

Nos. 25-238, 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 PROTECTION, ET AL.,

***On Writs of Certiorari to the
United States Courts of Appeals for the
Seventh and Second Circuits***

**BRIEF OF AMICUS CURIAE
THE COMMONWEALTH OF VIRGINIA
IN SUPPORT OF RESPONDENTS**

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- Bureau of Alcohol, Tobacco, Firearms,
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- Christopher S. Koper et al.,
*Criminal Use of Assault Weapons and
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- U.S. Census Bureau, Population Div.,
*Annual Estimates of the Resident
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Regions, States, District of Columbia,
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- U.S. Dep’t of Just., Off. of Just.
Programs,
*Impacts of the 1994 Assault Weapons
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- U.S. Dep't of Just., Off. of Pub. Affairs,
*Department of Justice Announces
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- William English,
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INTEREST OF AMICUS CURIAE

The Commonwealth of Virginia has an interest in ensuring the safety of its citizens. Its elected representatives have chosen to promote public safety by restricting the purchase and sale of assault firearms. Va. Code § 18.2-287.4:1; *see* Va. Code § 18.2-308.2:2(F) (defining “assault firearm”). Multiple courts have stayed lawsuits challenging Virginia’s assault-firearms laws pending this Court’s resolution of these cases. *See, e.g.,* Order at 1, *McDonald v. Katz*, No. 1:26-cv-1305 (E.D. Va. July 24, 2026).

STATEMENT

Since shortly after the AR-15 platform and the other assault weapons at issue in this appeal (collectively AR-15s, for ease of reference), became broadly available to American consumers, states have restricted their possession. California enacted the first such law in 1989. *See* Cal. Penal Code § 12280 (1989), Cal. Stat. 1989, ch. 19 (now codified at Cal. Penal Code § 30600). At the time, by one estimate, manufacturers produced a modest “average of 91,000 guns annually” in “five categories of assault weapons,” including AR-15s. U.S. Dep’t of Just., Off. of Just. Programs, *Impacts of the 1994 Assault Weapons Ban: 1994–96* at 4–5, *available at* <https://perma.cc/JZA6-DKPY>.

Several states followed suit before the federal government imposed a national ban in 1994. *See* Pub. L. 103-322, § 110102, 108 Stat. 1796 (1994). When the ban expired in 2004, five states and the District of Columbia independently restricted AR-15s. Still other states enacted restrictions in the following years.

Earlier this year, Virginia enacted Senate Bill 749, which, among other things, makes it a crime to buy or sell an assault firearm, subject to certain exceptions and a grandfather clause. *See* Va. Code § 18.2-287.4:1(B)–(C).

Multiple plaintiffs sued in local and federal Virginia courts. Two Virginia circuit courts issued preliminary injunctions restricting enforcement of the challenged laws, including one with statewide application. *See* Order at 1–2, *Crump v. Katz*, No. CL26000201-00 (Lancaster Cnty. Cir. Ct. June 30, 2026); Order at 2–3, *Santolla v. Katz*, No. CL26001139-00 (Wash. Cnty. Cir. Ct. July 9, 2026). Later, those courts and all the other courts entertaining similar challenges issued stays pending the outcome of these writs of certiorari.¹

Today, 11 states and the District of Columbia—collectively representing over 34 percent of the United States’ population—have laws restricting AR-15 possession.²

¹ *See* Order at 1–2, *Crump*, No. CL26000201-00 (Sept. 10, 2026); Order, *Santolla*, No. CL26001139-00 (July 28, 2026); Order at 2, *Curtis v. Katz*, No. CL26002454-00 (Spotsylvania Cnty. Cir. Ct. July 16, 2026); Order at 2, *Black v. Hook*, No. CL26000241-00 (Fauquier Cnty. Cir. Ct. July 16, 2026); Order at 1, *McDonald*, No. 1:26-cv-1305 (E.D. Va. July 24, 2026); Order at 1, *United States v. Commonwealth of Virginia*, No. 1:26-cv-2035 (E.D. Va. July 28, 2026).

