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, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE CONNECTICUT DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC TRANSPORTATION, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SEVENTH AND SECOND CIRCUITS

BRIEF OF *AMICUS CURIAE* LANDMARK LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

RICHARD P. HUTCHISON
LANDMARK LEGAL FOUNDATION
2405 Grand Boulevard,
Suite 420
Kansas City, MO 64108

MATTHEW C. FORYS
Counsel of Record
MICHAEL J. O'NEILL
LANDMARK LEGAL FOUNDATION
19415 Deerfield Avenue,
Suite 312
Leesburg, VA 20176
(703) 554-6100
matt@landmarklegal.org

Attorneys for Amicus Curiae

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Landmark Legal Foundation ("Landmark") is a national public-interest law firm committed to preserving the principles of limited government, separation of powers, federalism, originalist construction of the Constitution and individual rights. Landmark has previously filed briefs in support of Second Amendment rights, most recently in *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025).

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is about whether the government may ban one of the most commonly owned arms in the Nation's history by calling them almost the same as military arms. The answer should be no. The opinions below have strayed from this Court's focus on text and historical tradition, shifting the burden from the government to the individual.

District of Columbia v. Heller, 554 U.S. 570 (2008), laid the analytical framework for determining the validity of firearms restrictions—considering text first and history second. *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1, 24 (2022), then distilled it into a clearly articulated test. The Seventh Circuit, in *Viramontes v. Cook Cnty.*, No. 24-1437, 2025 U.S. App. LEXIS 13331 (7th

1. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

Cir. June 2, 2025), incorrectly held that Cook County has the authority to implement a ban on an expansive category of firearms. It decided that its analysis under the *Bruen* test, in *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023), foreclosed this issue. *Viramontes*, No. 24-1437, 2025 U.S. App. LEXIS 13331, at *5 (7th Cir. June 2, 2025). And shortly after this Court granted certiorari in *Viramontes*, the Seventh Circuit overturned a district court ruling and upheld an assault weapons ban in *Barnett v. Raoul*, 180 F.4th 1035 (7th Cir. 2026). The Second Circuit similarly upheld an assault weapons ban in *Nat'l Ass'n of Gun Rights v. Lamont*, 153 F.4th 213 (2d Cir. 2025).

But these decisions are incorrect. The Seventh Circuit in both *Bevis* and *Barnett* (for *Viramontes* said little more than that it would not overrule *Bevis*) have misapplied the *Bruen* test. At step one of the test, *Bevis* declared military weapons are not "Arms" within the meaning of the Second Amendment before finding AR-15s to be military weapons. *Bevis*, 85 F.4th at 1193-95. *Bevis* briefly discussed the second step of *Bruen*, and *Barnett* did so in greater depth, but again, both courts determined that historical tradition still justified a ban on these rifles. However, the courts shifted the burden of proof on the plaintiffs, in contradiction to the *Bruen* test. *See Barnett*, 180 F.4th at 1075 (Brennan, C.J., dissenting); *Bevis*, 85 F.4th at 1194.

The historical tradition the circuit courts emphasized is not sufficiently analogous. The laws provided as historical examples are either prohibitions on types of conduct with weapons, bans on classes of weapons which were later overturned, or bans too recent to create a historical tradition. The first group are limited behavioral

restrictions and should not be viewed as establishing an expansive tradition of banning the manufacture, sale, transfer, and ownership of a class of firearms. The second group cannot create a historical tradition specifically because they were overturned. The third group is irrelevant under *Bruen*.

The lack of historical examples of bans on rifles is telling. The founding generation expected citizens to keep arms suited to militia service. The early state declarations of rights and the Federalist Papers confirm as much. Respondents further compare the AR-15 to the M16 with supposed similarities, necessary to establish that the AR-15 is a "dangerous and unusual" weapon. But they are insufficient. And Respondents would sweep up many other rifles under their definition and cut against historical examples of legal, civilian arms similar to military counterparts. Finally, the Second Amendment, like other constitutional rights, is technologically neutral and applies as much to modern instruments as to those present at the Founding.

The Court should reverse the decisions below, hold that the banned semi-automatic rifles are protected arms, and remand for entry of judgment for Petitioners.

ARGUMENT

I. The Circuit Courts Misapplied the *Bruen* Test by Failing to Treat AR-15s as Arms and Failing to Identify a Sufficient Historical Tradition to Ban an Entire Category of Commonly Used Rifles.

The Seventh Circuit, in both *Bevis* and *Barnett*, misapplied the two-part *Bruen* test. In step one, *Bruen* requires a court to first determine whether the "Second Amendment's plain text covers an individual's conduct." *Bruen*, 597 U.S. at 24. If so, "the Constitution presumptively protects that conduct." *Id.* In step two, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* The *Bevis* decision incorrectly determined that AR-15s do not constitute "Arms" under the Second Amendment and are thus not protected, failing step one. *See Bevis*, 85 F.4th at 1195.

The *Bevis* court reasoned that "these assault weapons and high-capacity magazines are much more like machine guns and military-grade weaponry than they are like the many different types of firearms that are used for individual self-defense." *Bevis*, 85 F.4th at 1195. The AR-15 is "almost the same gun as the M16," a weapon not lawful for civilian ownership. *Id.* at 1195. But there is an essential distinction between the two: automatic firing capability. The statutory definitions of machinegun and rifle under the National Firearms Act hinge on this distinction. 26 U.S.C. § 5845(b)-(c).

