

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, ET AL.,
Petitioners,

v.

RONNELL HIGGINS, ET AL..

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

**BRIEF OF HUANG TIANGE, ET AL., AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

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QUESTION PRESENTED

Whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.

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INTERESTS OF *AMICI CURIAE*

Amicus curiae Huang Tiange owns numerous firearms, with a number of them bearing the characteristics outlawed by the laws of the states of Connecticut and Illinois challenged at the center of this case. This case interests Huang, as it does with every constituent under the jurisdiction of the U. S. Constitution, on the issues of the right to keep and bear arms. Additionally, Huang is a victim of similar laws in other jurisdictions that have adopted laws similar to those instantly under this Court’s review, as he frequently visits those jurisdictions, and his rights to keep and bear these common arms are deprived and infringed whenever he travels to those jurisdictions.¹ Huang is additionally an incoming law student who has previously briefed this Court as *amicus curiae* on other cases involving constitutional issues.

Amicus curiae Corey J. Biazzo is an appellate advocate, civil trial attorney, and U. S. Navy veteran. He has filed *amicus curiae* briefs in this Court in constitutional cases, including *United States v. Hemani*, 608 U. S. ____ (2026), and has authored multiple books on the Second Amendment and related issues.

The parties comprehensively address the governing text-and-history framework and the nationwide prevalence of the rifles at issue. *Amici curiae* write separately to address three related points. First, common lawful possession is itself constitutionally relevant “use” of an arm: the Second Amendment

¹ Namely, the District of Columbia, the states of New Jersey and New York.

No counsel for any party authored this brief, in whole or in part. No person or entity other than amicus contributed monetarily to its preparation or submission.

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protects the right to “keep” Arms, and an owner need not first discharge an arm in self-defense before his possession becomes constitutionally meaningful. Second, statutory “assault weapon” classifications frequently distinguish among semiautomatic firearms according to selected components and features rather than any distinct firing function. Third, the common-use principle must be applied in a manner that does not permit government to prohibit a new iteration of protected arms at its birth and then invoke the scarcity produced by its own prohibition as evidence that the arm is “unusual.”

Amici therefore urge a narrow clarification of the existing common-use rule. When a newly developed bearable arm retains a firing function and functionally relevant architecture already common among lawful protected arms, novelty in the precise model or configuration—and improved performance resulting from that innovation—does not, without more, make the arm constitutionally “unusual.” That principle preserves *Heller*’s historical limitation concerning “dangerous and unusual” weapons while preventing the limitation from becoming a legislative veto over the future development of arms.

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INTRODUCTION

A limited number of jurisdictions² have adopted laws targeting arms “in common use,” which in the view of *amici curiae* and this Court’s precedents, infringes upon “the right of the people to keep and bear Arms[.]” *District of Columbia v. Heller*, 554 U. S. 570,

² Namely, California, Cal. Penal Code §§30510, 30515, 30600, 30605 (West 2025) (listed models, series, and feature-based definitions); Colorado, Colo. Rev. Stat. §§18–12–101(1)(g.8), 18–12–116, 24–35–122 (2026) (specified semiautomatic firearms; effective Aug. 1, 2026); Connecticut, Conn. Gen. Stat. §§53–202a to –202c (2025) (listed firearms, copies or duplicates, parts, and feature-based definitions); Delaware, Del. Code Ann. tit. 11, §§1465, 1466 (2025) (listed assault long guns and pistols, copies, and copycat weapons); the District of Columbia, D. C. Code §§7–2501.01(3A), 7–2502.02(a)(6) (2025) (listed models, series variations, feature-based definitions, and registration prohibition); Hawaii, Haw. Rev. Stat. §§134-1, 134-8(a) (2025) (assault pistols by features); Illinois, 720 Ill. Comp. Stat. 5/24–1.9 (2025) (listed firearms, copies, duplicates, variants, altered facsimiles, parts, and feature-based definitions); Maryland, Md. Code Ann., Crim. Law §§4–301, 4–303; Md. Code Ann., Pub. Safety §5–101(r)(2) (West 2025) (listed assault pistols and assault long guns, copies, and copycat weapons); Massachusetts, Mass. Gen. Laws ch. 140, §§121, 131M (2025) (assault-style firearms by enumerated firearms, copies, duplicates, and features); New Jersey, N. J. Stat. Ann. §§2C:39–1(w), 2C:39–5(f), 2C:58–12 (West 2025) (listed assault firearms, substantially identical firearms, parts, and feature/capacity categories); New York, N. Y. Penal Law §§265.00(22), 265.02(7), 265.10(1)–(3) (McKinney 2025) (feature-based assault-weapon definition); Rhode Island, R. I. Gen. Laws §§11–47.2–1, 11–47.2–2 (2026) (prohibited firearms by features; effective July 1, 2026); Virginia, Va. Code Ann. §§18.2–287.4:1, 18.2–308.2:2 (2026) (assault firearms by features/capacity; preliminarily enjoined before July 1, 2026, effective date); and Washington, Wash. Rev. Code §§9.41.010(2), 9.41.390 (2025) (listed firearms, regardless of producer or manufacturer, and feature-based definitions).