² *See* Cal. Penal Code §§ 30600, 30605 (California 2025 estimated population 39,355,309); Conn. Gen. Stat. §§ 53-202b, 53-202c (3,688,496); Del. Code tit. 11, § 1466 (1,059,952); D.C. Code §§ 7-2501.01(3A), 7-2502.02(a)(6), 7-2505.01, 7-2505.02(a), (6) (693,645); 720 Ill. Comp. Stat. 5/24-1.9(b)–(c) (12,719,141); Md. Code, Crim. Law § 4-303 (6,265,347); Mass. Gen. Laws ch. 140, § 131M (7,154,084); N.J. Stat. Ann. §§ 2C:39-1(w), 2C:39-5(f)

SUMMARY OF THE ARGUMENT

AR-15s are not “Arms” that the Second Amendment protects. A state may therefore choose to restrict its citizens’ ability to possess such weapons.

This Court has already recognized that states may restrict machinegun possession. *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008). Machineguns are not “Arms” because they are dangerous and inapt for self-defense. AR-15s *are* machineguns, except that they—at least to start—have semiautomatic fire rather than automatic fire. AR-15s thus bear nearly all the same features that take machineguns outside the Second Amendment’s protection.

Even if the difference between automatic fire and semiautomatic fire were enough to change the dangerousness determination, several inexpensive and inconspicuous devices exist to turn a semiautomatic assault rifle into a machinegun or its functional equivalent. This Court should not ignore these realities in assessing AR-15s’ dangerousness.

Petitioners bore the burden to establish that AR-15s are “Arms” within the Second Amendment’s protection. Their showing before this Court suffers from multiple flaws. They ask this Court to rely on statistics extrapolated from gun-owner surveys, none

(9,548,215); N.Y. Penal Law §§ 265.00(22), 265.02(7) (20,002,427); R.I. Gen. Laws § 11-47.2 (1,114,521); Va. Code § 18.2-287.4:1 (8,880,107); Wash. Rev. Code §§ 9.41.010(2), 9.41.240; 9.41.390. (8,001,020); *see also* U.S. Census Bureau, Population Div., *Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico: April 1, 2020 to July 1, 2025 (NST-EST2025-POP)* (Jan. 2026), *available at* <https://perma.cc/G2KE-RYPX>.

of which shows actual use. They ask this Court to focus on the stocks and grips of AR-15s while downplaying the tremendous lethality of these weapons. And they ask this Court to adopt a methodology for deciding when a weapon is a Second Amendment “arm” that turns on recent legislative and consumer happenstance. The constitutionality of states’ assault-weapons laws, and the safety of millions of Americans, should not depend on such contingencies.

ARGUMENT

I. AR-15s are not Second Amendment protected “Arms.”

A. *Bruen* step one and step two differ in which party bears the burden.

The Second Amendment provides that “the right of the people to keep and bear Arms, shall not be infringed.” Its protection “applies equally to the Federal Government and the States.” *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010) (citation omitted). This Court has “identified the Amendment’s ‘central’ concern: securing the fundamental right of self-defense.” *Wolford v. Lopez*, 609 U.S. 185, 192 (2026) (citation omitted). The right secured by the Second Amendment is not unlimited; instead, it “protects a right that already existed” at adoption. *Id.* at 193 (citations omitted); *see id.* at 196 (the “right was not in every way coterminous with the Amendment’s literal language”).

After *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1 (2022), courts conduct a two-step analysis of Second Amendment challenges to statutes. *See Wolford*, 609 U.S. at 195. At the first step, a court

determines whether the challenged law “clashes with the ‘plain text’ of the Amendment’s language” by asking “three subsidiary questions.” *Id.* (citation omitted). The challenger bears the burden of establishing whether the law applies to “the people”; whether “it concern[s] any form of ‘Arms’”; and whether it restricts either the keeping or bearing of arms. *See id.* (citations omitted). If the answer to each question is “yes,” then the law “is presumptively unconstitutional.” *Id.* at 196 (citation omitted).

As to what constitutes protected “Arms,” this Court has recognized that the Second Amendment protects only “the sorts of weapons” that were “in common use at the time” of adoption. *Heller*, 554 U.S. at 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)). And it does not protect “the carrying of ‘dangerous and unusual weapons.’” *Id.* (citations omitted). Instead, “the Second Amendment’s definition of ‘arms’ . . . covers modern instruments that facilitate armed self-defense.” *Bruen*, 597 U.S. at 28 (citation omitted).