By minimizing this and other distinctions, the Seventh Circuit found the AR-15 failed the first step of the *Bruen*

test as an unprotected, "dangerous and unusual" firearm. But this should have been addressed in step two. "*Bruen* and *Rahimi* did not disturb the historically based 'common use' test." *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024), *cert. denied sub nom. Snope v. Brown*, 145 S. Ct. 1534, 1534 (2025) (Kavanaugh, J., statement respecting denial of certiorari). "Accordingly, the common use test more properly belongs in *Bruen*'s second step, where courts examine the Nation's 'historical tradition of firearm regulation.'" *Barnett*, 180 F.4th at 1064 (Brennan, C.J., dissenting) (quoting *Bruen*, 597 U.S. at 24). The Second Circuit in *Lamont*, in contrast to the Seventh Circuit, addresses the "dangerous and unusual" question in step two of *Bruen*. *Lamont*, 153 F.4th at 227.

The Seventh Circuit in *Bevis* claimed under their framework, that even if an AR-15 was an Arm protected under the plain text of the Second Amendment, it would still fail the second step. The circuit court produced a long list of laws in an attempt to show that there is a historical tradition of regulating analogous weaponry for private citizens. *Bevis*, 85 F.4th at 1200-02. In fact, their own examples highlight a lack of historical tradition, given that most of the examples they find important enough to list do not even pertain to firearms. Trying to generalize any historical restrictions on weapons to justify Cook County's ban "waters down the right." *United States v. Rahimi*, 602 U.S. 680, 740 (2024) (Barrett, J., concurring).

The Seventh Circuit's application of step two of the *Bruen* test erroneously shifts the burden of proof from the government to the individual. The *Bevis* court stated that the first step required plaintiffs to show "that the weapons addressed in the pertinent legislation are Arms

that ordinary people would keep at home for purposes of self-defense, not weapons that are exclusively or predominantly useful in military service, or weapons that are not possessed for lawful purposes." *Bevis*, 85 F.4th at 1194. But that "incorrectly shifts the burden of proof that the firearms are used for self-defense onto the plaintiffs. After they satisfy their burden on *Bruen* step one, a firearm is 'presumptively' protected." *Barnett*, 180 F.4th at 1075 (Brennan, C.J., dissenting) (quoting *Bruen*, 597 U.S. at 24). This characterization of *Heller* and *Bruen* by the Seventh Circuit not only shifts the burden on citizens; it reverses the nature of constitutional rights. *See Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024), *cert. denied sub nom. Snope v. Brown*, 145 S. Ct. 1534, 1536-37 (2025) (Thomas, J., dissenting from denial of certiorari); *Barnett*, 180 F.4th at 1075 (Brennan, C.J., dissenting).

The *Bevis* court erred once again in the second step. The Seventh Circuit argued historical regulations on firearms consistently reserved "dangerous and unusual" arms for the military, while leaving many alternatives for use by civilians. *Bevis*, 85 F.4th at 1197–1202; *see Barnett*, 180 F.4th at 1041. But the AR-15 *is* that type of civilian alternative arm, and that is why the derived M16 was specifically created to fill the military role AR-15s could not. The district court in *Barnett* noted, "no military has ever issued AR-15s to its troops, largely because of their different firing modes." *Barnett*, 180 F.4th at 1042.

As explained further below, Cook County relies on the misapplication of the *Bruen* test by the Seventh Circuit, apparent in both *Bevis* and *Barnett*.

II. Historical Bans, Affray Laws, and Writings of the Founding Generation Demonstrate the Abnormality of These Bans.

A. The historical record does not provide sufficiently similar analogs to the bans at issue in this case.

As noted above, *Bevis* argued that even if the AR-15 is an "Arm" protected by the plain text of the Second Amendment, Illinois's ban survives at the second step of *Bruen*. The *Bevis* court assembled a catalogue of ordinances and prohibitions to supposedly provide the requisite tradition. The Second Circuit does much the same in *Lamont*, utilizing an almost identical historical record. Yet not one of them is a ban on an entire class of civilian firearms approaching the scope of the law at issue. Cook County fails to pass *Bruen*'s second step because it cannot present a single historical regulation that is similar in the scope of the weapons it reaches, nor in the extreme burden it places upon Second Amendment rights.

Bevis claims that there exists "a long tradition . . . supporting a distinction between weapons and accessories designed for military or law-enforcement use, and weapons designed for personal use." *Bevis*, 85 F.4th at 1202. According to *Bevis*, governments in the colonial and nineteenth-century periods regulated when and where arms could be fired or carried, and they wrote exceptions into those laws for men bearing arms in an official capacity. The majority cites many examples. Multiple cities banned the discharge of any weapon, with exceptions for the military. *Id.* at 1201. Bowie knives were regulated in multiple states, and these laws likewise excepted the

armed forces. *Id.*; *Lamont*, 153 F.4th at 243-44; *Barnett*, 180 F.4th at 1048.

This tradition, according to *Bevis* and *Lamont*, was not limited to the nineteenth century. The National Firearms Act of 1934, Pub. L. No. 73-474, 48 Stat. 1236 (1934), imposed tax and registration requirements on the weapons it covered, but exempted transfers to the United States, the states, their territories and political subdivisions, and peace officers. *Bevis*, 85 F.4th at 1202; *Lamont*, 153 F.4th at 246. In the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197 (1968), Congress restricted the sale and delivery of machineguns and destructive devices (bombs, grenades, mines, rockets, and missiles) and again spared items sold to the United States or to a state. *Bevis*, 85 F.4th at 1202. The Firearm Owners' Protection Act of 1986, Pub. L. No. 99-308, 100 Stat. 449 (1986), banned the sale of newly manufactured machineguns, capping civilian holdings at pre-1986 levels while leaving military and law enforcement access untouched. *Bevis*, 85 F.4th at 1202.

