

Nos. 25-238 and 25-566

In the Supreme Court of the United States

CUTBERTO VIRAMONTES, ET AL., PETITIONERS

v.

COOK COUNTY, ILLINOIS, ET AL.

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.

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

**BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE IN SUPPORT OF PETITIONERS**

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QUESTION PRESENTED

Whether a categorical ban on the possession of AR-15 semiautomatic rifles infringes the right to keep and bear arms guaranteed by the Second Amendment.

(I)

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INTEREST OF THE UNITED STATES

The United States has a substantial interest in the preservation of the right to keep and bear arms and in the proper interpretation of the Second Amendment.

INTRODUCTION

The right to keep and bear arms guaranteed by the Second Amendment is among the “fundamental rights necessary to our system of ordered liberty.” *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010). Millions of Americans exercise that right by owning an AR-15 rifle, which is “the most popular rifle in the country.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025). Yet the State of Connecticut and Cook County, Illinois, have made the possession of AR-15s a crime.

Those bans are unconstitutional. A firearms restriction comports with the Second Amendment only if it is “consistent with the Nation’s historical tradition of firearm regulation.” *NYSRPA v. Bruen*, 597 U.S. 1, 24 (2022). And this country’s regulatory tradition precludes banning arms that are “in common use” among law-abiding citizens for lawful purposes. *District of Columbia v. Heller*, 554 U.S. 570, 624 (2008). That common-use test has deep historical roots in English and American law. This Court has already adopted that test and has repeatedly applied it to evaluate the validity of arms bans. See *Bruen*, 597 U.S. at 47; *Heller*, 554 U.S. at 627; *United States v. Miller*, 307 U.S. 174, 179 (1939).

The AR-15 rifle is unquestionably in common use among law-abiding citizens for lawful purposes. Today, AR-15s are lawful at the federal level and in 40 States. The overwhelming majority of AR-15 owners possess those rifles for the lawful purposes to which they are adapted, such as self-defense in the home, hunting, and target shooting. A ban on possessing such rifles thus violates the Second Amendment.

STATEMENT

A. Factual Background

The AR-15 rifle was developed in 1956 by the small-arms manufacturer ArmaLite. See Cameron McWhirter & Zusha Elinson, *American Gun* 46, 51 (2023). Sources variously describe the “AR” as standing for “ArmaLite Rifle,” “ArmaLite Research,” and the first two letters of “ArmaLite.” *Id.* at 46. After the patent expired in 1977, several manufacturers began producing their own models, and “AR-15” became a generic term for those weapons. 86 Fed. Reg. 27,721, 27,721 n.6 (May 21, 2021).

The AR-15 rifle is a type of semiautomatic firearm, meaning that it fires only one shot each time the shooter pulls the trigger. See *Garland v. Cargill*, 602 U.S. 406, 410-411, 416 (2024). It possesses several features that make it popular. For instance, it is accurate, light, portable, easy to shoot, easy to accessorize, and configured with components that can be removed and customized. See Frank Miniter, *The Future of the Gun* 35 (2014). As a result, millions of Americans own AR-15s, making them the most commonly owned rifles in America. Americans’ reasons for owning AR-15s and other semiautomatic rifles include “self-defense in the home, hunting, target shooting, and competitions.” *Heller v. District of Columbia*, 670 F.3d 1244, 1287-1288 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (*Heller II*).

B. Proceedings Below

Connecticut and Cook County, Illinois, have enacted laws making it a crime to possess an “assault weapon.” Conn. Gen. Stat. § 53-202c; Code of Ordinances of Cook County § 54-212. Each statute defines the term “assault weapon” to include (1) firearms with certain features and (2) specific firearms listed in the statute. Conn.

Gen. Stat. § 53-202a; Code of Ordinances of Cook County § 54-211. Each statute’s list of banned firearms includes the AR-15 rifle, and each statute would independently ban the AR-15 because of its features (*e.g.*, the nature of its grip and its stock). Conn. Gen. Stat. § 53-202a(1)(B)(xx); Code of Ordinances of Cook County § 54-211(7)(A)(iii). Connecticut’s statute, however, grandfathered certain firearms that were possessed before the ban took effect. Conn. Gen. Stat. § 53-202d(a)(2)(A).

In *Grant*, a group of organizations and individuals (petitioners here) challenged Connecticut’s statute. *Grant* Pet. App. 19a-20a. The United States District Court for the District of Connecticut denied the challengers’ motion for a preliminary injunction, *id.* at 74a-92a, and the Second Circuit affirmed, *id.* at 1a-73a. The Second Circuit assumed without deciding that AR-15 rifles are “arms.” *Id.* at 35a. It nonetheless held that Connecticut could ban such arms because they are “especially dangerous,” have “military-style features,” and have limited “usefulness for self-defense.” *Id.* at 9a, 49a. Judge Nathan, joined by the other two members of the panel, issued a concurrence in which she opined that the challengers’ proposed test—which would have focused on whether arms are in common use—lacks historical support. *Id.* at 67a-73a.

In *Viramontes*, organizations and individuals (also petitioners here) challenged Cook County’s statute. *Viramontes* Pet. App. 2a. The United States District Court for the Northern District of Illinois granted summary judgment to Cook County, *id.* at 6a-26a, and the Seventh Circuit affirmed, *id.* at 1a-5a. Both courts were bound by *Bevis v. City of Naperville*, 85 F.4th 1175 (2023), cert. denied, 144 S. Ct. 2491 (2024), where the Seventh Circuit had rejected a Second Amendment

challenge to an AR-15 ban enacted by Illinois. *Bevis* reasoned that AR-15 rifles are not “Arms,” and that our regulatory tradition in any event allows legislatures to ban them, because they are “military-grade” weapons and are “especially dangerous.” *Id.* at 1195, 1201.

SUMMARY OF ARGUMENT

Connecticut’s and Cook County’s categorical bans on AR-15 rifles violate the Second Amendment.

A. The Second Amendment protects the right to keep and bear “Arms.” U.S. Const. Amend. II. “Arms” are “implements used for offense or defense.” *Wolford v. Lopez*, 146 S. Ct. 2032, 2041 (2026). “[A]ll firearms constitut[e] arms.” *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008). AR-15s are thus “arms” covered by the Second Amendment.

