

Nos. 25-238, 25-566

IN THE
Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,
Petitioners,

v.

COOK COUNTY, ILLINOIS, *et al.*,
Respondents.

EDDIE GRANT, JR., *et al.*,
Petitioners,

v.

RONNELL HIGGINS, *et al.*,
Respondents.

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

**BRIEF OF EVERYTOWN FOR GUN SAFETY AS
AMICUS CURIAE IN SUPPORT OF RESPONDENTS**

JANET CARTER
Counsel of Record
WILLIAM J. TAYLOR, JR.
PRIYANKA GUPTA SEN
RACHEL A.B. DANNER
JAIME S. MILLER
EVERYTOWN LAW
450 Lexington Avenue,
P.O. Box 4184
New York, N.Y. 10163
(646) 324-8174
jcarter@everytown.org

TABLE OF CONTENTS

	Page(s)
TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICUS CURIAE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. Historical Restrictions on Armed Groups Are Analogous to Modern Assault Weapon Prohibitions	3
A. Before the 20th Century, Mass Violence Was Perpetrated by Armed Groups	4
B. Throughout Anglo-American History, Courts and Legislatures Addressed Group Mass Violence by Restricting Armed Groups.....	9
1. Armed groups were prosecuted as riots or unlawful assemblies under English common law	9
2. Common law and statutes in early America punished armed groups to prevent mass violence.....	15
3. State legislation in the 19th century restricted specific categories of armed groups	19
C. Historical Restrictions on Armed Groups Are Part of the Robust	

TABLE OF CONTENTS—Continued

	Page(s)
Historic Lineage for Modern Assault Weapon Laws	22
II. Reconstruction-Era and Later Historical Evidence Is a Crucial Part of the <i>Bruen</i> Analysis	25
A. The Court Should Give Significant Weight to Post-Ratification History, Regardless of Which Era is the Focus	25
B. Historical Analysis Should Focus on the Reconstruction Era.....	28
CONCLUSION	31

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Barnett v. Raoul</i> , 180 F.4th 1035 (7th Cir. 2026).....	4, 23, 24
<i>Bianchi v. Brown</i> , 111 F.4th 438 (4th Cir. 2024) (en banc), <i>cert. denied</i> , 145 S. Ct. 1534 (2025)	4, 24
<i>Chiafalo v. Washington</i> , 591 U.S. 578 (2020)	25
<i>Commonwealth v. Murphy</i> , 166 Mass. 171 (1896).....	21
<i>Commonwealth v. Runnels</i> , 10 Mass. 518 (1813).....	16
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	26, 28
<i>Dobbs v. Jackson Women’s Health Org.</i> , 597 U.S. 215 (2022)	27
<i>Howard v. Bell</i> (1616) 80 Eng. Rep. 241; Hob. 91 (Star Chamber)	13
<i>Mahanoy Area Sch. Dist. v. B. L.</i> , 594 U.S. 180 (2021)	28
<i>McCullen v. Coakley</i> , 573 U.S. 464 (2014)	24

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>McIntyre v. Ohio Elections Comm’n</i> , 514 U.S. 334 (1995)	29
<i>Nev. Comm’n on Ethics v. Carrigan</i> , 564 U.S. 117 (2011)	26, 30
<i>New York State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022)	2, 10, 12, 22, 25, 26, 27, 28, 29
<i>Presser v. Illinois</i> , 116 U.S. 252 (1886)	20, 21
<i>R v. Fursey</i> (1833) 172 Eng. Rep. 1155 (Old Bailey)	17
<i>R v. Soley</i> (1707) 88 Eng. Rep. 935 (QB).....	14, 23, 24
<i>Sanders v. State</i> , 60 Ga. 126 (1878).....	17, 18
<i>Semayne’s Case</i> (1604) 77 Eng. Rep. 194 (KB).....	14
<i>State v. Alexander</i> , 41 S.C.L. (7 Rich.) 5 (S.C. App. L. 1853)	15
<i>State v. Brooks</i> , 19 S.C.L. (1 Hill) 361 (S.C. App. L. & Eq. 1833)	18
<i>State v. Russell</i> , 45 N.H. 83 (1863).....	17

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>United States v. Fenwick</i> , 25 F. Cas. 1062 (C.C.D.C. 1836) (No. 15,086)	18, 19
<i>United States v. Hemani</i> , 608 U.S. 772 (2026)	26, 28
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	3, 4, 23, 24, 25, 26, 27, 28
<i>Wolford v. Lopez</i> , 609 U.S. 185 (2026)	23, 24, 25, 28
<i>Zuber v. Allen</i> , 396 U.S. 168 (1969)	27
Constitutional Provisions	
Idaho Const. of 1889, art. XIV, § 6	22
Mont. Const. of 1889, art. III, § 31	22
Wyo. Const. of 1889, art. 19, § 6	22
Statutes	
1 David Wagner, <i>The Statutes of the State of Missouri</i> , art. 7, ch. 42, § 10 (1870)	20
1749-51 Mass. Acts 339	19
1786 Mass. Acts 502	19
1791 N.H. Laws 277	19

TABLE OF AUTHORITIES—Continued

	Page(s)
1797 N.J. Laws 179	19
1838-39 Wis. Sess. Laws 368	19
1865 Me. Laws 235	23
1866 Mass. Acts 170	23
1870-71 N.C. Sess. Laws 200	23
1873 Ky. Acts 35 §3	23
1879 Colo. Sess. Laws 111.....	24
1879 Ill. Laws 149.....	24
1880 Iowa Acts 259.....	24
1883 N.Y. Laws 417.....	24
1884-85 Ga. Laws 74	24
1887 Neb. Laws 479.....	25
1888 Ky. Acts 139	25
1888-89 Ala. Laws 82	25
1889 Mo. Laws 95	25
1889 Tex. Gen. Laws 12	25
1889 W. Va. Acts 81.....	25
1891 Ark. Acts 245.....	26

TABLE OF AUTHORITIES—Continued

	Page(s)
1891 Minn. Laws 93	25
1893 N.C. Sess. Laws 148	27
1893 N.C. Sess. Laws 350	25
1893 Neb. Laws 403.....	27
1893 S.D. Sess. Laws 27.....	27
1893 Wash. Sess. Laws 449.....	26
1893 Wis. Sess. Laws 197.....	27
1894 Utah Laws 64.....	25
1895 Cal. Stat. 193	25
1897 Kan. Sess. Laws 230.....	27
1897 Minn. Laws 204	25
1899 Or. Laws 96.....	27
Me. Rev. Stat. tit. 12, ch. 159, § 5 (1840).....	19
Mich. Rev. Stat. tit. 30, ch. 157, § 1 (1846).....	19
Penal Code of Mont. Part I, tit. XI § 759 (1895).....	27
R.H. Clark et al., <i>Code of the State of Georgia</i> § 4514 (1873).....	21
R.I. Rev. Stat. tit. 30, ch. 213 § 1 (1857).....	19

