

No. 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, 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 ASSOCIATION OF NEW JERSEY
RIFLE & PISTOL CLUBS, INC., GUN OWNERS'
ACTION LEAGUE, INC., AND NEW JERSEY
FIREARMS OWNERS SYNDICATE AS AMICI
CURIAE IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICI CURIAE¹

Association of New Jersey Rifle & Pistol Clubs, Inc. (“ANJRPC”) is a not-for-profit membership corporation, incorporated in the State of New Jersey in 1936 and represents its members, including tens of thousands of members who reside in New Jersey. ANJRPC represents the interests of target shooters, hunters, competitors, outdoors people, and other law abiding firearms owners. Among ANJRPC’s purposes is aiding such persons in every way within its power and supporting and defending the people’s right to keep and bear arms, including the right of its members and the public to purchase, possess, and carry firearms. New Jersey imposes restrictions on the purchase and possession of semi-automatic firearms at least as restrictive and unconstitutional as the ones at issue in this case. Such unconstitutional restrictions are a direct affront to ANJRPC’s central mission.

Gun Owners’ Action League, Inc. (“GOAL”) is a membership organization focused on promoting and defending the fundamental right of ordinary citizens to keep and bear arms for lawful purposes, including, but not limited to, competition, recreation, hunting, and self-defense. GOAL was

¹ No counsel for a party authored this brief in whole or in part. No person or entity, other than amici or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

established in November of 1974 and has a principal place of business in Westboro, Massachusetts.

New Jersey Firearms Owners Syndicate (“NJFOS”) is a nonprofit incorporated in the State of New Jersey with its principal place of business in Atlantic Highlands, New Jersey. NJFOS advocates on behalf of its thousands of members across the state in respect of their fundamental right to keep and bear arms. NJFOS’s purpose is to educate both the public and lawmakers on legislative issues affecting or proposing to limit or negatively impact those fundamental civil liberties, and to take legal action when those rights are unconstitutionally restrained. NJFOS is interested in this case because Cook County’s and Connecticut’s restrictions on the right of their citizens to possess firearms in common use violate the Second Amendment. New Jersey has placed virtually the same restrictions on our members and all peaceable people across the state seeking to exercise their fundamental right to keep and bear arms.

Neither ANJRPC, GOAL, nor NJFOS are publicly traded, and none has a parent corporation.

SUMMARY OF THE ARGUMENT

1. The type of defiance of this Court's precedents represented by the judgments below is widespread and egregious. Amici are associations representing millions of law abiding Americans in New Jersey and Massachusetts—two states that have elevated disregard of this Court's rulings to an art form.

The judgments below should be reversed because unconstitutional prohibitions on these commonly possessed arms exist in multiple states, including some of the oldest of their kind in New Jersey and Massachusetts. Reversing the judgments below would broadly vindicate the fundamental right to keep and bear arms throughout the Nation. This is particularly so for New Jerseyans and Bay Staters who have lived under some of the oldest such rights violating regimes for decades.

Enacted in 1990, New Jersey's version of this arms ban (along with California's similar arms ban of 1989) set the stage for a flurry of such infringing laws over the last several decades in states such as Connecticut (1993) (challenged herein), Massachusetts (1998), and New York (2000), to name a few.

The infringing arms bans continued to spread, including in the District of Columbia in 2008 in the immediate aftermath of *District of Columbia v. Heller*.

As if raising its fist in rebellion, a mere seven days after *New York State Rifle & Pistol Association v. Bruen* was decided, the State of Delaware, on June 30, 2022, enacted its own ban on these commonly possessed semi-automatic arms. This was followed in rapid succession in 2023 by Illinois and Washington and, of course, passage that same year of the very Cook County law that is the subject of the *Viramontes* case herein. The states are simply not getting the message.

Just as it paved the way for these infringing laws, New Jersey continues to coordinate this broad disdain for the requirements of the Second Amendment. *See, e.g.*, 20 state amicus curiae brief spearheaded by the New Jersey Attorney General in *Miller v. Bonta*, No. 23-2979 (9th Cir).