On the unprotected side of the line are “M-16 rifles and the like,” and “short-barreled shotguns.” *Heller*, 554 U.S. at 625, 627. On the protected side are handguns, “the quintessential self-defense weapon.” *Id.* at 629. That said, this Court has not established “a comprehensive framework for evaluating restrictions on types of weapons,” including for how to assess “what makes a weapon ‘bearable,’ ‘dangerous,’ or ‘unusual.’” *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (Thomas, J., statement respecting denial of certiorari).

At the second step of the analysis, the “relevant government” entity defending the law can show that

the law “did not infringe the historical understanding of the codified right.” *Wolford*, 609 U.S. at 196 (citation omitted). It can rely on “[a] variety of sources, including scholarship,” but, often, proffering one or more “historical analogues” is the best evidence that the current law does not infringe historical understandings. *Id.* (citations omitted).

The Commonwealth agrees with respondents’ *Bruen* step two analysis. See *Grant* Resp. Br. 9–23; *Viramontes* Resp. Br. 13–25. This amicus brief focuses on *Bruen* step one, but the points it makes below apply equally if the Court analyzes common use and dangerousness at *Bruen* step two.

B. AR-15s are not protected because they are dangerous and inapt for self-defense.

1. AR-15s are exceedingly similar to unprotected machineguns.

AR-15s are not “the sorts of weapons . . . ‘in common use at the time’” of the Second Amendment’s adoption. *Heller*, 554 U.S. at 627 (citation omitted). Rather, they are not in common use for lawful “individual self-defense” *id.* at 599, and they are extraordinarily dangerous.

1. The simplest way to approach this question is to recognize that consumers have multiple easy-to-implement—and hard-to-detect—options to convert AR-15s to unprotected machineguns or their functional equivalent. See *Garland v. Cargill*, 602 U.S. 406, 411 (2024) (“Shooters have devised techniques for firing semiautomatic firearms at rates approaching those of some machineguns.”).

Bump stocks. Bump stocks allow users to dramatically increase the rate of fire compared to a stock AR-15. A bump stock “replaces a semiautomatic rifle’s stock . . . with a plastic casing that allows every other part of the rifle to slide back and forth,” and “has a ledge to keep the shooter’s trigger finger stationary.” *Cargill*, 602 U.S. at 411–12. This assists with “bump firing,” where a shooter “uses the firearm’s recoil to help rapidly manipulate the trigger.” *Id.* at 411. “A rifle equipped with a bump stock can fire at a rate between 400 and 800 rounds per minute.” *Id.* at 434 (Sotomayor, J., dissenting). While this configuration does not meet the technical definition of a “machinegun” under the National Firearms Act, *id.* at 410, it is no less deadly than one in practice. Indeed, “[t]he horrible shooting spree in Las Vegas in 2017 . . . demonstrated that a semiautomatic rifle with a bump stock can have the same lethal effect as a machinegun.” *Id.* at 429 (Alito, J., concurring); see also *Bianchi v. Brown*, 111 F.4th 438, 456 (4th Cir. 2024) (en banc), *cert. denied sub nom. Snope v. Brown*, 145 S. Ct. 1534 (2025).

Auto sears. Auto sears are small firearm parts that turn AR-15s into fully automatic machineguns. By default, an AR-15 will load and fire one cartridge per trigger pull, because a small hook on an internal part called a “disconnecter” will catch the hammer as it moves backwards in the firing sequence. *Cargill*, 602 U.S. at 420. To reinitiate the firing sequence, the shooter must pull the trigger again. *Id.* at 416, 420. By contrast, “[t]he auto sear catches the hammer as it swings backwards, but will release it again once a new cartridge is loaded if the trigger is being held back.” *Id.* at 420 n.4 (citation omitted). This means that changing out a small internal component of the

AR-15, *see id.* at 417–420 (illustrations of the assembly), will make it a machinegun.