These federal restrictions do not advance Cook County's case. Even under their misreading of the *Bruen* test, the instances they cite are not relevant. Every federal example the court provides comes from the twentieth century, a period that falls outside the historical window *Bruen* treats as probative. *Bruen*, 597 U.S. at 34-38.

Discharge ordinances are not relevant either. They were not proscriptions on the ownership of firearms. Instead, they were public safety necessities that did not restrict the carry or ownership of firearms, just the creation of noise which would confuse or frighten those

nearby. An ordinance against public discharge does not compare with a complete ban on the ownership and sale of a massive subset of civilian weapons. It is even less compelling to cite an ordinance in Boston, the city where the first civilians took up their own private arms and began the American Revolution. *Bevis*, 85 F.4th at 1201.

Bowie knife restrictions similarly fail to provide a historical tradition which could be used to justify Cook County's ban of a commonly used rifle. To begin, the Arkansas Supreme Court overturned the prohibition on the carrying of sidearms, including Bowie knives. The court stated "[i]f cowardly and dishonorable men sometimes shoot unarmed men with army pistols or guns, the evil must be prevented by the penitentiary and gallows, and not by a *general deprivation of a constitutional privilege*." *Wilson v. State*, 33 Ark. 557, 560 (1878) (emphasis added). As the *Barnett* court acknowledged, a ban on the open carry of Bowie knives was also struck down in Georgia by *Nunn v. State*, 1 Ga. 243 (1846). *Barnett*, 180 F.4th at 1049-50. Even if there was no question about their constitutionality, none of the cited laws prohibited the possession of these knives. *Bevis*, 85 F.4th at 1216 (Brennan, C.J., dissenting).

But the restrictions which were upheld do not provide any more of a meaningful historical tradition for the purposes of Cook County's ban. As *Bevis*, *Barnett*, and *Lamont* note, these laws prohibited the carrying of such weapons, not their ownership and sale. *See Bevis*, 85 F.4th at 1201; *Barnett*, 180 F.4th at 1048; *Lamont*, 153 F.4th at 243-44. The cases in Tennessee and Texas upholding these restrictions, cited by *Barnett*, make this only more evident. For example, the Supreme Court of Texas stated, "[h]e who *carries* such a weapon, for lawful defence, as he may,

makes himself more dangerous to the rights of others." *Cockrum v. State*, 24 Tex. 394, 403 (1859) (emphasis added). And the Tennessee Supreme Court noted "the *carrying* of [Bowie knives] by truculent and evil disposed persons . . . too often ended in assassination." *Haynes v. State*, 24 Tenn. 120, 122 (1844) (emphasis added). And a Tennessee case cited by *Lamont* says much the same. *See Aymette v. State*, 21 Tenn. 154, 159 (1840) (stating the legislature could ban the carry of such an arm to protect citizens from "the terror . . . unusual exhibition of arms might produce, or . . . endanger[ment] by desperadoes with concealed arms").

It should be evident that these examples are significantly different from the bans at issue here. The cited restrictions are prohibitions on carrying weapons on one's person. Regardless of the constitutionality of these bans, they are not comparable to a broader, categorical ban on the manufacturing, sale, transfer, and ownership of an entire class of firearms. The bans at issue here are far more burdensome and sweeping on citizens' Second Amendment rights than the restrictions cited by the circuit courts. While this Court has recognized that a litigated regulation on firearms need not find "a dead ringer" among "historical precursors," it still must be "analogous enough to pass constitutional muster." *Bruen*, 597 U.S. at 30. The carry restrictions cited by the Seventh and Second Circuits are simply too distinct from the complete bans imposed here to be considered analogous.

Where prohibitions of this breadth have no meaningful precursor across two centuries of American regulation, the government has not carried the burden *Bruen* places on them, and an inverse historical tradition is apparent in all the bans they *cannot* find.

B. The Founders expected ordinary citizens to possess arms to provide for the common defense.

The Founders' intellectual commitments show that the Second Amendment was a protection of individual rights rooted in a responsibility for collective defense. This is borne out by preconstitutional documents, the pivotal role of civilian militiamen in the Revolution, and the Federalist Papers. The founding generation emphasized the importance of proper armament for the defense of the Republic. Before the drafting of the Constitution, seven states included a prefatory bill or declaration of rights to their framework of state government, with each one enshrining protections for the common defense.[2] Also,

