

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 COURT OF APPEALS
FOR THE SEVENTH AND SECOND CIRCUITS*

**BRIEF FOR *AMICUS CURIAE* GIFFORDS LAW
CENTER TO PREVENT GUN VIOLENCE
SUPPORTING RESPONDENTS**

MICHAEL KIM KROUSE
ARNOLD & PORTER
KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019

BRENT P. RAY
ARNOLD & PORTER
KAYE SCHOLER LLP
811 Main Street, Suite 1800
Houston, TX 77002

BENJAMIN C. MIZER
Counsel of Record
SAMUEL I. FERENC
ALEXANDER E. SIRIO
CONNOR J. MORGAN
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
benjamin.mizer@
arnoldporter.com

Additional counsel listed on inside cover

WILLIAM T. CLARK
LEIGH ROME
J. ADAM SKAGGS
GIFFORDS LAW CENTER
TO PREVENT GUN
VIOLENCE

*244 Madison Avenue
Suite 147
New York, NY 10016*

TABLE OF CONTENTS

	Page
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. Assault Weapons Bans Are a Common, Popularly Demanded Response to Mass Shootings in American Communities	3
A. Counties, States, and Congress Enact Assault Weapons Bans After the Cleveland Elementary and 101 California Street Shootings	3
B. Renewed Legislative Action After the Sandy Hook, Parkland, and Uvalde Shootings	9
II. The Constitution Empowers the People’s Representatives to Protect the Public from Particularly Dangerous Weapons	13
A. Bedrock Values and Constitutional Structure Permit State and Local Responses to Public Safety Threats	14
B. Restrictions on Assault Weapons Properly Respond to Popular Will in the Wake of Mass Shootings and Other Incidents of Gun Violence	16
III. Striking Down the Challenged Laws Would Prove That <i>Bruen</i> Is Unworkable and Must Be Overruled	18
CONCLUSION	27

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Antonyuk v. James</i> , 120 F.4th 941 (2d Cir. 2024)	23
<i>Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.</i> , 183 F.4th 211 (3d Cir. 2026)	21
<i>Barnett v. Raoul</i> , 180 F.4th 1035 (7th Cir. 2026)	3, 16, 17, 21
<i>Bianchi v. Brown</i> , 111 F.4th 438 (4th Cir. 2024)	2, 14, 16-18, 21, 22, 25-26
<i>Capen v. Campbell</i> , 134 F.4th 660 (1st Cir. 2025)	16
<i>Capen v. Campbell</i> , 708 F. Supp. 3d 65 (D. Mass. 2023)	16
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	2, 16, 19
<i>Ezell v. City of Chicago</i> , 651 F.3d 684 (7th Cir. 2011)	19
<i>Furman v. Georgia</i> , 408 U.S. 238 (1972)	15
<i>Garcia v. San Antonio Metro. Transit Auth.</i> , 469 U.S. 528 (1985)	18
<i>Ill. Sporting Goods Ass’n v. Cnty. of Cook</i> , 884 F. Supp. 275 (N.D. Ill. 1995)	5
<i>Kolbe v. Hogan</i> , 849 F.3d 114 (4th Cir. 2017)	3, 26
<i>McCleskey v. Kemp</i> , 481 U.S. 279 (1987)	15
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010)	1, 15, 20

Cases—Continued	Page(s)
<i>Metromedia, Inc. v. City of San Diego</i> , 453 U.S. 490 (1981)	25
<i>Moorman Mfg. Co. v. Bair</i> , 437 U.S. 267 (1978)	15
<i>N.Y. State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022)	1, 18-26
<i>Nat’l Ass’n for Gun Rts. v. Lamont</i> , 153 F.4th 213 (2d Cir. 2025)	16, 17, 21
<i>Nat’l League of Cities v. Usery</i> , 426 U.S. 833 (1976)	18
<i>Nat’l Pork Producers Council v. Ross</i> , 598 U.S. 356 (2023)	15
<i>New State Ice Co. v. Liebmann</i> , 285 U.S. 262 (1932)	2, 15
<i>New York v. United States</i> , 505 U.S. 144 (1992)	15
<i>Planned Parenthood of Se. Pa. v. Casey</i> , 505 U.S. 833 (1992)	25
<i>Printz v. United States</i> , 521 U.S. 898 (1997)	15
<i>Range v. Att’y Gen. U.S.</i> , 124 F.4th 218 (3d Cir. 2024)	21
<i>Rocky Mountain Gun Owners v. Polis</i> , 467 P.3d 314 (Colo. 2020)	25
<i>State v. Misch</i> , 256 A.3d 519 (Vt. 2021)	25
<i>State v. Reid</i> , 1 Ala. 612 (1840)	24
<i>United States v. Daniels</i> , 77 F.4th 337 (5th Cir. 2023)	21

Cases—Continued	Page(s)
<i>United States v. Hemani</i> , 608 U.S. 772 (2026)	1, 20, 24, 25
<i>United States v. Morrison</i> , 529 U.S. 598 (2000)	22
<i>United States v. Price</i> , 111 F.4th 392 (4th Cir. 2024).....	21
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	1, 20, 21, 22, 23, 24
<i>United States v. Salerno</i> , 481 U.S. 739 (1987)	15
<i>Wilson v. Cnty. of Cook</i> , 968 N.E.2d 641 (Ill. 2012)	5
<i>Wolford v. Lopez</i> , 609 U.S. 185 (2026)	1, 20
Constitutional Provisions	
U.S. Const. pmb.	14
U.S. Const. art. I, § 8.....	15
U.S. Const. art. I, § 8, cl. 3.....	14
U.S. Const. art. I, § 8, cl. 18.....	15
U.S. Const. amend. II	1, 7, 16, 19-26
U.S. Const. amend. X.....	14, 15
Statutes	
National Firearms Act, Pub. L. No. 73-474, 48 Stat. 1236 (1934)	17
Roberti-Roos Assault Weapons Control Act of 1989, ch. 19, § 4, 1989 Cal. Stat. 60	4
Legislative Materials	
140 Cong. Rec. 9356 (1994).....	7, 8
140 Cong. Rec. 23819 (1994).....	7
162 Cong. Rec. 8691 (2016).....	7

Legislative Materials—Continued	Page(s)
<i>Assault Weapons: A View from the Front Lines: Hearing on S. 639 and S. 653 Before the S. Comm. on the Judiciary, 103d Cong. 39 (1993), https://bit.ly/4zZI3WQ.....</i>	<i>6</i>
<i>Hearing Before the Bipartisan Task Force on Gun Violence Prevention & Children’s Safety (Conn. Jan. 30, 2013), https://bit.ly/4sqscOi</i>	<i>10</i>
<i>Hearing on the Assault Weapons Ban of 2013: Hearing Before the S. Comm. on the Judiciary, 113th Cong. 15 (2013).....</i>	<i>11</i>
<i>Public Safety & Recreational Firearms Use Protection Act: Hearing on H.R. 3527 Before the Subcomm. on Crime & Crim. Just. of the H. Comm. on the Judiciary, 103d Cong. 164 (1994).....</i>	<i>5, 6, 7</i>
<i>S. Rep. No. 72-575 (1932).....</i>	<i>17</i>
Other Authorities	
<i>Adam Eisgrau, How to Get a New Assault-Weapons Ban Through Congress, N.Y. Times (Jan. 2, 2013), https://bit.ly/4rGVhVm</i>	<i>11</i>
<i>Amanda Vinicky, Local Legislators Spent Years Trying to Pass Gun Laws. After Highland Park’s Deadly Parade Shooting, Illinois Took Action, WTTW (July 3, 2023), https://bit.ly/4s7L8Bp</i>	<i>13</i>
<i>Andrew Kaczynski, The Assault Weapon Ban Would Have Never Passed if It Wasn’t for Ronald Reagan, BuzzFeed News (Dec. 19, 2012), https://bit.ly/4jdVs8B.....</i>	<i>8</i>
<i>Arlette Saenz & Sarah Parnass, Gabrielle Giffords’ Emotional Plea for Senate ‘Courage’ on Gun Control, ABC News (Jan. 29, 2013), https://bit.ly/4yth2um</i>	<i>11</i>