B. An arms regulation complies with the Second Amendment only if the government can show that the regulation is “consistent with the principles that underpin our regulatory tradition.” *Wolford*, 146 S. Ct. at 2045 (citation omitted). Our regulatory tradition precludes banning arms that are in common use among law-abiding citizens for traditionally lawful purposes.

That common-use test has deep historical roots. Early English and American militia laws recognized that individuals had not just the right, but the duty, to possess “arms ‘in common use at the time’ for lawful purposes.” *Heller*, 554 U.S. at 624. Early laws also banned the public carrying of “dangerous and unusual” weapons while permitting the carrying of “common” weapons. *NYSRPA v. Bruen*, 597 U.S. 1, 47 (2022). And 19th-century state courts explained that legislatures could not ban “the usual arms of the citizen.” *Andrews v. State*, 50 Tenn. 165, 179 (1871).

This Court adopted the common-use test in *United States v. Miller*, 307 U.S. 174 (1939), where it upheld federal restrictions on short-barreled shotguns because those weapons were not “in common use.” *Id.* at 179. The Court reaffirmed the test in *Heller* and applied it to invalidate a total ban on handguns, “the most popular weapon chosen by Americans for self-defense in the home.” 554 U.S. at 629. The Court then reiterated the test in *Bruen*, explaining that States may not ban the public carrying of handguns because they are “in common use today.” 597 U.S. at 47.

C. Traditional legislative practice provides a useful guide to applying the common-use test. If Congress and a significant majority of the States have long banned or severely restricted a class of arms, that practice is strong evidence that the arms are not in common use. Conversely, the longstanding and widespread legality of a class of arms usually suggests that law-abiding citizens can and do possess such arms for lawful purposes. That approach avoids the types of complex empirical inquiries that this Court’s Second Amendment cases generally eschew.

D. The AR-15 rifle—“the most popular rifle” in the United States, *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025)—is the quintessential example of an arm that is in common use among law-abiding citizens for lawful purposes. Semi-automatic rifles like AR-15s “traditionally have been widely accepted as lawful possessions.” *Staples v. United States*, 511 U.S. 600, 612 (1994). Today, AR-15s are lawful at the federal level and in 40 States, with law-abiding citizens using them for lawful purposes such as self-defense, target shooting, and hunting. The challenged bans thus violate the Second Amendment.

E. Some courts of appeals have upheld AR-15 bans, but their reasons for doing so lack merit. Those courts questioned the usefulness of AR-15s for self-defense, but the Constitution “allows the American people—not the government—to decide which weapons are useful for self-defense.” *Snope v. Brown*, 145 S. Ct. 1534, 1537 (2025) (Thomas, J., dissenting). The lower courts also concluded that AR-15s are unprotected because they are “militaristic,” but that is no basis for banning arms. To the contrary, at the founding, “small-arms weapons used by militiamen and weapons used in defense of person and home were one and the same.” *Heller*, 554 U.S. at 625 (brackets and citation omitted). Finally, the lower courts concluded that legislatures may ban AR-15s because they are especially dangerous. But this Court’s cases and the Nation’s regulatory tradition foreclose the theory that a legislature may prohibit an arm in common use based on perceived dangerousness alone.

ARGUMENT

To evaluate a law under the Second Amendment, a court must apply a two-step test. See *NYSRPA v. Bruen*, 597 U.S. 1, 17 (2022). It must first ask whether the law burdens the right protected by the Amendment’s plain text, the “right of the people to keep and bear Arms.” U.S. Const. Amend. II; see *Wolford v. Lopez*, 146 S. Ct. 2032, 2043-2044 (2026). If so, the law is invalid unless the government shows that it is “consistent with the principles that underpin our regulatory tradition.” *Id.* at 2045 (citation omitted).

A ban on a class of firearms burdens the right to keep and bear arms protected by the Second Amendment’s plain text. And this country’s regulatory tradition precludes such a ban where the firearms in question are in common use among law-abiding citizens for lawful pur-

poses. Because AR-15 rifles are in common use, Connecticut’s and Cook County’s categorical bans on such rifles violate the Constitution.

A. AR-15 Rifles Are “Arms”

Bruen’s first, plain-text step requires a court to ask whether the challenged law burdens the right of the people to keep and bear “arms.” See *Wolford*, 146 S. Ct. at 2043-2044. At the founding, as today, “arms” meant “weapons of offence, or armour of defence,” or “any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.” *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008) (quoting 1 Samuel Johnson, *A Dictionary of the English Language* (4th ed. 1773); 1 Timothy Cunningham, *A New and Complete Law Dictionary* (2d ed. 1771)). At the founding, as today, “all firearms constituted ‘arms.’” *Ibid.* (citation omitted). AR-15 rifles are thus “Arms,” and a complete ban on them burdens the right of “the people” to “keep and bear” those arms. U.S. Const. Amend. II. The plain-text inquiry here is as simple as that.

Some courts—such as the Seventh Circuit in *Bevis v. City of Naperville*, 85 F.4th 1175 (2023), cert. denied, 144 S. Ct. 2491 (2024)—have concluded that the term “arms” does not encompass some firearms, such as AR-15s, because our regulatory tradition supposedly allows legislatures to ban those firearms. See *id.* at 1192-1197. But that theory, under which some firearms are not arms, defies both the plain meaning of “arms” and *Heller*’s interpretation of that term. It also overlooks that historical gun regulations come into play only at *Bruen*’s second step. See *Wolford*, 146 S. Ct. at 2054 (Barrett, J., concurring). Smuggling them into the first step wrongly relieves the government of its burden of

proving that the challenged law is consistent with our regulatory tradition. See *Bruen*, 597 U.S. at 17.

Cases analyzing who may own firearms provide a useful analogy. At the first step, the court should ask whether the disarmed persons are among “the people”—*i.e.*, “members of the political community.” *Heller*, 554 U.S. at 580; see, *e.g.*, *United States v. Portillo-Munoz*, 643 F.3d 437, 440 (5th Cir. 2011) (illegal aliens are not among “the people”), cert. denied, 566 U.S. 963 (2012). If they are, the court should then ask whether the restriction is consistent with history and tradition. See, *e.g.*, *United States v. Rahimi*, 602 U.S. 680, 698 (2024) (disarming persons subject to domestic-violence restraining orders comports with history). So also here, the first-step inquiry should focus on whether AR-15s are “arms”—*i.e.*, “implements used for offense or defense.” *Wolford*, 146 S. Ct. at 2041. They are, so the Court should proceed to *Bruen*’s historical step without further ado.