The record in the New Jersey semi-automatic arms ban litigation further supports Petitioners' showing that arms like the AR-15 rifle are widely chosen by Americans for lawful purposes such as self-defense.

The ubiquity of the AR-15 in the modern American household arises from its inherent and profound utility for law-abiding citizens for lawful purposes. The Petitioners illustrate this extensively. However, there is further support for this understanding to be found in the district court

record in *Association of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin* (“ANJRPC”).

ANJRPC is notable for the court’s findings as to the AR-15 rifle. In that case, the plaintiffs introduced the expert testimony of Emanuel Kapelsohn – an expert witness with 45 years of teaching about, writing about, studying, using, and testing with the AR-15 platform – and concluded that the AR-15 rifle is overwhelmingly chosen by American society for a lawful purpose, are well-adapted for self-defense because it is light weight, has very mild recoil, and has good ergonomics and is well suited to younger shooters, female shooters, and other shooters of smaller stature. The AR-15 has also been used recently in several, relatively high-profile self-defense events in Florida, Illinois, Texas, Pennsylvania, and Oklahoma. As such, the judgments below should be reversed.

2. And while these cases are not explicitly about ammunition magazine limitations, the Court is holding two magazine ban petitions even as it decides these cases, see *Duncan v. Bonta*, 25-198, *Gator’s Custom Guns, Inc. v. Washington*, 25-153, with at least one more on the way, see *Association of New Jersey Rifle & Pistol Clubs v. Attorney General New Jersey*, case no. 24-2415, Dkt# 129, (3rd Cir, August 4, 2026) (Order granting stay of mandate pending petition for certiorari).

There is an acute similarity between the constitutional issues implicated by so-called “assault weapon” bans and by magazine bans.

This nexus is also illustrated by the very Cook County ordinance at issue in *Viramontes*, which in part defines “assault weapon” as a “semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise” Thus, Cook County defines its rifle ban in part in terms of a magazine capacity limitation.

Because of this, the Court has the opportunity to, and should, include in its ruling a discussion of magazines and their connection to the functionality, popularity, and desirability of the banned rifles.

The parallel nature of the lawsuits challenging both types of laws warrants a discussion of this nexus by the Court. At minimum, this will help prevent lower courts from continuing to go off the constitutional rails until this Court can fully and directly address unconstitutional magazine bans.

3. Finally, this Court should clarify the proper degree of abstraction governing historical analogies under the Second Amendment. In the wake of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), lower courts have adopted inconsistent approaches to historical analysis, with some framing historical “principles” at such a high level of generality that it effectively predetermines

the validity of the challenged law. Guidance from this Court is needed to ensure that courts make the “nuanced judgments” that historical analysis requires, *id.* at 25, rather than “engage in independent means-end scrutiny under the guise of an analogical inquiry,” *id.* at 29 n.7.

This Court has imposed firm limits on analogical reasoning. *Bruen* requires that a historical analogue be representative, well-established, and enduring, and that it share both the “how” and “why” with the challenged regulation. *United States v. Rahimi*, 602 U.S. 680 (2024), reaffirmed these limitations while establishing that two distinct legal regimes that were each well-established by the Founding Era, so long as they arise from the same legal tradition, may be considered together to identify a unifying regulatory principle. Lower courts, however, are struggling to determine the proper degree of abstraction when identifying and applying historical analogies.

Multiple lower court decisions exemplify how some courts uphold unconstitutional laws by invoking historical tradition at an unduly abstract and generalized level. For example, in *Schoenthal v. Raoul*, 150 F.4th 889 (7th Cir. 2025), the Seventh Circuit upheld Illinois’s public transit carry ban as a “sensitive place” restriction, even though public transportation bears little resemblance to the historically recognized sensitive places. Rather than analogizing to those categories of places, the court

created a new sensitive place: “crowded spaces.” *Id.* at 914.

Aside from contradicting historical tradition and this Court’s clear statement that a place may not be deemed sensitive “simply because it is crowded,” *Bruen*, 597 U.S. at 31, the decision illustrates the perils of analogizing at an inappropriately high level of generality. By stitching together isolated historical outliers, the court conjured a sweeping prohibition on carrying in “crowded spaces.” Having first determined that “the appropriate balance” favors banning firearms over “the risk of allowing armed self-defense” in crowded spaces, 150 F.4th. at 910-11, the court then generalized at whatever level of abstraction was necessary to justify the ban.