TABLE OF AUTHORITIES—Continued

	Page(s)
Other Authorities	
“Armour,” <i>Oxford English Dictionary</i> , oed.com	10
1 William Hawkins, <i>A Treatise of the Pleas of the Crown</i> (1716).....	10, 12, 13, 14, 19
1 William Oldnall Russell & Daniel Davis, <i>A Treatise on Crimes & Misdemeanors</i> (1824).....	15
19 Charles Viner, <i>A General Abridgement of Law and Equity</i> (2d ed. 1793)	13
4 Thomas Walter Williams, <i>The Whole Law Relative to the Duty and Office of a Justice of the Peace</i> (1795)	13
Alan Taylor, <i>American Revolutions: A Continental History, 1750-1804</i> (2016)	5
Daniel Walker Howe, <i>What Hath God Wrought: The Transformation of America, 1815-1848</i> (2007)	6, 7
Darrell A. H. Miller et al., <i>Lethality and the Historical Principles of Arms Regulation</i> , 54 Pepp. L. Rev. (forthcoming)	4, 8, 15
David Grimsted, <i>American Mobbing, 1828-1861: Toward Civil War</i> (1998).....	7
Elizabeth Joh, <i>The Forgotten Threat: Private Policing and the State</i> , 13 Ind. J. Glo. Legal Stud. 357 (2006)	21, 22

TABLE OF AUTHORITIES—Continued

	Page(s)
Eric Foner, <i>Reconstruction: America's Unfinished Revolution</i> (1988)	7, 8
Francis Wharton, <i>A Treatise on the Criminal Law of the United States</i> (1846)	11, 15, 17
<i>Full Text of the Act to Suppress Lawlessness, Commonly Called the "Ku-Klux Law", Tri-Weekly Ky. Yeoman</i> (Frankfort, Ky.), Apr. 29, 1873	19
George F.E. Rudé, <i>The Gordon Riots: A Study of the Rioters and their Victims</i> , 6 Transactions of the Royal Hist. Soc'y (1956)	5
J.A.G. Davis, <i>A Treatise on Criminal Law</i> (1838) ...	15
Jill Lepore, <i>These Truths: A History of the United States</i> (2018)	6
John Frederick Archbold, <i>A Summary of the Law Relative to Pleading and Evidence in Criminal Cases</i> (1822)	11
Josh Blackman & Ilya Shapiro, <i>Keeping Pandora's Box Sealed: Privileges or Immunities, the Constitution in 2020, and Properly Extending the Right to Keep and Bear Arms to the States</i> , 8 Geo. J.L. & Pub. Pol'y 1 (2010)	29
Kate Masur, <i>Until Justice Be Done: America's First Civil Rights Movement, From the Revolution to Reconstruction</i> (2021)	6

TABLE OF AUTHORITIES—Continued

	Page(s)
Linda K. Kerber, <i>Abolitionists & Amalgamators: The New York City Race Riots of 1834</i> , 48 N.Y. Hist. 28 (1967)	6
Lorraine Boissoneault, <i>The Deadliest Massacre in Reconstruction-Era Louisiana Happened 150 Years Ago</i> , Smithsonian Magazine (Sept. 28, 2018)	7
Mark Anthony Frassetto, <i>Mass Violence and the Second Amendment</i> , 76 Ala. L. Rev. 43 (2024)	23
Michael Dalton, <i>The Country Justice</i> (1690)	13
Paul A. Gilje, <i>Rioting in America</i> (1996)	4, 5, 6
Randolph Roth, <i>American Homicide</i> (2009)	7
S. Poverty L. Ctr., <i>Ku Klux Klan: A History of Racism and Violence</i> (2011)	20
Saul Cornell, <i>A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America</i> (2006)	6
Stephen Siegel, <i>Injunctions for Defamation, Juries, and the Clarifying Lens of 1868</i> , 56 Buff. L. Rev. 655 (2008)	29

TABLE OF AUTHORITIES—Continued

	Page(s)
Steven Calabresi & Sarah Agudo, <i>Individual Rights Under State Constitutions When the Fourteenth Amendment Was Ratified in 1868: What Rights Are Deeply Rooted in American History and Tradition?</i> , 87 Tex. L. Rev. 7 (2008).....	29
Tom Rea, <i>The Rock Springs Massacre</i> , WyoHistory.org (Nov. 8, 2014).....	8
William Lambard, <i>Eirenarcha: Or of the Office of the Justices of Peace</i> (1591)	10, 11
William Shepherd, <i>The Whole Office of the Country Justice of Peace</i> (2d ed. 1652).....	14

INTEREST OF AMICUS CURIAE¹

Everytown for Gun Safety (formally, Everytown for Gun Safety Action Fund) is the nation's largest gun-violence-prevention organization, with more than eleven million supporters across the country. Everytown was founded in 2014 as the combined effort of Mayors Against Illegal Guns, a national, bipartisan coalition of mayors combating illegal guns and gun trafficking, and Moms Demand Action for Gun Sense in America, an organization formed after a gunman used an assault weapon to murder twenty children and six adults at Sandy Hook Elementary School in Newtown, Connecticut. Everytown also includes a large network of gun-violence survivors who are empowered to share their stories and advocate for responsible gun laws, as well as a national movement of high school and college students working to end gun violence.

INTRODUCTION AND SUMMARY OF ARGUMENT

Assault weapons are a highly destructive means of mass violence in modern America: all ten of the highest-casualty mass shootings in the United States in the last decade have involved an assault weapon. These military-style weapons are designed for the battlefield to inflict maximum damage on the human body in the shortest amount of time.

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

Our Constitution and history reflect the obvious wisdom that democratically elected government bodies can keep these weapons of war out of our communities. In turn, for the reasons set out in respondents' briefs, prohibiting assault weapons is constitutional under the Second Amendment analysis established in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). See Conn. Resp. Br. 9-37; Cook Cnty. Resp. Br. 13-46. Everytown submits this amicus brief to address two issues.

First, this brief expands on one strand of historical evidence supporting the principles that underlie the challenged laws: restrictions on armed groups. Although our nation has endured mass violence throughout its history, that violence has assumed different shapes across generations as technologies developed and social concerns evolved. Today, mass violence can be perpetrated in minutes—or even seconds—by a single individual with an assault weapon. Before the 20th century, however, mass violence was primarily carried out by groups of individuals armed with far more rudimentary weapons, such as bludgeons, blades, and guns that fired just one or a small number of rounds. Restrictions on armed groups, operating primarily through the common law crimes of riot and unlawful assembly, thus responded to the dangers of mass violence that faced Americans in the 18th and 19th centuries. As more specific threats of armed-group violence emerged, such as threats posed by private militias and the Ku Klux Klan, American legislatures responded with statutes to address those threats.

Together, these restrictions demonstrate that laws restricting the means of perpetrating mass

murder and terror have always been part of our nation’s historical tradition. Equally, this history explains why regulatory responses did not always focus on specific weapons: when the weapons were rudimentary, targeting group conduct was a tailored and effective response. And our nation’s historical tradition also includes a long tradition of restricting especially dangerous weapons. *See* Conn. Resp. Br. 10-23; Cook Cnty. Resp. Br. 15-25. Both historical strands reflect and embody the principle that governments have the authority—consistent with the Second Amendment—to protect the public from the means of mass violence.