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619–626; U.S. Const., Amdt. II. This Court has repeatedly found “that the Second Amend protects the possession and use of weapons that are in common use at the time.” *New York State Pistol & Rifle Assn., Inc. v. Bruen*, 597 U. S. 1, 21 (2022) (citing *Heller*, 554 U. S., at 627) (citations and quotations omitted). Specifically in *Bruen*, the Court held that a “New York law [that] broadly prohibited law-abiding citizens from carrying commonly used firearms in public . . . violated the Second and Fourteenth Amendments.” *Wolford v. Lopez*, 609 U. S. ___, __ (2026) (slip op., at 8) (citing *Bruen*, 597 U. S., at 38.).

Not only do these laws target arms in common use, they are highly controversial and have faced legal challenges since their enactment. In the discussions below, *amici curiae* makes clear how the challenged laws in Connecticut and Illinois fail the *Bruen* test and violate the Second Amendment.

These cases also present a related question concerning the manner in which the common-use principle applies as arms technology develops. The Second Amendment is not confined to arms existing at the Founding. *Heller* held that it extends to “all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” 554 U. S., at 582. That rule necessarily contemplates technological development in the arms protected by the Amendment.

A difficulty arises, however, if “common use” is measured only by the prevalence of an exact model or configuration at the moment it is challenged. A legislature could prohibit a newly developed arm before ordinary citizens have an opportunity to acquire it, prevent that arm from ever becoming common, and

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then invoke the scarcity created by its own prohibition as evidence that the arm is “unusual.” The government may not manufacture the very unusualness on which it then relies.

The proper inquiry therefore cannot turn exclusively on the commercial age or sales history of the precise configuration. Where a newly developed bearable arm retains a firing function and functionally relevant architecture already common among lawful protected arms, novelty in the exact model, combination, or level of performance does not, standing alone, make the arm constitutionally “unusual.” Common use of the relevant firing functions, operating mechanisms, functional components, and features is evidence that the new arm remains within an existing constitutional class even though the latest iteration has not yet achieved the prevalence of its predecessors.

This principle does not prevent meaningful regulation of materially different weapon classes. Nor does it make every object containing commonplace parts a protected arm. The relevant commonality concerns the defining functional architecture of the arm, not incidental materials or generic components. The rule instead preserves the distinction drawn in *Heller* between arms “in common use at the time” and “dangerous and unusual weapons,” while preventing that distinction from becoming a mechanism through which legislatures may prohibit each new iteration of otherwise familiar arms at its inception. 554 U. S., at 627.

The point is especially important where innovation improves performance without changing the underlying firing function. An arm does not become constitutionally unusual merely because improved

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engineering permits faster practical fire, greater reliability, reduced recoil, improved accuracy, or other advantages while the arm continues to operate through functions, mechanisms, and features already ordinary among lawful protected arms. Technological improvement within an existing class is not, by itself, the creation of a constitutionally different class of arm.

SUMMARY

The judgments below should be reversed. The challenged laws prohibit possession of bearable arms, and the Second Amendment’s text therefore presumptively protects the conduct at issue. *Bruen*, 597 U. S., at 17, 24; *Wolford*, 609 U. S., ___ (slip op., at 7). Respondents accordingly bear the burden of establishing that their categorical prohibitions are consistent with this Nation’s historical tradition of firearm regulation.

The rifles at issue independently satisfy *Heller*’s existing common-use rule. The Second Amendment protects the right to “keep” Arms, not merely the right to discharge them. *Heller* defined keeping arms in possessory terms and invalidated a prohibition on the class of arms Americans had overwhelmingly chosen for lawful defense. 554 U. S., at 582, 628–629. It did not require a statistical showing that the protected arms had been discharged in some threshold number of defensive encounters.

That distinction matters. The defensive value of an arm is contingent. The owner lawfully keeps it available if an emergency arises while hoping that no emergency ever does. Deterrence, avoidance, retreat, or simple good fortune may result in no discharge and no official record. Criminal misuse, by contrast, predictably generates victims, police reports,

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prosecutions, studies, and reported decisions. A rule that measures constitutional use primarily through recorded discharges would systematically discount the peaceful conduct the Amendment expressly protects.

Nor can the rifles be removed from the right by reconstructing *Heller*'s "dangerous and unusual" limitation into a free-floating exception for arms a court considers "unusually dangerous." *Heller* juxtaposed arms "in common use at the time" with the historical tradition concerning "dangerous and unusual weapons." 554 U.S., at 627. *Bruen* repeated that distinction. 597 U.S., at 47. A firearm possessed by millions of law-abiding citizens does not become constitutionally unusual because government believes it is more effective, more lethal, or less desirable than some substitute.

Militia suitability does not change that conclusion. *Miller* and *Heller* explain that the traditional militia consisted of citizens who appeared bearing arms privately supplied and of the kind commonly possessed by the people. An ordinary civilian rifle's usefulness for collective defense therefore does not itself provide a reason for exclusion from the right. Nor does *Heller*'s reference to "M-16 rifles and the like" establish a freestanding military-resemblance test. Read in context, that statement follows the Court's discussion of weapons "highly unusual in society at large," not ordinary semiautomatic rifles possessed by millions of civilians.