These errors mirror level-of-generality mistakes made by multiple federal circuits. *Amici* respectfully suggest that the Court adopt a clear framework for analogical reasoning to resolve these recurring errors: Courts should (1) begin with close, firearm-specific analogues; (2) abstract up only if no such analogues exist, ensuring that any generalization preserves *Bruen*’s focus on “how and why” rather than relying on incidental or unrelated doctrines; and (3) rely only on historical laws that are themselves well-established and representative, as *Rahimi* requires, so that generalized principles reflect a genuine historical tradition. Applying these rules would meaningfully constrain lower courts and restore the doctrinal consistency *Bruen* intended.

ARGUMENT

I. The Judgments Below Should be Reversed Because Unconstitutional Prohibitions on These Commonly Possessed Arms Exist in Numerous States, Including Two of the Oldest of their Kind in New Jersey and Massachusetts.

Reversing the judgments below would broadly vindicate the fundamental right to keep and bear arms throughout the Nation. This is particularly so for New Jerseyans and Bay Staters who have lived under some of the oldest such rights violating regimes for decades. *See* N.J. STAT. ANN. 2C:39-5(f), 2C-39-1(w);² MASS. GEN. LAWS CH. 140 § 131M.

Enacted in 1990, New Jersey's version of this arms ban (along with California's similar arms ban of 1989; *see* CAL. PEN. CODE § 30515(a)) set the stage for a flurry of such infringing laws over the last several decades in states such as the subject Connecticut law at issue in the *Grant* case herein (1993), Massachusetts (1998), and New York (2000), to name a few.³

² The feature based portion of New Jersey's semi-automatic firearm ban is contained in August 19, 1996 Attorney General Guidelines. These Guidelines can be found at <https://www.nj.gov/lps/dcj/agguide/assltf.htm> (last accessed September 2, 2026).

³ *See* CONN. GEN. STAT. ANN. §§ 53-202a, 202b, 202c; MASS. GEN. LAWS CH. 140 § 131M; 2000 N.Y. LAWS, CH. 189, § 10.

Notably, these initial arms bans were enacted at a time before this Court made clear in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010) that states may *not* simply disregard the fundamental right to keep and bear arms. Yet, even after this Court decided *Heller* and *McDonald*, sending the clear message that legislatures could not freely deprive individuals of the fundamental right to keep and bear arms, the infringing arms bans continued to spread, including in the District of Columbia in 2008 in the immediate aftermath of *Heller*, *see* D.C. CODE §§ 7-2501.01(3A) and 7-2502.02(a)(6).

In 2022, this Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). This Court sent a clear message:

If the last decade of Second Amendment litigation has taught this Court anything, it is that federal courts tasked with making such difficult empirical judgments regarding firearm regulations under the banner of “intermediate scrutiny” often defer to the determinations of legislatures.

Id. at 26. In the 12 years between *McDonald* and *Bruen*, lower courts had allowed the states to run roughshod over the Second Amendment. In *Bruen* this Court sought to correct that disturbing trend.

Yet, as if raising its fist in defiance, a mere seven days after *Bruen* was decided, the State of Delaware, on June 30, 2022, enacted its own ban on these commonly possessed semi-automatic arms. *See* DEL. CODE TIT. 11 § 1466. This was followed in rapid succession in 2023 by Illinois, *see* 720 ILL. COMP. STAT. § 5/24-1.9, and Washington, *see* WASH. REV. CODE § 9A.41.390), and of course passage in that same year of the very Cook County law which is the subject of the *Viramontes* case herein.

This continuing cascade of infringing laws that ban constitutionally protected, commonly possessed arms demonstrates that the states are simply not getting the message.

Just as it paved the way for these infringing laws, New Jersey continues to coordinate this broad defiance of the requirements of the Second Amendment. *See, e.g.*, 20 state amicus curiae brief spearheaded by the New Jersey Attorney General in *Miller v. Bonta*, No. 23-2979 (9th Cir), Dkt. No. 28.

