

Nos. 25-238, 25-566

**IN THE
SUPREME COURT OF THE UNITED STATES**

CUTBERTO VIRAMONTES, et al., Petitioners,
v.
COOK COUNTY, ILLINOIS, et al., Respondents.

EDDIE GRANT, JR., et al., Petitioners,
v.
RONNELL HIGGINS, et al., Respondents.

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

**BRIEF OF DAVID A. ROBINSON
AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICUS CURIAE

I am David A. Robinson, age 73, a Connecticut lawyer.¹ I am the amicus and counsel for the amicus. My interest in this case stems from my effort in 2023-24 to start a movement to amend the Second Amendment for modern times and modern safety needs. I wrote a short book, *Amending the Constitution to Reduce Gun Violence*, and self-published it on Amazon (Kindle Direct Publishing). I drafted a constitutional amendment, inserted it in the book, and posted the amendment on Amazon so people can read the amendment without having to buy the book. The book and amendment remain on Amazon today.

I wrote the book and amendment because *District of Columbia v. Heller*, 544 U.S. 570, 636 (2008), states “it is not the role of this Court to pronounce the Second Amendment extinct.” *Heller* thus implies that it is the role of *the American people* to pronounce the Second Amendment extinct or partly extinct. The American people can pass a constitutional amendment clarifying or repealing the Second.

¹ No counsel for a party authored this brief in whole or in part. No counsel or party or anyone else made a monetary contribution to fund the preparation or submission of this brief. I wrote and paid for it entirely myself.

Someone needs to start the process, so I started it. In sections I and VII *infra*, I tell briefly about my effort. My effort was largely a failure, for reasons I explain in section VII. Those reasons indicate that it *is* the role of this Court to pronounce the Second extinct or partly extinct. This Court cannot expect the American people to do so.

In sections II through VI, and VIII, I explain why the Second Amendment does *not* give civilians the right to semiautomatic weapons including the AR-15. Also in section VIII, I illustrate why the First, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Amendments fully apply today but the Second only partly applies today.

My interest also stems from my residing in Connecticut. Connecticut is a respondent in this case. I want Connecticut's law on AR-15s to remain in force.

I practiced law in Massachusetts from 1977 to 2008, then moved to Connecticut. I earned my J.D. in 1977 from Washington University in St. Louis. I am admitted to practice in the United States Supreme Court.

SUMMARY OF ARGUMENT

This Court should pronounce what is and is not extinct about the Second Amendment. I tried to start a movement to pass a constitutional amendment—the 28th Amendment---to pronounce what is and is not extinct about the Second but was unable to persuade a majority to agree on the wording of the 28th. Based on my experience, this Court should not expect the American people to do so. The Second Amendment is not extinct *in toto* but the prefatory clause (“A well regulated Militia, being necessary to the security of a free State”) is extinct, so the operative clause (“the right of the people to keep and bear Arms, shall not be infringed”) is extinct unless the right is inherent. The right to self-defense is inherent, so the Second Amendment gives civilians the right to keep and bear arms for self-defense. If some people believe that their local, state, or federal government is tyrannical, that does not give those people the right to shoot government officials or possess an AR-15. Capacity limits on firearms are analogous to speed limits on cars: The limits are constitutional and protect public safety.

ARGUMENT

I. The Court should pronounce what is, and is not, extinct about the Second Amendment. The Court should not expect the American people to do so. I tried to start a movement to persuade the American people to amend the Constitution to clarify the Second Amendment for modern times, but I failed because the people cannot agree on the language of an amendment clarifying the Second.

The Court opined in *District of Columbia v. Heller*, 544 U.S. 570, 636 (2008), that “it is not the role of this Court to pronounce the Second Amendment extinct.” If it is not the role of this Court, whose role is it? *Heller* implies that it is the role of the American people. The American people can pass a constitutional amendment clarifying or repealing the Second Amendment for modern times. The people would, I assume, need to pass a 28th Amendment to the Constitution to do that.