2. Va. Bill of Rights § XIII (1776), *in* 7 The Federal and State Constitutions, Colonial Charters and Other Organic Laws 3812, 3814 (Francis N. Thorpe ed., Washington Government Printing Office 1909); Pa. Declaration of Rights § XIII (1776), *in* 5 The Federal and State Constitutions, Colonial Charters and Other Organic Laws 3081, 3083 (Francis N. Thorpe ed., Washington Government Printing Office 1909); Md. Declaration of Rights § XXV (1776), *in* 3 The Federal and State Constitutions, Colonial Charters and Other Organic Laws 1686, 1688 (Francis N. Thorpe ed., Washington Government Printing Office 1909); N.C. Declaration of Rights § XVII (1776), *in* 5 The Federal and State Constitutions, Colonial Charters and Other Organic Laws 2787, 2788 (Francis N. Thorpe ed., Washington Government Printing Office 1909); Mass. Declaration of Rights § XVII (1780), *in* 3 The Federal and State Constitutions, Colonial Charters and Other Organic Laws at 1888, 1892 (Francis N. Thorpe ed., Washington Government Printing Office 1909); N.H. Bill of Rights § XXIV (1784), *in* 4 The Federal and State Constitutions, Colonial Charters and Other Organic Laws 2453, 2456 (Francis N. Thorpe ed., Washington Government Printing Office 1909); Del. Declaration of Rights § XVIII (1776), *in* Sources of Our Liberties 338, 339 (Richard L. Perry ed., American Bar Foundation 1959).

the Court has previously recognized that "nine state constitutional provisions written in the 18th century or the first two decades of the 19th," used the formulation "'bear arms in defense of themselves and the state.'" *Heller*, 554 U.S. at 584.

In the ensuing Revolutionary War, common citizens became foot soldiers. After the Battle of Bunker Hill, John Adams wrote to his wife, saying that British casualties were "a glorious Proof of the Bravery of our Worthy Countrymen." Letter from John Adams to Abigail Adams (July 7, 1775), *in* 1 Adams Family Correspondence 241, 241 (Lyman H. Butterfield, ed., 1963). "Virtually every man at Bunker Hill brought his own firearm. . . . [A]n analysis of the returns of thirty New England militia companies finds that the overall rate of private ownership was at least 75 percent and probably higher." Alexander Rose, Men of War: The American Soldier in Combat at Bunker Hill, Gettysburg, and Iwo Jima 20 (2015). These men were not armed with mere handguns.

The Federalist Papers communicate the necessity of the right to bear arms, in aggregate, as a check on the threat of enemies foreign or domestic. In Federalist No. 29, Alexander Hamilton argues for the existence of militias. His contention hinges on the belief that the people must be "properly armed and equipped" as a necessity for the protection of the Nation. The Federalist No. 29 at 184 (Alexander Hamilton) (Jacob E. Cooke ed., 1961). In Federalist No. 46, James Madison envisions ordinary citizens who, "with arms in their hands," would be capable of serving as a militia "fighting for their common liberties." The Federalist No. 46 at 321. The founding generation, therefore, advocated an armed people which would be capable of executing martial functions.

C. Affray is not a historical tradition that can be used to justify the bans under the *Bruen* test.

In addition to relying on the disanalogous historical examples discussed above, Cook County also invokes "the law of affray as adopted in early American jurisprudence" to defend their ban on "assault weapons." Brief for Respondent in Opposition to Writ of Certiorari at 32, *Viramontes v. Cook County*, No. 25-238 (Oct. 29, 2025). The history of the law of affray originates in 14th Century England. The Statute of Northampton, enacted in 1328, states a man may "bring no force in affray of the peace, nor to go nor ride armed . . . in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere." 2 Edw. 3, c. 3 (1328). The term "affray" is defined as "[t]he fighting of two or more persons in some public space to the terror of the people." *Affray*, Black's Law Dictionary (12th ed. 2024).

Affray was interpreted in the United States in *State v. Huntly*, 25 N.C. 418 (1843). Cook County claimed that the question in *Huntly* (of whether an act was affray) depended on "whether it was unusual 'wherewith to be armed and clad,'" and not "whether the weapon was unusual to own." Brief of Respondent in Opposition to Writ of Certiorari at 32, *Viramontes v. Cook County*, No. 25-238 (Oct. 29, 2025) (quoting *Huntly*, 25 N.C. at 422 (1843)). It was neither. *Huntly* states that "[b]ut although a gun is an 'unusual weapon,' it is to be remembered that the carrying of a gun *per se* constitutes no offence." *Huntly*, 25 N.C. at 422-23. Immediately following the quote which Cook County cites, the *Huntly* court explicitly states that "[i]t is the wicked purpose—and the mischievous result—which essentially constitute the crime." *Id.* at 423. Thus,

the primary question when considering whether the crime of affray has been committed is whether there was an unlawful *purpose* for being "armed and clad." *Id.* at 422. In this case, "[Huntly] had taken to the public roads on horseback, armed with 'a double barrelled gun,' and had uttered threats to kill one Ratcliff." Michael P. O'Shea, *Modeling the Second Amendment Right to Carry Arms (I): Judicial Tradition and the Scope of "Bearing Arms" for Self-Defense*, 61 Am. U. L. Rev. 585, 636 (2012).

Along with *Huntly*, *Rahimi* further repudiates Cook County's mischaracterization of affray:

> Although the prototypical affray involved fighting in public, commentators understood affrays to encompass the offense of 'arm[ing]' oneself 'to the Terror of the People,' T. Barlow, The Justice of the Peace: A Treatise 11 (1745). Moreover, the prohibitions—on fighting and going armed—were often codified in the same statutes. *E.g.*, 2 Edw. 3 c. 3; Acts and Laws of His Majesty's Province of New-Hampshire in New-England 2 (1761).