The ubiquity of the AR-15 in the modern American household arises from its inherent and profound utility for “law-abiding citizens for lawful purposes.” *Heller*, 554 U.S. at 625. The Petitioners illustrate this extensively. *See* Pet.Br. at 8-14. However, there is further support for this understanding to be found in the trial record in *Association of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin*, 742 F. Supp. 3d 421 (D.N.J. 2024), *aff’d*

in part and rev'd in part, sub nom. Association of New Jersey Rifle & Pistol Clubs v. Attorney General New Jersey, 183 F.4th 211 (3d Cir. 2026) (“*ANJRPC*”).

The decision of the district court in *ANJRPC* addressed several claims, including claims that New Jersey’s ban on common semi-automatic arms violates the Second Amendment – claims mirroring the claims asserted against Cook County and Connecticut herein. However, the district court record in *ANJRPC* is notable for the court’s findings as to the AR-15 rifle. In that case, the plaintiffs introduced the expert testimony of Emanuel Kapelsohn – an expert witness with 45 years of teaching about, writing about, studying, using, and testing with the AR-15 platform.⁴ Relying repeatedly on the Kapelsohn testimony, the district court found, among other things, as follows:

15. According to Plaintiffs’ Expert Emanuel Kapelsohn (hereinafter, “Kapelsohn”), the AR-15 has many uses, including self-defense, target shooting, hunting, and pest control by ranchers and farmers. (ECF No. 184-3 at 101). According to Kapelsohn, the build of the weapon also makes it particularly well-suited to self-

⁴ Kapelsohn’s CV and two expert reports admitted into evidence in connection with summary judgment motions can be found on the docket at *ANJRPC v. Platkin*, No. 18-cv-10507 (D.N.J.), Dkt. Nos. 175-5, 184-3 (at pp. 89 and 248), and 197-1.

defense. According to Kapelsohn, because of the AR-15's "light weight, very mild recoil, and good ergonomics," it is a weapon which is "well suited to younger shooters, female shooters, and other shooters of smaller stature" (*Id.*).

16. Further, it is "an easy rifle for larger, stronger individuals to use." (*Id.*). Overall, according to Kapelsohn, all these design features—including the effectiveness of the AR-15's cartridge for self-defense use and its better continuity of fire when used with available magazines—make the AR-15 a good choice for self-defense. (*Id.*)
17. Evidence has also been presented that AR-15s are used for self-defense. Plaintiffs have shown that the AR-15 has been used recently in several, relatively high-profile self-defense events in Florida, Illinois, Texas, Pennsylvania, and Oklahoma. (ECF No. 175-5 at 105–12, 120–26).

742 F. Supp. 3d at 433-34. Also relying a great deal on Kapelsohn, the district court further found:

Further, Plaintiffs have shown that AR-15s are well-adapted for self-defense. Evidence

has been presented to the Court that the build of the AR-15 makes it well-suited to self-defense because it is “light weight, [has] very mild recoil, and [has] good ergonomics[;]” it is a weapon which is “well suited to younger shooters, female shooters, and other shooters of smaller stature” (ECF No. 184-3 at 101). Further, the AR-15’s design features—including the effectiveness of its cartridge for self-defense use and its better continuity of fire when used with available magazines—make the AR-15 a good choice for self-defense. (*Id.*) . . . Plaintiffs have shown that the AR-15 has been used recently in several, relatively high-profile self-defense events in Florida, Illinois, Texas, Pennsylvania, and Oklahoma. (ECF No. 175-5 at 105–12, 120–26).

742 F. Supp. 3d at 444.

This record in the New Jersey litigation illustrates the constitutional consequences of allowing the majority of other courts hearing these cases to run off the rails with the same type of interest balancing approach that persisted for 12 years prior to *Bruen*. Accordingly, the Court has an excellent opportunity in these cases to right that ship.

Law-abiding citizens of States like New Jersey and Massachusetts have lived with these unconstitutional infringements for decades. This

Court should correct that by reversing the judgments below.

II. Because the Challenged Cook County Ordinance Contains an Ammunition Magazine Component, the Court Should Provide Guidance to Lower Courts Hearing Magazine Ban Challenges.

