

Nos. 25-238, 25-566

In the Supreme Court of the United States

CUTBERTO VIRAMONTES, ET AL.,
Petitioners,

v.

COOK COUNTY, ILLINOIS, ET AL.,
Respondents.

EDDIE GRANT, JR., ET AL.,
Petitioners,

v.

RONNELL HIGGINS, IN HIS OFFICIAL
CAPACITY AS COMMISSIONER OF THE CONNECTICUT
DEPARTMENT OF EMERGENCY SERVICES AND
PUBLIC PROTECTION, ET AL.,
Respondents.

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

**BRIEF OF HISTORIANS AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

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INTERESTS OF *AMICI CURIAE*¹

Amici curiae are Ph.D. historians who study American history from the colonial era through the early twentieth century. *Amici*'s works have been published in peer-reviewed journals, law reviews, and university press monographs and anthologies. They have authored in-depth scholarship on the history of firearms and weapons regulation and the social and legal context of the eras most relevant to this case. Their works have been cited by numerous courts. Several *Amici* have served as expert witnesses on historical topics in Second Amendment litigation. A complete list of *Amici* appears in the Appendix.

Amici submit this brief to inform this Court's evaluation of the historical record inquiry that is key in Second Amendment jurisprudence—a sometimes “difficult” task. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 25 (2022). *Amici*'s knowledge and expertise will assist the Court in this endeavor.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case asks whether state and local restrictions on assault weapons—used to commit some of the deadliest acts of civilian violence on American soil in the last 50 years—are “consistent with the principles that underpin our regulatory tradition,” *United States v. Rahimi*, 602 U.S. 680, 692 (2024), especially as it

¹ *Amici* certify pursuant to Rule 37.6 that no party or party's counsel authored this brief in whole or in part and that no person or entity, apart from *amici curiae* and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

existed around the ratification of the Second and Fourteenth Amendments.

Assault weapons “are not the modern equivalents of weapons that were commonly possessed and employed for self-preservation by your shopkeeper, or your butcher, or your blacksmith up the road in colonial America.” *Bianchi v. Brown*, 111 F.4th 438, 452 (CA4 2024) (en banc). New research quantifies the technological gulf, finding that a semiautomatic AR-15 rifle can deliver more kinetic energy in a minute than twenty-five Brown Bess muskets. See Darrell A. H. Miller et al., *Lethality and the Historical Principles of Arms Regulation*, 54 Pepp. L. Rev. __ (forthcoming), at 27 tbl.3, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7525418. The “dramatic technological changes” that resulted in this unprecedented killing power, and the mass violence enabled by assault weapons, have provoked “unprecedented societal concerns” that warrant “a more nuanced approach.” *Bruen*, 597 U.S., at 27.

Our country has a longstanding tradition of restrictions on certain types of weaponry when their features made them especially dangerous. Importantly, when the “proliferation” of such weapons led to concern over community violence, *Bianchi*, 111 F.4th, at 466, legislatures used their police power to enact restrictions on those particular weapons while leaving available other means of self-defense. The laws enacted by Cook County and Connecticut’s democratically elected leaders thus follow a rich regulatory tradition dating back to colonial America.

Three points about that tradition are particularly relevant here.

First, any consideration of what early American regulators did or did not do in the colonial and Founding eras must begin with the historical context. The overwhelmingly rural society of the time possessed single-shot, muzzle-loading firearms—firearms with a fraction of the lethality of those at issue here. They also inhabited a much simpler governmental culture. Early American legislators met rarely and briefly and undertook a far narrower range of work than their modern counterparts. Nonetheless, early American authorities prioritized the protection of public safety and devoted regulatory attention to specific weapons deemed especially dangerous to public safety. While the repeating arms of the type Petitioners and their *Amici* raise were not subject to targeted legislation in the Founding era, that is because they were far too rare and inconsequential to merit regulation.

Second, weapon-specific legislation became much more common starting in the early nineteenth century. The development and mass production of portable and concealable lethal weapons prompted public safety concerns in the quickly urbanizing nation. Legislators responded with a wave of weapon-specific regulation. For example, nearly all states enacted some sort of restriction on Bowie knives—weapons in common use for legal purposes that also posed distinct public safety risks. These laws emerged in the 1830s, were in force in many states upon the ratification of the Fourteenth Amendment, and continued to be passed into the early twentieth century. While concealed-carry restrictions were the most common type of regulation, some states enacted effective prohibitions on Bowie knives. Crucially, none of these Bowie-knife provisions were overturned on constitutional

grounds. Moreover, during Reconstruction, governments restricted access to Winchester’s new repeating rifle—a novel technology that threatened public safety when Klansmen and their allies attempted to acquire it. In sum, the regulatory wave that emerged in the early nineteenth century set an enduring pattern: technological change leading to societal concerns that provoke restrictions.

Third and finally, that national regulatory tradition produced a robust response to the dramatic technological change and intense societal concerns prompted by automatic and semiautomatic weapons in the early twentieth century. Legislatures enacted machine gun statutes and regulations starting in the late 1920s, many of which remain in effect to this day. In the decades since, legislatures have repeatedly refined machine-gun laws as the technology evolved.

Throughout American history, states and localities have chosen varying policy responses to the problems posed by particularly dangerous weapons that threatened the safety of their communities. They demonstrate that modern Connecticut and Cook County restrictions on assault firearms are “part of an enduring American tradition of state regulation.” *Bruen*, 597 U.S., at 69.

ARGUMENT

I. Early American Weapons Regulation Must Be Understood in Its Historical Context.

Petitioners and their *Amici* appear to contend that the relative scarcity of weapons restrictions during the Founding era invalidates future regulations. See Pet. Br. 5–7, 46; NRA Br. 3–4, 10–14, 24–27, 30. But

any comparison between modern laws and the laws early Americans did or did not enact must begin with the historical context. Early American arms regulations reflected the dangers that contemporary weapons posed in their social context, not the outer limits of legislators' constitutional authority.

a. Early American Weapons Regulations Reflected the Society and Arms Technology of the Times.