United States v. Rahimi, 602 U.S. at 697. Affray is inseparable from the act of fighting or making threats while going armed. *Huntly* acknowledges the fact that going about armed is not itself a crime. A "wicked purpose" and "mischievous result" is necessary to cause the "Terror of the People," which is why fighting and going armed were so often codified together, as *Rahimi* notes. *Huntly*, 25 N.C. at 423; T. Barlow, The Justice of the Peace: A Treatise 11 (1745); *Rahimi*, 602 U.S. at 697. Thus, the law of affray forms no greater a historical

tradition to defend the ban than the piecemeal examples of disanalogous weapons restrictions cited by *Bevis* and *Barnett*.

This Court has tied the analysis of "dangerous and unusual" weapons to the concept of affray. *See Heller*, 554 U.S. at 627. This is reasonable, for carrying a "dangerous and unusual" weapon would serve little purpose other than to engage in terrorizing people. One could conclude this about, for example, machineguns, grenade launchers, or dirty bombs. But the same cannot be said of semi-automatic rifles owned by millions of Americans.

III. Semi-Automatic Rifles are not "Dangerous and Unusual" Weapons.

A. The M16 is not an appropriate comparison to the AR-15 because of fundamental differences in how the weapons operate.

A crucial aspect of the holdings in *Barnett*, *Bevis*, and *Lamont* is the supposed similarity between the M16 and the AR-15. For its part, the *Bevis* court felt "the AR-15 is almost the same gun as the M16 machine gun." *Bevis*, 85 F.4th at 1195. "Both weapons share the same core design, and both rely on the same patented operating system," with "the only meaningful distinction" being "that the AR-15 has only semiautomatic capability . . . while the M16 operates both ways." *Id.* at 1195-96, 1195. *Barnett* discussed many of the same features, including similarities in muzzle velocity, ammunition, and effective range, though the court did not include *Bevis*'s claim that an AR-15 can fire up to 300 rounds per minute. *Barnett*, 180 F.4th at 1053-54. *Lamont* argues along much the same

lines as *Barnett*. *Lamont* explicitly states that there is no evidence that "this distinguishing factor fundamentally transforms the AR-15 into a weapon that is substantially less dangerous than its military counterpart." *Lamont*, 153 F.4th at 241. These courts thus place little emphasis on the difference between the two rifles' mode of fire (semi-automatic versus automatic fire).

Cook County similarly contends that because machineguns are bannable dangerous weapons, AR-15s are also bannable because they are *like* machineguns. The AR-15 and the M16 may be "like" one another in many ways. But "[e]verything is similar in infinite ways to everything else." C. Sunstein, *On Analogical Reasoning*, 106 Harv. L. Rev. 741, 774 (1993). As this Court stated, "a green truck and a green hat are relatively similar if one's metric is 'things that are green.'" *Bruen*, 597 U.S. at 29 (citing F. Schauer & B. Spellman, *Analogy, Expertise, and Experience*, 84 U. Chi. L. Rev. 249, 254 (2017)). Some metrics must therefore be more important than others when comparing AR-15s and M16s. If the AR-15 is not sufficiently similar to machineguns in metrics which are the most important, the argument that they are "dangerous and unusual" collapses, regardless of whether it is made at the first or second step of the *Bruen* test. And this argument fails for a number of reasons.

1. The rates of fire and modes of fire of the M16 and AR-15 are essential differences between the weapons.

A gun's mode of fire sets its rate of fire–the number of rounds it can fire per minute. As noted above, Cook County and *Bevis* downplay the importance of the

difference between the two rifles' modes of fire. Instead, they claim that M16s and AR-15s both fire at a semi-automatic cyclic rate of 300 rounds per minute. *See* Brief for Respondent in Opposition to Writ of Certiorari at 7, *Viramontes v. Cook County*, No. 25-238 (Oct. 29, 2025); *Bevis*, 85 F.4th at 1196. James Yurgealitis, an expert witness, supposedly substantiated the 300-rounds-per-minute claim in *Viramontes* and *Bevis*. This claim is not unique to the Seventh Circuit; it has also been made by the Fourth Circuit in *Kolbe v. Hogan.* 849 F.3d 114, 125 (4th Cir. 2017) (citation omitted).

As the *Barnett* dissent noted, *Bevis*'s claim has "not aged well." *Barnett*, 180 F.4th at 1063 (Brennan, C.J., dissenting). The word "cyclic" supplies the only clue to how the number was derived. Citing a U.S. Army training document, the dissent in *Bevis* explains cyclic fire:

> [It is] a type of fire where "the gunner holds the trigger to the rear while the assistant gunner feeds ammunition into the weapon." The cyclic rate "produces the highest volume of fire the machine gun can fire" and is a drastic step, as it "can permanently damage the machine gun and barrel and should be used only in case of emergency." It is difficult to see how a gunner could fire an AR-15 cyclically. Because it is a semiautomatic firearm, if the trigger were held to the rear, the cyclic rate would be one round per minute.

Bevis, 85 F.4th at 1223-1224 (Brennan, C.J., dissenting) (internal citations omitted). The Chief Judge further stated "the M16's maximum semiautomatic effective

rate . . . [is] 45 rounds per minute—more than four times slower than its maximum automatic effective rate." *Bevis*, 85 F.4th at 1224 (Brennan, C.J., dissenting). Thus, there is little reason to believe the AR-15's actual rate of fire is much greater than forty-five rounds per minute, and certainly not the 300 rounds claimed by *Bevis* and *Kolbe*.