Other Authorities—Continued	Page(s)
Benjamin N. Cardozo, <i>The Nature of the Judicial Process</i> (1921).....	25
<i>Boulder Passes Gun Laws, Including Assault Weapons Ban</i> , Associated Press (June 8, 2022), https://bit.ly/47k716U	12
Bruce D. Black & Kara L. Kapp, <i>State Constitutional Law as a Basis for Federal Constitutional Interpretation: The Lessons of the Second Amendment</i> , 46 N.M. L. Rev. 240 (2016).....	24
Charles Mohr, <i>U.S. Bans Imports of Assault Rifles in Shift by Bush</i> , N.Y. Times (Mar. 15, 1989), https://bit.ly/4hZNopP	4
Christopher Keating, <i>In the Wake of Sandy Hook Massacre, A Sense of Duty to Prevent Further Tragedy Compelled Connecticut Lawmakers to Act on Guns</i> , Hartford Courant (Dec. 13, 2022), https://bit.ly/47xdKdF	9
Cris Barrish, ‘AR-15s Are Not Made for Target Shooting’: <i>Ban on Sales of Assault-Style Weapons to Become Law in Delaware</i> , WHYY (June 16, 2022), https://bit.ly/47hLLPm	13
Hannah Workman, <i>35 Years Later, Survivors of Stockton Schoolyard Shooting Remember the Tragedy</i> , The Stockton Record (Jan. 22, 2024), https://bit.ly/4ifjleN	4
Jacob D. Charles & Jonah B. Gelbach, <i>Bruen’s Tenth Amendment Problem</i> , 94 U. Chi. L. Rev. (forthcoming 2027)	24
Jacob D. Charles, <i>The Dead Hand of a Silent Past, Bruen, Gun Rights, and the Shackles of History</i> , 73 Duke L.J. 67 (2023)	23

Other Authorities—Continued	Page(s)
Jeanie Lindsay, <i>Washington Governor Signs New Gun Bills Into Law, Including ‘Assault Weapons’ Ban</i> , KUOW (Apr. 25, 2023), https://bit.ly/4jPcDxq ...	13
Joseph Blocher & Reva Siegel, <i>The Ambitions of History and Tradition in and Beyond the Second Amendment</i> , 174 U. Pa. L. Rev. 633 (2026).....	22
Katharine Q. Seelye, <i>House Approves Bill to Prohibit 19 Assault Arms</i> , N.Y. Times (May 6, 1994), https://bit.ly/4AYWuvD	7
Katharine Q. Seelye, <i>In Gun Vote, an Odd Hero for Liberals</i> , N.Y. Times (May 7, 1994), https://bit.ly/4yGfFba	9
Katie Dowd, <i>101 California: The High-Rise Shooting That Changed San Francisco Forever</i> , SFGate (July 3, 2023), https://bit.ly/4Bx5Wqo	4
Lawrence Rosenthal, <i>The Limits of Second Amendment Originalism and the Constitutional Case for Gun Control</i> , 92 Wash. U. L. Rev. 1187 (2015).....	23
Margaret Carlson, <i>Giving Up the Gun: The Conversion of Henry Hyde</i> , Time (May 16, 1994), https://bit.ly/4eshAZo	8
Michael Luo & Michael Cooper, <i>Lessons in Politics and Fine Print in Assault Weapons Ban of '90s</i> , N.Y. Times (Dec. 19, 2012), https://bit.ly/4ii4Plp	7
Mike Riopell, <i>Cook County Adds to List of Banned Guns</i> , Daily Herald (July 17, 2013), https://bit.ly/4yooExA	12
Naperville City Council Votes to Ban Local Sale of Assault Rifles, CBS Chicago (Aug. 17, 2022), https://bit.ly/48hPIDO	12

Other Authorities—Continued	Page(s)
<i>New York Bans Assault Weapons</i> , NPR (Jan. 16, 2013), https://bit.ly/4yqBZFz	12
<i>Our History</i> , Giffords Law Center, https://bit.ly/4dVKPUy	5
Peter Applebome, <i>Legislators in Connecticut Agree on Broad New Gun Laws</i> , N.Y. Times (Apr. 1, 2013), https://bit.ly/4dm3w3o	10
<i>Police Officer Christy Lynne Brondell-Hamilton, Officer Down Memorial Page</i> , https://bit.ly/4yVW476	6
Raymond Baccari & Sophia Szabo, <i>RI Lawmakers Approve Modified Assault Weapons Ban</i> , WPRI (June 20, 2025), https://bit.ly/4zbmMcK	13
<i>Remarks by the President in the State of the Union Address</i> , White House (Feb. 12, 2013), https://bit.ly/4j1kDv1	11
Robert J. Spitzer, <i>Understanding Gun Law History After Bruen: Moving Forward by Looking Back</i> , 51 Fordham Urb. L.J. 57 (2023)	17
Sabrina Siddiqui, <i>Assault Weapons Ban, High- Capacity Magazine Measures Fail in Senate Vote</i> , HuffPost (Apr. 17, 2013), https://bit.ly/4xYSM2i	12
Susan F. Rasky, <i>Import Ban on Assault Rifles Becomes Permanent</i> , N.Y. Times (July 8, 1989), https://bit.ly/4B3ufvw	4
The Declaration of Independence (U.S. 1776)	14
Tonja Jacobi & Cory Conley, <i>Is Bruen the New Usery?</i> , 67 Wm. & Mary L. Rev. 1529 (2026)	19
<i>Veronique Pozner’s Statement: Full Transcript</i> , Forward (Jan. 29, 2013), https://bit.ly/48gWREt	10

Other Authorities—Continued	Page(s)
<i>Virginia Governor Signs Assault Weapons Ban Into Law</i> , WTVR (May 14, 2026), https://bit.ly/47FjsKN ..	13
William J. Eaton, <i>Ford, Carter, Reagan Push for Gun Ban</i> , L.A. Times (May 5, 1994), https://bit.ly/4yLFes0 ..	8

INTEREST OF *AMICUS CURIAE*¹

Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a survivor-led nonprofit organization serving lawmakers, advocates, legal professionals, gun-violence survivors, and others seeking to reduce gun violence and improve the safety of their communities. The organization was founded more than 30 years ago following the 101 California Street shooting, a gun massacre at a San Francisco law firm, and was renamed Giffords Law Center in 2017 after joining forces with the gun-safety organization led by former Congresswoman Gabrielle Giffords.