The common-use principle nevertheless requires clarification as applied to technological innovation. If courts demand proof that every newly introduced model or configuration has itself already achieved

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widespread possession, legislatures obtain a first-mover advantage over the Constitution. They may prohibit a new iteration immediately, prevent the people from ever adopting it, and then invoke the scarcity caused by the prohibition as proof that the arm is unusual.

This Court should therefore hold that when a newly developed bearable arm retains a firing function and functionally relevant architecture already common among lawful protected arms, novelty or improved performance in the resulting configuration does not, standing alone, establish constitutional unusualness. Common use of the relevant firing functions, operating mechanisms, functional components, and features is affirmative evidence that the new arm is a technologically evolved member of an existing protected class rather than a constitutionally alien weapon.^z

Thus, an improved semiautomatic firearm does not become unusual merely because it permits faster practical fire while continuing to discharge one round for each separate function of the trigger. Nor does greater reliability, accuracy, capacity, modularity, or ergonomic efficiency alone break constitutional continuity where those improvements are accomplished through mechanisms and features already ordinary among lawful arms. The question is whether the innovation creates a materially different functional class of weapon—not whether it makes an existing class more effective.

This rule preserves meaningful limits. Commonality of generic materials or incidental parts is insufficient. The inquiry concerns the defining functional

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architecture of the arm.³ And nothing in the proposed clarification displaces the government’s ability to prohibit harmful misuse or to establish a historically grounded limitation under *Bruen*, *Rahimi*, *Hemani*, and *Wolford*. It instead prevents government from converting technological novelty itself into constitutional unusualness.

DISCUSSION

I. This Court’s Modern Second Amendment Cases Have Corrected Earlier Underprotection of the Right

For much of the Nation’s history, the Second Amendment was judicially underenforced against state and local governments. That history initially followed from a rule applicable to the Bill of Rights generally. *Barron v. Baltimore*, 7 Pet. 243, 250–251 (1833), held that the Bill of Rights constrained the Federal Government rather than the States. After ratification of the Fourteenth Amendment, *United States v. Cruikshank*, 92 U.S. 542, 553 (1876),

³ This proposed clarification does not establish a rule of complete nonregulation of all weapons, nor does an object become constitutionally protected merely because it contains components or materials also found in commonly possessed arms. The relevant commonality concerns the functionally defining architecture of the arm—the firing function, operating mechanisms, functional components, and features materially responsible for the operation or capability at issue. Thus, a nuclear, biological, or chemical weapon does not become constitutionally ordinary merely because it incorporates generic components, materials, containers, wiring, or other items also found in lawful arms or ordinary commerce. Nor does the proposed standard displace *Heller*’s limitation concerning “dangerous and unusual weapons” or the historical inquiry required by *Bruen* and its progeny.

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continued to treat the Second Amendment as imposing no direct restraint upon state governments.

A second source of underprotection later emerged from judicial interpretations treating the Second Amendment as principally or exclusively a collective militia guarantee. For decades before *Heller*, that understanding predominated among the Courts of Appeals. In 2008, *Heller* rejected it. *Heller* held that the Second Amendment codifies an individual right belonging to “the people,” and that the prefatory militia clause does not confine the operative guarantee to organized military service. 554 U.S., at 579–600.

Heller also rejected the notion that constitutional arms are frozen at the technologies known to the founding generation. The Second Amendment extends to “all instruments that constitute bearable arms,” including those not existing at the founding. *Id.*, at 582. *Caetano v. Massachusetts* subsequently applied that principle to a modern arm unknown in the eighteenth century. 577 U.S. 411, 411–412 (2016) (*per curiam*).

McDonald then removed any remaining geographical distinction between federal and state protection of the right. It held that “the Second Amendment right is fully applicable to the States.” 561 U.S. 742, 750 (2010). An incorporated constitutional right is not one thing in jurisdictions favorably disposed toward it and another in jurisdictions hostile to its exercise.

Bruen next rejected the means-end balancing that had developed in the lower courts after *Heller*. Once the Second Amendment’s plain text covers the conduct, the Constitution presumptively protects it, and government bears the burden of demonstrating consistency with the Nation’s historical tradition of

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firearm regulation. 597 U.S., at 17, 24. Judges may not uphold a restriction merely because they conclude that the government’s public-safety objectives outweigh the burden imposed on the enumerated right.

Rahimi, *Hemani*, and *Wolford* have since made that historical method more disciplined, not less. Historical analogues need not be identical, but their “how” and “why” must be sufficiently similar to permit an inference that the modern restriction is consistent with the right historically understood. *United States v. Rahimi*, 602 U. S. 680, 692 (2024); *United States v. Hemani*, 608 U. S., ___ (slip op., at 4–5); *Wolford*, 609 U. S., at ___ (slip op., at 7–8).