Society and firearms of the colonial and Founding eras were vastly different from today. Those differences inevitably shaped the scope and character of weapons regulation. Whereas about 80 percent of Americans now live in urban areas, colonial- and Founding-era America was overwhelmingly rural and agrarian. Rural families made up nearly 95 percent of the colonial population, compared to about 20 percent today. See U.S. Census Bureau, Nation's Urban and Rural Populations Shift Following 2020 Census (Dec. 29, 2022), <https://www.census.gov/newsroom/press-releases/2022/urban-rural-populations.html>; U.S. Census Bureau, *Historical Statistics of the United States, Colonial Times to 1957*, at 14 (1960).

In addition to use of firearms for hunting and pest management, the ongoing projects of controlling slave labor and dispossessing Indigenous people of land required high rates of white gun ownership. Tellingly, the largest concentrations of guns evident in sampled probate records from the period are found among the large Southern slaveholders. See Expert Report and Declaration of Kevin M. Sweeney ¶¶ 14–17, *Nguyen v. Bonta*, No. 3:20-cv-02470 (S.D. Cal. 2023); Brian De-

Lay, *The Myth of Continuity in American Gun Culture*, 113 Calif. L. Rev. 1, 14 (2025); see also, e.g., 3 *Statutes at Large of South Carolina* 395 (1838) (1734 law requiring slave patrols to be armed).

Moreover, men in British colonial America also required arms for service in militias and continental regiments, particularly during periods of inter-imperial warfare. See George D. Moller, *American Military Shoulder Arms, Volume I: Colonial and Revolutionary War Arms* 9–12 (2011); Kevin M. Sweeney, *Firearms Ownership and Militias in Seventeenth- and Eighteenth-Century England and America*, in *A Right to Bear Arms? The Contested Role of History in Contemporary Debates on the Second Amendment* 61, 75 tbl. 3.5 (Jennifer Tucker, Barton C. Hacker & Margaret Vining eds., 2019) (comparing relatively low levels of firearms ownership in Quaker colonies versus New England and Chesapeake ones in seventeenth-century America). In short, boosting white male gun ownership was a far more pressing problem for early American legislators than trying to protect society against criminal misuse of guns.

Early American firearms technology was also vastly different from today's weaponry. Formal militaries used sturdy, large-caliber muskets with bayonets. Most civilians preferred lighter, relatively small-caliber smoothbore long arms known as "fusils," "fowlers," or "trade guns." Kevin M. Sweeney, *Firearms, Militias, and the Second Amendment*, in *The Second Amendment on Trial: Critical Essays on District of Columbia v. Heller* 310, 329–342 (Saul Cornell & Nathan Kozuskanich eds., 2013). Smoothbore pistols circulated in smaller numbers, and rifles were common in

some areas of western settlement. Preferences depended on needs. Muskets were more formidable on eighteenth-century battlefields but less practical on a farm. Rifles had greater range but took longer to load and therefore averaged one round a minute instead of two or three. See Harold L. Peterson, *Arms and Armor in Colonial America, 1526-1783*, at 198 (1956); De Witt Bailey, *British Military Flintlock Rifles, 1740-1840*, 76 (2002).

But in comparison to the firearms available today, all of these weapons were functionally similar. In general, the eighteenth century was “a century which saw little change” before the “dramatic” changes in arms technology and production that characterized the nineteenth century. Peterson, *Arms and Armor*, at 221–22. With vanishingly few exceptions, single-shot, muzzle-loading, smoothbore firearms were the guns that preoccupied the Founding generation. *Ibid.*

These firearms could obviously be deadly to individual targets. But their slow rate of fire and comparative unreliability meant that none could equip a lone shooter to kill numerous people at once. Thus, the common firearm in 1791 was “not remotely as significant a policy concern in the late-eighteenth century as it is today.” DeLay, *The Myth of Continuity*, at 15, 32; see also Randolph Roth, *Why Guns Are and Aren’t the Problem: The Relationship Between Guns and Homicide in American History*, in *A Right to Bear Arms?*, at 135, 139–140.

b. Authorities in Colonial- and Founding-Era America Regulated Weapons in the Name of Public Safety.

Early American legislatures had neither the staff, the administrative infrastructure, nor the information-gathering capabilities needed to implement a regulatory regime comparable to the one we have today. See William E. Nelson, *The Eighteenth-Century Background of John Marshall's Constitutional Jurisprudence*, 76 Mich. L. Rev. 893, 920 (1978).

Nonetheless, authorities in the colonial and Founding eras shared a conviction that governments had extensive regulatory authority and a duty to protect the public. Colonial and early American governments regulated weapons through common law and enacted hundreds of positive laws that directly or indirectly regulated weapons. Nearly all of these regulations were motivated by concerns for public safety as defined by white authorities. They included regulations forbidding discharge or carry of weapons in particular times and places, storage of gunpowder, and dispossession of weapons from classes of people.²

Although colonial and Founding-era legislatures were practically limited in their capacity to enact sweeping weapons regulations, they did so when faced

² See, e.g., Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 Law & Contemp. Probs. 55, 59–60, 72–74, 78–80 (2017); Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 Fordham L. Rev. 487, 510–15 (2004); Joseph Blocher & Reva Siegel, *Guided by History: Protecting the Public Sphere from Weapons Threats Under Bruen*, 98 N.Y.U. L. Rev. 1795, 1805–06 (2023).

with specific risks posed by particularly dangerous weapons. They crafted regulations on carrying or brandishing particular weapons, even while more general prohibitions on assault and affray existed. For example, against a backdrop of violent crimes committed with weapons such as clubs, dirks, and daggers, East Jersey in 1686 prohibited the concealed carrying of “pocket pistol[s], skeines, stilladers, daggers or dirks, or other unusual or unlawful weapons” An Act Against Wearing Swords, ch. 9 (1686), reprinted in *The Grants, Concessions, and Original Constitutions of the Province of New Jersey* 289–90 (2d ed. 1881).

c. The Lack of 18th-Century Regulations on Repeating Firearms Says Little About the Scope of the Second Amendment at the Time of Its Ratification.

Petitioners and their *Amici* contend that a lack of regulation of eighteenth-century repeating firearms forecloses restrictions on assault weapons today. In so doing, they obscure vital context. The repeating firearms they describe, see, e.g., Pet. Br. 6–7; NRA Br. 4, 10–14, 26; Buckeye Inst. Br. 4–8; Second Amendment Law Ctr. Br. 18–19; Cato Inst. Br. 19–20, were experimental novelties and otherwise uncommon.