Today, through partnerships with gun-violence researchers, public-health experts, and community organizations, Giffords Law Center researches, drafts, and defends laws, policies, and programs proven to effectively reduce gun violence. Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun-safety legislation and community violence prevention strategies.

Giffords Law Center has contributed technical expertise and informed analysis as an *amicus curiae* in numerous cases involving firearm regulations and constitutional principles affecting gun policy. *E.g.*, *Wolford v. Lopez*, 609 U.S. 185 (2026); *United States v. Hemani*, 608 U.S. 772 (2026); *United States v. Rahimi*, 602 U.S. 680 (2024); *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008).

¹ No counsel for a party authored this brief in whole or in part. No person other than Giffords Law Center, its members, or its counsel made a monetary contribution to its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

Elected representatives of the American people at all levels of government and all political parties have worked to reduce the risk of mass violence in their communities by limiting access to assault weapons, “while nonetheless preserving avenues for armed self-defense.” *Bianchi v. Brown*, 111 F.4th 438, 442 (4th Cir. 2024) (en banc). These policies, like the regulations challenged here, are “fully consistent with our nation’s long and dynamic tradition of regulating excessively dangerous weapons whose demonstrable threat to public safety led legislatures to heed their constituents’ calls for help.” *Id.* at 472.

Not all communities have taken the same approach. But that is precisely how our federal system of representative democracy is designed to operate. The citizens of different jurisdictions are entitled to make divergent choices and explore diverse solutions to the public policy challenges they face. “It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

The choices of some communities to adopt these laws are, at a minimum, of no less constitutional significance than the choices of other consumers to purchase the firearms they regulate. Americans’ popular will is legitimately expressed not just through the weapons they buy, but also through the legislators they elect and the policies they enact.

As Judge J. Harvie Wilkinson III has observed, to “[d]isenfranchis[e] the American people on this life and death subject,” as Petitioners seek to do, “would be the gravest and most serious of steps,” “deliver[ing] a body blow to democracy as we have known it since the very

founding of this nation.” *Kolbe v. Hogan*, 849 F.3d 114, 150 (4th Cir. 2017) (Wilkinson, J., concurring). “Whether to adopt” assault weapons laws should remain “a decision reposed in our elected representatives,” *Barnett v. Raoul*, 180 F.4th 1035, 1039 (7th Cir. 2026), who have set themselves to the hard work of democracy in searching for solutions in the aftermath of one mass shooting after another.

The Court should affirm the decisions below.

ARGUMENT

I. Assault Weapons Bans Are a Common, Popularly Demanded Response to Mass Shootings in American Communities

The assault weapons bans challenged in these cases were proposed, debated, and adopted by American communities in the aftermath of devastating mass shootings.² In the wake of these unspeakable tragedies, the impacted communities—acting through their democratically elected representatives—chose to mitigate novel and serious threats to public safety by restricting access to the unusually dangerous weapons commonly used in these tragedies.

A. Counties, States, and Congress Enact Assault Weapons Bans After the Cleveland Elementary and 101 California Street Shootings

On January 17, 1989, a mass shooter armed with an assault weapon fired 106 rounds in three minutes at students on a playground at Cleveland Elementary School in Stockton, California. Five children were killed, all under the age of ten, and 31 were injured. “Four of the children killed were from Cambodian immigrant families, who had escaped violence at the hands of the Khmer

² This brief uses the term “assault weapons,” matching the language used by the parties and the challenged legislation.

Rouge regime in their homeland, only to experience tragedy in the United States.”³

In response, elected officials offered some of the first comprehensive regulations of assault weapons. In short order, California became the first State to adopt a ban, Roberti-Roos Assault Weapons Control Act of 1989, ch. 19, § 4, 1989 Cal. Stat. 60, 64-70, and President George H.W. Bush placed a temporary ban on the import of certain types of assault weapons.⁴ The National Rifle Association supported the import restriction, saying it “should provide an atmosphere for a reasoned and sensible debate.”⁵ President Bush would later make the policy permanent.⁶

Another tragedy a few years later spurred renewed action to regulate assault weapons. Just before 3:00 PM on the first day of July 1993, a gunman armed with assault weapons stepped off the elevator into the law offices of Pettit & Martin at 101 California Street in San Francisco, California. “[S]hooting indiscriminately into glass-walled conference rooms and offices,” the gunman murdered eight people and wounded six others.⁷ In the wake of the shooting, survivors and local attorneys founded the Legal

³ Hannah Workman, *35 Years Later, Survivors of Stockton Schoolyard Shooting Remember the Tragedy*, The Stockton Record (Jan. 22, 2024), <https://bit.ly/4ifjleN>.

⁴ Charles Mohr, *U.S. Bans Imports of Assault Rifles in Shift by Bush*, N.Y. Times (Mar. 15, 1989), <https://bit.ly/4hZNopP>.

⁵ *Id.*

⁶ Susan F. Rasky, *Import Ban on Assault Rifles Becomes Permanent*, N.Y. Times (July 8, 1989), <https://bit.ly/4B3ufvw>.

⁷ Katie Dowd, *101 California: The High-Rise Shooting That Changed San Francisco Forever*, SFGate (July 3, 2023), <https://bit.ly/4Bx5Wqo>.

Community Against Violence, the first iteration of Giffords Law Center.⁸

Three months after the 101 California Street shooting, the Cook County Board of Commissioners passed an ordinance restricting the possession of assault weapons, which the Board determined “are twenty times more likely to be used in the commission of a crime than other kinds of weapons.” *Ill. Sporting Goods Ass’n v. Cnty. of Cook*, 884 F. Supp. 275, 277 (N.D. Ill. 1995) (quoting ordinance). Based on its “finding[s] of public health and welfare concerns caused by both assault weapons and firearms in general,” the Board of Commissioners effected the community’s will to reduce the threat of mass shootings and other gun violence. *Wilson v. Cnty. of Cook*, 968 N.E.2d 641, 645 (Ill. 2012).

At the federal level, legislators convened hearings on the rising epidemic of mass shootings with assault weapons. Congress heard from law enforcement officers who spoke of being outgunned in their communities.⁹ It heard from doctors, who described the increased lethality of assault weapons, causing more serious wounds than other semiautomatic weapons.¹⁰ And it heard from survivors of mass shootings involving assault weapons.

Steve Sposato, who had lost his wife Jody in the 101 California Street shooting just one month before, shared his family’s story. Carrying his infant daughter on his back, he told senators that “you are looking at what is left

⁸ *Our History*, Giffords Law Center, <https://bit.ly/4dVKPUy> (last visited Oct. 27, 2026).

⁹ *Public Safety & Recreational Firearms Use Protection Act: Hearing on H.R. 3527 Before the Subcomm. on Crime & Crim. Just. of the H. Comm. on the Judiciary*, 103d Cong. 164-67 (1994) (statement of Sylvester Daughtry, Jr., President, Int’l Ass’n of Chiefs of Police).

¹⁰ *Id.* at 42-45 (statement of Dr. David Milzman, Assoc. Dir., Trauma Servs., Georgetown Univ. Med. Ctr.).

of my family.”¹¹ To Sposato, the shooting “has denied my wife, Jody, the right to life. It has denied our daughter, Meghan Marie, the right to her mom, and it has denied me the liberty of a life with the woman with whom I chose to share the next half-century.” “What has happened to the unalienable right to life, liberty and the pursuit of happiness?” Sposato asked the committee. “For me, that pursuit was shattered by an IntraTEC DC-9 assault weapon on a normal, sunny business day afternoon in San Francisco.”

