

Nos. 25-238 and 25-566

In the
Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,
Petitioners,

v.

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

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

v.

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

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

BRIEF OF *AMICUS CURIAE*
AMERICANS AGAINST GUN VIOLENCE
IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE¹

Amicus Curiae Americans Against Gun Violence (“AAGunV”) is a nonprofit organization founded in the belief that the people of the United States have not only the ability, but also the moral obligation to reduce rates of firearm-related deaths and injuries in our country to levels comparable to the rates in the other high income democratic countries. In order to help fulfill this obligation, AAGunV engages in educating the public and policymakers regarding the causes of our country’s extraordinarily high rate of firearm-related deaths and injuries and the definitive measures needed to stop this epidemic.

SUMMARY OF ARGUMENT

Petitioners rest their argument that the Second Amendment guarantees a right to possess AR-15 platform and similar semiautomatic rifles (“AR-15’s) entirely upon this Court’s decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and its progeny – not on the history and text of the Second Amendment itself. *Heller* and its progeny are egregiously flawed decisions that are themselves incompatible with the history and plain language of the Second Amendment, and these decisions have devastating public health consequences. A ruling by this Court in favor of Petitioners in the present case would compound those devastating consequences.

1. No party’s counsel authored this brief in whole or in part and no party or party’s counsel made any monetary contribution intended to fund the preparation or submission of this brief.

We call on this Court to rule not only that civilian ownership of AR-15's is not constitutionally protected, but also to acknowledge *Heller* and its progeny were wrongly decided.

ARGUMENT

I. *Heller* Was Wrongly Decided.

In *Heller*, a narrow five-justice majority reversed over two centuries of legal precedent by ruling for the first time that the Second Amendment conferred an individual right to firearm ownership unrelated to service in a “well regulated Militia.” *Heller*, 554 U.S. at 576-626; U.S. Const., amend. II.

The late Justice John Paul Stevens, having served 35 years on this Court and dissented in *Heller*, disagreed. In his autobiography, Stevens wrote, “*Heller* is unquestionably the most clearly incorrect decision that the Court announced during my tenure on the bench.” John Paul Stevens, *The Making of a Justice: Reflections on My First 94 Years*, 482 (New York, Little Brown & Co. 2019).

Below we address the primary reasons why *Heller* was wrongly decided and should be overturned by this Court.

A. *Heller* is incompatible with the “well regulated Militia” clause of the Second Amendment.

Heller's holding rested in part on an incompatible reading of the text and purpose. As the Professors of Linguistics and English aptly explained in their amicus brief in *Heller*:

Under longstanding linguistic principles that were well understood and recognized at the time that the Second Amendment was adopted, the “well regulated Militia” clause necessarily adds meaning to the “keep and bear Arms” clause by furnishing the reason for the latter’s existence....On its face, the language of the Amendment tells us that the reason why the right of the people to keep and bear arms shall not be infringed is because a well regulated militia is necessary to the security of a free state. The purpose of the Second Amendment, therefore, is to perpetuate “a well regulated militia.”

Brief for Professors of Linguistics & English, *et al.* in *Heller*, at 2-3 (Jan. 11, 2008) (the “Linguists’ Brief”).

The *Heller* majority acknowledged the term, “the people,” was used in a collective sense throughout the Bill of Rights and that “the militia” in colonial America consisted of a subset of “the people,” but the majority concluded:

Reading the Second Amendment as protecting only the right to “keep and bear Arms” in an organized militia therefore fits poorly with the operative clause’s description of the holder of that right as “the people.” We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans.

Heller, 554 U.S. at 579-81.

We do not see the logic in this presumption. Reading the Second Amendment as conferring a collective right for the people of the states to maintain well regulated militias fits perfectly with the *Heller* majority's own previous acknowledgements that "the people" refers to "a class of persons who are part of a national community," and that "the militia" consists of "a subset of 'the people.'" *Heller*, 554 U.S. at 580.