The difference in rates of fire between the weapons, and the variance in the mode of fire which produces that difference is significant. Cook County and the circuit courts assert the AR-15 is "dangerous and unusual" because it is like the military M16. *Lamont* stresses that the AR-15 was "initially developed for modern military combat." *Lamont*, 153 F.4th at 240. But these claims ignore a crucial reality—automatic fire is a key requirement for military weapons. Indeed, this is why the AR-15 was not adopted by the U.S. military. The U.S. Army has not used a purely semi-automatic rifle as its standard-issue infantry firearm since the M14 replaced the M1 Garand in 1957. *Post WWII Rifle Development*, National Park Service: Springfield Armory National Historic Site (July 22, 2020), https://www.nps.gov/spar/learn/historyculture/post-wwii-rifle.htm. And the M14, the predecessor to the M16, was adopted in part because the Army realized the need for a rifle capable of automatic fire to replace the exclusively semi-automatic M1. *Id.* The AR-15 does not have this critical capability. It cannot fire anywhere near as many rounds as an M16 in the same amount of time. That distinction defeats the premise that the AR-15 is "almost the same gun as the M16" and therefore bannable. *Bevis*, 85 F.4th at 1195.

Lamont goes further. The Second Circuit implied semi-automatics are actually more deadly at ranges

over twenty-five meters than automatic weapons. *See Lamont*, 153 F.4th at 241. But this misses the point of the "dangerous and unusual" analysis. The M16 is "dangerous and unusual" not because at some specific range it may outclass another firearm in "shots per target, trigger pulls per hit, and time to hit." Dep't of the U.S. Army, FM 3-22.9: Rifle Marksmanship M16-/M4-Series Weapons, § 7-15 (2008). If the superiority of semi-automatic fire to automatic at ranges over twenty-five meters is the metric for the "dangerous and unusual" framework, *any* semi-automatic weapon would be swallowed up. The M16 is "dangerous and unusual" not because of these statistics, but because it is capable of devastating rates of fire which are impossible for a semi-automatic rifle like the AR-15 to achieve.

2. The Seventh and Second Circuits emphasize other similarities which are not sufficient to argue AR-15s are like M16s.

The circuit courts overstate the importance of other differences, such as kinetic energy (the energy of the bullet as it leaves the gun), caliber of ammunition, and effective range. But these are not sufficient to prove the AR-15 "dangerous and unusual." And if they are, they would swallow up an even larger portion of protected firearms because of their comparability to military weapons, as explained below.

The fact the AR-15 is similar to a military weapon in certain specifications is not historically unique. Throughout American history, civilians have been able to purchase and own weapons nearly or completely identical in function to weapons used by the military. And often, firearms manufacturers emphasized these similarities.

See Brief for Landmark Legal Foundation as Amicus Curiae Supporting Petitioners at 11, *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025) (No. 23-1141).

At the Founding, the American citizen soldiers who comprised the militia would have been expected to have "ordinary military equipment" whose "use could contribute to the common defense." *United States v. Miller*, 307 U.S. 174, 178 (1939) (citation omitted); s*ee* Militia Act of 1792, ch. 33, 1 Stat. 271 (1792) (requiring all citizens eligible for enrollment to have "within six months thereafter . . . a good musket or firelock"). There would have been no difference between the common muskets utilized by the Army and those owned by the civilian population. This trend would continue throughout the nineteenth and into the twentieth centuries. As one scholar stated,

> The repeating rifles that first debuted in the Civil War evolved into the lever action rifles used by soldiers and civilians alike in the Old West . . . . Like the modern AR-15, these rifles had higher ammunition capacity and more rapid rates of fire than their predecessors . . . . The Remington Model 30 bolt-action sporting rifle . . . was derived from the M1917 Enfield rifle used by American soldiers in World War I. The semiautomatic M1 Garand rifle and M1 carbine were designed for military use in World War II, Korea, and Vietnam. Civilian versions are sold commercially for target shooting and hunting.

E. Gregory Wallace, *"Assault Weapon" Myths*, 43 S. Ill. U. L.J. 193, 201 (2018). It should be further noted that

M1s are still commonly sold and would remain legal under the Cook County and Connecticut Assault Weapons Bans, despite the fact that the mass-produced civilian variant is indistinguishable from its military variant.

These civilian-accessible weapons would undoubtedly have had extremely similar or identical specifications to their military counterparts. But factors such as an identical range or caliber do not in themselves make a rifle "dangerous and unusual." Courts and legislatures have not found such similarities relevant when instituting restrictions on firearms. The federal government was evidently unconcerned with them when deciding to sell surplus M1s to the public. This history tends to negate the importance of the similarities which *Bevis*, *Barnett*, and *Lamont* discuss, thereby elevating the importance of rates of fire and modes of fire, which as noted are not the same between the AR-15 and the M16.

Placing importance on things such as range, caliber, and muzzle velocity would also lead to inconsistent classifications of firearms as "dangerous and unusual." The Browning BAR MK 4 is an example of a firearm which would avoid this classification despite outperforming the AR-15 in these categories. The rifle is a semi-automatic derivation of a weapon designed during the First World War and used extensively during the Second World War by American armed forces. *BAR MK 4 Hunter*, Browning, https://www.browning.com/products/firearms/rifles/bar/bar-mk-4-hunter.html (last visited Aug. 31, 2026). The weapon can be chambered in six different calibers all of which are larger and have a greater muzzle energy (the kinetic force with which the round exits the barrel) than the 5.56 round used by the AR-15 and M16. *Id.*;

Jason Hitchcock, *Bullet Caliber Chart: Smallest to Largest Rounds*, Survival Stoic (Apr. 14, 2026) https://survivalstoic.com/bullet-sizes-and-caliber-charts/. While muzzle velocity varies based on the ammunition manufacturer, all six of the calibers in which the MK 4 may be chambered have muzzle velocities in a similar range as 5.56 ammunition. *Rifle Caliber Chart: A Ballistics Performance and Usage Guide for Hunting*, Sportsman's Warehouse, https://www.sportsmans.com/rifle-caliber-performance-chart?msockid=27b2b144ed8562a022f8a750ec0e63e8 (last visited Aug. 31, 2026).