Other witnesses shared stories of losing loved ones in shootings perpetrated with AR-15s. At a 1994 House hearing, Ken Brondell testified about his sister, Officer Christy Brondell Hamilton, the oldest recruit to ever graduate from the Los Angeles Police Academy.¹² Ken Brondell recalled how their father, a retired LAPD sergeant who served for 30 years, “all but floated to the stage as he helped present my sister with her certificate.”¹³ Four days later, Officer Brondell Hamilton was shot and killed with an AR-15.¹⁴ Responding to a shots-fired call at a residence and encountering gunfire upon arrival, Officer Brondell Hamilton ducked behind the door of her vehicle and reached for her radio, but one of the rounds passed through the door, killing her instantly. Ken Brondell urged Congress to pass the assault weapons ban: “We cannot make our streets absolutely safe. . . . But we can take a step that will make

¹¹ *Assault Weapons: A View from the Front Lines: Hearing on S. 639 and S. 653 Before the S. Comm. on the Judiciary*, 103d Cong. 39 (1993) (statement of Stephen Sposato), <https://bit.ly/4zZI3WQ> (C-SPAN video).

¹² *Public Safety & Recreational Firearms Use Protection Act*, *supra* note 8, at 41-42 (statement of Ken Brondell, Jr.).

¹³ *Id.* at 41.

¹⁴ *Police Officer Christy Lynne Brondell-Hamilton, Officer Down Memorial Page*, <https://bit.ly/4yVW476> (last visited Oct. 27, 2026).

us all a little safer today and a lot more secure in the future.”¹⁵

Legislators from across the political spectrum responded to calls for action by advocating for a federal assault weapons ban. Representative David McCurdy, an Oklahoma Democrat who had opposed previous assault weapons bills, now spoke out in support: “[T]his is an issue of common sense. My colleagues, what kind of country do we want?” 140 Cong. Rec. 9357 (1994). Representative Marge Roukema, a New Jersey Republican, stated: “This debate isn’t about hunting or the Second Amendment. This is about crime control and controlling the national epidemic of gun violence.”¹⁶ Senator Howard Metzenbaum, an Ohio Democrat, stated that “[t]he American people are fed up with the death and violence brought on by these assault weapons,” and “[t]hey demand action.”¹⁷ Senator Tom Harkin, an Iowa Democrat, spoke from the perspective of a gun owner: “I go hunting just about every fall [Gun owners] do not believe there is any need or any reason for assault weapons in our society.” 140 Cong. Rec. 23819 (1994).

Former Presidents Ford, Carter, and Reagan wrote a joint letter to Congress urging passage of the assault weapons ban. “This is a matter of vital importance to the public safety. . . . We urge you to listen to the American public and to the law enforcement community and support a ban on the further manufacture of these weapons.” 162 Cong. Rec. 8691-92 (2016) (republishing 1994 letter); *see*

¹⁵ *Public Safety & Recreational Firearms Use Protection Act*, *supra* note 8, at 42 (statement of Ken Brondell, Jr.).

¹⁶ Katharine Q. Seelye, *House Approves Bill to Prohibit 19 Assault Arms*, N.Y. Times (May 6, 1994), <https://bit.ly/4AYWuvD>.

¹⁷ Michael Luo & Michael Cooper, *Lessons in Politics and Fine Print in Assault Weapons Ban of '90s*, N.Y. Times (Dec. 19, 2012), <https://bit.ly/4ii4Plp>.

140 Cong. Rec. 9356 (1994).¹⁸ Representative Scott Klug, a Wisconsin Republican, changed his vote to support the ban after receiving a handwritten note from President Reagan that called it “absolutely necessary.”¹⁹

Among the federal ban’s most outspoken advocates was Representative Henry Hyde, a conservative Republican from Illinois who had staunchly opposed previous assault weapons bills. In the leadup to the House vote on the ban, Senator Dianne Feinstein of California, the Senate sponsor of the bill, delivered to him a briefing book that documented shootings involving assault weapons in his district.²⁰ “There was Gerome Allen, a local basketball player who was shot with an AK-47 by another teenager outside a supermarket; the 7-year-old fatally wounded while walking to school with his mother; the Chicago Housing Authority police officer who was killed by an AR-15 as he walked back to his patrol car at the end of his shift.”²¹ As Representative Hyde explained, “like many things complicated and emotional, you don’t dwell on them unless forced to. Then somebody grabs you by the collar when there’s a vote coming up, the pieces fit together and you say to yourself, ‘This is wrong.’”²² And although he “c[aught] hell” for his position, Representative Hyde took solace in the fact that a

¹⁸ See also William J. Eaton, *Ford, Carter, Reagan Push for Gun Ban*, L.A. Times (May 5, 1994), <https://bit.ly/4yLFes0>.

¹⁹ Andrew Kaczynski, *The Assault Weapon Ban Would Have Never Passed if It Wasn’t for Ronald Reagan*, BuzzFeed News (Dec. 19, 2012), <https://bit.ly/4jdVs8B>.

²⁰ Margaret Carlson, *Giving Up the Gun: The Conversion of Henry Hyde*, Time (May 16, 1994), <https://bit.ly/4eshAZo>.

²¹ *Id.*

²² *Id.*

supermajority of his district supported stronger gun restrictions.²³

Like so many members of Congress, Representative Hyde recognized that adopting the federal assault weapons ban was an act of popular sovereignty. The enactment of the federal assault weapons ban in 1994 was representative democracy at work: Elected legislators implemented policy that their constituents demanded to protect the safety of their communities.

B. Renewed Legislative Action After the Sandy Hook, Parkland, and Uvalde Shootings

On December 14, 2012, in less than five minutes, a gunman fired 154 bullets from an AR-15-style assault weapon and murdered 26 people—including 20 first graders—at Sandy Hook Elementary School in Newtown, Connecticut. *Grant Resp'ts'* Br. 3-4.

The tragedy at Sandy Hook renewed many communities' efforts to ban assault weapons. Even though Connecticut had adopted an initial assault weapons ban on a bipartisan basis in 1993, the state legislature knew it needed to address important gaps in its law.²⁴

The Connecticut legislature heard from victims' families and survivors of the shooting. Veronique Pozner, whose six-year-old son Noah was killed, spoke of how Noah “will never get to attend middle school or high school, kiss a girl, attend college, pick a career path, fall in love, marry, have children or travel the world. Never

²³ Katharine Q. Seelye, *In Gun Vote, an Odd Hero for Liberals*, N.Y. Times (May 7, 1994), <https://bit.ly/4yGfFba>.