Although governments of the era desired reliable repeating firearms, in North America, none “functioned well enough to become militarily and commercially significant before the nineteenth century.” DeLay, *The Myth of Continuity*, at 24. Newspaper references to repeating weapons in the period characterized them as novelties that people might pay to see. The Cookson repeater described by Petitioners’ *Amici*, see NRA Br. 10–11; Second Amendment Law Ctr. Br.

19; Cato Inst. Br. 19–20, was expensive, unwieldy, often unsafe, and extremely rare in the colonies; a single 1756 advertisement is little evidence of its commercial availability. See David S. Weaver & Brian Godwin, *John Cookson, Gunmaker*, 19 *Arms & Armour* 43, 43–63 (2022).

Similarly, the firearm that Joseph Belton demonstrated in Philadelphia in 1777 was far less significant than Petitioners imply. See Pet. Br. 6. Its superimposed system of loading alternating charges of gunpowder and balls in a single barrel was the “most discredited” of the early repeat-fire designs, because if the charges went off all at once, the barrel would burst in the shooter’s face. Lewis Winant, *Firearms Curiosa* 166 (1955). In the end, Congress declined to engage Belton. See Kevin M. Sweeney, *Brass Fusil*, 131 *Am. Hist. Rev.* 773, 773–776 (2026). Although gunmakers continued to create and promote similar weapons, by the early 1820s the “complexity, and inherent danger” of the superimposed system led to its “wholesale abandonment.” Andrew J. B. Fagal, *The Promise of American Repeating Weapons, 1791-1821*, *Age of Revolutions* (Oct. 20, 2016), <https://ageofrevolutions.com/2016/10/20/the-promise-of-american-repeating-weapons-1791-1821>.

Nor is there evidence that the Girardoni air rifle, see Pet. Br. 6; Buckeye Inst. Br. 7; NRA Br. 12, ever reached commercial circulation. See DeLay, *The Myth of Continuity*, at 29–30. Lewis and Clark carried a single specimen on their expedition to the Pacific, used to impress Native Americans along the way. Frederick J. Chiaventone, *The Girandoni Air Rifle: The Lewis and*

Clark Expedition's Secret Weapon, 14 Military Heritage 66 (2013), <https://warfarehistorynetwork.com/article/lewis-and-clarks-girandoni-air-rifle>.

In sum, the extreme rarity of repeating arms for civilian use in the eighteenth century meant that these weapons posed no special risk to the public. Then, as now, governments are not “require[d] ... to regulate for problems that do not exist.” *McCullen v. Coakley*, 573 U.S. 464, 481 (2014) (citations omitted). Instead, they “respond when the ramifications of a technological development become more apparent over time.” *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 50 (CA1 2024); see also *Bianchi*, 111 F.4th, at 464.

II. Nineteenth-Century Legislatures Restricted Bowie Knives and Other Weapons—Arms in Common Use for Lawful Purposes—Because of Their Distinctive Dangers.

Arms technology underwent massive changes in the nineteenth century. Unlike the eighteenth century’s flawed repeating firearms, those changes led to reliable weapons that actually produced social consequences. Starting in the Jacksonian era, state and local legislatures began responding with new regulations. Many targeted specific weapons—including the Bowie knife, which offers a salient analogue for distilling the “principles that underpin our regulatory tradition.” *Rahimi*, 602 U.S., at 692. Reconstruction-era regulation of new repeating rifles used by the Klan further illustrates that tradition at work.

a. Dramatic Technological Change and New Social Problems Produced a National Wave of Weapon-Specific Regulation.

A new wave of regulations targeting particular weapons began to emerge in the early nineteenth century. Rapid urbanization, population growth, and the Industrial Revolution's advances in metallurgy, machine tooling, and mass production coincided to bring unprecedented changes in society's relationship with weapons. For example, the advent of percussion-cap ignition and improvements in industrial production made affordable, single-shot pistols a mass-consumer item by the 1820s. By the 1830s, these advances opened the way for mass production of reliable repeating pistols. Industrialization and the market revolution also made fighting knives and other familiar weapons more commonly available and affordable.

"Americans scrambled to buy" these weapons, which were portable, concealable, and "ideal for killing in the heat of the moment." *Bianchi*, 111 F.4th, at 465 (quoting Roth, *Why Guns Are and Aren't the Problem*, at 121). Combined with population booms and rapid urbanization, the proliferation of weapons led to increases in armed crime. From the U.S.-Mexican War through Reconstruction, homicide rates increased dramatically. The U.S. became the most murderous affluent society in the world by far. See Randolph Roth, Michael D. Maltz, & Douglas L. Eckberg, *Homicide Rates in the Old West*, 42 W. Hist. Q. 173, 173–195 (2011).

In response, legislatures across the country passed the nation's first raft of modern weapons regulations.

These regulations built on a colonial- and Founding-era legal tradition wherein individual rights were understood and exercised within an overarching commitment to the public peace and welfare. See generally William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* 19–50 (1996). The new laws included restrictions on weapons as varied as billy clubs, slungshots, sand clubs, Bowie knives, and pistols. See generally Robert J. Spitzer, *Understanding Gun Law History After Bruen: Moving Forward by Looking Back*, 51 *Fordham Urb. L.J.* 57, 87–102 (2023) (collecting examples). And they included restrictions on concealed carry of various weapons, both before and after the ratification of the Fourteenth Amendment.³ See Spitzer, *Gun Law History in the United States*, at 63–64 n.48 (collecting historical statutes).

b. Bowie Knife Restrictions in the Early and Mid-Nineteenth Century Serve as an Apt Historical Reference for Understanding Second Amendment Principles.

The Second Circuit below and courts around the nation addressing like cases have homed in on the robust set of antebellum laws restricting Bowie knives as relevantly similar to modern restrictions on assault

³ As they had in the colonial era, legislatures also continued to regulate trap guns, now being mass-produced for setting traps. See, e.g., Robert J. Spitzer, *Gun Law History: How Three Hundred Years of Weapons Laws Built the Nation* 91 (2026) (collecting half a dozen late nineteenth-century examples and many more in the twentieth).

firearms. See, e.g., *Grant* Pet. App. 37a, 52a–57a; *Barnett v. Raoul*, 180 F.4th 1035, 1047 (CA7 2026) (calling Bowie-knife regulations “a leading example of this tradition”); *Bianchi*, 111 F.4th, at 466.