B. History And Precedent Foreclose Bans On Arms That Are In Common Use For Lawful Purposes

Because firearms are arms, a law burdening the right to keep and bear them is valid only if the government can show that it comports with “the principles that underpin our regulatory tradition.” *Wolford*, 146 S. Ct. at 2045 (citation omitted). The governing historical principle here is simple: Legislatures may not ban arms in common use among law-abiding citizens for lawful purposes. Three bodies of historical evidence—militia laws, going-armed laws, and state-court decisions—show that the common-use test has deep roots in English law, was settled in the United States by the founding, and was widely applied in the 19th century. This Court adopted that test in *United States v. Miller*, 307

U.S. 174 (1939), and has repeatedly used it to judge the constitutionality of arms bans. Some courts of appeals have nonetheless rejected that test, but their reasons for doing so lack merit.

Militia laws. Militia laws stretching back nearly a millennium show that individuals had not just the right, but the duty, to keep arms in common use. Early English laws required men to keep “such arms as were then in use” so that they could help resist “foreign invasions” and “domestic insurrections.” 1 William Blackstone, *Commentaries on the Laws of England* 411 (10th ed. 1787). The Assize of Arms, a decree issued by King Henry II in 1181, required Englishmen to equip themselves with lances and iron helmets, the usual arms of that era. See *Select Documents of English Constitutional History* 23-25 (George Burton Adams & H. Morse Stephens eds., 1906). Parliament periodically updated the list of required arms to include those “of more modern service,” such as swords in the 13th century and hagbuts (a type of long gun) in the 16th century. 1 Blackstone 411; see Military Service Act 1557, 4 & 5 Phil. & M. c. 2, § 2; Statute of Winchester, 13 Edw. 1 St. 2, c. 6 (1285).

In the United States, too, “the militia system was based on the principle of the assize of arms.” *Miller*, 307 U.S. at 179 (citation omitted). At the founding, the militia “was formed from a pool of men bringing arms ‘in common use at the time’ for lawful purposes like self-defense.” *Heller*, 554 U.S. at 624. Federal and state militia laws thus required men to supply themselves with arms “of the kind in common use.” *Ibid.* (citation omitted). For instance, a statute passed by the Second Congress required every militiaman to equip himself with “a good musket or firelock” or “a good rifle,” along

with suitable ammunition. Second Militia Act of 1792, ch. 33, § 1, 1 Stat. 271.

That background explains the link between the Second Amendment’s prefatory clause (“A well regulated Militia, being necessary to the security of a free State”) and its operative clause (“the right of the people to keep and bear Arms, shall not be infringed”). U.S. Const. Amend. II. The founding generation feared that the new federal government would “destroy the citizens’ militia by taking away their arms.” *Heller*, 554 U.S. at 599. So the founders codified an individual right to keep and bear the type of arms used by the militia—arms “typically possessed by law-abiding citizens for lawful purposes.” *Id.* at 625.

Going-armed laws. The distinction between common and unusual arms also is evident in the going-armed laws, which this Court has often consulted to discern the Second Amendment’s meaning. See *Rahimi*, 602 U.S. at 697-698; *Bruen*, 597 U.S. at 40-42; *Heller*, 554 U.S. at 627. Those laws confirm that individuals have long been free to publicly carry arms in common use.

The going-armed laws originated with the Statute of Northampton, 2 Edw. 3, c. 3 (1328), which provided that no one could “go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere.” See *Bruen*, 597 U.S. at 40. A person could violate the statute by publicly carrying “dangerous and unusual weapons” in a manner that terrified the community. *Id.* at 47. But a person was “in no Danger of Offending against this Statute by wearing common Weapons.” *Id.* at 45 (quoting 1 William Hawkins, *A Treatise of the Pleas of the Crown* 136 (1716)). Thus, in the medieval period, the statute restricted weapons such as launceegays (light

throwing lances that were typically carried only by those seeking to engage in combat or breaches of the peace) but not daggers (which were often carried by law-abiding subjects for self-defense). See *id.* at 41-42.

The prohibition on going armed crossed the Atlantic. See *Rahimi*, 602 U.S. at 697-698. Some States codified it in statutes modeled on the Statute of Northampton, while others recognized it as part of the common law. See *ibid.* Either way, States restricted the public carrying of “dangerous and unusual weapons” but left people free to carry common weapons. *State v. Langford*, 10 N.C. 381, 383 (1824) (citation omitted).¹

State-court cases. In the 19th century, state legislatures sometimes banned possessing, carrying, or selling specific types of arms. Many of those laws targeted the Bowie knife, which was associated with “duels, brawls, and other criminal activities.” *Bianchi v. Brown*, 111 F.4th 438, 510 (4th Cir. 2024) (en banc) (Richardson, J., dissenting), cert. denied, 145 S. Ct. 1534 (2025). Other laws targeted weapons such as spears, sword canes, slungshots, and brass knuckles. See David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. Legis. 223, 328-368 (2024).

State courts have long applied the common-use test to judge such laws under state constitutional provisions securing the right to bear arms. For example:

¹ See, e.g., Ellis Lewis, *An Abridgment of the Criminal Law of the United States* 64 (1848) (“dangerous and unusual weapons”); Francis Wharton, *A Treatise on the Criminal Law of the United States* 527 (1846) (same); John C.B. Davis, *The Massachusetts Justice* 379 (1847) (same); Henry Hitchcock, *The Alabama Justice of the Peace* 15 (1822) (same); Henry Potter, *The Office and Duties of a Justice of the Peace* 13 (1816) (same); John A. Dunlap, *The New-York Justice* 8 (1815) (same); 3 *The Works of the Honourable James Wilson, L.L.D.* 79 (Bird Wilson ed., 1804) (same).