To pass a constitutional amendment, someone must draft an amendment and start the process set forth in Constitution article V. Unaware of anyone else proposing to amend the Constitution to clarify or

repeal the Second, I proposed an amendment myself. I drafted an amendment and wrote a short book about it. Later in this brief I will discuss it but I will say right now that my effort was unsuccessful. One reason it was unsuccessful is that people cannot agree on what the new amendment should say. Therefore, it is the role of this Court to pronounce what is, and is not, extinct about the Second Amendment. This Court should not expect the American people to do so.

II. The Second Amendment is not extinct *in toto* but the prefatory clause (“A well regulated Militia, being necessary to the security of a free State”) is extinct, so the operative clause (“the right of the people to keep and bear Arms, shall not be infringed”) is extinct unless the right is inherent. The right to self-defense is inherent, so the Second Amendment gives civilians the right to keep and bear arms necessary for self-defense.

The prefatory clause of the Second Amendment—“A well regulated militia, being necessary to the security of a free State”—means that the Second Amendment gives government the authority to ban or limit possession of arms by people *not* in the militia. *District of Columbia v. Heller*, 554 U.S. 570, 637, 643, 681 (2008) (Stevens and Breyer, JJ., dissenting).

People not in the militia are *civilians*. *Nicely v. United States*, 23 F.4th 1364, 1369 (Fed. Cir. 2022) (“civilian” is “person who is not on active duty in the armed services”). Had our Founding Fathers wanted every civilian to have the right to a gun, the Second Amendment would read simply, “The right of the people to keep and bear arms shall not be infringed.”

The second Militia Act of 1792, § 1 (May 8, 1792), commanded *militiamen* to provide themselves with “a good musket or firelock” and either 24 cartridges or 20 balls suited to the bore of the musket, firelock, or rifle. When the Court in *United States v. Miller*, 307 U.S. 174, 181-82 (1939), said militiamen were expected to bear arms of the kind in common use “at the time,” the Court meant 1792, not 1939 and certainly not 2026. “This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment,” *Bostock v. Clayton County*, 590 U.S. 644, 654 (2020), and interprets constitutional amendments likewise. *Fulton v. City of Philadelphia*, 593 U.S. 522, 570-71 (2021) (Alito, J., concurring).

That does not mean the Second Amendment protects only arms in existence in the 18th century. The Second Amendment protects 21st century arms to the extent necessary for self-defense. “[I]ndividual self-defense is the central component of the Second Amendment right.” *New York State Rifle & Pistol*

Assn, Inc. v. Bruen, 597 U.S. 1, 29 (2022) (citation modified). “[T]he inherent right of self-defense has been central to the Second Amendment right.” *District of Columbia v. Heller*, 554 U.S. at 628. The Court repeated this twice in June 2026. On June 18 the Court held, “The Second Amendment protects the right of all Americans to keep and bear firearms for self-defense.” *United States v. Hemani*, 146 S. Ct. 1677, 1685 (citation modified). On June 25 the Court held, “The Second and Fourteenth Amendments protect the right to carry handguns inside or outside the home for self-defense.” *Wolford v. Lopez*, 146 S. Ct. 2032, 2040. Had someone told our Founding Fathers in 1791 that 235 years later there will be a firearm enabling an individual to kill 60 people in 60 seconds, I believe they would have worded the Second Amendment to *not* give a civilian the right to such a high-capacity firearm.

In *Garland v. Cargill*, 602 U.S. 406 (2024), the Court held that bump-stocked semiautomatic weapons are not “machine guns,” and thus the prohibition against “machine guns” in the National Firearms Act of 1934 does not apply. Nowhere in *Garland* did the Court mention the Second Amendment. Thus, bump-stocked semiautomatic weapons are not a Second Amendment right. Congress can ban them. 602 U.S. at 429 (Alito, J.,

concurring). Congress and/or a state can ban semiautomatic weapons in general.