Most importantly, *Hemani* made explicit that courts owe the Second Amendment the same judicial enforcement as other constitutional guarantees. When government crosses the line into unconstitutional infringement, courts must say so “no less” under the Second Amendment than elsewhere in the Constitution. 608 U. S., at ___ (slip op., at 4). The historical inquiry protects a pre-existing individual right against erosion through majoritarian legislation or judicial fiat. *Ibid.*

Wolford likewise rejected the proposition that local political attitudes may alter the substance of the right. The Second Amendment has the same meaning throughout the United States; “merely local attitudes” cannot shrink or enlarge an incorporated Bill of Rights guarantee. 609 U. S., at ___ (slip op., at 18). The same principle applies when local hostility is directed not merely toward firearms generally, but toward a particular family, feature, configuration, or technological development of arms.

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These cases mark a consistent doctrinal course. The Second Amendment is an individual and nationally uniform constitutional guarantee; it protects modern arms; its scope does not turn on judicial interest balancing; and any government seeking to restrict conduct covered by its text bears a historical burden. A court therefore cannot revive the former underprotection of the right indirectly by defining disfavored modern arms out of constitutional protection whenever their technology improves.

II. Legislative “Assault Weapon” Classifications Do Not Define a Distinct Constitutional Class of Arms

A. Legislative Labels Do Not Alter the Plain-Text Inquiry

The constitutional inquiry begins with the Second Amendment, not with the terminology selected by a legislature. *Wolford* identifies the relevant textual questions: whether the challenged law applies to “the people,” concerns “Arms,” and restricts their keeping or bearing. 609 U.S., at ___ (slip op., at 7). If those conditions are satisfied, the law is presumptively unconstitutional and government bears the historical burden. *Ibid.*

The rifles at issue satisfy that threshold. They are bearable weapons possessed by ordinary citizens, and the challenged laws restrict their acquisition, possession, transfer, and use. Calling them “assault weapons,” “assault-style weapons,” or any other legislatively chosen name cannot alter those constitutional facts.

Nor may government define the protected class at whichever level of specificity makes prohibition

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easiest. *Heller* rejected the argument that government may prohibit one protected class of arms because another remains available. 554 U.S., at 629. The Constitution therefore does not permit a legislature to begin with the universe of semiautomatic rifles, subdivide that universe by selected model names or features, and then argue that every disfavored subdivision is constitutionally dispensable because other rifles remain lawful.

The relevant distinction is likewise not whether a legislature believes a particular configuration especially useful, intimidating, military in appearance, or dangerous. The question is first whether the object is an “Arm,” and then whether the asserted restriction is consistent with the historical boundaries of the right. *Bruen*, 597 U.S., at 17, 24; *Wolford*, 609 U.S., at ___ (slip op., at 7–8).⁴

**B. The Statutory “Assault Weapon”
Category Does Not Correspond to a
Distinct Firing Function**

**1. Semiautomatic Operation Is Not
Defined by Appearance or Rate of
Fire Alone**

Modern “assault weapon” statutes do not employ that label to identify a single firing mechanism. Instead, they commonly combine enumerated firearm

⁴ *Amici curiae* do not advocate that the government is without the rights and authority of government to prohibit and punish murder, assault, robbery, reckless endangerment, unlawful discharge, or other harmful misuse of arms. The issue here is categorically different: whether government may prohibit otherwise law-abiding persons from acquiring or possessing protected arms themselves.

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models with classifications based upon selected stocks, grips, muzzle devices, magazine arrangements, or other features. Those characteristics may affect handling, ergonomics, or practical performance, but they do not necessarily change the firearm’s fundamental mode of operation.

Federal law illustrates the mechanical distinction. A “machinegun” is defined principally by the capacity to fire more than one shot automatically, without manual reloading, by a single function of the trigger. 26 U.S.C. §5845(b). *Staples v. United States* distinguished the ordinarily semiautomatic AR-15 from the automatic M-16. 511 U.S. 600, 603 (1994). And *Garland v. Cargill* again explained that an ordinary semiautomatic rifle requires a separate function of the trigger for each shot. 602 U.S. 406, 410–412 (2024).

Cargill is especially instructive concerning rate of fire. The mechanism there could permit substantially faster repeated fire, yet the Court distinguished increased firing speed from the defining automatic-fire characteristic because each shot still resulted from a separate function of the trigger. *Id.*, at 415–416. The decision construed a federal statute rather than the Second Amendment, but its mechanical distinction is pertinent here: *increased practical rate of fire does not necessarily create a different firing function.*

The same principle applies more generally. A firearm may become faster to operate, more accurate, more reliable, more controllable, or more ergonomically efficient without thereby becoming a different class of firing mechanism. Technological improvement in the performance of a semiautomatic arm is not synonymous with conversion to automatic fire,

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and legislative terminology cannot substitute for that mechanical distinction.

**2. Feature-Based “Assault Weapon”
Bans Do Not Track Firing
Function, Lethality, or Any
Coherent Constitutional
Distinction**

The statutory classifications challenged here reveal a more fundamental problem with the modern “assault weapon” category. The prohibited features do not consistently correspond to a distinct firing function, a distinct ballistic capability, or even to the asserted dangerousness offered to justify the prohibition. Instead, the laws frequently prohibit one semiautomatic rifle while leaving another rifle with the same basic firing function—and, in some circumstances, comparable or greater ballistic capability—outside the prohibition.