- The Tennessee Supreme Court explained that the legislature could not ban “the usual arms of the citizen,” *Andrews v. State*, 50 Tenn. 165, 179 (1871), but could ban arms that are “not usual,” *Aymette v. State*, 21 Tenn. 154, 159 (1840).
- The Texas Supreme Court explained that the right extends to “such arms as are commonly kept, according to the customs of the people.” *State v. Duke*, 42 Tex. 455, 458 (1875).
- The Arkansas Supreme Court explained that the right extends to “the usual arms of the citizen.” *Fife v. State*, 31 Ark. 455, 460 (1876) (citation omitted).
- The West Virginia Supreme Court of Appeals explained the legislature could ban weapons that are “only habitually carried” by criminals. *State v. Workman*, 14 S.E. 9, 11 (1891).
- The North Carolina Supreme Court explained that the right extends to arms “in common use.” *State v. Kerner*, 107 S.E. 222, 224 (1921).
- The Michigan Supreme Court explained that the right extends to arms that are “recognized by the common opinion of good citizens as proper for private defense of person and property.” *People v. Brown*, 235 N.W. 245, 246 (1931).

Applying that test, courts identified the rifle as the quintessential example of a protected firearm. Courts observed that the “rifle” was among the arms kept by “the great mass of the people,” *Duke*, 42 Tex. at 458-459; that “the usual arms of the citizen” included “the rifle of all descriptions,” *Andrews*, 50 Tenn. at 179; and that “rifles” were “usually employed” arms, *Aymette*, 21

Tenn. at 160-161. “[N]ot even the most restrictive courts debated whether rifles” were protected; on that point, courts were “unanimou[s].” William Baude & Robert Leider, *The General-Law Right to Bear Arms*, 99 Notre Dame L. Rev. 1467, 1500-1501 (2024).

By contrast, courts recognized that legislatures could ban weapons such as Bowie knives, sword canes, and brass knuckles. See *Kerner*, 107 S.E. at 224-225; *Workman*, 14 S.E. at 11; *Fife*, 31 Ark. at 461; *Andrews*, 50 Tenn. at 186; *Aymette*, 21 Tenn. at 161-162. Courts reasoned that those arms were not in common use among law-abiding citizens and were instead “usually employed in brawls, street fights, duels, and affrays.” *Workman*, 14 S.E. at 11.

This Court’s cases. This Court adopted the common-use test in *Miller*, where it upheld the federal ban on possessing unregistered short-barreled shotguns. See 307 U.S. at 178-182. After reviewing founding-era militia laws, the Court opined that the Second Amendment protects only those arms that are “in common use at the time” and so does not protect short-barreled shotguns. *Id.* at 179. Those weapons “are not typically possessed for lawful purposes” and are “uniquely attractive to violent criminals.” *Johnson v. United States*, 576 U.S. 591, 640 (2015) (Alito, J., dissenting).

Heller read *Miller* to establish that “the sorts of weapons protected [a]re those ‘in common use at the time’” and that legislatures may ban weapons that are “not typically possessed by law-abiding citizens for lawful purposes.” *Heller*, 554 U.S. at 625, 627 (citation omitted). That reading, the Court explained, fits with founding-era practice, under which the “militia was formed from a pool of men bringing arms ‘in common use at the time.’” *Id.* at 624. In addition, the Court con-

tinued, that reading “is fairly supported by the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *Id.* at 627 (citation omitted).

Heller then applied the common-use test to invalidate the District of Columbia’s ban on possessing handguns in the home. See 554 U.S. at 628-635. The Court noted that “the American people have considered the handgun to be the quintessential self-defense weapon,” that it is “the most popular weapon chosen by Americans for self-defense in the home,” that it is “overwhelmingly chosen by American society for th[e] lawful purpose” of self-defense, and that it is “the most preferred firearm in the nation.” *Id.* at 628-629 (citation omitted). That alone established that “a complete prohibition of their use is invalid.” *Id.* at 629.

Bruen reiterated the common-use test. The Court explained that “the Second Amendment protects the possession and use of weapons that are ‘in common use at the time,’” *Bruen*, 597 U.S. at 21 (citation omitted), and that handguns are protected because they are “‘in common use’ today,” *id.* at 32. It also contrasted arms “in common use,” which are protected, with arms that are “highly unusual in society at large,” which may be banned. *Id.* at 47 (citation omitted).

Individual Justices, too, have repeatedly invoked the common-use test. Justice Thomas has written that the Second Amendment protects arms that are “commonly used for a lawful purpose.” *Friedman v. City of Highland Park*, 577 U.S. 1039, 1042 (2015) (Thomas, J., dissenting); see *Snope v. Brown*, 145 S. Ct. 1534, 1536 (2025) (Thomas, J., dissenting); *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (statement of Thomas, J.); *Voisine v. United States*, 579 U.S. 686, 714 (2016) (Thomas, J., dissenting). Justice Alito has noted that

“the pertinent Second Amendment inquiry” is whether the weapons at issue “are commonly possessed by law-abiding citizens for lawful purposes.” *Caetano v. Massachusetts*, 577 U.S. 411, 420 (2016) (Alito, J., concurring in the judgment). And Justice Kavanaugh has endorsed “the historically based ‘common use’ test with respect to the possession of particular weapons.” *Snope*, 145 S. Ct. at 1534 (statement of Kavanaugh, J.); see *Rahimi*, 602 U.S. at 735 (Kavanaugh, J., concurring); *Heller v. District of Columbia*, 670 F.3d 1244, 1271-1272 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

Criticisms of the common-use test. The Second and Seventh Circuits rejected the common-use test, but their reasons for doing so lack merit.

To start, the lower courts erroneously derided the common-use test as a “trivial counting exercise,” *Grant* Pet. App. 30a (citation omitted), and “circular,” *Bevis*, 85 F.4th at 1190. Justice Breyer’s dissent in *Heller* raised the same objection, to no avail. See 554 U.S. at 721. The point of the common-use test is that “the American people,” rather than legislatures or courts, get to “decide which weapons are useful” for lawful purposes. *Snope*, 145 S. Ct. at 1537 (Thomas, J., dissenting). “A constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all.” *Heller*, 554 U.S. at 634. Instead of relying on their “own assessment of how useful an arm is” for lawful purposes, legislatures and courts must defer to the practices of the American people. *Snope*, 145 S. Ct. at 1538 (Thomas, J., dissenting).

Such reliance on community practice is hardly unusual in the law. Whether speech is obscene under the First Amendment turns on “contemporary community standards.” *Miller v. California*, 413 U.S. 15, 24 (1973).