Auto sears are too easily made and installed to be susceptible to effective enforcement. They “can be made of plastic or metal . . . are inexpensive[,] and can be purchased online, oftentimes disguised as harmless items, such as a Lego.” Manhattan Dist. Att’y’s Off., *D.A. Bragg, Senator Hoylman-Sigal and Assemblymember Rosenthal Announce New Push to Address Emergence of 3D-Printed Guns & Auto Sears* (May 16, 2025), available at <https://perma.cc/5DH8-4P5F>. With widespread blueprint availability, auto sears can be 3-D printed using a home setup for a marginal cost of \$5.00. *Id.*

Even cruder, some end users have simply filed off or otherwise removed the stock AR-15 disconnecter hook, ostensibly in an effort to make the weapon fully automatic. *See* Bureau of Alcohol, Tobacco, Firearms, and Explosives, *National Firearms Act Handbook, Appendix B* at 1–2, available at <https://perma.cc/E4JP-QZTD> (noting that many AR-15s, even when not fully modified with M16 components, “will also shoot automatically by manipulation of the selector or removal of the disconnecter”).

Forced-reset triggers. Forced-reset triggers “are aftermarket firearm components that allow a shooter to maintain continuous pressure and achieve a significantly higher rate of fire while technically performing a separate trigger pull for each round.” *In re Super Safety Pat. Litig.*, 829 F. Supp. 3d 1370, 1372 (U.S. Jud. Pan. Mult. Lit. 2026). In short, they allow shooters to continuously fire AR-15s simply by maintaining enough pressure on the trigger. *See*

United States v. Rare Breed Triggers, LLC, 690 F. Supp. 3d 51, 64 (E.D.N.Y. 2023). They allow “even a novice shooter . . . to fire multiple rounds of ammunition in a fraction of a second.” *Id.* at 65.

After initially taking the position that such devices are illegal machinegun-conversion devices, *see Rare Breed Triggers*, 690 F. Supp. 3d at 58, the federal government eventually reversed course and ended several enforcement efforts, *see* U.S. Dep’t of Just., Off. of Pub. Affairs, *Department of Justice Announces Settlement of Litigation Between the Federal Government and Rare Breed Triggers* (May 16, 2025), available at <https://perma.cc/EJP4-BAXE>.

These devices proliferated even before the federal government stopped regulating them. In the *Rare Breed Triggers* case alone, the manufacturer had sold “approximately 100,000” forced-reset triggers in less than three years. 690 F. Supp. 3d at 58. That means AR-15s throughout the country have devices that “mak[e] a weapon fire successive rounds extremely rapidly.” *Id.* at 59.

Binary Triggers. Binary triggers “shoot[] one round of ammunition with each pull *and* each release of the trigger.” *Rare Breed Triggers*, 690 F. Supp. 3d at 97 n.37. This “allow[s] for more rapid shooting than a standard trigger.” *Id.* The federal government does not regulate these devices. *See id.*

That end users would have to take some simple steps to turn their AR-15s into machineguns does not change the calculus. As this Court recognized in *Bondi v. VanDerStok*, both starter guns and firearm-conversion kits *are* firearms under federal law. 604 U.S. 458, 471, 473 (2025). This is so, despite the fact

that neither object can, in its present form, discharge a projectile by means of an explosive, because “a person without any specialized knowledge can convert a starter gun [or a firearm-conversion kit] into a working firearm using everyday tools in less than an hour.” *Id.* at 472 (citation omitted). In common usage, “artifact nouns”—such as “weapon” or “machinegun”—“sometimes capture unfinished articles.” *Id.* at 473 (citation omitted). The same logic applies here: AR-15s are not meaningfully less dangerous than machineguns just because “a person without any specialized knowledge,” *id.* at 472, would have to take a few easy steps to make the switch. *Cf. Cargill*, 602 U.S. 429 (Alito, J., concurring) (Congress “would not have seen any material difference between a machinegun and a semiautomatic rifle equipped with a bump stock”).

Hewing to precedent with a full picture of AR-15s yields a straightforward result: the Second Amendment does not prevent states from restricting AR-15s, just as with their fraternal twin, the machinegun. *Heller*, 554 U.S. at 627.

2. The federal government, as *amicus*, wrongly asks this Court to hold that *all* firearms are, by definition, Second Amendment-protected “Arms,” and to proceed to *Bruen* step two “without further ado.” Fed. Gov’t Br. 8–9. This must be, it says, because anything less “defies both the plain meaning of ‘arms’ and *Heller*’s interpretation of that term.” *Id.* at 8. But the federal government’s theory of the framework leads to absurd results.