Most importantly, under the assault weapons bans at issue, the MK 4 would appear to remain legal for civilian use. *See* Cook County, Ill., Code § 54-211; Conn. Gen. Stat. § 53-202a(1)(A)-(I). Here, therefore, is a weapon which is far more like the AR-15 than the AR-15 is like the M16. It is a semi-automatic variant of a former military rifle, with specifications rivaling or exceeding those of the AR-15, and using a round far larger than that of the AR-15. And yet, it is one which inexplicably would not be considered "dangerous and unusual" under the Cook County and Connecticut bans.

Further, consider the negligible difference between military and civilian handguns. The U.S. Military currently uses the SIG Sauer M17 and M18 handguns, semi-automatic 9mm handguns with an effective range of around fifty meters. Program Acquisition Executive Maneuver Ground, *M17/M18 9mm Modular Handgun System*, PAEMG: Project Manager Soldier Lethality Portfolio, https://cpeground.army.mil/Equipment/Equipment-Portfolio/PM-SL-Portfolio/M17-M18-Modular-Handgun-System/ (last visited Aug. 31, 2026).

Commonly purchased civilian handguns, such as the SIG Sauer P320 or the Glock 19 match these military handguns in many respects. The former is nearly identical in all aspects to the M17 and M18, which are slightly improved variants of the P320 for military use. *P230-M17*, SIG Sauer, https://www.sigsauer.com/p320-m17.html (last visited Aug. 31, 2026). The latter, the Glock 19, also chambered in 9mm, has a similar range but has no external safety, instead utilizing a safe trigger system. *G19 Gen 6*, Glock, https://us.glock.com/en/products/commercial-firearms/pistols/g19-gen6 (last visited Aug. 31, 2026); *Glock 19*, GlobalMilitary.Net, https://www.globalmilitary.net/firearms/glock-19/ (last visited Aug. 31, 2026); *Do Glocks Have a Safety? Debunking Common Myths*, CYA Supply Co., https://www.cyasupply.com/blogs/articles/do-glocks-have-a-safety-debunking-common-myths (last visited Aug. 31, 2026). Under the circuit courts' logic, these handguns could be bannable for mirroring military weapons. Yet *Heller* has made clear these are *not* "dangerous and unusual," for they are "overwhelmingly chosen by American society for . . . [a] lawful purpose." *Heller*, 554 U.S. at 628.

If the features which supposedly make the AR-15 a bannable, military-like "assault weapon" are key to determining if a weapon is "dangerous and unusual," the circuit courts' comparison creates confusion. Either courts and legislatures must live with inconsistent results when attempting to classify weapons as "dangerous and unusual." Or they must ban even larger categories of firearms to encompass those which approach or surpass some abilities of military firearms. Upholding these bans will open the door to further restrictions that conflict with *Heller*.

B. Cook County's and Connecticut's assault weapons bans list features which do not make weapons more or less "dangerous and unusual."

The circuit courts' and Respondents' flawed weapon analysis does not end with AR-15s. In addition to rifles banned by name, Cook County and Connecticut both use a two-factor test to determine whether a rifle may qualify as an "assault weapon." The test requires the weapon be capable of accepting a detachable magazine and contain one of several features. But these features, at best for the Respondents, can only be considered neutral in their bearing on whether such a rifle is "dangerous and unusual." For example, a foregrip, a grip attached to the barrel of the gun forward of the trigger and magazine, allows a shooter to better control recoil and thereby improve his accuracy. Those in favor of such bans have suggested this feature increases the "capability for lethality — more wounds, more serious, in more victims." *Kolbe*, 849 F.3d at 137. In the hands of a criminal, a feature improving a shooter's accuracy may indeed make a firearm more deadly. Yet, such a feature also increases the "defensive application" of the firearm, as well as granting a "public safety advantage in preventing stray shots" when the firearm is used in a lawful manner. David B. Kopel, *Rational Basis Analysis of "Assault Weapon" Prohibition*, 20 J. Contemp. L. 381, 396 (1994).

The same can be said of telescopic or folding stocks, which may make a rifle more concealable but also improve accuracy and ease of use for lawful purposes, and a barrel shroud, which prevents burns on the hands of the user. In the best-case scenario for the Respondents, these features

still do not make a rifle more or less dangerous. Their benefits to public safety during civilian use are at least as great as benefits to public safety from preventing their criminal use. In the worst case for the Respondents, these features actually make rifles as a whole less dangerous. The public safety benefits for the vast majority of lawful users outweigh the potential slim increases in accuracy and concealability for unlawful users. A test that treats a heat shield as evidence of dangerousness should not be considered reasonable or beneficial for measuring dangerousness for the purposes of the Second Amendment.

C. The Second Amendment applies to modern weapons even though they are technologically distinct from those at the time of the Founding.