Petitioners and their *Amici* attempt to dismiss the historical evidence. They argue that Bowie knives were not “in common use” for lawful self-defense, see Pet. Br. 48; U.S. Br. 13–14, 29–30, and critique the reams of legislation as insufficiently strict, outliers, or too late, see Pet. Br. 46–47; NRA Br. 5, 34–36. None of these objections withstand historical scrutiny. In fact, Bowie-knife restrictions emerged swiftly, spread widely, were sometimes quite severe, and consistently endured legal challenge.

1. Petitioners claim that it is “not clear that Bowie knives were ‘in common use.’” Pet. Br. 48; see also U.S. Br. 12, 14, 29. But that is flatly contradicted by the historical record.

As the Seventh Circuit explained, “[p]opularized in the 1830s,” Bowie knives “were both widespread and used for lawful purposes” and were “‘particularly suitable for self-defense’ and ‘typically possessed for self-defense.’” *Barnett*, 180 F.4th, at 1047–48 (collecting sources). Bowie knives usually had “crossguards to protect users’ hands, and clip points that made it easier to stab an opponent.” *Bianchi*, 111 F.4th, at 465.

Thus, Bowie knives “were a common part of American life until well after the Civil War,” David B. Kopel, Clayton E. Cramer & Joseph Edward Olson, *Knives and the Second Amendment*, 47 U. Mich. J.L. Reform 167, 184 (2013), serving “everyone equally, upstanding citizens and villains,” Norm Flayderman, *The Bowie Knife: Unsheathing an American Legend* 20

(2004). As counsel for one of Petitioners' *Amici* put it, "[a]n important reason that the Bowie knife was typically possessed for self-defense was that it was, in some respects, superior to firearms." Kopel et al., *Knives and the Second Amendment*, at 185. Bowie knives were relatively inexpensive, deadly in close quarters, required no ammunition, and did not suffer mechanical malfunction.

Bowie knives were a common consumer good and possessed by ordinary civilians as early as the mid-1830s. See Flayderman, *The Bowie Knife*, at 43. Examples abound. An 1837 advertisement for the Augusta, Georgia Jewelry and Fancy Store offered "Rodgers & Wostenholm's Pocket, Pen, Desk and Bowie Knives." J.B. Murphy, *Augusta Jewelry and Fancy Store*, *Augusta Chronicle & Sentinel*, Mar. 3, 1837, at 3; see also *St. Louis Luminary*, Apr. 7, 1855, at 3, col. 4 (merchant advertising "Dry Goods," "Clothing," and "Guns, Pistols, Buoy-Knives, &c."); *The Frontier Guardian*, May 2, 1851 (Vol. 3, No. 7), at 2 (watchmaker and jeweler advertising "bowie" knives). Likewise, period overland migrant guides declared that every man should carry "a hunter's or a bowie-knife" in his belt. Edwin Bryant, *What I Saw in California* 467 (1849); see also *Galveston Island, or, A Few Months Off the Coast of Texas: The Journal of Francis C. Sheridan, 1839-1840*, at 100 (1954); J.D. Borthwick, *Three Years in California* 7 (1857).

Other sources confirm the weapon's popularity for self-defense. Nineteenth-century juries acquitted defendants who used the Bowie knife for this purpose. See, e.g., *State v. Walker* (Ohio Ct. Com. Pl. July Term

1850), reprinted in *Reports of Cases Argued and Determined, in Ohio Courts of Record as Published in The Western Law Journal* 353–58 (1896); *Bloody Affray*, Chi. Trib., Aug. 7, 1857, at 1. Justice Field carried one for protection as a young lawyer in California. Stephen J. Field, *Personal Reminiscences of Early Days in California* 98–99 (1880). Congressman John Fox Potter became so famous for his carrying of the weapon that he became known as “Bowie-knife Potter.” John Fox Potter’s Death, N.Y. Times (May 21, 1899).

2. Bowie knives were simultaneously in common use *and* notorious weapons of interpersonal violence. The fact that the weapon was in common use for legal purposes did not stop legislatures around the nation from regulating them from the 1830s through the rest of the nineteenth century.

Bowie knives were used in “an alarming proportion of the era’s murders and serious assaults,” and their large blades “wreaked particularly ‘bloody’ and ‘gruesome’ injuries.” *Grant* Pet. App. 53a (citation omitted). As the Texas Supreme Court explained, the Bowie knife was “the most deadly of all weapons in common use.” *Cockrum v. State*, 24 Tex. 394, 403 (1859). It was often seen as more lethal than a firearm: “[t]he gun or pistol may miss its aim,” but the Bowie knife “is the instrument of almost certain death.” *Id.*, at 402–03.

By 1838, the *Arkansas Gazette* was lamenting “the frequent Bowie knife murders in the west.” Ark. Gazette (Little Rock), Mar. 14, 1838, at 2. In 1837, an Arkansas legislator had killed a fellow member with a

Bowie knife on the floor of the state House of Representatives, scandalizing the nation. See *Another Awful Tragedy*, Balt. Sun, Dec. 27, 1837, at 2.

Thus, in the century following their popularization in the mid-1830s, nearly all states enacted restrictions on Bowie knives. See *Grant* Pet. App. 52a, 54a–55a; *Bianchi*, 111 F.4th, at 466–67 & n.5; *Ocean State Tactical*, 95 F.4th, at 46; see also Spitzer, *Understanding Gun Law History*, at 105 (App. A). The legislative response ranged from “outright bans on their manufacture, sale, and possession; to enhanced criminal penalties for those who used the weapons to commit crimes; to prohibitions on both open and concealed carry.” *Bianchi*, 111 F.4th, at 467; see also *Barnett*, 180 F.4th, at 1048 (collecting laws).