Whether an intrusion is an unreasonable search under the Fourth Amendment depends in part on “customary” practices and “the habits of the country,” *Florida v. Jardines*, 569 U.S. 1, 8-9 (2013) (citation omitted), and on whether the government has used technology “that is not in general public use,” *Kyllo v. United States*, 533 U.S. 27, 40 (2001). Whether a method of giving notice satisfies the Due Process Clause turns in part on whether that mode of communication would be accepted in “the business world.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950). In fact, the common law itself is built on community customs. See 1 Blackstone 64.

The lower courts also erroneously questioned the common-use test’s administrability. See *Grant* Pet. App. 30a; *Bevis*, 85 F.4th at 1198. Courts have been applying that test for centuries without apparent difficulty. A court should face no trouble in concluding, for instance, that rifles and handguns are in common use while sword canes and spears are not. Some types of weapons may, of course, raise harder questions. But under any legal test, “there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls.” *United States v. Petrillo*, 332 U.S. 1, 7 (1947).

Finally, the Second Circuit worried that the common-use test could lead to “absurd consequences,” such as conferring a constitutional right to own “nuclear warhead[s]” if they become popular. *Grant* Pet. App. 30a (citation omitted). That concern is implausible. Even if nuclear warheads were somehow available to the public, “no reasonable person would think to use one to defend himself.” *Snope*, 145 S. Ct. at 1538 (Thomas, J., dissenting). It is even less likely that a nuclear weapon would

“become a *common* means of self-defense” or otherwise enter common use. *Ibid.*

C. Traditional Legislative Practice Provides A Useful Guide To Applying The Common-Use Test

Courts applying the common-use test may properly consider whether the arms at issue “have traditionally been banned” or “‘heavily regulated.’” *Heller II*, 670 F.3d at 1270, 1289 (Kavanaugh, J., dissenting) (citation omitted). If the federal government and a significant majority of the States have long banned or severely restricted a class of arms, that practice is strong evidence that such arms are not in common use. Conversely, the longstanding and widespread legality of a class of arms usually suggests that law-abiding citizens can and do possess such arms for lawful purposes.

That approach follows from *Heller*. There, the Court held that the District of Columbia’s handgun ban was unconstitutional primarily because “[f]ew laws in the history of our Nation” have banned handguns. *Heller*, 554 U.S. at 629. Unlike the dissenters, the Court did not dwell on statistics about how many Americans own handguns or how they use them. Compare *id.* at 628-629, with *id.* at 693-705 (Breyer, J., dissenting).

That approach also is consistent with this Court’s methodology in other Second Amendment cases. Those cases have focused on legislative practice, validating laws that fit within an “‘enduring American tradition’” while invalidating “outlier legal rule[s] adopted in a few locales.” *Wolford*, 146 S. Ct. at 2050 (citation omitted). At the same time, those cases have rejected tests that require courts to make “difficult empirical judgments.” *Bruen*, 597 U.S. at 26.

Focusing on legislative practice avoids concerns about the common-use test’s administrability. Courts

often consider how many States have adopted a given type of law, including when deciding whether a speech restriction is a narrowly tailored means of serving the government’s interest, see *NRSC v. FEC*, 146 S. Ct. 2404, 2422 (2026); whether a search or seizure is reasonable, see *Tennessee v. Garner*, 471 U.S. 1, 10-11 (1985); or whether a method of execution poses an objectively intolerable risk of serious pain, see *Baze v. Rees*, 553 U.S. 35, 53 (2008) (opinion of Roberts, C.J.). Courts should have little trouble conducting that familiar type of inquiry in the Second Amendment context.

To be sure, courts may need to use “a more nuanced approach” when legislatures address new arms. *Bruen*, 597 U.S. at 27. In such circumstances, where there is no settled tradition of either banning or allowing the arms, it would make little sense for the right to keep and bear arms to turn on whether “a firearm is outlawed quickly following its introduction to the market.” *Bevis*, 85 F.4th at 1211 (Brennan, J., dissenting). Courts therefore may need to “reason by analogy,” asking whether the new weapons are more comparable to those that have historically been banned or severely restricted or instead to those that have historically been protected. *Heller II*, 670 F.3d at 1275 (Kavanaugh, J., dissenting). That task “can be difficult and leave close questions at the margins,” but it is “an essential component of judicial decisionmaking under our enduring Constitution.” *Bruen*, 597 U.S. at 31 (citation omitted).

D. AR-15 Rifles Are In Common Use

Semiautomatic rifles are in common use among law-abiding citizens for lawful purposes. “The first commercially available semi-automatic rifles * * * entered the market between 1903 and 1906.” *Heller II*, 670 F.3d at 1287 (Kavanaugh, J., dissenting). Semiautomatic rifles

“have not traditionally been banned,” or even subjected to heavy regulation. *Id.* at 1269. Instead, they “traditionally have been widely accepted as lawful possessions.” *Staples v. United States*, 511 U.S. 600, 612 (1994).

In particular, the AR-15 rifle—“the most popular semi-automatic rifle’ in America”—is “undeniably ‘in common use.’” *Harrel*, 144 S. Ct. at 2492 (statement of Thomas, J.) (citation omitted). Though the AR-15 is, for example, more accurate and more portable than many other semiautomatic rifles, it lacks features—such as the capacity for fully automatic fire—that have traditionally provided a basis for banning firearms. See *Bevis*, 85 F.4th at 1216 (Brennan, J., dissenting). For most of their history, therefore, AR-15s have been lawful at both the federal and state level. Though a 1994 federal statute restricted the manufacture of new AR-15s, that law did not limit the possession or transfer of existing AR-15s, was not widely replicated at the state level, and expired in 2004. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 110102, 110105, 108 Stat. 1996-1998, 2000.

Today, AR-15s are “widely legal.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025). They are lawful at the federal level and in 40 States; only ten States and the District of Columbia have banned them.² The traditional and continuing legality of AR-15s in a “significant majority of the

² See Cal. Penal Code § 30510(a)(1)(5); Conn. Gen. Stat. § 53-202a(1)(B)(xx); Del. Code, tit. 11, § 1465(2)(o); D.C. Code § 7-2501.01(3A)(A)(i)(I)(ee); 720 Ill. Comp. Stat. § 24-1.9(a)(1)(J)(ii)(II); Md. Code Pub. Safety § 5-101(r)(2)(xv); Mass. Gen. Laws ch. 140, § 121(e)(iv); N.J. Rev. Stat. § 2C:39-1(w)(1); N.Y. Penal Law § 265.00(22)(a); R.I. Gen. Laws § 11-47.2-1(9)(iv); Va. Code § 18.2-308.2:2(F); Wash. Rev. Code § 9.41.010(2)(a)(i).