In my book I come up with an analogy, which I will tell in the next section of this brief, that I believe proves that the Second and Fourteenth Amendments do *not* guarantee civilians the right to keep and bear semiautomatic rifles in common use in 2026 including the AR-15. Many civilians have that right anyway and will continue to, regardless of the Court's decision in this case, because many *states* give civilians that right. Those states, *not the Second and Fourteenth Amendments*, give them that right. *United States v. Rahimi*, 602 U.S. 680, 737 (2024) (Barrett, J., concurring) ("That evidence marks where the [Second Amendment] right stops and the State's authority to regulate begins."). Congress could, according to the Commerce Clause, U.S. Const. art. 1, § 8, cl. 3, give civilians that right in all 50 states but has not done so. Connecticut does not give civilians that right. Connecticut bans semiautomatic rifles including the AR-15.

The Court should rule on semiautomatic weaponry the way the Court ruled on abortion: It is not a constitutional right, but if Congress and/or states want to allow it, they can allow it. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

III. The Second Amendment’s “militia” clause is analogous to Major League Baseball’s pre-1947 “Whites only” policy: It made sense to most Americans at the time but makes no sense today.

The Second Amendment is unique: It is the only provision in our Constitution with a prefatory clause. *Heller*, 554 U.S. at 577. If the prefatory clause no longer applies, the operative clause—“The right of the people to keep and bear arms, shall not be infringed”—no longer applies unless there is indication elsewhere in the Constitution that the operative clause applies. I believe there is such indication. I believe, and *Heller* holds, that the right to be armed for self-defense is “ancient” and “inherent.” *Id.* at 594, 599, 628. So, the holdings in *Heller* and *Bruen* that a person has the right to keep and carry a handgun for self-defense make sense. The argument that the Second Amendment’s “militia” clause gives a civilian the right to an AR-15 makes no sense.

The Second Amendment is analogous to the “gentlemen’s agreement” in Major League Baseball (MLB) from 1901 to 1947 regarding Black ballplayers. Had the “agreement” been written, it may have read, “An all-White team being necessary to maximize Major League Baseball’s popularity and the number of people who attend MLB games, the right of the

teams to hire only White ballplayers shall not be infringed.” As absurd and hateful as such an agreement sounds in 2026, it made sense to most White Americans then, especially in the MLB cities and surrounding areas then. From 1901 to 1947 no MLB team was south of Washington, DC, or St. Louis, MO. A supermajority of Americans in the Northeast and Upper Midwest, where all 16 MLB teams played, were White. Most Blacks lived in the South. American society was segregated. Black ballplayers had their own leagues, called “Negro Leagues,” so did not need to play “major” league (American or National League) baseball. In 1947 the Brooklyn Dodgers and Jackie Robinson (no relation to me) broke the color barrier in MLB. Invoking the 1791 “militia” clause to give civilians in 2026 the right to a rifle enabling a civilian to kill 60 people in 60 seconds is analogous to a baseball team’s invoking the 1901 to 1947 “gentlemen’s agreement” in 2026 to hire Whites only. Whatever sense, if any, the prefatory clause made in 1791 or 1901, the preface is “outmoded” and “extinct” in the 21st century, to borrow words from *Heller*, 554 U.S. at 636. The preface is no longer the basis of the operative clause, so the standalone operative clause should be limited to self-defense.

IV. No American has been drafted (forced) into military service since 1973. The Selective Service System has replaced the “militia.” The “militia” is essentially extinct and thus cannot be the basis of gun rights today.

The “militia” exists today on paper but most gun owners are not in it, and the Selective Service System has essentially replaced it. According to 10 U.S.C. § 246, the “militia” consists only of 1) able-bodied males ages 17 to 44, 2) military veterans ages 45-64 who enlist in the National Guard, and 3) female members of the National Guard. Thus, reading the Second Amendment in the light most favorable to AR-15 owners, only people in those three categories have a Second Amendment right to keep and bear arms. Connecticut likewise has a “militia” today on paper:

All male citizens . . . between the ages of eighteen and forty-five years, not exempt by law, shall be subject to military duty and designated as the militia. All female citizens . . . between the ages of eighteen and forty-five years, may enlist voluntarily in any women's unit of the armed forces of the state.

Conn. Gen. Stat. § 27-2.