For example, Georgia in 1837 made it a crime to “sell, or offer to sell, or to keep, or have about their person or elsewhere,” “Bowie, or any other kind of knives, manufactured and sold for the purpose of wearing, or carrying the same as arms of offence or defence, pistols, dirks, sword canes, spears, &c.” 1837 Ga. Acts 90 (1838).⁴ While Georgia appeared to allow for open carry, the restrictions on concealed carry and sale would have greatly limited the availability of Bowie knives.⁵

⁴ Petitioners note that the Georgia law excepted those who wore Bowie knives openly and exposed to view. Pet. Br. 47 (citing 1837 Ga. Acts 90, § 4). But that proviso did not touch the Act’s prohibition on selling the knives. 1837 Ga. Acts 90, § 1.

⁵ *Nunn v. State*, 1 Ga. 243 (1846) did not strike down the state’s Bowie-knife law. *Nunn* only addressed the defendant’s conviction of carrying a pistol, not a Bowie knife, and held that the law was

Similarly, other states, like Tennessee, targeted the point of sale, making it a crime to “sell or offer to sell ... any Bowie knife” for any purpose. 1838 Tenn. Pub. Acts 200, ch. 137, §§ 1, 2; see also 1881 Ark. Acts 191, 192, § 3; 1907 Ala. Laws 80; Dorset Carter, *Annotated Statutes of the Indian Territory* 243–44 (1899). Indeed, even Petitioners acknowledge that Tennessee “outright bann[ed]” the sales of Bowie knives. Pet. Br. 47 (quoting *Grant* Pet. App. 55a–56a).

Other jurisdictions elected to regulate by placing prohibitive economic burdens on sales. Alabama expressly aimed to “suppress the Use of Bowie Knives” by requiring that “for every such weapon, sold or given, or otherwise disposed of in this State, the person selling, giving or disposing of the same, shall pay a tax of one hundred dollars.” Act of June 30, 1837, No. 11, § 2, 1837 Ala. Laws 7, 7.⁶ That \$100 tax would

valid “so far as [it] seeks to suppress the practice of carrying certain weapons *secretly*,” but not in so far as it prohibits “bearing arms *openly*.” 1 Ga., at 251. The decision also did not encompass the separate sale prohibition, which was not at issue. See *ibid*.

⁶ See also 1838 Fla. Terr. Laws 36, No. 24, § 1 (\$200 annual seller tax); 1841 Miss. Laws 51, 52 (\$1 per Bowie knife); 1856–1857 N.C. Sess. Laws 34 (\$1.25 on every Bowie knife worn or carried); 1865 Ala. Laws 3, 7, § 2 (\$3 on each Bowie knife held by non-dealers); 1866 N.C. Sess. Laws 63 (Charlotte: \$50 tax on Bowie knives and other deadly weapons worn upon the person); 1876 Ala. Laws 43 (\$50 dealer tax); 1881 Fla. Laws 21 (\$50 dealer license tax); 1886 Ky. Acts 140, 154 (\$50 license to sell pistols or Bowie knives); 1 William L. Martin, *The Code of Alabama* 1137 (1897) (\$300 dealer tax, enacted 1892); 1904 W. Va. Acts 6 (\$300 wholesale and \$100 retail license to sell Bowie knives).

be “at least \$5,000” as of 2013.⁷ Kopel et al., *Knives and the Second Amendment*, at 185 (using price of gold as benchmark); see also *Barnett*, 180 F.4th, at 1048.

Still others focused on the carry of Bowie knives. Some prohibited all carry with narrow exceptions. See, e.g., 1869 N.M. Laws 72, ch. 32, § 1; 1871 Tex. Gen. Laws 25; 1881 Ark. Acts 191; 1882 W. Va. Acts 421; 1889 Ariz. Sess. Laws 30; 1889 Idaho Laws 23, § 1.⁸ Others prohibited concealed carry of Bowie knives. See, e.g., 1838 Va. Acts 76; 1838 Tenn. Pub. Acts 200; 1839 Ala. Acts 67; 1855 La. Acts 130, 148, § 115; 1878 Miss. Laws 175; 1879 N.C. Sess. Laws 231; 1880 S.C. Acts 448.

Despite the numerous restrictions of varying methods across the nation, state courts repeatedly upheld Bowie-knife laws. See *Bianchi*, 111 F.4th, at 468 (collecting cases); accord U.S. Br. 14 (acknowledging that “courts recognized that legislatures could ban weapons such as Bowie knives”). Courts simultaneously acknowledged the weapon’s defensive use while

⁷ If using gold as a benchmark, today, the amount would be approximately \$20,000. See Gold / US Dollar Spot, CNBC, <https://www.cnbc.com/quotes/XAU=> (last visited Oct. 27, 2026).

⁸ Many localities enacted their own Bowie-knife carry restrictions. See, e.g., Fayetteville, Ark., An Ordinance, Fayetteville Democrat, Aug. 12, 1871, at 3; Abilene, Kan., Ordinance, reprinted in Abilene Weekly Chronicle, June 29, 1871, at 3; Nebraska City, Neb., Ordinance No. 7 (1872); Chattanooga, Tenn., An Ordinance to Prevent the Carrying of Arms, §§ 1–3, reprinted in Daily Times, Apr. 12, 1873, at 1; Revised Ordinances of the City of Fort Worth, Texas, 1873-1884 Ordinance No. CLVI (Apr. 10, 1873); Los Angeles, Cal., Ordinance Nos. 35–36 (1878); Syracuse, N.Y., Ordinance ch. 27 (1885); Dallas, Tex., Ordinance (1887); McKinney, Tex., Ordinance No. 20 (1899).

holding it could be restricted because of its particular dangerousness.

Consider cases interpreting Tennessee’s regulation of Bowie knives—among the most restrictive of the time. In *Day v. State*, 37 Tenn. 496, 501 (1858), the Tennessee Supreme Court made clear “it was the fixed purpose of the Legislature to prohibit the use of this particular weapon for any purpose; it is not to be sold, given away, kept about the person, used or attempted to be drawn or used, not even upon a ‘sudden rencounter.’” The court rejected arguments about the right to self-defense, stating that it was “not denied, but this particular instrument is prohibited in the exercise of that right.” *Ibid.* See also, e.g., *Haynes v. State*, 24 Tenn. 120, 122 (1844) (noting Bowie knives were “extremely dangerous and destructive to human life”); *Aymette v. State*, 21 Tenn. 154, 159 (1840) (holding state could prohibit “wearing or keeping weapons dangerous to the peace and safety of the citizens”). Other state opinions are in accord. See, e.g., *State v. Reid*, 1 Ala. 612, 617 (1840); *Cockrum*, 24 Tex., at 402–03; *Dabbs v. State*, 39 Ark. 353, 355 (1882).