States” suggests that they are in common use. *Snope*, 145 S. Ct. at 1534 (statement of Kavanaugh, J.).

The Judiciary and the Executive Branch have both recognized the ubiquity of AR-15 rifles. This Court has observed that “[t]he AR-15 rifle is the most popular rifle in the country” and is “bought by many ordinary consumers.” *Smith & Wesson*, 605 U.S. at 297. Members of the Court have likewise noted that the AR-15 rifle is “America’s most common civilian rifle,” *Harrel*, 144 S. Ct. at, 2493 (statement of Thomas, J.); that “semi-automatic rifles” like AR-15s are “commonly available,” *Garland v. Cargill*, 602 U.S. 406, 430 (2024) (Sotomayor, J., dissenting); and that “millions of Americans own AR-15s,” *Snope*, 145 S. Ct. at 1534 (statement of Kavanaugh, J.). One court of appeals panel has called the AR-15 the “most popular rifle in American history.” *Duncan v. Becerra*, 970 F.3d 1133, 1148 (9th Cir. 2020), vacated en banc, 19 F.4th 1087 (9th Cir. 2021). And the Bureau of Alcohol, Tobacco, Firearms and Explosives has described the AR-15 as “one of the most popular firearms in the United States.” 87 Fed. Reg. 24,652, 24,652 (Apr. 26, 2022).

As discussed above, applying the common-use test does not require elaborate statistical analysis. But to the extent statistics are relevant, they confirm that AR-15s are in common use. Commentators have estimated that:

- A quarter of firearm owners own an AR-15 rifle. See William English, *2026 National Firearms Survey* 37 (2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7347338.
- In 2021, AR-style rifles accounted for a quarter of all firearms produced by U.S. manufacturers for the U.S. market. See NSSF, *Firearm Production*

in the United States with Firearm Import and Export Data (2023), <https://perma.cc/P6A8-DZK2>.

- At least 16 million Americans—about 1 in 20—own AR-15 rifles. See Emily Guskin et al., *Why do Americans own AR-15s?*, Wash. Post (Mar. 27, 2023), <https://perma.cc/U6M6-QRDG>.
- At least 28 million AR-style rifles are in domestic circulation. See NSSF, *NSSF Releases Most Recent Firearm Production Figures* (Jan. 11, 2024), <https://perma.cc/C5-33-T8TV>.

The popularity of the AR-15 reflects its features. The AR-15 is accurate, light, and portable. See Minitier 35. It is also versatile; it is made with components that can easily be removed and reconfigured, and its design makes it easy to add accessories. See *ibid.* The rifle is “easy to shoot and has little recoil, making it popular with women.” *Ibid.* And it is “so user-friendly” that disability-rights advocates have touted it as enabling self-defense by individuals who cannot easily handle other rifles. *Ibid.*

That the Second Amendment protects semiautomatic rifles such as AR-15s follows *a fortiori* from *Heller*’s holding that it protects semiautomatic handguns. While both semiautomatic rifles and semiautomatic handguns are in common use among law-abiding citizens, “semi-automatic handguns are more dangerous as a class than semi-automatic rifles”—and are chosen far more often by “‘armed criminals’”—because they “can be concealed.” *Heller II*, 670 F.3d at 1286 (Kavanaugh, J., dissenting) (citation omitted). Interpreting the Second Amendment to provide less protection to semiautomatic rifles than to semiautomatic handguns “would strain logic and common sense.” *Ibid.*

In short, AR-15 rifles are in common use among law-abiding citizens for lawful purposes. The challenged bans are therefore invalid.

E. The Courts Of Appeals’ Alternative Tests Are Unsound

Applying the common-use test, the en banc Third Circuit has held that a State may not ban AR-15 rifles. See *ANJRPC, Inc. v. Attorney General New Jersey*, 183 F.4th 211, 223 (2026). The Second, Seventh, and en banc Fourth Circuits, by contrast, have rejected the common-use test and have upheld AR-15 bans under other frameworks. See *Grant* Pet. App. 22a-61a; *Bevis*, 85 F.4th at 1188-1202; *Bianchi*, 111 F.4th at 444-473. Those courts’ alternative tests lack merit.

Usefulness for self-defense. Courts have stated that AR-15 rifles may be banned because of their supposedly limited “usefulness for self-defense.” *Grant* Pet. App. 49a; see *Bianchi*, 111 F.4th at 451-452; *Bevis*, 85 F.4th at 1195-1196. That argument suffers from two flaws: (1) AR-15s *are* useful for self-defense, and (2) the Second Amendment protects the right to possess arms for a variety of lawful purposes beyond just self-defense.

First, the theory that AR-15s are not useful for self-defense is facially implausible. AR-15s are highly useful for self-defense, both in their capacity for deterrence and in their lethality. See *Bianchi*, 111 F.4th at 525-526 (Richardson, J., dissenting). Moreover, while Americans own AR-15s for many reasons, self-defense is among the most common. See *Heller II*, 670 F.3d at 1287 (Kavanaugh, J., dissenting). Surveys have found, for example, that around 60%-65% of survey respondents have cited self-defense as a major reason for owning an AR-15 or another AR-style rifle. See *Bianchi*, 111 F.4th at 518-519 (Richardson, J., dissenting). A court may not override the judgment of the American people

based on its own view that the AR-15's features "limit its usefulness for self-defense." *Grant* Pet. App. 49a.

The Second Circuit emphasized that AR-15 bans leave people free to defend themselves with handguns, *Grant* Pet. App. 50a, but that is "like saying books can be banned because people can always read newspapers," *Heller II*, 670 F.3d at 1289 (Kavanaugh, J., dissenting). *Heller* rejected the theory that "it is permissible to ban the possession of handguns so long as the possession of other firearms (*i.e.*, long guns) is allowed." 554 U.S. at 629. So too, legislatures may not ban long guns simply because people can still possess handguns.