No American since 1973 has been drafted (forced) into military service. Barry M. Stentiford, *Selective Service Before the All-Volunteer Force*, MILITARY REV., Nov.-Dec. 2023, at 114-15, 123. To my knowledge, no state or local government has drafted (forced) anyone into military service, that is, forced anyone to become a state or local police officer, since long before 1973 if ever. The federal, state, and local armed forces have been all-volunteer since 1973 or earlier.

Suppose another nation attacks the United States and there are not enough soldiers in the all-volunteer U.S. Armed Forces to defend against the attack. Does the United States need a way to quickly draft (force) people into military service? Yes. That is why 10 U.S.C. § 246 remains in effect. That is why we have a Selective Service System:

Federal law requires nearly all male U.S. citizens and male immigrants to register at age 18. . . .

In a national emergency, Selective Service System will use the registry to provide personnel to the Department of War and alternative service for conscientious objectors, if authorized by the President and Congress.

<https://www.sss.gov> (last visited Oct. 22, 2026). That does not give a civilian the right to an AR-15. I still carry my draft card (Selective Service System Registration Certificate), issued February 8, 1971, in my wallet because the card says I must have the card in my “personal possession at all times and to surrender it upon entering active duty in the Armed Forces.” That does not give me the right to an AR-15 and never did.

V. If the Second Amendment gives people the right to keep and bear AR-15s to defend against a tyrannical government, who decides if a government is tyrannical? Many people today (October 2026) believe that their local, state, or federal government is tyrannical.

AR-15 owners assert that the Second Amendment’s prefatory clause gives nearly everyone the right to an AR-15. They assert they need the ability to kill 60 people in 60 seconds or, at a minimum, 20 people in 20 seconds. Why do they need that ability? Because, they assert, the Second Amendment gives them the right to defend against a tyrannical government. *District of Columbia v. Heller*, 554 U.S. 570, 598, 600, 608-09 (2008). They believe that a government that bans AR-15 rifles is tyrannical. *Id.* at 608-09, citing J. Story, A Familiar

Exposition of the Constitution of the United States § 450 (reprinted 1986). I assume—they can correct me if I am mistaken—they therefore believe that if a law enforcement officer in a state that bans AR-15 rifles tries to seize an AR-15 or arrest or serve a warrant on a person possessing an AR-15, the AR-15 possessor has a Second Amendment right to shoot the officer/tyrant. Since the officer/tyrant may have 19 officers/tyrants nearby as backup, an AR-15 is necessary to shoot all 20. Their reasoning is circular: The Second Amendment gives a civilian the right to an AR-15 because if 20 cops try to seize the civilian's AR-15, the civilian needs an AR-15 to shoot all 20. A 10-round pistol or 6-round revolver won't suffice. They have a 1791 mentality and a 2026 AR-15—a volatile combination.

VI. Capacity limits on rifles are analogous to speed limits on cars: They are constitutional and protect public safety.

Travel is a constitutional right. *Shapiro v. Thompson*, 394 U.S. 618, 629-30 (1969). Nevertheless, the government has authority to impose speed limits on automobiles. Likewise, the government has authority to impose capacity limits on rifles. The fear that many people have when AR-15s are legal is as great as the fear people would have if there were no speed limits.

VII. My proposed amendment says what *Heller* and *Bruen* say and clarifies that the Second Amendment *today* is for individual self-defense, not “militia.”

Believing as I do that the Constitution should give civilians the right to keep and bear arms for individual self-defense, but fearing that this Court might eventually hold that semiautomatic weapons including the AR-15 are a Second Amendment right, in 2023 I drafted an amendment—the 28th Amendment to the U.S. Constitution—clarifying, not repealing, the Second Amendment for modern times and modern safety needs. I wrote and self-published on Amazon (Kindle Direct Publishing) a very short book (paperback is 29 pages) explaining it and the amendment process, *Amending the Constitution to Reduce Gun Violence*. I posted the amendment on the book’s Amazon description page so anyone can read the amendment without having to buy the book. Here is, or was, my proposed amendment:

a. My Proposed 28th Amendment
to the United States Constitution

This amendment clarifies the Second Amendment. People have a right to defend themselves against physical harm. People have the right to keep and bear arms to the extent necessary to defend themselves, their families,

their homes, and other people nearby, and hunt for food. Reasonable prohibitions on the owning, possessing, and carrying of weapons by criminals, the mentally ill, and people who have unjustifiably threatened violence are lawful. Owners of private property may ban or restrict the possession of arms on their property. The Second Amendment does not restrict the military's use of arms and weaponry. The military is the armed forces of the local, state, and federal government. The right to defend themselves against physical harm does not give people the right to resist a lawful arrest by local, state, or federal law enforcement officers.