Second, post-ratification evidence is a crucial part of the Second Amendment historical analysis, regardless of whether the founding or Reconstruction era is the central focus of that analysis. The Court should consider that evidence here. Moreover, as with prior decisions, the Court need not decide which period to prioritize in the event of an irreconcilable conflict because the historical record is consistent across time. If it were to decide the issue, however, the Court should conclude that the Reconstruction era has primacy, consistent with originalist principles.

ARGUMENT

I. HISTORICAL RESTRICTIONS ON ARMED GROUPS ARE ANALOGOUS TO MODERN ASSAULT WEAPON PROHIBITIONS

As respondents have explained, the challenged assault weapon prohibitions are “consistent with the principles that underpin our regulatory tradition.” *United States v. Rahimi*, 602 U.S. 680, 692 (2024); *see* Conn. Resp. Br. 9-37; Cook Cnty. Resp. Br. 13-46. These principles are embodied in multiple regulatory

traditions, including restrictions on weapon types and prohibitions on armed groups. “Taken together,” *Rahimi*, 602 U.S. at 698, these traditions confirm that the challenged assault weapon laws are consistent with our constitutional principles.

A. Before the 20th Century, Mass Violence Was Perpetrated by Armed Groups

For much of our nation’s history—from the founding era, through Reconstruction, and into the 20th century—mass violence was “a group activity.” *Barnett v. Raoul*, 180 F.4th 1035, 1057 (7th Cir. 2026) (citation omitted); see *Grant* Pet. App. 43a; *Grant* C.A. App. 1165-66 ¶41 (Roth Decl.). Because the weapons that existed in early America “were ‘certainly lethal but did not provide individuals ... the means to inflict mass casualties on their own,’” people gathered together in groups to accomplish their violent ends. *Bianchi v. Brown*, 111 F.4th 438, 463 (4th Cir. 2024) (en banc), *cert. denied*, 145 S. Ct. 1534 (2025) (citation omitted); see *Grant* Pet. App. 43a; *Grant* C.A. App. 1165-66 ¶41. Today, “a single person armed with an AR-15 can ... unleash the same lethal potential as dozens if not hundreds of eighteenth-century assailants,” and “carry[] out a mass murder in seconds.” Darrell A. H. Miller et al., *Lethality and the Historical Principles of Arms Regulation*, 54 Pepp. L. Rev. (forthcoming), <https://tinyurl.com/efrts97> (manuscript at 34) (emphasis omitted); *Grant* Pet. App. 43a. But historically it was these armed groups that were “[t]he only way to kill a large number of people.” *Grant* C.A. App. 1165-66 ¶41.

America’s history of mass violence traces back to England, which experienced riots for centuries. Paul A. Gilje, *Rioting in America* 13-15 (1996). In the 18th

century, for example, groups in England rioted about political, economic, and labor issues. *Id.* at 15-16. Some of the deadliest riots concerned religion, such as the 1780 anti-Catholic Gordon Riots, in which mobs of demonstrators, many of them armed, caused widespread destruction in London; close to 300 people died. George F.E. Rudé, *The Gordon Riots: A Study of the Rioters and their Victims*, 6 Transactions of the Royal Hist. Soc'y 93, 97-99, 103 (1956).

Similar unrest traveled across the ocean to America, where the colonies also experienced group violence. During the 17th century, for example, an armed group of Marylanders sacked and burned Lewes, Delaware in a land dispute, and a group of women in Marblehead, Massachusetts bludgeoned two Native American men to death. *See* Gilje, *supra*, at 19-20. Rioting was especially prevalent in the leadup to the American Revolution, with at least 150 riots occurring between 1765 and 1769, some leaving cities nearly ungovernable for weeks at a time. *See id.* at 35, 38-41. Into the 1770s, riots were used in revolutionary efforts against the British (supported, at least to a degree, by American elites). *See id.* at 45-49.

After the Revolution, a depressed economy and high taxes to pay war debts led to a wave of defaults and foreclosures. Armed groups in Massachusetts responded by blocking court sessions and foreclosure sales. Alan Taylor, *American Revolutions: A Continental History, 1750-1804* 367 (2016). The difficulties Massachusetts had dealing with the largest of these uprisings, Shays's Rebellion, led many—including elites who had supported revolutionary riots—to understand the need for a stronger central government and support a constitutional convention. *See* Jill

Lepore, *These Truths: A History of the United States* 117-18 (2018); Gilje, *supra*, at 54. And soon after the ratification of the Constitution, the federal government used its newfound powers to suppress the Whiskey Rebellion, an armed tax revolt in Pennsylvania. See Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* 76-85 (2006); Gilje, *supra*, at 55. By this point, most major leaders agreed that mobs should not “dictat[e] the course of government through extra-legal violence.” See Gilje, *supra*, at 54.

Mob violence nevertheless continued during the antebellum period. It was often directed at protecting the institution of slavery and the subjugation of Black Americans, targeting both abolitionists and free Blacks in the North. See, e.g., Kate Masur, *Until Justice Be Done: America’s First Civil Rights Movement, From the Revolution to Reconstruction* 99-100 (2021). As one example, in 1834, mobs in New York armed “with brickbats and other missiles” attacked abolitionists and the Black community—severely damaging or destroying sixty buildings, including six churches. Linda K. Kerber, *Abolitionists & Amalgamators: The New York City Race Riots of 1834*, 48 N.Y. Hist. 28, 30-33 (1967); Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* 433 (2007). Mob violence was also prevalent in the South, and typically more deadly. See Howe, *supra*, at 435.

These horrific incidents did not go unnoticed. In an 1838 speech, a 28-year-old Abraham Lincoln observed that “[a]ccounts of outrages committed by mobs form the everyday news of the times,” and warned that “[w]henver the vicious portion of the

population shall be permitted” to gather and commit acts of terror and violence, such as to “shoot editors, and hang and burn obnoxious persons at pleasure and with impunity, depend on it, this government cannot last.” *Id.* at 438.

Mass killings by armed groups became more prevalent during this period as well. *See Grant* C.A. App. 1165-67 ¶¶41-42. In 1844, for example, an attack on Philadelphia’s Catholic community left twenty dead and destroyed Catholic homes and churches throughout the city. Randolph Roth, *American Homicide* 188, 305 (2009). And in 1855, a riot initiated by nativist Protestants against Irish and German Catholics in Louisville, Kentucky, resulted in twenty-two deaths. David Grimsted, *American Mobbing, 1828-1861: Toward Civil War* 232-34 (1998).

In the years after the Civil War, armed mob violence often took the form of mass killings of freedmen and others in the South by white supremacist groups. *Grant* C.A. App. 1167-68 ¶43. In one incident in New Orleans, armed white mobs fired on a group of delegates and supporters, most of them Black, assembling for Louisiana’s constitutional convention and then stormed the convention, indiscriminately shooting attendees and killing thirty-seven people. Eric Foner, *Reconstruction: America’s Unfinished Revolution* 262-63 (1988). In Opelousas, Louisiana, attacks by armed white paramilitary groups seeking to destroy the local Republican party left an estimated 250 people dead. Lorraine Boissoneault, *The Deadliest Massacre in Reconstruction-Era Louisiana Happened 150 Years Ago*, *Smithsonian Mag.* (Sept. 28, 2018). Sometimes the violence from armed groups was smaller in scale but equally terrifying, as groups like the Ku Klux Klan

engaged in assassinations and murders throughout the South. Foner, *supra*, at 342.