²⁴ Christopher Keating, *In the Wake of Sandy Hook Massacre, A Sense of Duty to Prevent Further Tragedy Compelled Connecticut Lawmakers to Act on Guns*, Hartford Courant (Dec. 13, 2022), <https://bit.ly/47xdKdF>.

will he feel the sunlight on his face.”²⁵ To Pozner, “[t]his is not about the right to bear arms. It is about the right to bear weapons with the capacity for mass destruction.”²⁶ David Wheeler, who lost his six-year-old son Benjamin in the shooting, called for legislative action as well: “As elected representatives it is your job to craft the legislation that keeps your constituents safe.... The liberty of any person to own a military style assault weapon, and a high capacity magazine, and keep them in their home is second to the right of my son to his life—his life, to the right to live, of all of those children and those teachers, to the right to the lives of your children, of you, of all of us, all of our lives, it is second.”²⁷

Ultimately, the Connecticut legislature significantly strengthened its assault weapons ban, “fill[ing] holes in the state’s regulations.”²⁸ Lauded as “an appropriate response to the tragedy at Sandy Hook,” the bipartisan amendment that eventually emerged from the legislative debate reflected the popular demand to promote public safety in Connecticut by regulating assault weapons.²⁹ As Senator John McKinney—Newtown’s senator and the Republican minority leader—explained, “[W]hat I’m proud of is that all of us, Republicans and Democrats, understood that some issues, and this one particularly, should rise above politics.”³⁰

²⁵ *Veronique Pozner’s Statement: Full Transcript*, Forward (Jan. 29, 2013), <https://bit.ly/48gWREt>.

²⁶ *Id.*

²⁷ *Hearing Before the Bipartisan Task Force on Gun Violence Prevention & Children’s Safety* 25 (Conn. Jan. 30, 2013) (statement of David Wheeler), <https://bit.ly/4sqscOi>.

²⁸ Peter Applebome, *Legislators in Connecticut Agree on Broad New Gun Laws*, N.Y. Times (Apr. 1, 2013), <https://bit.ly/4dm3w3o>; see *Grant Resp’ts’ Br.* 4.

²⁹ Applebome, *supra* note 26.

³⁰ *Id.* (quoting Sen. McKinney).

After Sandy Hook, members of Congress and President Obama also attempted to pass legislation reinstating the federal assault weapons ban, which had expired in 2004.³¹ Gun violence survivors like former Representative Gabrielle Giffords—who was shot in the head during a mass shooting that killed six people and injured 13 others on January 8, 2011—called on Congress to act, emphasizing that “[t]oo many children are dying” from gun violence and that “Americans are counting on you.”³²

During his 2013 State of the Union address, President Obama called on Congress to take up a series of gun violence prevention laws, including a renewed assault weapons ban. “Each of these proposals deserves a vote in Congress. Now, if you want to vote no, that’s your choice. But these proposals deserve a vote. Because in the two months since Newtown, more than a thousand birthdays, graduations, anniversaries have been stolen from our lives by a bullet from a gun—more than a thousand. . . . They deserve a vote.”³³ Some Republican leaders who opposed an assault weapons ban agreed that the issue should be put to Congress for a vote. Senator Lindsey Graham stated: “The President urged the Congress to vote on matters like this, and I could not agree more. I think we should take legislation like this up and get on record and make our respective cases.”³⁴

³¹ Adam Eisgrau, *How to Get a New Assault-Weapons Ban Through Congress*, N.Y. Times (Jan. 2, 2013), <https://bit.ly/4rGVhVm>.

³² Arlette Saenz & Sarah Parnass, *Gabrielle Giffords’ Emotional Plea for Senate ‘Courage’ on Gun Control*, ABC News (Jan. 29, 2013), <https://bit.ly/4yth2um>.

³³ *Remarks by the President in the State of the Union Address*, White House (Feb. 12, 2013), <https://bit.ly/4j1kDv1>.

³⁴ *Hearing on the Assault Weapons Ban of 2013: Hearing Before the S. Comm. on the Judiciary*, 113th Cong. 15 (2013) (statement of Sen. Lindsey Graham).

Communities impacted by gun violence soon received a vote, although not with their hoped-for result.³⁵ Still, the American people were not prevented from exercising democratic tools—through their representatives in Congress—to confront a serious and growing threat to public safety.

In the following years, state and local governments took up the mantle to respond to the public outcry for regulation of assault weapons. New York expanded its assault weapons ban in early 2013 after Sandy Hook and other recent shootings “provided an opening . . . to reach a [bipartisan] deal.”³⁶ Cook County, Illinois, similarly strengthened its assault weapons ban that summer.³⁷

After mass shootings in places like Parkland, Buffalo, Highland Park, Uvalde, and Nashville, state and local governments took similar steps to regulate assault weapons. They passed local bans in Boulder, Colorado,³⁸ and Naperville, Illinois.³⁹ They passed state laws in

³⁵ Sabrina Siddiqui, *Assault Weapons Ban, High-Capacity Magazine Measures Fail in Senate Vote*, HuffPost (Apr. 17, 2013), <https://bit.ly/4xYSM2i>.

³⁶ *New York Bans Assault Weapons*, NPR (Jan. 16, 2013), <https://bit.ly/4yqBZFz>.

³⁷ Mike Riopell, *Cook County Adds to List of Banned Guns*, Daily Herald (July 17, 2013), <https://bit.ly/4yooExA>.

³⁸ *Boulder Passes Gun Laws, Including Assault Weapons Ban*, Associated Press (June 8, 2022), <https://bit.ly/47k716U>.

³⁹ *Naperville City Council Votes to Ban Local Sale of Assault Rifles*, CBS Chicago (Aug. 17, 2022), <https://bit.ly/48hPIDO>.

Delaware,⁴⁰ Illinois,⁴¹ Washington,⁴² Rhode Island,⁴³ and Virginia.⁴⁴ Today, “35% of the Nation’s population” lives in a jurisdiction that regulates AR-15s. *Grant Resp’ts’ Br.* 48.

In each of these cases, Americans acted through their representatives to protect themselves by mitigating the risk of mass shootings with the weapons most commonly used to perpetrate them. And these democratic responses to such an extraordinary threat to public safety were legitimate acts of popular sovereignty.

II. The Constitution Empowers the People’s Representatives to Protect the Public from Particularly Dangerous Weapons

The challenged laws fit comfortably within a long history of action by elected officials to protect their constituents from violence perpetrated with unusually dangerous weapons. These efforts reflect and operationalize structural features of the Constitution designed by the Framers to promote public safety. They also honor and advance core democratic values by implementing popular will as it evolves in response to newfound threats to public safety.

⁴⁰ Cris Barrish, ‘AR-15s Are Not Made for Target Shooting’: Ban on Sales of Assault-Style Weapons to Become Law in Delaware, WHYY (June 16, 2022), <https://bit.ly/47hLLPm>.

⁴¹ Amanda Vinicky, *Local Legislators Spent Years Trying to Pass Gun Laws. After Highland Park’s Deadly Parade Shooting, Illinois Took Action*, WTTW (July 3, 2023), <https://bit.ly/4s7L8Bp>.

⁴² Jeanie Lindsay, *Washington Governor Signs New Gun Bills Into Law, Including ‘Assault Weapons’ Ban*, KUOW (Apr. 25, 2023), <https://bit.ly/4jPcDxq>.

⁴³ Raymond Baccari & Sophia Szabo, *RI Lawmakers Approve Modified Assault Weapons Ban*, WPRI (June 20, 2025), <https://bit.ly/4zbmMcK>.

⁴⁴ *Virginia Governor Signs Assault Weapons Ban Into Law*, WTVR (May 14, 2026), <https://bit.ly/47FjsKN>.

Put simply, overturning the acts of elected representatives who have heeded the public's calls for action in the wake of countless mass shootings would usurp the constitutional authority to promote the general welfare. U.S. Const. pmbl. It would also undermine state and local governments' independent authority in our federal system to explore new solutions to pressing social needs. The Court should reject Petitioners' invitation to place reasonable and urgent reforms that the public demands beyond the public's democratic control.