The AR-15 and Ruger Mini-14 illustrate the point. Both are available as semiautomatic, detachable-magazine-fed rifles. A conventional centerfire AR-15 is gas operated and employs a rotating and locking bolt. The Mini-14 likewise is gas operated and semiautomatic, although Ruger uses a fixed-piston/moving-cylinder system together with a Garand-type rotating bolt. Their internal operating systems therefore differ, but both remain semiautomatic rifles under the firing-function distinction described above.

Yet an “assault weapon” statute may distinguish between them not because one is semiautomatic and the other is not, but because one possesses a folding or adjustable stock, pistol grip, flash suppressor, or another selected feature. Connecticut’s statute is

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illustrative. It expressly prohibits the “Colt AR-15 and Sporter,” while among Mini-14 rifles specifically identifying the “Ruger Mini-14/5F folding stock model only.” Conn. Gen. Stat. §53–202a. The same underlying family of Mini-14 rifles can therefore move across the statutory line according to the presence or absence of a selected feature without any corresponding change from semiautomatic to automatic fire.

That distinction exposes the underinclusiveness of the asserted rationale. If the constitutional concern were truly the basic lethality of semiautomatic fire, the legislature’s selected features would be poor proxies for that concern. A pistol grip does not increase the number of rounds fired by a single function of the trigger. A folding or telescoping stock does not transform semiautomatic fire into automatic fire. A flash suppressor alters visible muzzle flash, not the fundamental firing cycle. And a rifle lacking those prohibited features may fire the same cartridge through the same semiautomatic mode of operation as one that possesses them.

The mismatch becomes still clearer when the statutory category is compared with firearms left outside it. Traditional-appearing semiautomatic rifles may be chambered for cartridges producing ballistic performance equal to or greater than that of many prohibited AR-15 configurations, yet remain lawful because they lack the selected external features or model designation. Conversely, a prohibited rifle may fire a comparatively modest cartridge while falling within the statutory definition because of its stock, grip, muzzle device, or appearance. The legal classification therefore does not reliably track projectile energy,

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terminal capability, rate of fire, or the firearm's basic semiautomatic operating principle.

That underinclusiveness matters because Respondents defend these laws by portraying the prohibited class as constitutionally exceptional. But a legislature cannot establish that an arm is exceptionally dangerous merely by drawing a statutory line around selected ergonomic or cosmetic characteristics while leaving arms of equal or greater functional capability outside the prohibition. The classification itself must be distinguished from the constitutional inquiry.

Nor does resemblance to a military arm cure the problem. Civilian semiautomatic rifles may share external characteristics, dimensions, controls, or ancestry with military rifles while retaining a materially different firing function. As explained below, *Heller's* reference to "M-16 rifles and the like" does not establish an appearance- or lineage-based exception to the Second Amendment.

The statutes' selective treatment therefore presents an internal contradiction. They characterize the prohibited arms as sufficiently exceptional to justify categorical prohibition while simultaneously leaving outside the prohibition other arms that operate in the same semiautomatic manner and may possess comparable or greater ballistic capability. A classification so dependent upon selected features cannot itself establish either that the prohibited arms are uniquely dangerous or that they are constitutionally "unusual."

The comparison also bears directly upon the innovation problem discussed below. If government may define a supposedly distinct class by adding or removing individual features from an otherwise familiar semiautomatic arm, it may continually subdivide

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protected arms as technology develops. A new stock, recoil system, operating component, trigger arrangement, or other improvement could become the basis for a new prohibited subclass even though the resulting arm remains functionally continuous with arms already commonly possessed. The legislature could thereby create the statutory novelty and then rely upon that novelty to argue constitutional unusualness.

The Second Amendment does not permit the constitutional class of “Arms” to turn upon that kind of legislative taxonomy.

III. The Rifles at Issue Are In Common Use, and the Common-Use Principle Must Protect Functionally Continuous Innovation

A. The AR-15 Platform and Similar Semiautomatic Rifles Already Satisfy *Heller*’s Existing Rule

This Court need not adopt any new doctrinal principle to conclude that the rifles presently before it are protected. They satisfy *Heller*’s common-use rule under the existing precedents.

Heller explained that the protected class includes arms “in common use at the time,” and that this limitation is supported by the historical tradition concerning “dangerous and unusual weapons.” 554 U.S., at 627. *Bruen* repeated the same distinction, explaining that historical prohibitions concerning dangerous and unusual weapons do not justify restrictions upon arms “unquestionably in common use today.” 597 U.S., at 47.

AR-15 platform rifles are common under any plausible numerical understanding of that term. This

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Court has described the AR-15 as “the most popular rifle in the country.” *Smith & Wesson Brands*, 605 U.S., at 297. The en banc Third Circuit recently found approximately 24 million AR-15s and similar semiautomatic rifles in circulation and concluded that, regardless of the precise numerical line at which common use begins, the many millions of semiautomatic rifles possessed for lawful purposes are plainly in common use. *Association of N. J. Rifle & Pistol Clubs v. Platkin*, 183 F. 4th 211, 241–42 (CA3 2026).