Mass killings by armed groups also plagued other parts of the nation in the postbellum period and beyond. Out west, for example, Chinese workers were frequently attacked, such as in 1885 when an armed white mob in Rock Springs, Wyoming killed twenty-eight Chinese workers, wounded fifteen more, and looted and burned all of the homes in Rock Springs's Chinatown. Tom Rea, *The Rock Springs Massacre*, WyoHistory.org (Nov. 8, 2014), perma.cc/ST2A-PBNH. Mass killings remained a threat into the early 20th century—with the 1921 Tulsa Race Massacre, in which an armed white mob murdered more than 300 Black Americans, the most notable example. See *Grant* C.A. App. 1168 ¶43.

All told, our communities have long endured the horrors of mass violence. But today, a single gunman armed with an assault weapon can murder dozens in minutes. “Early firearms by themselves,” by contrast, “did not facilitate mass killings.” *Grant* Pet. App. 43a. Thus, “[u]ntil very recently, there was no real ability to perpetrate mass violence with weapons *except* through the coordinated violent behavior of groups.” Miller, *supra*, at 38. And historically, governments responded to these threats through common law and legislative restrictions on armed groups—as the following section explains.

B. Throughout Anglo-American History, Courts and Legislatures Addressed Group Mass Violence by Restricting Armed Groups

In England, and later in the United States, governments recognized the serious public safety threat posed by armed groups. Accordingly, like the modern jurisdictions that prohibit assault weapons, they limited the means of committing acts of mass violence through common law and legislative restrictions on armed groups—even if those groups had not engaged in actual violence. These restrictions preceded the first American colonies, were widely adopted in America during the colonial period and founding era, evolved to address the mass violence dangers of the Civil War and Reconstruction periods, remained in effect into the 20th century, and continue to exist in some form today. These laws are antecedents of modern assault weapon prohibitions, which target the modern mass violence phenomena of mass shootings.

1. Armed groups were prosecuted as riots or unlawful assemblies under English common law

Under English common law, public gatherings were generally lawful. Certain conduct, however, could convert a legal gathering into an illegal one—including the fact that the group was armed. Other conduct of the group determined the precise category of illegality—whether it was as a “riot,” a “rout,” or an “unlawful assembly”—but as to each category, the fact that participants were armed could render an otherwise lawful gathering illegal.

William Hawkins, in his “widely read 1716 treatise,” *Bruen*, 597 U.S. at 45, explained that a riot was “a tumultuous disturbance of the peace, by three persons, or more, assembling ... with an intent mutually to assist one another” in a goal of a “private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people,” regardless of whether the goal was “of itself lawful or unlawful.”¹ William Hawkins, *A Treatise of the Pleas of the Crown* 155 (1716) (capitalizations altered in all Hawkins quotations). Crucially, the group’s being armed was one of the ways to show a violent and turbulent manner. As Hawkins explained:

[I]t seems to be clearly agreed, that in every riot there must be some such circumstances, either of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people, as the *shew of armour*, threatening speeches or turbulent gestures; for every such offense must be laid to be done *in terrorem populi*[.]

Id. at 157 (emphasis added).²

The term “armour,” historically, included weapons as well as defensive coverings. See “Armour,” *Oxford English Dictionary*, oed.com (“I.1 The whole

² Other English treatises and legal dictionaries set out similar principles. One 16th-century writer, for example, explained that riots, routs, and unlawful assemblies all required a gathering of three or more people and that “their being together doe breed some apparant disturbance of the Peace,” such as by “shew of Armour, ... so that either the peaceable sort of men bee unquieted and feared by the fact” or the less peaceable be “emboldened by the example.” William Lambard, *Eirenarcha: Or of the Office of the Justices of Peace* 186-87 (1591).

apparatus of war collectively; military equipment, both offensive and defensive; arms, weaponry.”)³ And context indicates that simply being armed was sufficient for a “shew of armour.”⁴ Accordingly, a group’s being armed could itself establish that the circumstances had an apparent tendency to violence, and thus were naturally apt to cause terror. (That is certainly the understanding that took root in this country. In the equivalent passage of his influential 19th-century treatise, Francis Wharton wrote:

It must be shown that the assembling as accompanied with some such circumstances, either of actual force or violence, or at least of an apparent tendency thereto, as were calculated to inspire people with terror, such as *being armed*, using threatening speeches, turbulent gestures, or the like.

Francis Wharton, *A Treatise on the Criminal Law of the United States* 524 (1846) (emphasis added).⁵

³ See also *id.* (including as examples “Their armour for war is a bow and arrows” (1761) and “Spear, or halberd, seems to have been anciently a common piece of warlike armour” (1769)).

⁴ The inclusion of “turbulent gestures” separately from “armour” indicates that the simple wearing of arms, without gesturing with those arms—*i.e.*, without brandishing them—brought an armed group within the prohibition.

⁵ An early-19th-century English treatise likewise recognized that Hawkins’s reference to “shew of armour” meant “being armed.” John Frederick Archbold, *A Summary of the Law Relative to Pleading and Evidence in Criminal Cases* 333 (1822) (stating that a group “being armed” had a “tendency ... to inspire people with terror” (citing Hawkins)).

In short, being armed as a group inspired terror in a way that, *Bruen* concluded, being armed as an individual did not. *Bruen* interpreted English sources, including Hawkins, to indicate that the *in terrorem populi* element “require[d] something more than merely carrying a firearm in public” for an individual. *Bruen*, 597 U.S. at 50 (discussing *Sir John Knight’s Case*); *id.* at 45 (“Hawkins ... confirmed that ‘no wearing of Arms is within the meaning of [the Statute of Northampton], unless it be accompanied with such Circumstances as are apt to terrify the People.’” (alteration in original) (quoting Hawkins, *supra*, at 136)). And *Bruen* saw “no reason to think that the founding generation held a different view.” *Id.* at 50. But Hawkins, and the American sources that adopted his views, compel the conclusion that being armed *could* supply the terror element when a group, and not just an individual, was armed.

Hawkins further confirmed that an armed group was naturally apt to create public terror in his discussion of unlawful assemblies.⁶ He wrote that “any meeting ... of great numbers of people with such circumstances of terror, as cannot but endanger the public peace ... seems properly to be called an unlawful assembly,” and gave as an example the situation “where great numbers, complaining of a common grievance, meet together, *armed in a warlike manner*, in order to consult together concerning the most proper means for the recovery of their interests; for no one can foresee what may be the event of such an

⁶ Although a “riot” generally required a group to share a common goal and act to accomplish that goal, an armed group could still be an “unlawful assembly” even without joint action. Compare Hawkins, *supra*, at 155, with *id.* at 158.

assembly.” Hawkins, *supra*, at 158 (emphasis added). Other treatises repeated this example. See, e.g., 19 Charles Viner, *A General Abridgement of Law and Equity* 234 (2d ed. 1793); 4 Thomas Walter Williams, *The Whole Law Relative to the Duty and Office of a Justice of the Peace* 30 (1795).