These are not magazine ban cases. But the Court is holding two magazine ban petitions even as it decides these cases, see *Duncan v. Bonta*, 25-198, *Gator's Custom Guns, Inc. v. Washington*, 25-153, with at least one more on the way, see *Association of New Jersey Rifle & Pistol Clubs v. Attorney General New Jersey*, case no. 24-2415, Dkt# 129, (3rd Cir, August 4, 2026) (Order granting stay of mandate pending petition for certiorari).

Petitioners also acknowledge that the defendants in both of these pending cases have also enacted unconstitutional bans on ammunition magazines, but stress, however, that the lawsuits at issue herein do not challenge those laws. Pet.Br. 15-16.

While Petitioners focusing on the specifics of *these* cases is understandable, it is also important to recognize the acute similarity of the constitutional issues implicated by so-called “assault weapon” bans and by magazine bans. This is amply illustrated by the Third Circuit’s en banc opinion in *ANJRPC*.

This nexus is also illustrated by the very Cook County ordinance at issue in *Viramontes*. Cook County Ordinance 54-211 defines “assault weapon” as follows:

Assault weapon means:

- (1) A semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise and one or more of the following: . .

.

Large-capacity magazine means any ammunition feeding device with the capacity to accept more than ten rounds, but shall not be construed to include the following:

Thus, Cook County has implemented its unconstitutional rifle ban by defining it in terms of an unconstitutional and artificial magazine capacity limitation. While most, if not all, so-called “assault weapon” laws include a feature-based aspect of their arms bans, including the ability to accept so-called “large capacity magazines” is not typically such a feature.

Because of this, the Court has the opportunity to, and should, include in its ruling a discussion of magazines and their connection to the functionality, popularity, and desirability of the banned rifles.

New Jerseyans and Bay Staters, along with millions of citizens of other hostile states, have lived under unconstitutional magazine bans for as long as they have lived under unconstitutional bans of so-called “assault weapons.” And, as the pending magazine petitions illustrate, law-abiding Americans have been fighting those laws for just as long as the laws under review herein.

The parallel nature of the lawsuits challenging both types of laws warrants a discussion of this nexus by the Court. At minimum, this will help prevent lower courts from continuing to go off the constitutional rails until this Court can fully and directly address unconstitutional magazine bans.

III. The Court Should Clarify the Proper Level of Abstraction Governing Historical Analogies Under the Second Amendment.

Lower courts are struggling to determine the proper degree of abstraction when identifying and applying historical analogies under this Court’s Second Amendment framework. *See, e.g., Baird v. Bonta*, 163 F.4th 723, 738-39 (9th Cir. 2026) (9th Cir. 2026) (“The district court may have been understandably led astray by cues from this court’s recent Second Amendment cases employing a mode of analysis that abstracts a very generalized principle and applies it.”). Under some courts’ approach, abstraction is conducted at such a high

level that the resulting “principle is so generalized that it seems to always cover the ‘analogous’ conduct.” *Id.* (citing *Wolford v. Lopez*, 116 F.4th 959, 983 (9th Cir. 2024), *rev’d*, 146 S. Ct. 2032 (2026)).

This uncertainty over the proper level of abstraction is not an academic concern. When historical principles are framed at an unduly high level of generality, the analogical inquiry required by *Bruen* risks collapsing into a foregone conclusion, permitting virtually any modern regulation to be upheld by reference to broadly stated historical themes rather than genuinely comparable historical regulations, *see* 597 U.S. at 30 (“courts should not uphold every modern law that remotely resembles a historical analogue”) (quotation marks omitted).

That approach undermines *Bruen*’s instruction that courts make “nuanced judgments” in conducting the “historical analysis,” *id.* at 25 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 803 (2010) (Scalia, J., concurring) (brackets omitted)), and it has produced divergent outcomes among federal circuits, *compare Nat’l Rifle Ass’n v. Bondi*, 133 F.4th 1108 (11th Cir. 2025) (en banc) (upholding firearms purchase ban for adults under twenty-one based on questionable reading of contract law’s infancy doctrine), *with Reese v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 127 F.4th 583 (5th Cir. 2025) (invalidating similar law based on analysis of historical firearms regulations).

