited simple possession of a gun” between “17th century English laws and 19th-century state laws.” *Id.* And even if someone could find a rare exception at this late stage, it would by definition be the sort of “outlier legal rule” that “is not enough” to justify a modern restriction. *Wolford*, 146 S. Ct. at 2050.

To be sure, *Heller* recognized that there is a historical tradition—and thus latitude to regulate—arms that are “dangerous and unusual.” *Heller*, 554 U.S. at 627. But this category is “mutually exclusive” with weapons “in common use for lawful purposes.” *ANJRPC*, 183 F.4th at 234. *Heller* “positioned the two in opposition,” *id.*, recognizing that the protection of weapons “in common use” was “supported” by the contrasting tradition of regulating “dangerous and unusual weapons,” *Heller*, 554 U.S. at 627; *see also* Kopel & Greenlee, *supra*, at 293-94 (noting that States instead regulated firearms through “mode of carry” restrictions and age limits); *accord Snope v. Brown*, 145 S. Ct. 1534, 1534 (2025) (statement of Kavanaugh, J., respecting the denial of certiorari); *Friedman v. City of Highland Park*, 577 U.S. 1039 (2015) (Thomas, J., dissenting from denial of certiorari). In other words, “[a] weapon may not be banned unless it is *both* dangerous *and* unusual.” *Caetano v. Massachusetts*, 577 U.S. 411, 417 (2016) (Alito, J., concurring in judgment); *see id.* at 412 (majority) (reversing solely on lower court’s conclusion that stun guns were “unusual”).

The “line between dangerous and unusual weapons, on the one hand, and common weapons, on the other, ... has deep roots.” *Bianchi*, 111 F.4th at 515 (Richardson, J., dissenting). *Heller* itself reflects this. The Court there struck down “a complete prohibition” on handguns, and the key consideration was that “the American people have considered the handgun to be the quintessential self-defense weapon.” 554 U.S. at 629. Because of the “choice[]” by the law-abiding American public to commonly use handguns, a ban was “off the table.” *Id.* at 636.

In *Bruen*, likewise, the Court struck down a public-carry restriction because there was no historical “tradition of broadly prohibiting the public carry of commonly used firearms for self-defense.” *Bruen*, 597 U.S. at 38. Again, the key to the Court’s analysis was that the ban targeted firearms that were “commonly used” for a lawful purpose, *i.e.*, “self-defense.” *Id.* When the American people have put a particular type of firearm to common use for such lawful purposes, the government may not impose a ban.

2. Accordingly, the dispositive question in this case is whether AR-15s and similar semiautomatic rifles are “in common use” for lawful purposes. They undoubtedly are. This Court has recognized that “[t]he AR-15 is the most popular rifle in the country” and that it belongs to a category of “products [that] are both widely legal and bought by many ordinary consumers.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025); *see also Staples v. United States*, 511 U.S. 600, 612 (1994) (recognizing that semiautomatic weapons like the AR-15 “traditionally have been widely accepted as lawful possessions”); *Garland v. Cargill*, 602 U.S. 406, 430-31 (2024) (Sotomayor, J., dissenting) (describing “semiautomatic rifles” like the AR-15 as “commonly available”); *Heller*, 670 F.3d at 1287 (Kavanaugh, J., dissenting) (recognizing that “[s]emi-automatic rifles remain in common use today” and that “[t]he AR-15 is the most popular semi-automatic rifle”); *ANJRPC*, 183 F.4th at 241-42 (holding that “[r]egardless of where [the] lines” for common use “may be drawn, the many millions of semiautomatic rifles in circulation for lawful purposes are plainly in common use”).

Whatever the precise numbers may be, the scale of the common use is undeniable. “Americans today possess an estimated 20 to 30 million AR-15s.” *Snope*, 145 S. Ct. at 1534 (2025) (statement of Kavanaugh, J.); *see also, e.g.*, John Berrigan *et al.*, *The Number and Type of Private Firearms in the United States*, 704 Annals Am. Acad. Pol. & Soc. Sci. 70, 70-90 (2022) (reporting similar range); Nat’l Shooting Sports Found., *Modern Sporting Rifle Comprehensive Consumer Report* 12 (July 14, 2022), <https://perma.cc/SSU7-PR95> (same). To the extent it matters, most AR-15 owners report that they own the firearm for defensive reasons. *See Most AR-15 Gun Owners Own AR-15s to Protect Their Self, Family, and Property*, Wash. Post-Ipsos (Mar. 27, 2023) (recording over two-thirds of owners reporting defensive reasons for ownership); Nat’l Shooting Sports Found., *supra*, at 53-61 (reporting that a similar proportion of consumers bought AR-15s and similar rifles for “home defense”). Additionally, millions of citizens use these rifles for other lawful purposes, such as hunting and target practice. *Id.* at 43.

3. The Second, Fourth, and Seventh Circuits all resisted the relevance of “common use.” They disparaged the idea of “numbers alone” because it could shift the scope of constitutional protections over time and does not allow for a purposive inquiry into the value of particular firearms for self-defense. *Bevis*, 85 F.4th at 1199; *Bianchi*, 111 F.4th at 460-61; *Lamont*, 153 F.4th at 233. But these courts did not even try to reconcile their reasoning with *Heller* and *Bruen*, which recognized that firearms in common use for lawful purposes are protected. And their contrary reasoning cannot withstand scrutiny.

a. According to the Seventh Circuit, governments “have long contemplated that the military and law enforcement may have access to especially dangerous weapons, and that civilian ownership of those weapons may be restricted.” *Bevis*, 85 F.4th at 1201. But whether or not that is true, the relevant question is whether there is any historical tradition of banning firearms that are commonly used by the public for law-abiding purposes. And the answer to that question is a resounding no.