We also fail to see the logic in another statement in which the *Heller* majority referred to the first half of the Second Amendment as "The prefatory clause" and an alleged right to private gun ownership as "the ancient right:"

The prefatory clause does not suggest that preserving the militia was the only reason Americans valued the ancient right; most undoubtedly thought it even more important for self-defense and hunting.

Heller, 554 U.S. at 599.

The *Heller* majority presented no basis to support its claim that "most" Americans "undoubtedly" believed that private gun ownership was more important for self-defense and hunting than to perpetuate a "well regulated Militia," nor did the majority provide any rationale for why, if this claim were true, the Founders would have neglected to even mention these other reasons in the first half of the Second Amendment. *See Heller*, 554 U.S. at 599-600. Moreover, as we discuss below, private gun ownership was not an "ancient right," nor does it confer any net defensive benefit in a democratic society. *See ibid.*

Ultimately, *Heller* effectively deleted the first half of the Second Amendment from the U.S. Constitution – just as the National Rifle Association did in the version of the Amendment that is inscribed on the wall of its headquarters in Fairfax, Virginia. Michael Waldman, *How the NRA Rewrote the Second Amendment*, Politico (May 19, 2014).²

B. *Heller* is incompatible with the “keep and bear Arms” clause.

The *Heller* majority opinion stated that the term “bear arms” in the Second Amendment “in no way connotes participation in a structured military organization.” *Heller*, 554 U.S. at 584. But citing the Linguists’ Brief, the *Heller* majority contradicted this claim by acknowledging, “The phrase, ‘bear arms,’ also had at the time an idiomatic meaning.” *Id.* at 586. The relevant portion of the Linguists’ Brief states:

The term “bear arms” is an idiom that means to serve as a soldier, do military service, fight.... The word “arms” itself has an overwhelmingly military meaning, referring to weapons of offense or armor of defense.

Linguists Brief at 4. Yet in the next paragraph, the *Heller* majority claimed that applying the Linguists’ interpretation of “bear arms” in the Second Amendment creates “an absurdity that no commentator has ever endorsed.” *Ibid.* The majority went on to state:

2. Available at <https://www.politico.com/magazine/story/2014/05/nra-guns-second-amendment-106856/> (last accessed Oct. 24, 2026).

Worse still, the phrase “keep and bear Arms” would be incoherent. The word “Arms” would have two different meanings at once: “weapons” (as the object of “keep”) and (as the object of “bear”) one-half of an idiom. It would be rather like saying “He filled and kicked the bucket” to mean “He filled the bucket and died.” Grotesque.

Id. at 587.

However, giving “bear arms” the idiomatic meaning endorsed in the Linguists’ Brief is precisely the interpretation of the “keep and bear Arms” clause that the history and text of the Second Amendment indicate the Founders intended. James Madison, who wrote the original draft of what would eventually become the Second Amendment, made it clear that he was using the term, “bear arms,” to refer to carrying weapons in the setting of military service for the common defense. Madison’s original draft read:

The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person.

1789 Annals of Congress, House of Representatives, at 451 (1789) (Joseph Gales ed. 1834).³

3. Available at <https://www.congress.gov/annals-of-congress/volume-1.pdf> (last accessed Oct. 24, 2026).

In *Aymette v. State*, 21 Tenn. 154, 159 (1840), the Tennessee Supreme Court derided the claim that the idiom, “bear arms,” referred to using guns for hunting or self-defense, stating:

A man in the pursuit of deer, elk, and buffaloes might carry his rifle every day for forty years, and yet it would never be said of him that he had borne arms; much less could it be said that a private citizen bears arms because he had a dirk or pistol concealed under his clothes, or a spear in a cane.