Judicially created tests should make some common sense. Interpreting the *Bruen* test to require holding that laws regulating weapons “such as the M16, the

short-barreled shotgun, the ricin pellet-firing umbrella gun, and the W54 nuclear warhead,” *Bianchi*, 111 F.4th at 460, are “presumptively unconstitutional,” subject to a government’s ability to produce satisfactorily similar historical analogues, *Wolford*, 609 U.S. at 196, defies common sense. It wrongly and automatically flips the burden to the government to defend even the most frivolous challenges. And it wastes judicial resources by requiring time-intensive history-and-tradition analyses for each challenge.

The subparts of judicially created tests should each do some work, too. If all firearms are necessarily “Arms,” as the federal government would have it, then the second of the “three subsidiary questions” at *Bruen* step one, *Wolford*, 609 U.S. at 195, would do nothing. Litigants are not raising Second Amendment challenges to arbitration clauses and campaign-finance regulations; they are raising them to restrictions on firearms. Asking the “Arms” question, then, presumes that there is some subset of arms that are *not* Second Amendment-protected “Arms” at *Bruen* step one.

The question is how to go about deciding whether the type of firearm at issue is such an “arm.” This Court should eschew the simplistic counting exercise that petitioners suggest and instead focus on whether a firearm’s characteristics make it unlike “the sorts of weapons” that were “in common use at the time” of adoption. *Heller*, 554 U.S. at 627.

2. AR-15s are not in common use for lawful self-defense.

Petitioners misconstrue *Heller*'s common-use test. *Heller* was clear about two things: First, lawful self-defense is “the central component of the right itself,” 554 U.S. at 599 (emphasis omitted); second, the Second Amendment protects “the *sorts of* weapons” that were “in common use at the time” of adoption, *id.* at 627 (emphasis added, citation omitted). Both aspects undermine petitioners' focus on current popularity.

1. To start, petitioners' counting exercise (at 34–36) is untethered from the use of these weapons for lawful self-defense. Petitioners rely on surveys to posit that millions of Americans *own* AR-15s, and that manufacturers have *made* millions of them. Pet'rs' Br. 34–35. Petitioners also rely on surveys for owners' self-reports about *why* they own AR-15s. *Id.* at 35. But none of this—even if accurate and properly before the Court—shows that AR-15s are commonly *used* for lawful self-defense.

On the contrary, usage data confirms how rarely these arms are used defensively compared to the handgun—the “quintessential” self-defense weapon. *Heller*, 554 U.S. at 629. In one study, rifles generally comprised four percent of defensive firearm uses, compared to 90 percent for handguns. *Grant* Resp. Br. 32 (citation omitted). And FBI data covering more than 20 years and 400 active-shooter incidents revealed only one instance of a civilian intervening with an assault weapon. *Id.* at 32–33 (citation omitted).

In any event, counting the numbers of AR-15s in circulation is misleading. These guns are concentrated in a small proportion of the gun-owning population, and a smaller fraction of the American populace. See William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned* 33 (Georgetown McDonough Sch. of Bus. Research Paper No. 4109494, 2022), available at <https://perma.cc/W7FG-493D> (reporting that 30.2 percent of gun owners had ever owned an AR-15-style rifle). And, to the extent AR-15s see actual *use*, the evidence ties it to more mass shooters than to lawful self-defense incidents. See Christopher S. Koper et al., *Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: An Updated Examination of Local and National Sources*, 95 J. URB. HEALTH 313, 317–19 (2018), available at <https://perma.cc/9UC7-Q77R> (finding assault weapons disproportionately represented in mass murders, particularly public mass shootings).

Petitioners place too much weight on this Court’s statements in *Staples v. United States*, 511 U.S. 600, 612–14 (1994), and *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025). *Staples* construed the mens rea requirement of a federal criminal statute. 511 U.S. at 604–05. This Court rejected the federal government’s broad argument that “all guns . . . are dangerous devices that put gun owners on notice that they must determine at their hazard whether their weapons come within the scope of the Act.” *Id.* at 608. “Guns in general” are unlike grenades, narcotics, and waste material, which put their owners on notice of their dangers to the public. *Id.* at 611–12. Rather, guns as a general category “have been widely accepted as

lawful possessions” and so their mere possession was insufficient to satisfy the mens rea requirement of the federal statute at issue. *Id.* at 612.