Absent additional guidance from this Court, lower courts will continue to apply inappropriately high levels of abstraction, creating inconsistency in the interpretation of a constitutional right and threatening to produce the same type of results-oriented test that *Bruen* sought to preclude.

A. *Bruen* and *Rahimi* Impose Constraints on Analogical Reasoning.

1. *Bruen* Carefully Limits and Structures Analogical Reasoning.

This Court has already provided guidance on analogical reasoning in the Second Amendment context. But just as *Bruen* was necessary to reaffirm the text-and-history test established in *District of Columbia v. Heller*, 554 U.S. 570 (2008), in the face of lower-court divergence, certiorari should likewise be granted here to reaffirm the governing principles that constrain historical analogy.

Under *Bruen*, a challenged regulation is unconstitutional unless it “is consistent with the Nation’s historical tradition of firearm regulation.” 597 U.S. at 24. Because the meaning of the Second Amendment was “fixed” at the time of ratification, the historical inquiry turns on whether the challenged law accords with “the understandings of those who ratified it.” *Id.* at 28.

That inquiry is “fairly straightforward” when the challenged regulation addresses “a general societal problem that has persisted since the 18th

century.” *Id.* at 26. In such cases, “the lack of a distinctly similar historical regulation addressing that problem,” evidence that “earlier generations addressed the societal problem ... through materially different means,” and the rejection of analogous regulations on constitutional grounds each provides probative evidence that the challenged law violates the Second Amendment. *Id.* at 26–27.

When the challenged regulation addresses “unprecedented societal concerns or dramatic technological changes,” however, the historical analysis “may require a more nuanced approach.” *Id.* at 27. This “will often involve reasoning by analogy” to determine whether the challenged and historical regulations are “relevantly similar.” *Id.* at 28–29 (quotation marks omitted). Two central considerations when reasoning by analogy are “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified.” *Id.* at 29. Put differently, “Why and how the regulation burdens the right are central to this inquiry.” *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (citing *Bruen*, 597 U.S. at 29).

The inquiry is comparative—but comparative to *what* matters enormously. Experience since *Bruen* has demonstrated that the selection of the relevant historical comparator does much, if not all, of the analytical work.

Bruen clarified that selection of the correct comparator(s) necessarily falls between two extremes:

To be clear, analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check. On the one hand, courts should not uphold every modern law that remotely resembles a historical analogue, because doing so risks endorsing outliers that our ancestors would never have accepted. On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.

597 U.S. at 30 (cleaned up).

Bruen articulated two additional principles that further constrain the selection of permissible historical analogues.

First, regulations forming a historical tradition must be numerically widespread. *See id.* at 46 (three colonial regulations do not suffice to show a tradition). Reliance on outliers—particularly those that were short-lived or covered a relatively small percentage of the nation’s population—cannot demonstrate the “well-established and

representative” practice the Second Amendment demands. *Id.* at 30, 65–66.

Second, laws must be historically longstanding to form a tradition. *Id.* at 49 (“At most eight years of history in half a Colony roughly a century before the founding sheds little light on how to properly interpret the Second Amendment.”); *id.* at 69 (territorial laws too transitory to form a tradition).

Together, these principles ensure that analogical reasoning remains tethered to genuinely representative historical practice. Only laws that are both widespread and enduring can supply the proper comparators under *Bruen*—and only faithful adherence to those limits can prevent historical analogy from becoming either a regulatory blank check or an empty formalism. Reaffirming these constraints is essential to restoring uniformity among the lower courts.

2. *Rahimi* Confirms and Applies the Limits of Analogy.

In *Rahimi*, the Court considered a Second Amendment challenge to 18 U.S.C. § 922(g)(8), which prohibits firearm possession by individuals subject to domestic violence restraining orders. In a narrow ruling, the Court held that “[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” 602 U.S. at 702.