The specific case Hawkins was describing in this passage was *Howard v. Bell* (1616) 80 Eng. Rep. 241, 242; Hob. 91, 92 (Star Chamber); see Hawkins, *supra*, at 158 (citing “Hob. 92” in margin). There, the court approved fines for “assembling the tenants to the number of 200 in an open field ... divers of the[m] ... being weaponed with swords and daggers, abiding three hours together, and yet nothing was proved done there by any of the defendants, but conference concerning the defence of their title.” 80 Eng. Rep. at 242. A treatise described another case in which eighty people gathered “with Spades, Matocks, Pistols, Swords and Daggers” and made trenches to release water from an illegal weir across the river Trent. See Michael Dalton, *The Country Justice* 324-25 (1690). Even though “it w[as] lawful to make the trenches,” they were “deeply fined in the Star-Chamber” because “they came with such number, and weapons.” *Id.* As these cases illustrate, assembling with ordinary weapons—such as swords and daggers—was sufficient to trigger the prohibition. And given that Hawkins was describing *Howard*, “weaponed with swords and daggers”—ordinary weapons—is what he meant when he described the group as “armed in a warlike manner.” 80 Eng. Rep. at 242; Hawkins, *supra*, at 158.

Courts likewise stressed that the group nature of the conduct was important to its illegality. In *Regina v. Soley*, for example, Lord Chief Justice Holt

explained that “[i]f a number of men assemble with arms, *in terrorem populi*, though no act is done, it is a riot. If *three* come out of an ale-house and go armed, it is a riot.” (1707) 88 Eng. Rep. 935, 936-37 (QB). He recognized that the law treated a single armed individual differently than an armed group, noting that “[t]hough a man may ride with arms, yet he cannot take two with him to defend himself.” *Id.* at 937.

Soley also highlighted another important aspect of the English common law of riot: it could prohibit an individual from riding with an armed group “even though his life is threatened”—*i.e.*, there was no exception for self-defense outside the home. *See id.* Likewise, in *Semayne’s Case*, the court concluded that it was unlawful for someone to “assemble his friends and neighbors ... to go with him to the market, or elsewhere for his safeguard against violence.” (1604) 77 Eng. Rep. 194, 195 (KB). A 17th-century treatise similarly made clear that “albeit one be threatened, and in danger of his life, and to defend himself[] he gathers a force, and they ride about armed; this is a Riot.” William Shepherd, *The Whole Office of the Country Justice of Peace* 55 (2d ed. 1652); *see also* Hawkins, *supra*, at 158 (“[A]n assembly of a man’s friends for the defence of his person, against those who threaten to beat him if he go to such a market, &c. is unlawful[.]”).⁷

⁷ These sources acknowledged that gathering a group for self-defense in one’s home was legal. *See Semayne’s Case*, 77 Eng. Rep. at 195; Shepherd, *supra*, at 55 (discussing an armed group specifically); Hawkins, *supra*, at 158.

2. Common law and statutes in early America punished armed groups to prevent mass violence

Concern about mass violence and restrictions on armed groups crossed the Atlantic with the colonists. See Miller, *supra*, at 33 (describing historical prohibitions on unlawful assemblies, riots, and “companies of armed individuals”). Treatises made clear that three or more individuals assembling together for a common goal (including a lawful goal) would be a riot if there were “circumstances of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people; [*such*] as the shew of armour.” 1 William Oldnall Russell & Daniel Davis, *A Treatise on Crimes & Misdemeanors* 351-52 (1824) (emphasis added). In other words, the fact that the group was armed contributed the “apparent tendency” to violence sufficient for their actions to be “*in terrorem populi*.” *Id.* at 352; see also J.A.G. Davis, *A Treatise on Criminal Law* 252 (1838).

As in England, even if not all the elements of a riot were met, armed gatherings could be illegal as an “unlawful assembly.” See J.A.G. Davis, *supra*, at 254-55 (reiterating Hawkins’s example of a group “armed in a warlike manner” constituting an unlawful assembly). And regardless of the categorization, “being armed” was one of the “circumstances” that could evidence “an apparent tendency [to violence] ... as were calculated to inspire people with terror,” and transform an otherwise lawful assembly into an illegal one. See Wharton, *supra*, at 524; see also, e.g., *State v. Alexander*, 41 S.C.L. (7 Rich.) 5, 8 (S.C. App. L. 1853) (noting, in a riot case, that “[a] show of arms ... [is] one of the circumstances which are calculated to

produce alarm”); *Commonwealth v. Runnels*, 10 Mass. 518, 520 (1813) (“[I]n indictments for that species of riots which consist in going about armed, &c., without committing any act, the words [*in terrorem populi*] ... are necessary, because the offence consists in terrifying the public[.]”).

American colonies and early states codified somewhat narrower restrictions in statutes but continued to prosecute the common law offenses. In 1750, a colonial Massachusetts statute provided that if “[t]welve or more [people], being Arm’d with Clubs or other Weapons, or if ... Fifty or upwards [people], whether armed or not, shall be unlawfully[,] riotously or tumultuously assembled,” and an official read an order to disperse, then any who did not disperse could be arrested and punished (and if officials killed or injured anyone resisting, the officials would be “indemnified and held guiltless”). 1749-51 Mass. Acts 339. In doing so, Massachusetts recognized the special dangers posed by armed groups, even those with rudimentary weapons, compared to unarmed groups. After independence, Massachusetts adopted a similar law. *See* 1786 Mass. Acts 502. Several other states followed suit. *See, e.g.*, 1791 N.H. Laws 277, 280-81 (restriction applying to armed groups of twelve or more and unarmed groups of thirty or more) (passed Feb. 16, 1791); 1797 N.J. Laws 179-80; 1838-39 Wis. Sess. Laws 368-69; Me. Rev. Stat. tit. 12, ch. 159, § 5 (1840); Mich. Rev. Stat. tit. 30, ch. 157, § 1 (1846); R.I. Rev. Stat. tit. 30, ch. 213 § 1 (1857); 1 David Wagner, *The Statutes of the State of Missouri*, art. 7, ch. 42, § 10–11 (1870).

These statutes did not replace the common law crime; instead, they were “another and distinct

offence from that of a riot at common law.” *State v. Russell*, 45 N.H. 83, 85 (1863). In *Russell*, the defendants challenged the indictment as failing to allege that “a proclamation under the riot act had been made.” *Id.* The court explained that no such proclamation was necessary for a prosecution under the common law. *Id.* The statutory offense was a “new and distinct offence” with a harsher punishment: in New Hampshire, “both fine and imprisonment” (and in England, death). *Id.* But common law riot, a misdemeanor with no proclamation-and-failure-to-disperse requirement, remained an offense. *Id.*; see also *id.* at 85-86 (finding no indication of intent to repeal the common law, including by reference to 1791 and 1829 statutes); *R v. Fursey* (1833) 172 Eng. Rep. 1155, 1158 (Old Bailey) (explaining that “a riot is not the less a riot ... because the proclamation of the Riot Act has not been read,” but is, in that circumstance, a misdemeanor rather than a capital offense); Wharton, *supra*, at 525 (citing *Fursey*’s explanation in U.S. treatise).