Underscoring the point, handguns and rifles each have pros and cons as self-defense weapons. A handgun is easier to access in an emergency, is easier to carry discreetly in public, requires less strength to wield, and can be more effective in self-defense at close quarters. See *Heller*, 554 U.S. at 629. But a rifle is easier to hold steady, easier to aim, more accurate, and more powerful. See *Bianchi*, 111 F.4th at 525-526 (Richardson, J., dissenting). Its appearance of power and lethality can also deter potential assailants. Because handguns and rifles are both in common use, Americans have a right to decide for themselves which to use for self-defense and other lawful purposes.

Second, the Constitution in any event protects the right to bear arms for "traditionally lawful purposes," which include but are not limited to self-defense. *Heller*, 554 U.S. at 577. The common-use test thus asks whether arms are "'in common use at the time' for lawful purposes," *id.* at 624 (emphasis added), not just whether they are in common use for self-defense. See *ANJRPC*, 183 F.4th at 241-242.

For instance, the Second Amendment protects the right to possess arms so that they are available for the common defense—*i.e.*, for “repelling invasions,” “suppressing insurrections,” and “resist[ing] tyranny.” *Heller*, 554 U.S. at 597-598. The prefatory clause indicates that the founders codified the right precisely because it would promote “the security of a free State” by enabling armed common defense. U.S. Const. Amend. II; see *Heller*, 554 U.S. at 595-598. The founding generation understood that the individual right to keep and bear arms “helped to secure the ideal of a citizen militia, which might be necessary to oppose an oppressive military force if the constitutional order broke down.” *Heller*, 554 U.S. at 599. It also believed that widespread arms ownership “offers a strong moral check against the usurpation and arbitrary power of rulers.” *McDonald v. City of Chicago*, 561 U.S. 742, 770 (2010) (quoting 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1890, at 746 (1833)).

Relatedly, as the Fourteenth Amendment’s framers recognized, individuals may possess arms to defend their communities. After the Civil War, black people in the South faced organized violence at the hands of mobs and militias. See *McDonald*, 561 U.S. at 855-858 (Thomas, J., concurring in part and concurring in the judgment). States refused to defend them against that violence, and they could not defend themselves because they had been disarmed. See *ibid.* One of the Fourteenth Amendment’s core purposes was to enable communal self-defense when an oppressive government withdraws its protection. See *id.* at 775 (majority opinion). As Representative Thaddeus Stevens said, “Disarm a community and you rob them of the means of defending life. * * * The four-

teenth amendment, now so happily adopted, settles the whole question.” *Id.* at 776 (citation omitted).

The Second Amendment also protects the right to train with arms. “[T]o bear arms implies something more than the mere keeping; it implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use.” *Heller*, 554 U.S. at 617-618 (quoting Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 271 (1880)). “No doubt, a citizen who keeps a gun or pistol under judicious precautions, practises in safe places the use of it, and in due time teaches his sons to do the same, exercises his individual right.” *Id.* at 619 (quoting Benjamin Vaughan Abbott, *Judge and Jury* 333 (1880)).

Hunting is yet another traditional lawful purpose for possessing arms. See *Heller*, 554 U.S. at 599. “[M]ost Americans in the late 18th century” valued the right to bear arms ““for hunting,”” “which, particularly for those moving west, was an important source of sustenance.” *Wolford*, 146 S. Ct. at 2042 n.4 (citation omitted). At the time of the Fourteenth Amendment, advocates of the right to bear arms emphasized that the freedmen needed firearms “to kill game for subsistence.” *Heller*, 554 U.S. at 615 (citation omitted).

The Second Amendment protects arms commonly owned for any of those purposes: self-defense, defense of the nation, defense of the community, training, and hunting. AR-15s are commonly owned for such purposes. See *Heller II*, 670 F.3d at 1287-1288 (Kavanaugh, J., dissenting); *Bianchi*, 111 F.4th at 518-519 (Richardson, J., dissenting).

Military character. Courts of appeals have reasoned that legislatures may ban AR-15 rifles because they are

purportedly “military-grade” weapons. *Bevis*, 85 F.4th at 1195; see *Grant* Pet. App. 5a; *Bianchi*, 111 F.4th at 441. But those courts identified no historical tradition of banning arms on that basis. To the contrary, that view is profoundly anachronistic.

The founders would have been astonished at the claim that legislatures may ban arms in common use if those arms can also be used for military purposes. At the founding, militiamen “were expected to appear bearing arms supplied by themselves and of the kind in common use.” *Heller*, 554 U.S. at 624 (citation omitted). So “small-arms weapons used by militiamen and weapons used in defense of person and home were one and the same.” *Id.* at 625 (brackets and citation omitted).

In fact, as *Heller* recognized, one of the purposes of the Second Amendment is to improve the United States’ military preparedness. “Some general knowledge of firearms is important to the public welfare; because it would be impossible, in case of war, to organize promptly an efficient force of volunteers unless the people had some familiarity with weapons of war.” *Heller*, 554 U.S. at 619 (quoting Abbott 333). In other words, the Amendment allows citizens to “become familiar with th[e] use [of arms] in times of peace, that they may the more efficiently use them in times of war.” *Andrews*, 50 Tenn. at 178. The theory that arms in common use may be banned if they could also be used by the military is wholly inconsistent with that objective.

The theory also defies common sense. It is true that AR-15 rifles were originally developed for the military. See *Bianchi*, 111 F.4th at 454. So were many other technologies, including the wristwatch, duct tape, and the Internet. See Katie Lange, Pentagon News, U.S. Dep’t of War, *12 Military Innovations That Are Now*

Everyday Parts of Society (Nov. 20, 2025).³ And so were “most popular civilian firearms.” *Bianchi*, 111 F.4th at 527 (Richardson, J., dissenting). For example, the Glock 17, “the most popular handgun in the world,” “was designed for the Austrian military and police.” *Ibid.* That is unsurprising. “The very functions that make a weapon useful for military purposes,” such as “lethality, accuracy, durability, and maneuverability,” “make a weapon useful for lawful self-defense, too.” *Ibid.* “So in choosing a firearm for that purpose, civilians naturally gravitate toward weapons that have already proved capable of repelling attackers.” *Ibid.*

On top of that, it is unclear what the term “military-grade” covers, or why it would cover AR-15s. The U.S. military today does not use AR-15s. Neither, as far as we are aware, does any other military in the world. See *Bianchi*, 111 F.4th at 528 (Richardson, J., dissenting).