3. Against this rich regulatory tradition, Petitioners and their *Amici* offer several unpersuasive contentions.

First, Petitioners argue that the restrictions on Bowie knives are “less severe” than the Cook County and Connecticut laws on assault weapons prohibiting possession, Pet. Br. 46–47. This ignores the practical effect of the above restrictions on a nineteenth-century American’s ability to obtain Bowie knives for self-defense. Some of these laws had the express intention of ending possession. Alabama stated clearly that the

aim of its taxation regime was to “suppress the Use of Bowie Knives.” 1837 Ala. Laws at 7. Under Tennessee’s law, where the weapon was “not to be sold, given away, [or] kept about the person,” the Legislature openly acknowledged that it “intended to abolish these most dangerous weapons entirely from use.” *Day*, 37 Tenn., at 500–01. Given that the Second Amendment does not require a “historical twin,” *Rahimi*, 602 U.S., at 692; see *Barnett*, 180 F.4th, at 1052–53, the Bowie-knife tradition is a robust analog to the challenged modern regulations.

Petitioners’ criticism also fails to account for the basic historical backdrop of nineteenth-century regulation, when possession bans of privately held weapons would have been difficult or impossible to enforce. While nineteenth-century officials exercised broad regulatory authority, local governments and police forces lacked the bureaucratic resources to effectively enforce restrictions on private possession of consumer goods. See Jonathan Obert, *The Coevolution of Public and Private Security in Nineteenth-Century Chicago*, 43 Law & Soc. Inquiry 827, 830 (2018). Authorities thus focused on public carry and point-of-sale, which yielded significant policy benefits. In sum, the absence of total possession bans reflects limited enforcement capacity, not the outer boundary of nineteenth-century regulatory authority.

Second, the ubiquity of Bowie-knife restrictions over time and geography also parries any suggestion from Petitioners that regulation of Bowie knives was only from “outliers.” Pet. Br. 47. When the Fourteenth Amendment was ratified in 1868, over a dozen states and territories had Bowie-knife laws on the books,

many of which were enacted years before and persisted through Reconstruction and beyond. See Spitzer, *Understanding Gun Law History*, at 105 (App. A). That includes, for example, the Tennessee regulation discussed above. See 3 Seymour D. Thompson & Thomas M. Steger, *A Compilation of the Statute Laws of the State of Tennessee* §§ 4746–47, 89 (1872).

Third, the NRA’s suggestion that the Court discount these laws because some arose in slave states or redeemer Confederate states is likewise undermined by the pervasiveness of these restrictions. NRA Br. 35. Despite the documentary record of Bowie-knife crimes committed by white people, see *supra* at 15–17, the NRA identifies no evidence that Bowie-knife laws were motivated by racial animus, nor even that they were applied discriminatorily. In fact, many of the locales that enacted restrictions do not even fit its geographical argument, see *supra* at 17–20.

Finally, contrary to Petitioners’ quip that these restrictions came “too late” to inform the understanding of the Second Amendment, Pet. Br. 46, the earliest Bowie-knife statutes exemplify the responsiveness of legislatures to emergent technological and social change. While large knives had obviously existed for centuries, the Bowie knife’s distinctive features and reputation at a time of unprecedented commercial distribution and rising notoriety quickly made it a safety risk. Thus, in the 1830s, only a few years after the weapon attracted national attention (and only a year after James Madison’s death), state authorities began responding to an emerging public safety concern by regulating a newly popular weapon that was both in common use and seen as particularly dangerous. To

suggest that such evidence cannot support a modern restriction is subscribing to a “flawed” view of “use it or lose it” constitutionalism. *Rahimi*, 602 U.S., at 739–40 (Barrett, J., concurring).

c. Reconstruction Governments Treated the First High-Capacity Repeating Rifles as Especially Dangerous Arms to Be Regulated in Sensitive Circumstances.

When advances in firearms technology occurred later in the nineteenth century, the same historical tradition led to targeted regulations. Advances such as reliable breech-loading, metallic cartridges, fixed tubular magazines, and manual mechanisms for chambering cartridges and ejecting spent cases culminated in the Henry Rifle of 1860 and its successor, the Winchester Repeating Rifle of 1866. The Henry and the Winchester were the first commercially and technologically viable firearms capable of firing more than ten rounds without reloading. See DeLay, *The Myth of Continuity*, at 39–40.

Notably, few of these weapons came into civilian hands prior to the 1870s. Company records reveal that there were approximately 74,000 Henrys and Winchester 1866s produced in the decade between 1861 and 1871. The vast majority were exported to foreign militaries, leaving only about 9,000 for domestic consumption before 1872. More than 90 percent of those were Henrys purchased by or issued to Union soldiers during the Civil War. In short, few Henrys and Winchesters were in the hands of private persons who

might have used them in ways that attracted regulatory attention. See DeLay, *The Myth of Continuity*, at 41.⁹

But in a few critical contexts, these rifles still proved sufficiently threatening to public safety to prompt regulation. The NRA's brief focuses on one 1893 Florida law and simplistically characterizes it as a racist law. NRA Br. 30–32.¹⁰ Yet the brief ignores instances of Winchester regulation aimed at protecting the rights of black Americans and the safety of the general public.

The South Carolina state militia during Reconstruction, a body that was created with the express task of subduing insurrection and anti-black activities, armed its members with Winchesters. See Otis A. Singletary, *Negro Militia and Reconstruction* 3–33 (1957). In response, white opponents of the militia, including the Ku Klux Klan, smuggled their own Winchesters into the State. See Letter from John Burke to John B. Hubbard (Oct. 10, 1870), in *Report of the Joint*

⁹ See, e.g., Letter from Tom Hall (longtime curator of the Winchester Collection) to D. C. Cronin (May 18, 1951), Box 8, Folder 16, Winchester Repeating Arms Company, office files (MS:20), McCracken Research Library, Cody, Wyo.; Herbert G. Houze, *Winchester Repeating Arms Company: Its History & Development from 1865 to 1981*, AT 21, 36, 51, 59, 65, 71, 73, 75 (1994). For details, see DeLay, *The Myth of Continuity*, at 40–42.