The majority concluded that “two distinct legal regimes,” each developed by “the 1700s and early 1800s” and arising from the same legal tradition, may be considered together to inform “the principles that underpin our regulatory tradition.” *Id.* at 692, 694–95. Specifically, the Court reasoned that both surety and going armed laws shared a common “why” with Section 922(g)(8) and, taken together, also satisfied the “how.” *Id.* at 698–99.

Rahimi thus established that two distinct historical lines of law can, in some circumstances, be combined to illustrate a “principle” drawn from historical tradition. This clarification, however, poses a challenge since courts inclined to uphold a modern regulation may choose to stitch together historical laws at an improperly high level of abstraction, thereby nullifying the Second Amendment’s constraints.

Justice Barrett squarely identified this risk in her concurring opinion:

To be sure, a court must be careful not to read a principle at such a high level of generality that it waters down the right. Pulling principle from precedent, whether case law or history, is a standard feature of legal reasoning, and reasonable minds sometimes disagree about how broad or narrow the controlling principle should be.

Id. at 740 (Barrett, J., concurring). Yet since “the

[*Rahimi*] Court settles on just the right level of generality,” she concluded, “[h]arder level-of-generality problems can await another day.” *Id.* That day has arrived: lower courts are already struggling to apply this constraint faithfully.

B. Numerous Lower Courts Apply an Improper Level of Generality in Historical Analogy.

Multiple decisions exemplify how lower courts uphold unconstitutional laws by invoking historical tradition at an unduly general level.

In *Schoenthal v. Raoul*, 150 F.4th 889 (7th Cir. 2025), the Seventh Circuit upheld Illinois’s public transit carry ban as a “sensitive place” restriction, despite acknowledging that public transportation bears little resemblance to the historically recognized sensitive places—courthouses, polling places, legislative buildings, and schools. *See Id.* at 910. Rather than analogizing to those categories of places, the court created a new “sensitive place,” concluding that “crowded spaces restrictions fall under the sensitive places doctrine.” *Id.* at 914.

That holding contradicts this Court’s clear instruction that a place may not be deemed sensitive “simply because it is crowded.” *Bruen*, 597 U.S. at 31. It also ignores the fact that the founding generation never enacted restrictions based on crowdedness and regularly carried in crowded spaces, including at public assemblies, weddings,

and funerals, and in churches, ballrooms, taverns, and shops. See Brief for *Amici Curiae* National Rifle Association of America, et al. in Support of Petitioners at 6–18, Nov. 24, 2025, *Wolford v. Lopez*, No. 24-1046.

More importantly for present purposes, the decision illustrates the perils of analogizing at an inappropriately high level of generality. By selectively stitching together a handful of historical outliers enacted over the course of a century—laws from four Southern states during Reconstruction, four Western territories in the latter half of the nineteenth century, and a single municipality banning firearms in ballrooms or similar venues, 150 F.4th at 912-14—the court transformed isolated regulations into a sweeping prohibition that eliminates the right to bear arms in “crowded spaces.”

Indeed, having first determined that “the appropriate balance” favors banning firearms over “the risk of allowing armed self-defense” in crowded spaces, *Id.* at 910, the court then generalized at whatever level of abstraction was necessary to justify the ban—even while conceding that its effort to “mak[e] [the] analogy to historical sensitive place rules ... sounds like the means-end scrutiny rejected in *Bruen*,” *Id.* at 910-11.

This is a refined form of ordinary question-begging, in which an argument assumes, rather than proves, the point in dispute. Question-begging

through abstraction smuggles in the assumption by choosing a description of the relevant interest, right, or activity that already resolves the controversy. Choosing a high level of abstraction begs the question *sub silentio*. The fallacy operates in two steps: First, the court describes the activity in question at a high level of generality—public safety in “crowded spaces.” Second, once abstracted, the outcome follows trivially: public safety outweighs generalized risk.

The Seventh Circuit drew from the Court of Appeals opinion in *Wolford*, in which the Ninth Circuit committed its own level-of-generality errors in upholding Hawaii’s private-property default carry ban. The court elevated two outlier laws enacted nearly a century apart over the broader historical record, abstracting away from the many regulations reflecting a tradition of antipoaching laws in order to manufacture a tradition that supports Hawaii’s law. 116 F.4th at 994–95.