A. Bedrock Values and Constitutional Structure Permit State and Local Responses to Public Safety Threats

The Declaration of Independence sets forth “certain unalienable Rights” endowed to all people: “Life, Liberty and the pursuit of Happiness.” The Declaration of Independence para. 2 (U.S. 1776). It then states another self-evident truth: “That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.” *Id.* In America, governments exist to secure and protect the unalienable rights of all people. “[O]ur Founders organized their fellow countrymen into a civilized society with an elected government, which necessarily entailed the ceding of unadulterated freedom for the nation's common good.” *Bianchi v. Brown*, 111 F.4th 438, 472 (4th Cir. 2024) (en banc).

The preamble to the Constitution sets out several purposes that relate to public safety, including to “establish Justice,” to “insure domestic Tranquility,” and to “promote the general Welfare.” U.S. Const. pmbl. Key features of the Constitution are designed to further and implement those broad and essential aims. Most specifically, the Constitution empowers the States and the federal government to enact and enforce criminal codes. *See* U.S. Const. amend. X (States); *id.* art. I, § 8, cl. 3

(federal government); *id.* art. I, § 8, cl. 18 (federal government). But more broadly, it authorizes States and the federal government alike to enact policies that enhance the general welfare and sustain order. *See id.* art. I, § 8; *id.* amend. X. This system of federalism was constructed to encourage responsive governance, so that communities could more effectively address local evils and adjudicate local controversies. *See Printz v. United States*, 521 U.S. 898, 918-22 (1997); *New York v. United States*, 505 U.S. 144, 155-59, 168-69 (1992).

In establishing this structure, the Framers anticipated and provided for local variation in policy that can be responsive to evolving popular preferences and public safety goals. “It is the legislatures, the elected representatives of the people, that are ‘constituted to respond to the will and consequently the moral values of the people.’” *McCleskey v. Kemp*, 481 U.S. 279, 319 (1987) (quoting *Furman v. Georgia*, 408 U.S. 238, 383 (1972) (Burger, C.J., dissenting)). And these legislatures, carrying out that popular will, “are entitled to weigh the relevant ‘political and economic’ costs and benefits for themselves, and ‘try novel social and economic experiments’ if they wish.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 382 (2023) (plurality opinion) (quoting *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 279 (1978); *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).

Under our Constitution, legislatures may experiment with new policy solutions to confront evolving threats to public safety. “[T]he safety and indeed the lives of its citizens” are, after all, the “primary concern of every government.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). This Court made clear in *McDonald v. City of Chicago* that “[s]tate and local experimentation with reasonable firearms regulations will continue.” 561 U.S. 742, 785 (2010) (plurality opinion) (internal quotation

marks omitted); *see also* *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008) (“The Constitution leaves . . . a variety of tools for combating th[e] problem” of gun violence). The Second Amendment does not require legislatures “to turn their backs to democratic cries,” but instead allows them to “invoke the basic power of government to protect the governed.” *Bianchi*, 111 F.4th at 472-73.

B. Restrictions on Assault Weapons Properly Respond to Popular Will in the Wake of Mass Shootings and Other Incidents of Gun Violence

Consistent with these foundational principles of representative self-government, there is “a storied tradition of legislatures perceiving threats posed by excessively dangerous weapons and regulating commensurately.” *Bianchi*, 111 F.4th at 462. “Indeed, the arc of weapons regulation in our nation has mimicked a call and response composition, in which society laments the harm certain excessively dangerous weapons are wreaking, and the state, pursuant to its police power, legislates in kind.” *Id.*; *see also* *Barnett v. Raoul*, 180 F.4th 1035, 1046 (7th Cir. 2026) (“legislatures have long imposed restrictions on particularly dangerous weapons”). Each of the provisions challenged in these cases is “but another chapter in that story.” *Barnett*, 180 F.4th at 1046.

“Over the centuries, the march of technological advancement has increased the lethality of weapons, and governments have consistently responded by outlawing weapons with characteristics that make them more lethal than their contemporary peers.” *Grant Resp’ts’ Br.* 10. Consider Bowie knives, which have been “subject to regulation by 49 states.” *Nat’l Ass’n for Gun Rts. v. Lamont*, 153 F.4th 213, 243 (2d Cir. 2025) (citing *Capen v. Campbell*, 708 F. Supp. 3d 65, 83 (D. Mass. 2023), *aff’d*, 134 F.4th 660 (1st Cir. 2025)). By the mid-19th century,

Bowie knives were “both widespread and used for lawful purposes.” *Barnett*, 180 F.4th at 1047. Nevertheless, responding to rampant acts of “criminal[] misuse[],” and recognizing the “particularly bloody and gruesome injuries” that Bowie knives could inflict, 19th-century legislatures “enact[ed] criminal prohibitions” on the carrying of Bowie knives, which “often authorized imprisonment.” *Id.* at 1048 (quoting *Lamont*, 153 F.4th at 243) (collecting statutes). And other statutes went well beyond carry limits. “At least three States banned the sale of Bowie knives entirely.... Still others imposed prohibitive taxes on the knives.” *Grant Resp’ts’ Br.* 20.

The turn of the 20th century saw the rise of fully automatic machine guns, which quickly became popular for criminal use. *Bianchi*, 111 F.4th at 469. These weapons had “firepower not seen before in civilian life,” with some models able to empty a 100-round drum in four seconds. *Id.* (citing Robert J. Spitzer, *Understanding Gun Law History After Bruen: Moving Forward by Looking Back*, 51 *Fordham Urb. L.J.* 57, 61-62 (2023)). “[N]ational tragedies” perpetrated using these weapons “put pressure on government to do something about machine guns.” *Id.*

In response, more than half the States enacted laws restricting machine guns between 1925 and 1934; ten went further and restricted semiautomatic weapons as well. *Id.* at 470. For the District of Columbia, Congress banned possession of automatic and semiautomatic firearms able to fire more than twelve rounds without reloading—a measure that garnered support from the National Rifle Association, which acclaimed it as a model for other States. *Id.* (citing S. Rep. No. 72-575, at 4-6 (1932)). Congress then passed the National Firearms Act in 1934, limiting civilian possession and general availability of automatic weapons, sawed-off shotguns, short-barreled rifles, and silencers. *See Grant Resp’ts’ Br.* 22.

In enacting assault weapons bans, modern legislatures continue down the “well-worn path” of responding to public safety concerns posed by particularly dangerous weapons when they become increasingly prevalent in violent crime. *Bianchi*, 111 F.4th at 469. Each of these laws “is a direct response to the calls of citizens who fear it is only a matter of time before mass violence will afflict their communities absent government intervention.” *Id.* at 472. Nothing in the Constitution “disable[s] the ability of representative democracy to respond to an urgent public safety crisis.” *Id.* “To disregard this tradition today—when mass slaughters multiply and the innovation of weaponry proceeds apace—could imperil both the perception and reality of well-being in our nation.” *Id.*

III. Striking Down the Challenged Laws Would Prove That *Bruen* Is Unworkable and Must Be Overruled

As Parts I and II explain, the laws at issue here reflect precisely the kind of considered judgment the Constitution leaves to the people’s representatives: Legislatures, confronting mass shootings, chose to restrict the weapons most often used to commit them. These laws are likewise consistent with the historical tradition of legislatures regulating unusually dangerous weapons. Petitioners nevertheless ask the Court to ignore this historical tradition and hold that *Bruen* commands invalidation of these democratically enacted laws.