The *c*ircuit courts have also failed to correctly apply the principle of technological neutrality to the Second Amendment. The Fourth Circuit in *Bianchi v. Brown* said of AR-15s and other "assault weapons" that "[t]hese are not our forebears' arms." *Bianchi*, 111 F.4th at 464. The Second Circuit, in *Lamont*, emphasizes that "contemporary assault weapons represent dramatic technological changes" from Founding-era weapons, and states that weapons of the 1790s and 1860s were "technologically distinguishable from modern AR-15-style firearms." *Lamont*, 153 F.4th at 237, 238.

And the Seventh Circuit, ruling on yet another assault weapons ban, found that, compared to the "single-shot, muzzle-loaded firearm" which was "ubiquitous" in the 1790s, the AR-15 is a "far cry from . . . antecedents." *Barnett*, 180 F.4th at 1055. *Barnett* dispenses with the idea that "the capabilities and ubiquity of repeating rifles grew

gradually as America grew." *Barnett*, 180 F.4th at 1056 (emphasis removed). According to the court, "[t]here need not be a singular, transformative moment in the history of firearm innovation for AR-15s . . . to be 'different in form and in kind from arms in common use during the Founding and Reconstruction eras.'" *Id.* (quoting *Hanson v. Smith*, 120 F.4th 223, 242 (D.C. Cir. 2024)).

Of course, no constitutional right applies only to the technology of the 18th century. This Court has explicitly stated that in the First Amendment context, "whatever the challenges of applying the Constitution to ever-advancing technology, 'the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary' when a new and different medium for communication appears." *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 790 (2011) (citation omitted). Why then is a comparison between muskets and AR-15s relevant? Certainly, firearms technology of the 1790s or 1860s is not comparable to that of modern day, but this does not mean that modern firearms are not covered by the Second Amendment. Just as the First Amendment applies to modern media, so too the Second Amendment applies to modern, semi-automatic rifles. The circuit courts do not afford the Second Amendment the same protection.

The *Barnett* majority cites *Bruen* to justify their comparison, "cases implicating . . . dramatic technological changes may require a more nuanced approach." *Barnett*, 180 F.4th at 1056 n.17 (quoting *Bruen*, 597 U.S. at 27). Yet, in the same paragraph, *Bruen* states "[a]lthough its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically

anticipated." *Bruen*, 597 U.S. at 28. Moreover, in the next paragraph, the Court reiterates this in the specific context of the Second Amendment, stating "[t]hus, even though the Second Amendment's definition of 'arms' is fixed according to its historical understanding, that general definition covers modern instruments that facilitate armed self-defense." *Id.*

Both *Barnett* and *Lamont* dismiss examples of eighteenth and nineteenth century repeating rifles as irrelevant because they "were exceedingly rare and never penetrated the commercial or military markets" and thus would not have been a focus of "historical legislatures" or the Founders. *Barnett*, 180 F.4th at 1056; *see Lamont*, 153 F.4th at 237 ("early multi-shot firearms were neither reliable nor widely used"). Yet their rarity should not be taken to mean total ignorance of their existence. Legislatures could have categorized them as dangerous weapons and banned them; they chose not to do so. It is not as though courts did not consider the question of unusual weapons and the power of the state to ban them. Indeed, *State v. Huntly* discussed whether guns were unusual weapons in the context of affray in 1843. *Huntly*, 25 N.C. at 421. It would be difficult to find a better example of an unusual weapon *in the early nineteenth century* than a repeater rifle.

Barnett similarly ignores the relevance of the 1866 Winchester repeating rifle, arguing it was "not a true semiautomatic firearm" and therefore not proof enough of historical analogs to the AR-15. *Barnett*, 180 F.4th at 1056. But the 1866 Winchester provides another link in the chain of firearms development from smooth-bore, muzzle-loading muskets to modern semi-automatic rifles.

Unquestionably, the lever-action and bolt-action rifles which became popular in the second half of the nineteenth century and early twentieth century had a higher rate of fire than muzzle-loading muskets and rifles. Once more, courts and legislatures did not suddenly consider them outside the scope of the Second Amendment despite the technological advancement they offered over muzzle-loaders. The Seventh Circuit argues on the one hand this upgrade was not substantial and was acceptable under the Second Amendment. But on the other, it argues that the advent of modern semi-automatic firearms was so substantial that the Second Amendment ceased to protect them.

Like the First Amendment, the Second is technologically neutral. The fact that a weapon does not function like a muzzle-loading firearm does not condemn it to proscription. This Court should not adopt this erroneous line of reasoning.

CONCLUSION

The opinions below limit the Second Amendment's protection by arbitrarily minimizing the crucial distinction between automatic and semi-automatic firearms. Their sparse historical examples cover improper carry and conduct, as well as weapons associated with criminality, not a ban on the peaceful carry and ownership of a broad category of rifles. Instead, the historical tradition of the founding generation, through their writings and experience with the militia, is at odds with the banning of effective rifles from private ownership.

The Court should reverse the decisions below, hold that the banned semi-automatic rifles are protected arms, and remand for entry of judgment for Petitioners.

Respectfully submitted,

RICHARD P. HUTCHISON
LANDMARK LEGAL FOUNDATION
2405 Grand Boulevard,
Suite 420
Kansas City, MO 64108

MATTHEW C. FORYS
Counsel of Record
MICHAEL J. O'NEILL
LANDMARK LEGAL FOUNDATION
19415 Deerfield Avenue,
Suite 312
Leesburg, VA 20176
(703) 554-6100
matt@landmarklegal.org

Attorneys for Amicus Curiae

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