¹⁰ For evidence against racist motivations behind the 1893 Florida law, see, e.g., Fla. Star, June 18, 1891, at 2 (describing instances of murders with Winchesters as reason for enacting law). The NRA brief relies on a statement by Ida B. Wells to speculate that Florida lawmakers acted “as if in response” to Wells’s statement about black ownership of Winchesters, but offers no evidence for the connection.

Investigating Committee on Public Frauds and Election of Hon. J. J. Patterson to the United States Senate 675–76 (1878); Richard Zuczek, *State of Rebellion: Reconstruction in South Carolina* 79–80 (1996). But with the help of the U.S. Army and his state militia, Governor Robert K. Scott’s administration confiscated the Klan’s Winchesters and directed militiamen to return theirs to state arsenals. See *id.*, at 79–80, 140–41. By 1878, South Carolina’s legislature saw such an acute problem with Winchester rifles—not only circulating among militiamen but also insurrectionists—that it passed a law requiring civilians to return Winchesters that had been intended for state use. 1878 S.C. Acts 595, 596.

Louisiana also provided revealing evidence that Reconstruction-era officials believed that high-capacity repeating firearms posed specific dangers that should be regulated. Specifically, Louisiana adjutant general James Longstreet issued orders singling out the Winchesters in the New Orleans armory: they were not to “be taken to pieces, or any part of [them] removed from its proper place,” or used for “parade or drill upon the streets or public highways,” without the Division Commander’s authority. General Orders No. 16(V) (July 19, 1870), in *Annual Report of the Adjutant General of the State of Louisiana, for the Year Ending December 31, 1870*, at 39. A former Confederate general who enforced Reconstruction policy and oversaw black militiamen tasked with putting down white insurrectionaries, Longstreet attempted to ensure Winchesters did not empower white terror.

In short, when authorities observed the risk that these particularly dangerous weapons were about to

be misused, they moved aggressively to regulate them.

III. The Regulatory Response to Automatic and Semi-Automatic Fire Fits Squarely into the American Tradition of Weapons Regulation.

The pattern of socially consequential new weapons technologies prompting regulation continued into the early twentieth century with the spread of automatic and semi-automatic firearms. As these novel weapons generated societal concerns, legislatures adopted possession bans, permit regimes, and registration requirements. Some of those laws regulated both fully- and semi-automatic firearms.

a. The Development of Automatic and Semi-Automatic Fire Revolutionized Firearms and Prompted Regulation.

Contrary to claims of gradual technological progress advanced by Petitioners' *Amici*, see NRA Br. 6–24; Buckeye Inst. Br. 4; Second Amendment Law Ctr. Br. 1–2, the advent of automatic and semi-automatic firearms in the late nineteenth century represented a revolution in firearms technology. The combined breakthroughs that led to these new weapons dramatically increased the killing power of firearms.

Earlier repeating firearms such as lever-action or pump-action rifles and revolvers required energy transferred from human muscle through an internal mechanism to eject spent cartridges (or rotate them out of the way) and then chamber a new round. When all rounds had been fired, the shooter usually had to

reload bullet by bullet. These manual systems for cycling and reloading rounds limited rates of fire. Lever-action repeating firearms similar to the Winchester 1866 remain popular around the country today. Weapons restrictions, including magazine capacity laws, nearly always include exceptions for “a tubular magazine that is contained in a lever-action firearm,” precisely because of their limited rates of fire. See Conn. Gen. Stat. § 53-202w(a)(1)(C); Cook County, Ill., Code of Ordinances § 54-211.

Automatic and semi-automatic firearms are different. They overcame stubborn rate-of-fire limitations, thanks to the integration of three breakthrough technologies developed in the 1880s. First, Hiram Maxim invented a reliable mechanism to capture the recoil energy of a fired round to eject the spent casing and chamber a new bullet. This could be done at speeds that astonished the world—as many as 600 rounds a minute. *The Maxim Automatic Machine Gun Works*, Scientific American, Oct. 9, 1886, at 225. Second, French researchers perfected a chemical propellant (“smokeless powder”) that was three times more powerful than traditional black powder, gave off little smoke, and left behind almost no residue in the barrel. That last quality was a prerequisite to sustaining high rates of fire. See DeLay, *The Myth of Continuity*, at 44–46. Third, the development of detachable magazines enabled shooters to reload far faster than ever before. Integrated together, these three innovations drastically increased rates of fire and, therefore, killing power. See *ibid.*

The new automatic and semi-automatic firearms first became commercially available in the late 1890s.

They grew more popular and varied through the early twentieth century, including popular semi-automatic pistols like the Colt M1911. See DeLay, *The Myth of Continuity*, at 46 nn. 239–41; John Walter, *The Hand Gun Story: A Complete Illustrated History* 127–44, 220–28 (2008).

However, some commercially available firearms more resembled weapons of war. The most notorious was the Thompson submachine gun—known colloquially as the Tommy Gun—introduced into the U.S. market in the 1920s. Most models were select-fire, meaning they could be set to automatic or semi-automatic modes. Many could be fitted with a drum holding up to one hundred rounds. See Auto-Ordnance Corp., *Handbook of the Thompson Submachine Gun* 3, 51 (1929).

Initially, the Thompson was available for sale at hardware stores. As early as 1926, an influential reporter for *Collier's* described the ease of ordering a Tommy Gun from a Manhattan sporting-goods store, arguing that the weapon “should be absolutely prohibited.” Owen P. White, *Machine Guns for Sale*, *Collier's*, Dec. 4, 1926, at 11–12.

This sentiment soon became widespread, as criminals began using these weapons to kill people. Automatic weapons became notorious across the country, associated with well-publicized murders and massacres. William J. Helmer, *The Gun That Made the Twenties Roar* 102–28, 152 (1969). Bystanders were caught in the crossfire. See, e.g., *Child Is Killed; Four Others Shot in Gang Warfare*, *Brunswick News* (Ga.), July 29, 1931, at 1. The most notorious incident took place in Cook County, Illinois, when men associated

with Al Capone's gang used machine guns to murder seven rivals in Chicago on Valentine's Day, 1929. See *Seven of Moran Gang Lined Up Against Wall in Own Headquarters and Killed by Rivals' Machine Guns*, Chi. Daily Trib., Feb. 15, 1929, at 42.