Bruen does not compel this result. But adopting Petitioners’ view of *Bruen* would confirm the worst fears of the past four years of the *Bruen* experiment. It would prove that *Bruen* is “unworkable” and “inconsistent with established principles of federalism.” *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 531 (1985) (overruling *Nat’l League of Cities v. Usery*, 426 U.S. 833

(1976)).⁴⁵ It would strip legislatures of their constitutional prerogative to protect the public. In short, if Petitioners are right that this is the result *Bruen* commands, then *Bruen* is unworkable and must be overruled.

This Court held in *District of Columbia v. Heller* that the Second Amendment guarantees an individual constitutional right to keep and bear arms for the purpose of lawful self-defense. 554 U.S. 570 (2008). It also made clear, however, that “the right [is] not unlimited”—any more than is “the First Amendment’s right of free speech.” *Id.* at 595. The Second Amendment does not enshrine “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626. And even in areas where Second Amendment protections are at their apex, regulators retain “a variety of tools” to limit both access to and use of guns to promote public safety. *Id.* at 636.

Following *Heller*, the Courts of Appeals embraced a two-step test for Second Amendment claims. At the first step, courts asked whether the challenged law burdened conduct within the Second Amendment’s scope, as informed by its text and history. If it did, they applied intermediate or strict scrutiny depending “on the relative severity of the burden and its proximity to the core of the [Second Amendment] right.” *Ezell v. City of Chicago*, 651 F.3d 684, 708-09 (7th Cir. 2011); see *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 18-19 (2022). As *Bruen* acknowledged, that first step was “broadly consistent with *Heller*, which demands a test rooted in the Second Amendment’s text, as informed by history.” 597 U.S. at 19.

⁴⁵ See Tonja Jacobi & Cory Conley, *Is Bruen the New Usery?*, 67 Wm. & Mary L. Rev. 1529, 1612 (2026) (“Very similar to the impracticality of *Usery*, *Bruen* invites courts into a thicket of historical inquiry that has proven unworkable in practice.”).

Bruen nonetheless rejected this consensus approach. It retained the historical inquiry, but discarded the means-end step, instructing courts to evaluate Second Amendment challenges solely on the basis of text and history. It reasoned that history would be “more legitimate, and more administrable,” than asking judges to “make difficult empirical judgments” about the costs and benefits of firearm regulations. *Id.* at 25 (quoting *McDonald*, 561 U.S. at 790-91 (plurality opinion)).

United States v. Rahimi sought to clarify *Bruen*’s instructions, acknowledging that “some courts have misunderstood the methodology of our recent Second Amendment cases.” 602 U.S. 680, 691 (2024). It explained that a modern law need only be “consistent with the principles that underpin our regulatory tradition.” *Id.* at 692. *United States v. Hemani* applied that principles-based approach in affirming the dismissal of an 18 U.S.C. § 922(g)(3) charge against a regular marijuana user. 608 U.S. 772, 780-83 (2026).

Wolford v. Lopez—issued one week after *Hemani*—then appeared to move away from *Rahimi*’s clarification. 609 U.S. 185, 197 (2026). In *Wolford*, the Court acknowledged that for novel problems, “it is too much to demand such a close match” between historical weapons limits and challenged modern restrictions. *Id.* Yet *Wolford* rejected the historical analogues Hawai’i proffered for its challenged law because they targeted “unauthorized hunting,” deemed too far afield from Hawai’i’s concealed-carry rules for private property. *Id.* at 207-10. The Court candidly acknowledged that its historical test is “not mechanical” and “undeniably necessitates an exercise of judgment.” *Id.* at 197. But freewheeling judgment about which history counts, and at what level of generality—*i.e.*, the test Petitioners demand here—is not the disciplined inquiry *Bruen* required.

The lower courts’ post-*Bruen* experience confirms the problem. “The message that lower courts are sending now in Second Amendment cases could not be clearer. They say there is little method to *Bruen*’s madness.” *Rahimi*, 602 U.S. at 742 & n.1 (Jackson, J., concurring) (collecting decisions).⁴⁶ Recent assault weapons cases illustrate the point, with the same test producing opposite results for materially identical laws. The en banc Fourth Circuit’s principal opinions in a Maryland assault weapons case each “engaged in an exhaustive sweep of history, only to reach diametrically opposed conclusions about what that history means.” *Bianchi*, 111 F.4th at 474 (Diaz, C.J., concurring). And the en banc Third Circuit invalidated New Jersey’s comparable law, breaking from the Second, Fourth, and Seventh Circuits. *Compare Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, 183 F.4th 211, 247 (3d Cir. 2026) (en banc), *with Lamont*, 153 F.4th at 247, *Bianchi*, 111 F.4th at 472, and *Barnett*, 180 F.4th at 1038-39. As Fourth Circuit Chief Judge Diaz put it, “if courts are to apply and replicate precedent consistently, then either the *Bruen* framework is failing, or we are.” *Bianchi*, 111 F.4th at 474 (Diaz, C.J., concurring).

⁴⁶ See also, e.g., *Barnett*, 180 F.4th at 1054-55 (observing that this Court “has not set out a comprehensive framework through which to evaluate challenges to restrictions on particular weapons”); *Range v. Att’y Gen.*, 124 F.4th 218, 279-80 (3d Cir. 2024) (en banc) (Krause, J., concurring in the judgment) (criticizing the majority’s application of *Bruen* and *Rahimi* for “creat[ing] more questions than it answers” and “declin[ing] to adopt any articulable methodology”); *Bianchi*, 111 F.4th at 473-74 (Diaz, C.J., concurring) (describing *Bruen* as “a labyrinth for lower courts”); *United States v. Price*, 111 F.4th 392, 415 (4th Cir. 2024) (en banc) (Quattlebaum, J., concurring) (describing the “puzzle” of whether “common use” belongs at *Bruen*’s first or second step); *United States v. Daniels*, 77 F.4th 337, 358 (5th Cir. 2023) (Higginson, J., concurring) (“[C]ourts, operating in good faith, are struggling at every stage of the *Bruen* inquiry.”).

The problem extends beyond predictability and administrability. Justice Sotomayor warned that a demanding reading of *Bruen*, like Petitioners' here, would render its test a "one-way ratchet," "mak[ing] it nearly impossible to sustain common-sense regulations necessary to our Nation's safety and security." *Rahimi*, 602 U.S. at 705 (Sotomayor, J., concurring) (quoting *Bruen*, 597 U.S. at 112 (Breyer, J., dissenting)).

A decision striking down these laws would confirm the *Bruen* dissenters' fear. *See id.* A test that ignores why legislatures pass these laws has not constrained judicial power; it has arrogated that power to courts. "Why even have a ballot box," Chief Judge Diaz asked in *Bianchi*, "when our laws are fossilized in a history book?" 111 F.4th at 475 (Diaz, C.J., concurring). The Constitution does not leave the American people or their representatives powerless to address gun violence. But by "direct[ing] judges away from the reasons that living Americans have advocated legislation or asserted rights," the view of the *Bruen* test that Petitioners argue for in these cases would "make[] judicial review less responsive to citizen concerns and less transparent to citizen observers."⁴⁷ A test "trapped in amber" in this way would fail to deliver the administrability on which *Bruen* staked its legitimacy. *Rahimi*, 602 U.S. at 691.