“Use” in this context cannot rationally mean only documented shootings in self-defense. The constitutional text protects the keeping of an arm. *Heller* explained that the ordinary meaning of “keep arms” was to “have weapons.” 554 U.S., at 582. It also invalidated the District’s requirement that lawful firearms in the home be rendered inoperable because that condition made them unavailable for immediate self-defense. *Id.*, at 630. The constitutional interest therefore included present readiness, not merely the eventual discharge of an arm. The lawful decision to acquire, possess, maintain, practice with, and hold an arm ready cannot disappear from the common-use inquiry merely because its owner never faces an event requiring him to fire it.

The Third Circuit recently rejected essentially the same effort to rely upon the relative rarity of actual defensive shootings. It recognized that an arm rarely discharged in self-defense may nevertheless be commonly possessed for self-defense, hunting, target shooting, or other lawful purposes. *Platkin*, 183 F. 4th, at 241–42.

The arms presently before the Court therefore lie comfortably within *Heller*’s existing protection. The

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innovation question addressed below does not supply the reason these rifles are protected; it supplies a necessary clarification so that *Heller*'s protection will remain meaningful when the next generation of arms arrives.

**B. A Discharge-Count Rule Would
Systematically Discount Peaceful
Exercise of the Right**

At the certiorari stage, Cook County emphasized that the record was “bereft of evidence of even a single instance” in which a covered rifle had been used in lawful self-defense. Br. in Opp. 9. That premise reveals the problem with a discharge-centered conception of common use. It treats a reported trigger pull as constitutionally visible while treating the decision of millions of citizens to keep an arm ready for defense as little or no evidence at all.

Peaceful defensive possession is ordinarily quiet. If no attack occurs, there is no incident to record. If an aggressor retreats upon confronting an armed defender, the arm may never be fired. If the owner avoids confrontation, secures the firearm, or summons law enforcement, there may be no firearm-related report at all. The absence of a discharge may therefore reflect successful preparedness rather than an absence of lawful use.

Criminal misuse has the opposite evidentiary character. A criminal shooting predictably generates victims, emergency responses, police reports, prosecutions, civil litigation, expert testimony, legislative findings, and reported decisions. The more notorious the misuse, the more visible the evidentiary record becomes. A discharge-count rule therefore places quiet

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lawful possession and notorious criminal misuse on different evidentiary planes and then risks treating the resulting imbalance as a constitutional fact.

The rule also creates circularity. Once a jurisdiction prohibits possession of an arm, lawful defensive incidents involving that arm necessarily become less frequent by operation of the prohibition itself. If the resulting scarcity is then offered as evidence that the arm lacks lawful use, the prohibition manufactures support for its own constitutionality. Government may not diminish the evidence of lawful exercise and then rely upon the diminution it created.

**C. Militia Suitability Does Not Defeat
Protection, and Heller’s M-16 Reference
Does Not Establish a Military-
Resemblance Test**

United States v. Miller did not treat militia usefulness as a reason for excluding an arm from constitutional protection. It explained that the traditional militia consisted of citizens who appeared bearing arms “supplied by themselves and of the kind in common use at the time.” 307 U.S. 174, 179 (1939). Private possession preceded any occasion for militia service.

Heller preserved that relationship while recognizing the individual character of the right. The Court explained that the traditional militia was formed from citizens bringing arms commonly possessed at home and described that relationship as “precisely the way in which the Second Amendment’s operative clause furthers the purpose announced in its preface.” 554 U.S., at 624–625. An ordinary rifle’s usefulness for

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collective defense therefore does not itself provide a constitutional reason for excluding it from the right.

Nor does *Heller*'s statement that "M-16 rifles and the like" may be banned establish a freestanding military-resemblance exception. That statement follows immediately from the Court's discussion of weapons "highly unusual in society at large." *Id.*, at 627. Read in context, the passage does not hold that an ordinary civilian arm becomes unprotected because it shares appearance, lineage, controls, ammunition, or particular components with a military arm.

The mechanical distinction discussed above reinforces the point. *Staples* distinguished the semiautomatic AR-15 from the automatic M-16, and *Cargill* confirmed the difference between repeated semiautomatic trigger functions and continuous automatic fire. Those statutory cases do not themselves resolve the constitutional inquiry, but they foreclose treating nomenclature or resemblance as a substitute for analysis of the arm's actual operation.

**D. "Dangerous and Unusual" Cannot Be
Rebuilt From the Same Distorted
Measure**

The discharge-count error cannot be cured by moving it into the "dangerous and unusual" inquiry. *Heller* described the historical tradition concerning "dangerous and unusual weapons" and tied that tradition directly to its protection of arms "in common use at the time." 554 U.S., at 627. *Bruen* repeated the same distinction. 597 U.S., at 21, 47.