American courts enforced both statutory and common law restrictions to punish those who took part in armed groups. In one case, for example, a group of men assembled outside a house “in search of somebody they thought [was] there,” and “[a]ll were armed.” *Sanders v. State*, 60 Ga. 126, 128 (1878). “The man of the house was frightened, and tried to pacify them, and hence invited them in and gave them breakfast.” *Id.* The Supreme Court of Georgia concluded that the evidence was “enough ... to make riot

under our Code,” albeit as a close case, and affirmed the judgment of conviction. *Id.*⁸

In another case, a dispute between an individual, Marsh, who had erected a dam partially on the land of another named Brooks, led to a prosecution for riot. See *State v. Brooks*, 19 S.C.L. (1 Hill) 361, 362 (S.C. App. L. & Eq. 1833). Brooks “armed himself and the other defendants,” went to the location of the dam, “said he intended to cut the dam—and that he would not be insulted on his own land: and would do it, at all hazards,” and did cut the dam. *Id.* After describing the common law offense of riot as set out in Hawkins’s treatise—including that the group’s goal could be, “of itself, lawful”—the court concluded that these facts “make out the offence, in the very terms of the definition.” *Id.*⁹

In these cases and others, a threat to public peace arose from the fact that the group was armed. And as the court stressed in *United States v. Fenwick*, 25 F. Cas. 1062 (C.C.D.C. 1836) (No. 15,086), laws restricting such actions were important in preventing mass violence, because “[w]hen a mob is once raised, no one can tell where it will end, and all who assisted in

⁸ Georgia’s riot statute at the time read: “If any two or more persons ... do an unlawful act of violence, or any other act in a violent and tumultuous manner, such persons so offending shall be guilty of a riot.” R.H. Clark et al., *Code of the State of Georgia* § 4514 (1873).

⁹ In explaining its conclusion, the court reiterated that the members of Brooks’s group “were armed.” *Brooks*, 19 S.C.L. at 362. It also said that “Brooks used threatening language,” *id.*, but the statements from Brooks it laid out barely met that description, thus indicating that the primary evidence must have come from the fact that the group was armed.

raising it are guilty of all the consequences.” *Id.* at 1065. This, in turn, echoed Hawkins’s observation that when “great numbers, ... armed in a warlike manner” gathered, “no one can foresee what may be the event of such an assembly.” Hawkins, *supra*, at 158.

3. State legislation in the 19th century restricted specific categories of armed groups

In the second half of the 19th century, states continued to regulate armed groups, including by tailoring their restrictions to the particular groups that endangered the public at that time. One such category involved prohibitions on private militias and armed marches. Maine was the first to enact such a law, prohibiting “any body of men” other than the organized militia or military to associate as a “military company” or to “parade in public with arms,” in any city or town, without the governor’s permission. 1865 Me. Laws 235, 280; *see also* 1866 Mass. Acts 170, 219 (similar).

Other prohibitions reflected a specific concern with political and racist violence. For example, an 1873 Kentucky statute, commonly known as the “Ku-Klux Law,” made it a crime for “two or more persons ... [to] unlawfully confederate or band together, and go forth armed or disguised.” 1873 Ky. Acts 35 § 3; *Full Text of the Act to Suppress Lawlessness, Commonly Called the “Ku-Klux Law”*, Tri-Weekly Ky. Yeoman (Frankfort, Ky.), Apr. 29, 1873, at 3.¹⁰ But

¹⁰ *See also* 1870-71 N.C. Sess. Laws 200, 200-01 (prohibiting “secret political organizations” and forbidding any “persons [from] ... band[ing] together and assemb[ling] to muster, drill or

whether they focused on private militias, armed marches, or racist political organizations, these laws were widely enacted in the decades following the Civil War.¹¹

Then, in 1886, this Court recognized the validity of state prohibitions on private militia groups, upholding Illinois’s law against Second and Fourteenth Amendment challenges in *Presser v. Illinois*, 116 U.S. 252 (1886). The Court found it “clear” that a law that “only forbid[s] bodies of men to associate together as military organizations, or to drill or parade with arms in cities and towns unless authorized by law, do[es] not infringe the right of the people to keep and bear arms.” *Id.* at 264-65.¹² It also rejected the Fourteenth Amendment challenge, finding that “[m]ilitary organization and military drill and parade under arms are subjects especially under the control of the

practice any military evolutions” except when authorized by law); S. Poverty L. Ctr., *Ku Klux Klan: A History of Racism and Violence* 15 (2011) (describing this prohibition as an anti-Klan law).

¹¹ See, e.g., 1879 Ill. Laws 149, 156 (“It shall not be lawful for any body of men whatever, other-than the regular organized volunteer militia of this State ... to associate themselves together as a military company or organization, or to drill or parade with arms in any city, or town, of this State, without the license of the Governor.”); 1879 Colo. Sess. Laws 111, 138-39; 1880 Iowa Acts 259, 265; 1883 N.Y. Laws 417, 439; 1884-85 Ga. Laws 74, 85.

¹² Even though the Court’s view at the time was that the Second Amendment constrained only the federal government, see *Presser*, 116 U.S. at 265, it explained that, nevertheless, the states could not “prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security,” *id.* And it concluded that Illinois’s law “[did] not have this effect.” *Id.* at 266.

government of every country.” *Id.* at 267; *see also Commonwealth v. Murphy*, 166 Mass. 171, 172 (1896) (upholding similar Massachusetts law under state right to keep and bear arms).

In the wake of *Presser*, states across the country enacted new prohibitions on private militias.¹³ Around the same time, several states began to adopt similar statutes aimed at limiting private police forces.¹⁴ One target of these laws was the notorious Pinkerton Detective Agency, which corporations often hired to infiltrate and disrupt labor movements. *See* Elizabeth Joh, *The Forgotten Threat: Private Policing and the State*, 13 Ind. J. Glo. Legal Stud. 357, 364-65 (2006). Some states even enshrined prohibitions against out-of-state private police forces in their constitutions.¹⁵ More states passed laws after the

¹³ *See, e.g.*, 1887 Neb. Laws 479, 502 (prohibiting “any body of men whatever” except government forces “to associate themselves together as a military company or organization, or to drill or to parade with arms in any city or town in this state without the license of the governor”); 1888-89 Ala. Laws 82; 1888 Ky. Acts 139; 1895 Cal. Stat. 193; 1889 W. Va. Acts 81, 86; 1893 N.C. Sess. Laws 350, 356-57; 1889 Tex. Gen. Laws 12, 12-13; 1894 Utah Laws 64, 76; 1897 Minn. Laws 204, 229.

¹⁴ *See, e.g.*, 1889 Mo. Laws 95 (prohibiting importing “into this state any person or persons ... for the purpose of discharging the duties devolving upon the police officers ... in the protection or preservation of public or private property”); 1891 Minn. Laws 93, 93-94 (prohibiting bringing in persons or associations of persons to discharge police duties and prohibiting keeping “any armed force for hire”); 1891 Ark. Acts 245, 245-46.