This Court has declared that it "c[ould] think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims." *United States v. Morrison*, 529 U.S. 598, 618 (2000). The Second Amendment limits how legislatures may use their police powers, but it does not

⁴⁷ Joseph Blocher & Reva Siegel, *The Ambitions of History and Tradition in and Beyond the Second Amendment*, 174 U. Pa. L. Rev. 633, 685 (2026).

relieve them of this fundamental duty to protect their communities. Petitioners claim otherwise, but their reading of *Bruen* would usurp the legislative prerogative in three ways.

First, it would disable legislatures from responding to dangers that earlier generations never confronted. Under a rigid historical test, “the legislatures of today would be limited not by a distant generation’s determination that such a law was unconstitutional, but by a distant generation’s failure to consider that such a law might be necessary” to address a problem that did not exist. *Rahimi*, 602 U.S. at 705-06 (Sotomayor, J., concurring). “[I]t is not necessarily the case that, if no positive legislation from a particular time or place is in the record, it must be because the legislators then or there deemed such a regulation inconsistent with the right to bear arms.” *Antonyuk v. James*, 120 F.4th 941, 969 (2d Cir. 2024) (citing Jacob D. Charles, *The Dead Hand of a Silent Past: Bruen, Gun Rights, and the Shackles of History*, 73 Duke L.J. 67, 153 (2023)). Founding-era firearms could not enable a single gunman to kill dozens of people in minutes, so the absence of a founding-era response to that danger “indicate[s] no more than the fact that no fairly analogous regulatory issue arose in the framing era.” Lawrence Rosenthal, *The Limits of Second Amendment Originalism and the Constitutional Case for Gun Control*, 92 Wash. U. L. Rev. 1187, 1215 (2015).

Second, it would take from legislatures judgments they are institutionally suited to make. Legislatures can hold hearings, gather evidence, weigh competing interests, and answer to the communities whose safety is at stake. Petitioners’ strict reading of *Bruen* makes all of that irrelevant, asking instead whether a particular legislature’s response resembles a centuries-old law, a question the legislature itself is poorly positioned to answer. To enact a new firearm law, “legislatures and

their lawyers are, as a practical matter, forced to trawl through inconclusive and incomplete historical records in search of evidence they can only hope will satisfy this Court.” *Hemani*, 608 U.S. at 803 (Jackson, J., concurring).

Third, it would disrupt the federal structure that allows communities to address local dangers in local ways. A test that permits only the solutions earlier generations happened to adopt is profoundly anti-federalist: it strips States of the ability to tailor regulations to local needs and prevents them from serving as “laboratories of democracy” in the manner this Court has long exalted.⁴⁸

* * *

The Second Amendment allows for laws that are “consistent with the *principles* that underpin our regulatory tradition.” *Rahimi*, 602 U.S. at 692 (emphasis added). One such principle is that the individual right to bear arms exists in conversation—not in tension—with the legislative duty to protect and promote public safety. Since well before *Bruen*, courts have found that the individual right to bear arms necessarily “leave[s] with the Legislature the authority to adopt such regulations of police, as may be dictated by the safety of the people and the advancement of public morals.” *State v. Reid*, 1 Ala. 612, 616 (1840).⁴⁹

⁴⁸ See Jacob D. Charles & Jonah B. Gelbach, *Bruen’s Tenth Amendment Problem*, 94 U. Chi. L. Rev. (forthcoming 2027) (“*Bruen*, in effect, strips the States of power they nowhere delegated to the national government—and a power the Constitution expressly reserves to them: the power to do things differently today than yesterday.”).

⁴⁹ For this reason, state courts have long applied the “reasonable regulation” test to their own constitutional arms guarantees. Bruce D. Black & Kara L. Kapp, *State Constitutional Law as a Basis for Federal Constitutional Interpretation: The Lessons of the Second*

Our Constitution “states or ought to state not rules for the passing hour, but principles for an expanding future.” Benjamin N. Cardozo, *The Nature of the Judicial Process* 83 (1921). And when drafting the Second Amendment, “[t]he Framers recognized they could not foresee all the dangers that novel weaponry would someday pose, or the circumstances that would invoke the basic power of government to protect the governed.” *Bianchi*, 111 F.4th at 473. They instead entrusted these difficult decisions to the people, who in turn delegate this solemn responsibility to their elected representatives.

Bruen and *Rahimi* did not “foreclos[e] all democratic outlet for the deep passions this issue arouses” or “banish[] the issue from the political forum that gives all participants, even the losers, the satisfaction of a fair hearing and an honest fight.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 1002 (1992) (Scalia, J., concurring in the judgment in part and dissenting in part). To read *Bruen* as “denying to every community the important powers reserved to the people and the States by the Constitution,” *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 569 (1981) (Burger, C.J., dissenting), would, to repeat Judge Wilkinson’s words of warning,

Amendment, 46 N.M. L. Rev. 240, 250-52 & nn.57-58 (2016) (collecting cases). This test “is not the same as rational-basis review” because courts must determine whether “the Legislature’s choices are anchored to a real, as opposed to hypothetical, foundation.” *State v. Misch*, 256 A.3d 519, 546 (Vt. 2021). It “demands that government enactments implicating the . . . right have a legitimate government end within the police power, such as promoting the public health, safety, or welfare.” *Rocky Mt. Gun Owners v. Polis*, 467 P.3d 314, 328 (Colo. 2020). Like means-end scrutiny, the reasonable regulation test evaluates “whether the government’s justification for a law is legitimate and whether the law’s operation is sufficiently tailored to promote that justification,” an inquiry that “is squarely within the competence of courts.” *Hemani*, 608 U.S. at 804 (Jackson, J., concurring).

“deliver a body blow to democracy as we have known it since the very founding of this nation.” *Kolbe v. Hogan*, 849 F.3d 114, 150 (4th Cir. 2017) (Wilkinson, J., concurring).

The Court should reject Petitioners’ untenable reading of *Bruen*. The course most consistent with the Second Amendment, our nation’s history and traditions, and this Court’s precedents, is to “decline to wield the Constitution to declare that military-style armaments which have become primary instruments of mass killing and terrorist attacks in the United States are beyond the reach of our nation’s democratic processes.” *Bianchi*, 111 F.4th at 442.

CONCLUSION

The judgments of the courts below should be affirmed.

Respectfully submitted.

MICHAEL KIM KROUSE
ARNOLD & PORTER
KAYE SCHOLER LLP
*250 West 55th Street
New York, NY 10019*

BRENT P. RAY
ARNOLD & PORTER
KAYE SCHOLER LLP
*811 Main Street, Suite 1800
Houston, TX 77002*

WILLIAM T. CLARK
LEIGH ROME
J. ADAM SKAGGS
GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE
*244 Madison Avenue
Suite 147
New York, NY 10016*

BENJAMIN C. MIZER
Counsel of Record
SAMUEL I. FERENC
ALEXANDER E. SIRIO
CONNOR J. MORGAN
ARNOLD & PORTER
KAYE SCHOLER LLP
*601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
benjamin.mizer
@arnoldporter.com*

OCTOBER 2026