The adjective "unusual" must retain constitutional meaning. An arm does not become unusual because peaceful possession is less visible than criminal

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discharge. Nor can government define the relevant class so narrowly, or define constitutional use so selectively, that widespread lawful possession is engineered out of the analysis. The common-use inquiry cannot first discount the quiet exercise of the right and then use the resulting distortion to establish unusualness.

Hemani supplies a related structural warning. Although that case concerned the disarmament of persons rather than prohibition of a class of arms, the Court rejected an asserted “broad power to designate any group as dangerous and thereby disqualify its members from having a gun,” explaining that such authority could “quickly swallow” the Second Amendment. 608 U.S., at ___ (slip op., at 18). The same structural danger arises if legislative dangerousness alone is permitted to displace the independent requirement of unusualness for arms already commonly possessed.

Government therefore cannot satisfy the historical limitation merely by attaching a legislative designation of dangerousness to a broad category of ordinary arms. The inquiry requires a constitutionally grounded distinction, not a label.

**E. Government May Not Render a New
Iteration of Protected Arms “Unusual”
by Prohibiting It at Birth**

The same circularity has a prospective form. A newly developed arm cannot accumulate widespread lawful possession if government prohibits it when it first enters civilian use. If scarcity created by that prohibition were then sufficient to establish unusualness, government would possess the power to prevent

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each new iteration of an existing class of protected arms from ever acquiring the very prevalence demanded for constitutional protection.

That problem is inherent in an exact-model application of common use. The Second Amendment is not confined to arms existing at the Founding. *Heller* held that it extends, *prima facie*, “to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” 554 U. S., at 582. *Caetano* applied the same principle to a modern arm unknown to the founding generation. 577 U. S., 411–412. A doctrine that recognizes protection for newly developed arms cannot at the same time permit government to prevent every new arm from attaining the prevalence necessary to receive that protection.

The circularity is not merely theoretical. In *Benson v. United States*, the District of Columbia argued that *Heller*’s common-use rule was “hopelessly circular” because manufacturers could introduce an arm and permit it to become commonly possessed before government acted. No. 23–CF–0514, slip op., at 34–35 (DC Mar. 5, 2026). The court observed that the District had pressed substantially the same objection in *Heller* itself—that government could prohibit a particularly dangerous weapon immediately after its invention, before it entered common use, but could lose that ability after widespread adoption. *Ibid.* This Court nevertheless adopted the common-use rule.

The answer to that concern is not to abandon common use or to permit government to determine which innovations may survive long enough to satisfy it. The inquiry instead must recognize constitutional continuity among successive iterations of protected

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arms. When a newly developed bearable arm retains a firing function and functionally relevant architecture already common among lawful protected arms, novelty in the precise model, configuration, or level of performance does not, standing alone, make the arm constitutionally “unusual.” Common use of the relevant firing functions, operating mechanisms, functional components, and features is affirmative evidence that the new arm remains within an existing protected class even though the particular iteration has not yet achieved the prevalence of its predecessors.

Functional continuity does not require unchanged performance. The ordinary course of technological development is to make existing tools more effective. A newly developed semiautomatic arm therefore does not become constitutionally unusual merely because improved engineering permits faster practical fire, greater accuracy, improved reliability, reduced recoil, greater capacity, improved ergonomics, or some other performance advantage while the relevant firing function remains semiautomatic and the improvement derives from operating mechanisms, functional components, or features already common among lawful protected arms.

Cargill illustrates the distinction between improved performance and a materially different firing function. The mechanism there could permit substantially faster repeated fire, yet the Court explained that an ordinary semiautomatic rifle still requires a separate function of the trigger for each shot. 602 U. S., at 415–416. *Cargill* construed the federal machinegun statute rather than the Second Amendment, but its mechanical distinction is pertinent here. An increase in practical rate of fire does not itself establish

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that the underlying firing function has become a different one.

That distinction supplies an administrable boundary. A materially different firing function may present a materially different constitutional inquiry. An arm does not become functionally continuous with a protected semiautomatic class merely because it shares a stock, barrel, receiver material, spring, fastener, or other incidental component with members of that class. The relevant commonality concerns the functionally defining architecture of the arm—the mechanisms, components, and features materially responsible for the operation or capability asserted as the basis for prohibition.

The same principle prevents legislatures from manufacturing unusualness through statutory subdivision. A government may not begin with a familiar class of protected arms, divide that class into progressively narrower configurations according to newly combined components or features, prohibit each new configuration as it appears, and then invoke the resulting scarcity as proof that each configuration is unusual. The prohibited feature may define a statutory subclass; it does not thereby create a constitutionally distinct class of Arm.

The proposed clarification does not eliminate *Heller*'s limitation concerning “dangerous and unusual weapons,” nor does it displace the historical inquiry required by *Bruen* and its progeny. It determines only that government may not establish unusualness from technological novelty alone where the challenged arm is functionally continuous with arms already commonly kept by the people. Government remains free to establish, through the historical tradition

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required by *Bruen*, that a particular restriction falls within a historically recognized boundary of the right.

Existing common use protects the people’s present choice of arms. Functional continuity protects their ability to make tomorrow’s choice.