In the interval between *Heller* and *New York State Rifle Association v. Bruen*, 597 U.S. 1 (2022), as Justice Breyer noted in his dissent in *Bruen*, overwhelming evidence was amassed, including searches of databases compiled by Brigham Young University that include 40,000 texts documenting that the term, “keep and bear arms,” was almost uniformly understood during the Founding Era to refer to possessing and carrying weapons of war in the setting of military service. *Bruen*, 597 U.S. at 109-110 (Breyer J., dissenting); Dennis Barron, *Corpus Evidence Illuminates the Meaning of Bear Arms*, 46 Hastings Const. L. Q. 509, 509-22 (2019).

C. The Second Amendment did not codify a broad right to private gun ownership inherited from English ancestors.

The *Heller* majority repeatedly referenced the 1689 English Declaration of Rights in claiming that the Second Amendment codified a broad individual right to own firearms that the Founders inherited from their English ancestors. *Heller*, 554 U.S. at 582, 593-94, 605-06, 612-13. The majority referred to “St. George Tucker” as an

important founding-era legal scholar (*id.* at 666 n. 32) and quoted Tucker as writing that the Second Amendment was the “true palladium of liberty.” *Id.* at 606. In the same paragraph, though, Tucker also wrote that the gun-related provision in the 1689 English Declaration of Rights was so limited that “not one man in five hundred can keep a gun in his house without being subject to a penalty.” St. George Tucker, *Blackstone’s Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States and of the Commonwealth of Virginia*, at 300 (1803).

The most obvious contemporary evidence that the Founders could not possibly have inherited a broad right to private gun ownership from their English ancestors lies in the fact that although the 1689 English Declaration of Rights has never been repealed, Britain currently has some of the most stringent gun control laws of any high income democratic country in the world, including a complete ban on civilian ownership of handguns and most automatic and semi-automatic long guns. Michael J. North, *Gun Control in Great Britain after the Dunblane Shootings*, *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* 186-191 (Johns Hopkins University Press 2013). In the words of Bob Marshall-Andrews, a former member of Parliament who participated in the debates during the enactment of the handgun ban, the claim that the 1689 English Declaration of Rights conferred a general right to firearm ownership is “preposterous.” Bob Marshall-Andrews, *Letter from Bob Marshall-Andrews, QC, to Dr. Michael North*, July 29 (2021).⁴

4. Available at <https://aagunv.org/wp-content/uploads/2026/10/Letter-from-Bob-Marshall-Andrews.pdf> (last accessed Oct. 24, 2026).

D. *Heller* violates *stare decisis*.

Before *Heller*, no United States gun control law had ever been overturned by a federal court on the basis that it violated the Second Amendment. As Justice Stevens wrote in his dissent in *Heller*, “[F]or most of our history, the invalidity of Second-Amendment-based objections to firearms regulations has been well settled and uncontroversial.” *Heller*, 554 U.S. at 676 (Stevens, J., dissenting). As we document below, the retort by the *Heller* majority, “For most of our history the question did not present itself,” is plainly wrong. *Id.* at 626.

1. Pre-*Heller* cases directly related to the Second Amendment.

a. *United States v. Cruikshank*, 92 U.S. 542 (1876).

Cruikshank was the first case in which this Court ruled directly on the right conferred by the Second Amendment. Based on the prevailing legal theory that the Bill of Rights did not confer rights but only prevented the federal government from infringing on rights derived from other sources, the Court held that “bearing arms for a lawful purpose” is “not a right granted by the Constitution.” *Cruikshank*, 92 U.S. at 553. The *Heller* majority stated:

The limited discussion of the Second Amendment in *Cruikshank* supports, if anything, the individual-rights interpretation. There was no claim in *Cruikshank* that the victims had been deprived of their right to carry arms in a militia.