Courts of appeals have analogized the AR-15 to the M16 rifle, which has been used by the military and which *Heller* said “may be banned.” 554 U.S. at 627; see *Grant* Pet. App. 47a; *Bianchi*, 111 F.4th at 454; *Bevis*, 85 F.4th at 1195-1196. But the M16 is capable of burst or fully automatic fire, meaning that a shooter can fire multiple rounds with a single function of the trigger. See *Staples*, 511 U.S. at 603. Fully automatic firearms “were never in widespread civilian use” and have “traditionally been banned” in the United States. *Heller II*, 670 F.3d at 1287 (Kavanaugh, J., dissenting). The AR-15, by contrast, is a semiautomatic firearm, meaning that it fires only one shot with each function of the trigger. See *Cargill*, 602 U.S. at 410-411, 416. Semiauto-

³ <https://war.gov/News/Feature-Stories/Story/Article/4337784/12-military-innovations-that-are-now-everyday-parts-of-society/>

matic rifles are in common use, and there is no tradition of prohibiting their possession.

Dangerousness. Courts of appeals have held that AR-15s may be banned because they are “especially dangerous,” for example because they can be used in mass shootings. *Grant* Pet. App. 49a; see *Bianchi*, 111 F.4th at 468; *Bevis*, 85 F.4th at 1201. But *Heller* forecloses that theory. There, the District of Columbia argued that it could ban handguns because they are “particularly dangerous.” Pet. Br. at 45, *Heller*, *supra* (No. 07-290). And Justice Breyer’s dissent assumed that the Second Amendment protects an individual right to own arms but concluded that handguns could still be banned because they are “involved in a majority of firearm deaths and injuries in the United States” and are “a very popular weapon among criminals.” *Heller*, 554 U.S. at 697-698. The Court rejected that argument, holding that legislatures could not ban “the most popular weapon chosen by Americans for self-defense.” *Id.* at 629. *Heller* thus establishes that perceived dangerousness alone cannot justify banning an arm that is in common use for the lawful purposes to which it is adapted.

Even putting aside *Heller*, the dangerousness theory lacks historical support. Courts of appeals that have adopted that theory have relied primarily on historical laws banning weapons such as Bowie knives. See *Grant* Pet. App. 37a; *Bianchi*, 111 F.4th at 467-468; *Bevis*, 85 F.4th at 1201-1202. But 19th-century courts did not rely solely on dangerousness in upholding those statutes. Instead, they emphasized that such weapons were “not usual.” *Aymette*, 21 Tenn. at 159; see pp. 12-13, *supra*. And they recognized that, although “cowardly and dishonorable men” might sometimes commit crimes with

weapons in common use, “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).

Judge Nathan’s concurrence in *Grant* quoted Blackstone’s statement that “riding or going armed, with dangerous *or* unusual weapons, is a crime against the public peace, by terrifying the good people of the land.” *Grant* Pet. App. 69a (emphasis added; citation omitted); see 4 Blackstone 149. But as Blackstone’s statement itself suggests, carrying a dangerous weapon was not a crime “unless it [was] accompanied with such Circumstances as [we]re apt to terrify the People.” *Bruen*, 597 U.S. at 45 (quoting 1 Hawkins 136). Other English authorities clarified, moreover, that “wearing common Weapons” was not by itself a crime. *Ibid.* (quoting 1 Hawkins 136).

The courts of appeals’ rationale also fails on its own terms because, when it comes to lethal arms, rifles such as AR-15s are not “especially dangerous.” To the contrary, rifles are in many ways less dangerous than handguns, which *Heller* establishes cannot be banned. See *Snope*, 145 S. Ct. at 1534 (statement of Kavanaugh, J.); *Heller II*, 670 F.3d at 1286 (Kavanaugh, J., dissenting). Handguns, which are easier to carry and conceal than rifles, “are the overwhelmingly favorite weapon of armed criminals.” *Heller*, 554 U.S. at 682 (Breyer, J., dissenting). The Federal Bureau of Investigation estimates that, of the 13,674 homicides committed in 2025, 5179 (about 38%) were committed with handguns, while 363 (about 3%) were committed with rifles of any kind—even though millions of Americans own rifles. See FBI,

Crime Data Explorer (Aug. 15, 2026).⁴ Handguns also have been used in mass shootings, and some studies have found that “a victim’s probability of death is *higher* in shootings involving a handgun than in shootings involving a rifle.” *Bianchi*, 111 F.4th at 530 n.78 (Richardson, J., dissenting). Holding that the Second Amendment protects handguns but not rifles would be “backwards.” *Heller II*, 670 F.3d at 1286 (Kavanaugh, J., dissenting).

In concluding that AR-15s are especially dangerous, courts of appeals have referred to them as “assault weapons.” See *Grant* Pet. App. 5a; *Bianchi*, 111 F.4th at 441; *Bevis*, 85 F.4th at 1175. “Prior to 1989, the term ‘assault weapon’ did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists.” *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting) (citation omitted). Such rhetoric, while “handy in political debate,” lacks “the precision necessary to postulates of judicial reasoning.” *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 636 (1943). The term “assault weapon” “does not meaningfully distinguish semi-automatic rifles from semi-automatic handguns,” which “are used far more often than any other kind of gun in violent crimes.” *Heller II*, 670 F.3d at 1290 (Kavanaugh, J., dissenting).

Preventing gun violence is undoubtedly a laudable objective. The Constitution leaves legislatures with “a variety of tools” for pursuing that objective, “including some measures regulating [firearms].” *Heller*, 554 U.S. at 636. For instance, the government has argued that our regulatory tradition permits heightened regulation

⁴ <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/shr>

of certain classes of arms that are especially susceptible to criminal misuse. See Br. in Opp. at 6-7, *Robinson v. United States*, 146 S. Ct. 995 (2025) (No. 25-5150). “But the enshrinement of constitutional rights necessarily takes certain policy choices off the table.” *Heller*, 554 U.S. at 636. One of those prohibited choices is a total ban on arms, such as AR-15 rifles, that are in common use among law-abiding citizens for lawful purposes.

CONCLUSION

In each of these cases, this Court should reverse the judgment of the court of appeals and remand the case for further proceedings.

Respectfully submitted.

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