Publicizing a book requires advertising. I paid Amazon \$5,300, all from my own pocket, from February 2023 to March 2024 to advertise my book. I created a slogan: "28 in 24." "Pass the 28th Amendment in 2024!" Word spread widely and quickly ("virally") among gun owners that a guy in Connecticut (me) is proposing changes to the Second Amendment. Gun owners posted negative reviews and comments.

At the same time at the other end of the political spectrum, many gun *control* advocates opposed my amendment. My proposed amendment declares that nearly everyone has a Second Amendment right to a gun. Gun control advocates hope this Court

eventually overrules *Heller* and *Bruen* and holds that since the Second Amendment's prefatory clause is extinct, the operative clause is extinct, and therefore no civilian has the right to a gun unless Congress or the state government gives the civilian that right. My amendment is a compromise between gun rights advocates and gun control advocates.

I created a Facebook page, <https://www.facebook.com/NewSecondAmendment>. I requested and received Facebook's permission to run political Facebook ads. On March 23, 25, and 26, 2024, I paid for and ran "28 in 24" Facebook ads. I don't recall how much I paid Facebook; my guess is around \$1,000 but I don't remember precisely. It went viral. Gun owners posted hundreds of negative comments while hundreds of others posted positive comments or "likes." Anyone on Facebook who wants to read them can still read them today.

I emailed, by filling out the "contact me" form on their office websites, my Congresswoman (Rosa DeLauro), two U.S. Senators (Richard Blumenthal and Chris Murphy), President Joe Biden, and Vice President Kamala Harris to ask them to propose my amendment. I received from each a "thank you" but no response to my specific proposal.

No one asked me or paid me to do any of this. I did it on my own with my own money, as I stated above

and in footnote 1 of this brief. I am one man exercising his First Amendment right to speak and petition the government.

On July 29, 2025, I emailed President Donald Trump (whitehouse.gov) and suggested that if he wants to win the Nobel Peace Prize, he should propose my proposed amendment. I received a “thank you” but no response to my specific proposal. Almost a year later, on July 16, 2026, after this Court granted certiorari in this case, I emailed President Trump and suggested that if he wants to win the Nobel he should cause the U.S. Department of Justice to file an amicus brief in favor of the respondents in this case. On September 4, the Justice Department filed an amicus brief in favor of the petitioners.

If this Court rules in favor of the respondents, the Court will essentially implement my proposed 28th amendment. I respectfully request this Court to do so. *Someone* needs to pronounce the Second Amendment partly extinct. *Someone* needs to reduce the number of mass shootings and the mass anxiety that *some* people with semiautomatic weapons including the AR-15 are causing. They are causing millions of Americans to worry about mass shootings. A person who goes to an outdoor concert is probably not worried that a guy with a pistol or revolver will shoot a concertgoer at random, but many people worry that a

guy with an AR-15 will shoot 30 concertgoers at random.

VIII. A conversation with a 9-year-old hiding in a closet with her classmates and teacher during a “lockdown” a/k/a “active shooter” drill at school illustrates that semiautomatic firearms are not a Second Amendment right.

The following hypothetical conversation between a 9-year-old student (“Jane”) and her teacher while both are hiding in a closet during a “lockdown” or “active shooter” drill proves that the Second Amendment does not protect semiautomatic firearms.

Jane: “Why do we have to do this?”

Teacher: “We do it in case a man enters the school with a gun and tries to shoot all 29 of you and also me. It would take him only 30 seconds. We have to learn to hide and barricade ourselves quickly.”

Jane: “Can a gun shoot 30 people in 30 seconds?”