Staples’ discussion of “[g]uns in general,” 511 U.S. at 611, plainly has nothing to do with whether AR-15s specifically are in common use. On the contrary, this Court would have “surely classif[ied] certain categories of guns—no doubt including the machineguns, sawed-off shotguns, and artillery pieces that Congress has subjected to regulation—as items the ownership of which would have the same quasi-suspect character we attributed to owning hand grenades in [*United States v. Freed*, 401 U.S. 601 (1971)].” *Id.* at 612. This Court issued *Staples* in May 1994, and the federal assault-weapons ban took effect in September. Had *Staples* been decided the following term, this Court “no doubt” would have added assault weapons to the list of quasi-suspect weapons “that Congress has subjected to regulation.” *Id.*

Smith & Wesson is further afield from the issues here. There, this Court determined that a civil complaint by the Mexican government against American gun manufacturers did not plausibly allege that the manufacturers had aided and abetted unlawful gun use by third parties. 605 U.S. at 284, 287. In noting that AR-15s might appeal to both criminals and non-criminals, this Court, in two sentences, stated that AR-15s and other “military style” weapons “are both widely legal and bought by many ordinary consumers” and that “[t]he AR-15 is the most popular rifle in the country.” *Id.* at 612 (citation omitted). It is “inconceivable” that this Court “would rest [its] interpretation . . . upon such . . . dictum in a case” where “[n]o Second Amendment

claim was raised or briefed by any party.” *Heller*, 554 U.S. at 625 n.25. These dicta are no substitute for competent evidence of the AR-15’s actual usage for lawful self-defense.

2. No number of present-day purchases can change the fact that AR-15s are nothing like “the sorts of weapons” in use in the late 18th century. In the Founding era, 50 to 60 percent of households owned a firearm, typically a single-shot, muzzle-loading long gun. J.A. 332. AR-15s, by contrast, are modern weapons of war that would have been wholly foreign to the framers of the Second Amendment. They were developed for Cold War battlefields in the 1950s and 1960s. *Grant* Resp. Br. 29 (citations omitted). They retain the muzzle velocity, range, and lethality engineered to kill at hundreds of yards. *Id.* at 24–25 (citations omitted). And the rate at which they fire rounds, *Cargill*, 602 U.S. at 433 (Sotomayor, J., dissenting) (60–180 rounds per minute without modifications), would have baffled the framers.

Those features make them unnecessary and even counterproductive for civilian self-defense. *See Bruen*, 597 U.S. at 28 (“the Second Amendment[] . . . covers modern instruments that *facilitate* armed self-defense”) (emphasis added, citation omitted). An AR-15-compatible round meant to wound at battlefield distances risks over-penetrating walls and endangering bystanders, neighbors, and others in one’s home. *See Bianchi*, 111 F.4th at 458. In the NRA’s Armed Citizen data, defenders fired 2.2 shots on average and only 0.3 percent of defenders fired more than ten; in a systematic sample of news-reported incidents, 97.3 percent fired five or fewer, and none fired more than ten. *See Oregon Firearms*

Fed'n, Inc. v. Kotek, 682 F. Supp. 3d 874, 896–97 (D. Or. 2023) (discussing these data); *see also Vermont Fed'n of Sportsmen's Clubs v. Birmingham*, 741 F. Supp. 3d 172, 191–97 (D. Vt. 2024).

3. Finally, focusing on current popularity is just plain arbitrary. The strength of popularity-based Second Amendment challenges turn on contingencies having nothing to do with the animating concerns of the Second Amendment. For example, assuming the number of AR-15 owners increases every year, then the constitutionality of states' regulations of AR-15s will depend on the calendar year in which the challenger filed his lawsuit. California's law was certainly constitutional when passed in 1989 because AR-15s were not then in common use. It makes little sense to have a test whereby the consumer preferences of gun owners in other states slowly erode the constitutionality of a longstanding law.

Conversely, a popularity focus implies that types of firearms may be banned if they fall enough in popularity before a court enshrines their protection, or if they never become popular in the first place. This, too, has little connection to the central concerns of the Second Amendment.