The Third Circuit made similar errors in upholding numerous “sensitive places” restrictions in *Koons v. Attorney General New Jersey*, 156 F.4th 210 (3d Cir. 2025), a decision the court has since rehear en banc (but had not yet decided). In searching for a principle from historical tradition to serve as a comparator, the court stitched together a collection of disparate outliers and treated them as a single, coherent tradition of restricting public carry nearly everywhere in public life. *Id.* at 228–42.

Other areas of Second Amendment jurisprudence are no less vulnerable to level of generality errors. In the context of purchase bans for adults under twenty-one, for example, the Fourth and Eleventh Circuits did not ask whether there is a historical tradition of restricting the arms rights of young adults. Instead, both courts relied on broad infancy doctrines drawn from contract law—which, at most, only incidentally affected firearms. *McCoy v. Bur. of Alcohol, Tobacco, Firearms & Explosives*, 140 F.4th 568 (4th Cir. 2025); *Nat’l Rifle Ass’n*, 133 F.4th 1108. The Tenth Circuit, for its part, upheld a similar law by labeling it a “commercial” restriction. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 119–20 (10th Cir. 2024); *see also* George A. Mocsary, *The Wrong Level of Generality: Misapplying Bruen to Young-Adult Firearm Rights*, 103 WASH. U. L. REV. ONLINE 100, 104–06 (2025) (detailing the level-of-generality errors in each decision).

As these examples demonstrate, “level of generality” is becoming the new “interest balancing.” No longer able to engage in explicit interest-balancing through the application of intermediate scrutiny, lower courts can instead embrace highly generalized analogies to uphold nearly any law. In light of this trend, clear guidance from the Court on the proper level of generality would serve to prevent the kind of lower court errors that pervaded the decade preceding *Bruen*.

C. The Court Should Establish Firmer Guidelines on Analogical Reasoning.

This Court should use this case as a vehicle to cabin the proper level of generality in Second Amendment analysis. The following framework would largely resolve these recurring errors.

First, courts should start with “close firearm-specific analogues.” Mocsary, at 106. Many of the decisions discussed above fail this rule. In *Wolford*, for example, the Ninth Circuit disregarded that the established regulatory tradition addressed poaching and, instead, reached upward to embrace outliers to manufacture a tradition.

Second, courts should abstract “[o]nly if close analogues are lacking and more nuance is warranted.” Mocsary, at 106. But they should not “abstract up” to global legal doctrines in an entirely different area of law. In cases involving adults under twenty-one, for example, courts began outside the field of firearms regulation, relying on contract law’s infancy doctrine (and arguably mischaracterizing those principles as burdening, rather than protecting, minors). *See id.* at 104–05. Abstraction must preserve *Bruen*’s focus on “how and why”—*i.e.*, whether modern and historical regulations impose comparable burdens for comparable reasons. *See id.* at 106–07.

The remaining question is how high courts may abstract even within the historical arms regulation

context when no precise analogue exists. *Rahimi* provides the answer. *Rahimi* turned in significant part on the proper level of generality. In identifying a principle drawn from two distinct legal regimes—surety and going armed laws—the Court relied exclusively on historical lines of law that were each themselves well established, representative, and rooted in the same legal tradition. As the Court explained, both lines of law were longstanding in the common law and in state statutes and sufficiently numerous to be widespread. 602 U.S. at 693–98.

Finally, since *Bruen* holds that a law regulating conduct covered by the Second Amendment’s plain text is presumptively unconstitutional, the absence of a historical analogue is “dispositive against the government.” J. Joel Alicea, *Bruen Was Right*,

174 U. PA. L. REV. 13, 46 (2025). “Historical silence [in the historical analysis] is dispositive not because it *proves* that our predecessors *did not* believe they had the power to enact such a regulation; it is dispositive because it does *not prove* that they *did* believe they had such power.” *Id.*

Requiring courts to adhere to these basic rules of abstraction would meaningfully constrain lower courts and maintain the doctrinal consistency among them that *Bruen* was intended to achieve. *Amici* respectfully urge the Court to adopt this approach and reverse the judgment below.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgments below and establish firmer guidelines for analogical reasoning.

Respectfully submitted,

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