Teacher: “Guns don’t shoot people. People shoot people. A gun is an inanimate object. It can’t do any harm itself. Yes, a rifle called an AR-15 can enable the rifleman to shoot 30 people in 30 seconds.”

Jane: “Why do they *allow* a gun like that? Why does anyone *need* a gun like that?”

Teacher: “The Second Amendment to the U.S. Constitution says you have the right to keep and bear arms and that no one can infringe on that right. Guns are arms. Some people have AR-15s for self-defense. Some have AR-15s to hunt animals for food. Some have AR-15s because AR-15s are fun to shoot.”

Jane: “We kids have to hide in a closet so grownups can have fun?”

Teacher: “The Second Amendment says what it says. It’s our constitutional right.”

Jane: “Can *I* have fun shooting an AR-15?”

Teacher. “No. You’re only 9. An AR-15 is a dangerous weapon. It can shoot 30 people in 30 seconds. Only adults can shoot an AR-15.”

Jane: “I thought you said guns don’t shoot people. May I read the Second Amendment?”

Teacher: “I’ll find it on my cellphone. Here it is. Read it.”

Jane: “It says, ‘A well regulated Militia, being necessary to the security of a free State, the right

of the people to keep and bear Arms, shall not be infringed.’ What’s a *militia*?”

Teacher: “When the United States was founded in the 1780s and 1790s, we did not have a standing professional army, so if foreigners or tyrants attacked us, every man needed a rifle to shoot the foreigners or tyrants. We called the men *militia*.”

Jane: “Do we have a militia today? Is my dad in it? Are you in it?”

Teacher: “No.”

Jane: “Could the man with the gun in the 1790s shoot 30 people in 30 seconds?”

Teacher: “No. The 1790s gun enabled him to shoot only 2 people in 30 seconds.”

Jane: “Why would a man want to shoot 30 people he doesn’t even know?”

Teacher: “Some men are angry at the world and enjoy watching people suffer.”

Jane: “Can’t anyone help these men be happier? I was angry once in class, so the teacher sent me to the vice principal. The vice principal sent me to the school nurse. The school nurse sent me to the school guidance counselor. The school guidance

counselor sent me to the school psychologist. They all tried to help me but I was still angry.”

Teacher: “You just answered your own question. The mental health system doesn’t work very well. Physical health is often visible or measurable. Mental health is not. It is very difficult to know what is inside a person’s mind.”

Jane: “Why does a man have the right to a gun enabling him to shoot 30 people in 30 seconds when a militia no longer exists and the militiaman’s gun enabled him to shoot only 2 people in 30 seconds?”

That question—the last question Jane asked—is the question presented in this case. Her conversation with her teacher illustrates how the Second Amendment is different from the First, Third, Fourth, Fifth, Sixth, Seventh, and Eighth amendments. Had Jane asked about freedom of speech, freedom of religion, quartering of soldiers, search and seizure, probable cause, privilege against self-incrimination, right to counsel, right to a speedy trial, right to jury trial in criminal and civil cases, ban on excessive bail, or ban on cruel and unusual punishment, the teacher could show Jane the amendment and Jane would understand where the right comes from. Reading the Second Amendment, Jane cannot understand where a civilian’s right to an AR-15 comes from. The “militia” clause confuses her the way it confuses me

and millions of other Americans. This Court should pronounce the “militia” clause extinct and hold that its extinction means that the operative clause is for individual self-defense and hunting for food. It means that the Second Amendment gives people the right to keep and bear arms reasonably necessary for self-defense and hunting. That is where the Second Amendment right “stops and the State's authority to regulate begins.” *United States v. Rahimi*, 602 U.S. 680, 737 (2024) (Barrett, J., concurring). Congress, states, counties, and municipalities can ban, limit, or allow deadlier arms. Respondents limit deadlier arms.

CONCLUSION

The Second and Fourteenth Amendments to the United States Constitution do not guarantee the right to possess semiautomatic rifles that are in common use for lawful purposes, including the most popular rifle in the country, the AR-15. The judgments of the Second and Seventh Circuits should be affirmed.

October 22, 2026 Respectfully submitted,

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