**IV. Text, History, and Tradition Do Not Permit
Government To Freeze the Development of
Arms**

The text begins with “Arms,” not with a list of weapon models approved at a particular point in technological history. *Heller* accordingly rejected the proposition that the Second Amendment protects only arms existing at the Founding and held that its coverage extends to modern bearable arms. 554 U.S., at 582. *Caetano* confirmed that principle. 577 U.S., at 411–412.

The textual inquiry precedes the historical justification. When a law applies to “the people,” concerns “Arms,” and restricts their keeping or bearing, the Second Amendment presumptively protects the conduct. *Wolford*, 609 U.S., at ___ (slip op., at 7). Government must then establish that the restriction is consistent with the Nation’s historical tradition of firearm regulation. *Bruen*, 597 U.S., at 17, 24. The government may not avoid that burden by defining a modern arm at such a narrow level of technological specificity that its novelty itself places it outside the right.

The historical inquiry protects against precisely that type of governmental redefinition. As *Hemani* recently explained, the Second Amendment codified a pre-existing individual right, and the historical inquiry guards that right against subsequent erosion

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through majoritarian legislation or judicial fiat. *Hemani*, 608 U. S., at ___, (slip op., at 4). A rule under which a temporary legislative majority determines which new arms may survive long enough to qualify for constitutional protection would invert that principle.

Wolford points in the same direction. The Second Amendment has the same meaning throughout the United States, and “merely local attitudes” cannot shrink or enlarge an incorporated Bill of Rights guarantee. 609 U. S., at ___ (slip op., at 18). A jurisdiction therefore cannot make a nationally familiar class of arms constitutionally unfamiliar merely by prohibiting selected local configurations or by attaching a disfavored legislative name to them.

Historical analogy likewise remains disciplined by the nature and purpose of the historical restriction. Modern laws need not have a precise historical twin, but the “how” and “why” of the modern and historical regulations must be relevantly similar. *Rahimi*, 602 U. S., 692 (2024). A historical law directed at affrays, threats, unlawful discharge, poaching, concealed carriage, or some other distinct conduct therefore does not automatically establish a tradition supporting categorical prohibition of peaceable possession merely because both laws may be described at a sufficiently high level of generality as promoting public safety.

Wolford recently rejected that degree of abstraction. Historical anti-poaching laws could not sustain Hawaii’s modern restriction because “the gap” between the historical laws and the modern burden was “too wide.” 609 U. S., at ___ (slip op., at 22). The same principle applies here. A historical restriction aimed at misuse of an arm cannot be converted into a general

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tradition permitting government to prohibit whatever modern arm it regards as especially effective.

Laws against murder, assault, threats, terrorizing carriage, reckless discharge, and comparable offenses regulate dangerous conduct. They do not by themselves establish a historical tradition of categorically prohibiting peaceable possession of a common arm merely because some persons have used that arm criminally. The modern “how” and “why” must still correspond to a historical principle supporting the burden government actually imposes. *Rahimi*, 602 U. S., at 692.

The tradition concerning “dangerous and unusual weapons” likewise supplies a historical boundary; it does not give government power to manufacture one side of that boundary. *Heller* linked that tradition to the protection of arms “in common use at the time.” 554 U. S., at 627. As explained above, government therefore cannot create constitutional unusualness by prohibiting a functionally continuous iteration at its inception and then relying upon the resulting scarcity. History may identify which kinds of restrictions fall outside the protected right; legislative suppression cannot itself create the historical principle necessary to justify the suppression.

Nor can legislative classifications substitute for the required historical showing. As the challenged statutes illustrate, selected stocks, grips, muzzle devices, model names, or other characteristics may define a statutory category without defining a materially different firing function or a uniquely dangerous ballistic class. A modern legislature’s decision to group those characteristics under the label “assault weapon” establishes what its statute prohibits. It does not

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establish that the resulting category lies outside the Second Amendment.

The better reading gives effect to each component of this Court's doctrine. *Heller* protects arms commonly chosen by the people and recognizes that the Second Amendment extends to modern technology. *Caetano* confirms that novelty does not itself defeat coverage. *Bruen* places upon government the burden of establishing the historical tradition supporting a restriction. *Rahimi* requires a principled comparison between the modern law and that tradition. *Hemani* guards the pre-existing right against erosion through legislative or judicial redefinition. And *Wolford* requires the incorporated right to retain the same constitutional meaning throughout the Nation.

The Second Amendment therefore protects a right whose coverage extends to modern arms; its substance cannot be fixed to a technological baseline selected by a legislature. Government may prohibit and punish harmful misuse, and it may defend restrictions grounded in the Nation's historical tradition. But it may not freeze the development of otherwise protected arms by prohibiting each new iteration before the people can keep it and then invoke the resulting scarcity as proof that the innovation is constitutionally unusual.

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CONCLUSION

The judgments of the Second and Seventh Circuits should be reversed. This Court should further clarify that a newly developed bearable arm is not constitutionally “unusual” merely because its precise configuration or improved performance is new where its firing function and functionally relevant architecture remain common among lawful protected arms.

Respectfully submitted.

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