For all its strident rhetoric about England’s “impressive standing army,” the Seventh Circuit never identified any “military” weapons at all, much less ones that were historically banned despite being commonly owned and used for law-abiding purposes. *Id.* at 1199. Instead, the court simply noted an assortment of laws that regulated weapons in different ways from as late as 1986 that included exemptions for military use. *Id.* at 1201-02. That might establish the unremarkable point that the Second Amendment generally allows the military to possess and use some dangerous and unusual weapons that civilians cannot. It does not, however, say anything about banning firearms like AR-15s, which are *not* used by the military but *are* commonly used by the public for lawful purposes.

The Seventh Circuit also has a timing problem. All but one of the regulations it cited came after 1868—many during the twentieth century. None of this evidence is load-bearing. “[B]ecause post-Civil War discussions of the right to keep and bear arms ‘took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources.’” *Bruen*, 597

U.S. at 36 (quoting *Heller*, 554 U.S. at 614). Ultimately, “evidence of ‘tradition’ unmoored from original meaning is not binding law.” *United States v. Rahimi*, 602 U.S. 680, 738 (2024) (Barrett, J., concurring). And “evidence ... largely from the late 19th and early 20th centuries” is “far too late to inform ... meaning ... at the time of the founding.” *Samia v. United States*, 599 U.S. 635, 655 (2023) (Barrett, J., concurring in part); *accord, e.g., Vidal v. Elster*, 602 U.S. 286, 323-24 (2024) (Barrett, J., concurring in part). A smattering of seemingly random laws from “seemingly random time period[s]” that impose very different restrictions are simply not probative of original meaning. *Samia*, 599 U.S. at 655 (Barrett, J., concurring in part).

The only timely regulation the court identified was a 1746 Boston ordinance that “outlawed the discharging of any cannon, gun, or pistol within city limits,” exempting soldiers. *Bevis*, 85 F.4th at 1201. But that is not a relevant comparator here because it simply regulated a particular *use*. It was not a total ban on possession. There is also no evidence that the law at issue applied to prevent using arms for self-defense. *See, e.g., Heller*, 554 U.S. at 631-32. Either way, that law does not provide any historical support for categorically banning popular firearms that are commonly used for lawful purposes.

In any event, even if this were a relevant comparator, courts cannot rely on “a single law, in effect in a single city, that contradicts the overwhelming weight of other evidence regarding the right to keep and bear arms.” *Heller*, 554 U.S. at 632; *accord, e.g., Wolford*, 146 S. Ct. at 2050.

b. The Second and Fourth Circuits tried to spin the lack of genuine comparators differently. They reasoned that the advent of modern semiautomatic rifles and the (purported) dearth of firearm homicides at the Founding called for “a more nuanced approach” due to these “unprecedented social concerns” and “dramatic technological changes.” *Bianchi*, 111 F.4th at 464; *Lamont*, 153 F.4th at 236-40. Their “tradition” was that legislatures have always been able to enact “responsible and proportional legislation” to address “urgent and visible threats posed by excessively harmful arms.” *Bianchi*, 111 F.4th at 464; *accord Lamont*, 153 F.4th at 244.

When it addressed comparators, the Fourth Circuit indiscriminately string-cited a mass of regulations with some connection to weapon use, control, storage, or sale. *Bianchi*, 111 F.4th at 466-68 & nn.4-10. For its part, the Second Circuit cited some of the same laws, blurring the line between use regulations and bans. *See Lamont*, 153 F.4th at 242-46. Insofar as particular weapons are concerned, they pointed only to the use and carry of unusual weapons like Bowie knives, “slungshots,” and “sand clubs.” *Bianchi*, 111 F.4th at 466-67. Setting aside that most regulations relating to these came after 1868, *Bruen* already rejected the comparison for a restriction on public carry. 597 U.S. at 40-55. These weapons were in fact dangerous and unusual—both oddities among law-abiding citizens and frequently used by criminals for illegal purposes. *See Bridges*, 150 F.4th at 536-41 (Nalbandian, J., concurring); Kopel & Greenlee, *supra*, at 328-72 (canvassing each regulation). Again, banning such unusual arms says nothing about arms in common use for lawful purposes—much less “the

most popular rifle in the country.” *Smith & Wesson*, 605 U.S. at 297.

More fundamentally, the Second and Fourth Circuits’ proposal that the “more nuanced” approach *Bruen* referenced could relax or replace any inquiry into original public meaning is badly mistaken. *Bruen* mandated only one test: Statutes implicating the Second Amendment right to keep and bear arms must be “consistent with this Nation’s historical tradition of firearm regulation.” 597 U.S. at 34. *Bruen*’s passing reference to a “more nuanced approach” was only “an unremarkable observation that making comparisons to proper historical analogies might be challenging at times.” *Duncan*, 133 F.4th at 910 (Bumatay, J., dissenting). Originalism’s utility would be eviscerated if the mere presence of (purportedly) new social problems or technology suddenly put all “policy choices,” including total bans on common firearms, back on “the table,” *Heller*, 554 U.S. at 636, or granted a “regulatory blank check,” *Bruen*, 597 U.S. at 30. This Court and history both make clear that arms in common use for lawful purposes cannot be categorically banned. That rule applies today with the same force that it did at the Founding.

CONCLUSION

The judgments below should be reversed.

Respectfully submitted,

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