Popularity also turns on legislative happenstance. Imagine, as a counterfactual, that Congress had continued to renew the federal assault-weapons ban until the present day. There can be little doubt that AR-15s would not be commonly owned in that scenario, and thus presumably not protected by the Second Amendment. But that makes the *constitutionality* of Cook County's and Connecticut's laws contingent on the *existence*, not the validity, of federal legislation. That makes little sense.

Petitioners also imply that the constitutionality of states' AR-15 laws is suspect because AR-15s "are legal in the vast majority of the states." Pet'rs' Br. 35. But simply tallying the number of states that have enacted similar legislation misses important context. For example, petitioners do not acknowledge that the 11 regulating states and the District of Columbia comprise more than a third of the United States' population. *See supra* at 2–3 n.2. And it ignores the trend in which states enact AR-15 restrictions much more frequently than they repeal them. Petitioners' theory invites arbitrariness by incentivizing freezing states' abilities to enact these regulations before a critical mass has done so. Would *Heller* have come out the other way had a large majority of states imposed a similar good-cause regime to D.C.'s at the time of *Heller*'s lawsuit? Petitioners' theory suggests that it should have. *See* Pet'rs' Br. 35.

In any event, the notion that some states' decisions to not restrict AR-15s affects the constitutionality of the regulating states' laws is in deep tension with the long-recognized principle that "the States [are] laboratories for devising solutions to difficult legal problems." *Arizona State Legis. v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 817 (2015) (citations omitted).

In the end, the percentage of states restricting AR-15s is higher than the percentage of Americans owning AR-15s. So, AR-15 regulation is more common than the gun itself.

3. AR-15s are unusually dangerous.

Multiple courts and parties have documented the horrors that AR-15s have visited on American communities and schoolchildren. *See, e.g., Cargill*, 602 U.S. at 429–430 (Sotomayor, J., dissenting); *Bianchi*, 111 F. 4th at 456–58; *Viramontes* Opp. to Pet. at 1–5; *Grant* Opp. to Pet. at 1; *Grant* Pet. App. 44a–45a. The “[m]ass shootings,” enabled by AR-15s “continue to be a growing threat unlike anything that the Framers could have imagined.” *Grant* Pet. App. 44a.

The reason why so many perpetrators of mass violence prefer these weapons is obvious: they are extraordinarily lethal. *See generally Bianchi*, 111 F. 4th 454–56; *Grant* Resp. Br. 24–28; *Viramontes* Resp. Br. 28–31. Bullets from AR-15s are about three times faster than those from handguns, and the effective range of AR-15s is eight to ten times greater than those of handguns. *Grant* Resp. Br. 24–25 (citations omitted). The wounds AR-15s create are significantly more devastating than those of handguns. *Id.* at 25 (citations omitted).

AR-15s are much easier to fire accurately with rapid fire than are traditional rifles. *Grant* Resp. Br. 26. AR-15s have lower recoil than hunting rifles, allowing a shooter to easily resight and to continue firing. *Id.* (citations omitted). And AR-15s are designed to accept detachable magazines, which can be extended to contain 30 or even 100 rounds. *Id.* at 27–28 (citations omitted). By contrast, hunting rifles typically “have a fixed internal magazine that can hold only three to five rounds.” *Id.* at 27. All of the above is true even of a stock AR-15; its lethality only

increases when an end user modifies one with a bump stock, auto sear, or forced-reset trigger.

Petitioners’ attempt to compare AR-15s to “non-banned rifles that are more traditionally styled,” Pet’rs’ Br. 16, is inapt. They first attempt to liken the AR-15 to the less-lethal Winchester 1873 by noting the unremarkable fact that both have stocks. *See id.* So too with the unremarkable fact that both models have grips—and different ones, at that. *Id.* at 17. And with the fact that both guns require the shooter to use two hands to hold it. *Id.* at 19. Each of these attempted comparisons ignores the cluster of features that makes AR-15s uniquely suited to mass killing. Common sense leads to only one conclusion: these weapons are unusually dangerous, and the Second Amendment does not shackle the states from protecting its citizens against them.

CONCLUSION

This Court should affirm the judgments of the Second and Seventh Circuits.

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