¹⁵ *See, e.g.*, Mont. Const. of 1889, art. III, § 31 (“No armed person or persons or armed body of men shall be brought into this State for the preservation of the peace or the suppression of domestic violence, except upon the application of the legislative assembly or of the governor when the legislative assembly cannot

Homestead Strike of 1892, during which a gun battle between striking steelworkers and Pinkerton agents resulted in ten deaths. *See Joh, supra*, at 365.¹⁶ Like the anti-Klan laws that preceded them, these laws demonstrated that legislatures took action to address the particular forms of armed groups that endangered their communities.

**C. Historical Restrictions on Armed Groups
Are Part of the Robust Historic Lineage for
Modern Assault Weapon Laws**

This Court has made clear that “[t]he regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868.” *Bruen*, 597 U.S. at 27. Mass violence has plagued our country since before its founding, but has taken different forms over time. As Judge St. Eve explained for the Seventh Circuit in *Barnett*:

When the Second and Fourteenth Amendments were ratified, mass killings were a ‘group activity,’ relying on ‘primitive firearms and melee weapons’ because individuals lacked ‘the means to inflict mass casualties on their own.’ A regulatory response to *that* problem was not to impose a targeted restriction

be convened.”); Wyo. Const. of 1889, art. 19, § 6 (similar); Idaho Const. of 1889, art. XIV, § 6 (similar).

¹⁶ *See, e.g.*, 1893 Wash. Sess. Laws 449, 450 (“[I]t shall be unlawful for any person ... to organize, maintain or employ an armed body of men in this state for any purpose whatever.”); 1893 N.C. Sess. Laws 148; 1893 S.D. Sess. Laws 27; 1893 Neb. Laws 403; 1893 Wis. Sess. Laws 197; Penal Code of Mont. Part I, tit. XI § 759 (1895); 1897 Kan. Sess. Laws 230.

on certain arms, no one of which was principally responsible for the lawlessness; rather, it was to target armed *groups*. And that is just what Founding- and Reconstruction-era legislatures did. See Mark Anthony Frassetto, *Mass Violence and the Second Amendment*, 76 Ala. L. Rev. 43, 54-58 (2024) (collecting statutes prohibiting armed groups). But whereas the firepower needed to carry out a mass killing used to come from an aggregation of people, now it comes from an AR-15 and large-capacity magazines—a problem for which the historical solution is self-evidently unfit.

Barnett, 180 F.4th at 1057 (some citations omitted).

Historical restrictions on armed groups thus “reveal a principle,” *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring), in which the challenged assault weapons laws comfortably fit. To be sure, they are not “dead ringer[s]” or “historical twin[s]”—but “a ‘historical twin’ is not required.” *Id.* at 692, 701 (majority op.); see also *Wolford v. Lopez*, 609 U.S. 185, 197 (2026).

Armed groups restrictions are analogous to assault weapons prohibitions both as to their “why” and “how.” The “why”—the “rationale” of each law, *Wolford*, 609 U.S. at 196—is the same for both: preventing mass-casualty violence and terror. And the “how”—“that is, whether [the historical law] imposed a restriction similar to that imposed by the challenged law,” *id.*—is also similar: preventing people from assembling or wielding the kind of force that could terrorize, injure, or kill scores, while still leaving them with the means for self-defense as individuals. See *Soley*, 88 Eng. Rep. at 937 (“Though a man may ride with arms, yet he cannot take two with him to defend

himself.”); *supra* at 14 (explaining that historical laws prohibited public armed groups even for self-defense). In short, both the historical and modern laws reflect the same principle: throughout our nation’s history, legislatures have protected communities from the threat of mass violence by regulating the means of committing that violence.

Petitioners, for their part, do not seriously dispute that mass shootings are a recent societal problem. *See* Pet. Br. 41. But they overlook that this “distinction[]” carries “important consequences for how a legislature might respond” to mass violence consistent with historical tradition. *Barnett*, 180 F.4th at 1057. “States adopt laws to address the problems that confront them,” *McCullen v. Coakley*, 573 U.S. 464, 481 (2014) (citation omitted), and the Second Amendment is not “a law trapped in amber,” *Rahimi*, 602 U.S. at 691. Accordingly, “a State ... can respond” to the problems before it “with focused regulations to address the threat.” *Wolford*, 609 U.S. at 220 (Barrett, J., concurring). That is precisely what Connecticut and Cook County have done. Historical legislatures focused on the mechanism that was “principally responsible” for the mass violence before them—they “target[ed] armed groups.” *Barnett*, 180 F.4th 1057. And modern legislatures have likewise calibrated their response to the “central cause of [the] mass carnage” before them by prohibiting assault weapons. *Bianchi*, 111 F.4th at 463.

In short, the historical armed groups prohibitions bolster and elucidate the longstanding historical pedigree for modern assault weapon laws—particularly given the evolving threat of mass violence. These restrictions sit alongside historical prohibitions on

unusually dangerous weapons in confirming that assault weapons may be banned. *See* Conn. Resp. Br. 10-23, 33-37; Cook Cnty. Resp. Br. 13-46; *Rahimi*, 602 U.S. at 698 (relying on two historical strands “[t]aken together” in rejecting Second Amendment challenge); *see also* *Wolford*, 609 U.S. at 196 (noting that a modern restriction may rest on an “analogue or collection of analogues”). Because democratically enacted legislatures are entitled to apply “the balance struck by the founding generation to modern circumstances,” *Bruen*, 597 U.S. at 29 n.7, the challenged assault weapon laws should be upheld.

II. RECONSTRUCTION-ERA AND LATER HISTORICAL EVIDENCE IS A CRUCIAL PART OF THE *BRUEN* ANALYSIS

This Court has made clear that post-ratification history “is a critical tool of constitutional interpretation.” *Bruen*, 597 U.S. at 20 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008)). Yet petitioners seek to confine this Court’s historical analysis strictly to the founding era. *See* Pet. Br. 40-41, 46, 49. Doing so flies in the face of precedent and originalist principles.

A. The Court Should Give Significant Weight to Post-Ratification History, Regardless of Which Era is the Focus

The “great weight” this Court affords post-ratification history in the “proper interpretation of constitutional provisions,” *Chiafalo v. Washington*, 591 U.S. 578, 592-93 (2020) (citation omitted), extends to the Second Amendment. Starting with *Heller*, Justice Scalia’s opinion for the Court examined caselaw, public discourse, and commentary on the Second

Amendment “through the end of the 19th century.” *Heller*, 554 U.S. at 605, 610, 614, 616-19. *Bruen* then relied on mid- to late-19th-century cases and statutes, and “public discourse surrounding Reconstruction.” 597 U.S. at 30, 51-55, 60. The Court likewise consulted post-ratification history in its subsequent Second Amendment cases. For example, in *United States v. Hemani*, 608 U.S. 772 (2026), it considered laws, cases, treatises, and social practices from the mid- to late-19th century. *See id.* at 783-84, 787 n.4, 788 n.5; *see also Rahimi*, 602 U.S. at 695-96 (relying on laws passed between 1836 and 1868, including by reference to *Bruen*, 597 U.S. at 56 & n.23).

This Court’s cases thus make clear that post-ratification history is highly relevant to Second Amendment analysis. And for good reason: considering post-ratification history advances *Bruen*’s originalist inquiry in at least three ways.