As with the arrival of new weapons in the nineteenth century, the advent of automatic and semi-automatic fire prompted widespread societal concerns and thus a new national wave of firearms regulation. Between 1925 and 1935, more than half the states enacted laws regulating not just Tommy Guns but all automatic firearms, and at least eighteen states, along with the Territory of Hawaii and the District of Columbia, banned their possession outright.¹¹

Some statutes reached semi-automatic firearms as well, defining the restricted weapons by how many rounds they could fire without reloading. See, e.g., Act of July 8, 1932, ch. 465, §§ 1, 14, 47 Stat. 650 (D.C.) (firearms that shoot more than twelve shots without reloading); 1927 Mich. Pub. Acts 888–89, § 3 (more than sixteen shots); 1927 R.I. Pub. Laws 256–57 (more

¹¹ See 1927 Cal. Stat. 938, ch. 552, §§ 1–2; 1927 Ind. Acts 469, § 1; 1927 Iowa Acts 201, §§ 1–2; 1927 Mich. Pub. Acts 888–89, § 3; 1927 R.I. Pub. Laws 256, §§ 1, 4–6; 1929 Mo. Laws 170, §§ 1–2; 1929 Wis. Sess. Laws 157, § 1; 1931 Ark. Acts 705–06, §§ 2–3; 1931 Del. Laws 813, § 1; 1931 Ill. Laws 452–53, §§ 1–2; Act of July 8, 1932, ch. 465, §§ 1, 14, 47 Stat. 650 (D.C.); 1932 La. Acts 356–57, §§ 1–2; 1933 Haw. Sess. Laws 38, § 7; 1933 Kan. Sess. Laws 76, §§ 1–3; 1933 Minn. Laws 231–33, §§ 1–3; 1933 N.Y. Laws 1639, §§ 1, 3; 1933 N.C. Sess. Laws 387, §§ 1–4; 1933 Or. Laws 489, §§ 3–4; 1933 Tex. Gen. Laws 219–20 (1st Called Sess.), §§ 1–4, 6; 1933 Wash. Sess. Laws 335–36, §§ 1–5. See also Spitzer, *Understanding Gun Law History*, at 64 n.38 (collecting machine-gun regulations).

than twelve shots semi-automatically); 1933 Ohio Laws 189–90 (more than eighteen shots semi-automatically).

Congress followed with the National Firearms Act of 1934 (the “NFA”). A landmark law that remains in effect today, the NFA imposed a then-prohibitive \$200 tax on the transfer of machine guns and other covered weapons and required their registration. See National Firearms Act, ch. 757, 48 Stat. 1236 (1934). Machine guns have been tightly regulated by the NFA and subsequent legislation for nearly a century.

The legislatures of the 1920s and 1930s, like lawmakers before them, restricted specific weapons that posed a particular danger to the public. Now, they were focused on weapons capable of inflicting mass violence. And like the challenged laws, they targeted specific firearms while leaving other weapons available for self-defense.

b. The Regulatory Tradition Has Iterated from the 1930s to the Present Day.

This Court has recognized that “dramatic technological changes” and “unprecedented societal concerns” may call for regulation that earlier generations had no occasion to adopt. *Bruen*, 597 U.S., at 27. Congress’s response to the development and spread of automatic weapons shows how that has worked in practice. Since the 1930s, legislatures have repeatedly refined machine-gun laws as technology has evolved. For example:

- In 1968, Congress extended the federal definition of “machinegun” to “any combination of

parts designed and intended for use in converting a weapon into a machinegun” after machine gun conversion kits began to spread. Gun Control Act of 1968, Pub. L. No. 90-618, tit. II, 82 Stat. 1213, 1231; see 114 Cong. Rec. 10,862 (1968).

- In 1981, the Bureau of Alcohol, Tobacco and Firearms classified the drop-in auto sear—a small part that could convert some AR-15 pattern rifles to fully automatic fire—as a machine gun. ATF Rul. 81-4, <https://www.atf.gov/media/24261/download>.
- And in 1986, Congress froze the civilian market by prohibiting the transfer or possession of any machine gun not lawfully possessed before enactment of the new law. Firearm Owners’ Protection Act, Pub. L. No. 99-308, § 102(9), 100 Stat. 449, 453 (1986) (codified at 18 U.S.C. § 922(o)).

Modern restrictions on assault weapons follow the same sequence. These modern weapons derived from military designs are far more capable of inflicting catastrophic injury than the deadly weapons of the Founding. See Miller et al., *Lethality*, at 27–29. And the line between these weapons and machine guns is thinner than ever: today, “a semiautomatic rifle with a bump stock can have the same lethal effect as a machinegun,” *Garland v. Cargill*, 602 U.S. 406, 429 (2024) (Alito, J., concurring), yielding rates of fire of 400 to 800 rounds per minute, Melissa A. Anderson & Jonathan S. Jacobs, *Garland v. Cargill and Machine Gun Conversion Devices*, 72 DOJ J. Fed. L. & Prac. 17,

18 (2024). Compared to the Brown Bess of the Revolutionary War, the discharge of kinetic energy in such configurations is several hundred times greater. See Miller et al., *Lethality*, at 27 tbl.3.¹²

These deadly advances in technology have produced a societal harm—mass shootings—that became more prominent as those weapons proliferated. Modern legislatures responded by targeting the assault weapons whose combination of features makes them especially dangerous, while preserving numerous weapons available for self-defense, just as historical legislatures did to particularly dangerous weapons of their day.

CONCLUSION

This Court should affirm the judgments below.

¹² Petitioners’ position that commonality of ownership drives constitutional protection, Pet. Br. 34–35, is not only ahistorical, but also suggests that bump stocks and machine-gun conversion devices may become protected by the Second Amendment merely because many people own them. Indeed, the federal government’s primary estimate of bump stocks “sold on the market” as of 2018 was 520,000, Bump-Stock-Type Devices, 83 Fed. Reg. 66,514, 66,538 (Dec. 26, 2018), a figure that is surely higher today, and climbing.

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APPENDIX

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