First, as *Heller* recognized, later history offers valuable insight into the original public meaning of the right because later generations were steeped in founding-era understandings. 554 U.S. at 614 (noting that the understandings of those “born and educated in the early 19th century” are “instructive”). After all, “[p]rinciples of liberty fundamental enough to have been embodied within constitutional guarantees are not readily erased from the Nation’s consciousness.” *Nev. Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 122 (2011) (citation omitted).

Second, post-ratification history can “liquidate [and] settle the meaning of disputed or indeterminate terms [and] phrases in the Constitution.” *Bruen*, 597 U.S. at 35-36 (cleaned up). Indeed, “the Framers themselves intended that postratification history

would shed light on the meaning of vague constitutional text.” *Rahimi*, 602 U.S. at 725 (Kavanaugh, J., concurring).

Third, and relatedly, later history can liquidate constitutional meaning because the absence of legislation in an earlier period does not demonstrate that people believed such legislation would be unconstitutional. Petitioners’ contrary suggestion has the “serious problem[]” of “assum[ing] that founding-era legislatures maximally exercised their power to regulate.” *Rahimi*, 602 U.S. at 739-40 (Barrett, J., concurring). In fact, this Court has repeatedly confirmed that the absence of legislation does not indicate that legislation was thought to be unconstitutional. *See, e.g., Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 253 (2022) (rejecting inference of unconstitutionality from absence of 18th- and 19th-century abortion restrictions); Amicus Br. of U.S. Conf. of Cath. Bishops 17-18; *see also Zuber v. Allen*, 396 U.S. 168, 185 n.21 (1969) (“Congressional inaction frequently betokens unawareness, preoccupation, or paralysis.”).

Nevertheless, petitioners say that even laws from as early as 1837 are “too late” under *Bruen*. Pet. Br. 46. But *Bruen* had found substantial, affirmative evidence that people with ordinary self-defense needs had a right to carry in public, *see, e.g.*, 597 U.S. at 53-57, and dismissed a few later laws because they “contradict[ed] the overwhelming weight of other evidence,” *id.* at 65-66. Short of that untenable use, precedent and originalist principles require giving meaningful weight to post-ratification history.

B. Historical Analysis Should Focus on the Reconstruction Era

This Court has left open whether to privilege the founding or Reconstruction era in Second Amendment analysis. *See Hemani*, 608 U.S. at 783 n.3; *Rahimi*, 602 U.S. at 692 n.1; *Bruen*, 597 U.S. at 37-38; *see also Wolford*, 609 U.S. at 221 n.7 (Barrett, J., concurring). It can do the same here, because the history “runs in an unbroken line from medieval England to the Founding to the Reconstruction era to the twentieth century.” Conn. Resp. Br. 6. If the Court reaches the issue, however, it should conclude that the inquiry centers on 1868.

An originalist analysis in a case challenging a state law must focus on 1868 because “[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*.” *See Heller*, 554 U.S. at 634-35 (emphasis added). A state “is bound to respect the right to keep and bear arms because of the Fourteenth Amendment, not the Second.” *Bruen*, 597 U.S. at 37; *see also id.* at 71 (concluding paragraph, stating that “New York’s proper-cause requirement violates the Fourteenth Amendment”). Accordingly, in a First Amendment case, Justice Thomas explained that he “would begin the assessment of the scope of free-speech rights incorporated against the States by looking to what ordinary citizens at the time of the Fourteenth Amendment’s ratification would have understood the right to encompass.” *Mahanoy Area Sch. Dist. v. B. L.*, 594 U.S. 180, 212 (2021) (Thomas, J., dissenting) (citation omitted). Similarly, Justice Scalia called for “further evidence of common practice in 1868,” saying “I doubt that the Fourteenth Amendment time-warped the post-Civil War States

back to the Revolution.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 375 (1995) (Scalia, J., dissenting).

Prominent practitioners and originalist scholars have also reasoned that the 1868 understanding should govern in a case against a state. *See, e.g.*, Tr. of Oral Arg. at 8:3-17, *Bruen* (No. 20-843) (Paul Clement, as counsel for petitioners); Steven Calabresi & Sarah Agudo, *Individual Rights Under State Constitutions When the Fourteenth Amendment Was Ratified in 1868: What Rights Are Deeply Rooted in American History and Tradition?*, 87 Tex. L. Rev. 7, 115-16 & 116 n.485 (2008); Josh Blackman & Ilya Shapiro, *Keeping Pandora’s Box Sealed: Privileges or Immunities, the Constitution in 2020, and Properly Extending the Right to Keep and Bear Arms to the States*, 8 Geo. J.L. & Pub. Pol’y 1, 52 (2010); Stephen Siegel, *Injunctions for Defamation, Juries, and the Clarifying Lens of 1868*, 56 Buff. L. Rev. 655, 662 n.32 (2008).¹⁷ Simply put, a faithful originalist analysis compels applying

¹⁷ The issue is more complex in a case challenging a federal law, because the Second Amendment has bound the federal government since 1791 and *Bruen* indicated that individual rights “have the same scope” against the federal government as against the states. 597 U.S. at 37. But *Bruen* itself charted the path through this complexity by citing scholars Akhil Amar and Kurt Lash, who have explained that the 1868 understanding should apply to both federal and state governments. *See id.* at 37-38; Amicus Br. of Prof. Amar 32. *Bruen* identified no authority explaining how an originalist could accept the contrary position—inflicting upon the states an understanding of the Second Amendment right different from the one the Reconstruction generation believed it was extending to them.

the 1868 understanding of the right to keep and bear arms in a case challenging a state law.¹⁸

* * *

Consideration of the full historical record, including post-ratification evidence, establishes that the challenged assault weapon laws sit at the intersection of multiple regulatory traditions. This includes the tradition of restricting armed groups. That tradition evolved in its particulars in response to changing technologies and social conditions, but remained unchanged at the level of principle: legislatures can protect their communities from mass violence by targeting the specific way in which that violence is commonly inflicted. States and local governments should be permitted to continue that historical tradition by keeping weapons of war out of our communities.

¹⁸ Petitioners criticize the Second Circuit for relying on both time periods in its decision below, pointing to *Bruen*'s comment that some prior cases had "generally assumed" that 1791 was the focus. Pet. Br. 40-41 (quoting *Bruen*, 597 U.S. at 37). But the assumption in pre-*Bruen* cases cannot have resolved the question that *Bruen*, *Rahimi*, and *Hemani* subsequently left open. Moreover, even the cases *Bruen* cited for its "general[] assum[ption]" considered post-ratification history too. See, e.g., *Nev. Comm'n on Ethics*, 564 U.S. at 122-25 (finding consistent tradition from founding era through 20th century).

CONCLUSION

The Court should affirm the judgments below.

Respectfully submitted.

JANET CARTER

Counsel of Record

WILLIAM J. TAYLOR, JR.

PRIYANKA GUPTA SEN

RACHEL A.B. DANNER

JAIME S. MILLER

EVERYTOWN LAW

450 Lexington Avenue,

P.O. Box 4184

New York, N.Y. 10163

(646) 324-8174

jcarter@everytown.org

OCTOBER 2026