Heller, 554 U.S. at 620. However, the persons whose Second Amendment rights were in question in *Cruikshank* were approximately 100 freed slaves who, after being deputized by a local sheriff to bring their own weapons to guard the courthouse in Colfax, Louisiana after a disputed gubernatorial election, were murdered by the Ku Klux Klan. Charles Lane, *The Day Freedom Died: The Colfax Massacre, the Supreme Court, and the Betrayal of Reconstruction*, 71-2 (Henry Holt & Co. 2008). The freed slaves fit the *Heller* majority's own definition of a "militia."

b. *Presser v. Illinois*, 116 U.S. 255 (1886).

The *Heller* majority claimed *Presser* "does not refute the individual-rights interpretation of the Amendment," and that "*Presser* said nothing about the Second Amendment's meaning or scope, beyond the fact that it does not prevent the prohibition of private paramilitary organizations." *Heller*, 554 U.S. at 621. However, in his dissent, Justice Stevens disputed this claim, citing the following statement in *Presser* as evidence that the Court interpreted the Second Amendment right as being related to militia service:

The plaintiff in error was not a member of the organized volunteer militia of the State of Illinois, nor did he belong to the troops of the United States or to any organization under the militia law of the United States. On the contrary, the fact that he did not belong to the organized militia or the troops of the United States was an ingredient in the offence for which he was convicted and sentenced.

Id. at 673-74 (Stevens, J., dissenting) (quoting *Presser*, 116 U.S. at 266).

The *Heller* majority responded:

Unfortunately for Justice STEVENS' argument, that later portion deals with the *Fourteenth Amendment*; it was the *Fourteenth Amendment* to which the plaintiffs nonmembership in the militia was relevant.

Heller, 554 U.S. at 621.

The *Heller* majority must have realized that the *Presser* Court was commenting in this section on what the nature of the Second Amendment right was that the Fourteenth Amendment incorporated into a right enjoyed by Hermann Presser.

c. *United States v. Miller*, 307 U.S. 174 (1939).

The Court ruled unanimously in *Miller* that the National Firearms Act, which established registration and tax requirements for private ownership of firearms such as machine guns and short-barreled shotguns, did not violate the Second Amendment. After quoting the full Article I, Section 8 of the Constitution that describes the power of Congress "To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States," the Court concluded:

With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view.

Miller, 307 U.S. at 178.

The ruling in *Heller* that the Second Amendment protects an individual right to possess a firearm unconnected with service in a well regulated militia plainly conflicts with *Miller*.

As Justice Stevens observed in his dissenting opinion in *Heller*, the Supreme Court’s unanimous ruling in *Miller* stood as the definitive interpretation of the Second Amendment from 1939 until the *Heller* decision in 2008:

The view of the Amendment we took in *Miller* – that it protects the right to keep and bear arms for certain military purposes, but that it does not curtail the Legislature’s power to regulate the nonmilitary use and ownership of weapons – is both the most natural reading of the Amendment’s text and the interpretation most faithful to the history of its adoption.

Heller, 554 U.S. at 637-38 (Stevens, J., dissenting).

The *Heller* majority seized upon an aside in the *Miller* decision in which the Court commented that the short-barreled shotgun that Jack Miller and his accomplice were convicted of carrying in violation of the NFA was not “any part of the ordinary military equipment,” nor could “its

use could contribute to the common defense.” *Heller*, 554 U.S. at 622. The majority stated, “Beyond that, the opinion provided no explanation of the content of the right.” *Ibid.* But as we’ve documented above, this is untrue.

The Court went on to state:

We may as well consider at this point, (for we will have to consider eventually) *what* types of weapons *Miller* permits. Read in isolation, *Miller*’s phrase “part of ordinary military equipment” could mean that only those weapons useful in warfare are protected. That would be a startling reading of the opinion, since it would mean that the National Firearms Act’s restrictions on machineguns (not challenged in *Miller*) might be unconstitutional, machineguns being useful in warfare in 1939.

Heller, 554 U.S. at 624.

The “startling” reading to which the *Heller* majority referred is the logical consequence of the *Heller* majority’s own interpretation of *Miller*. The majority attempted to escape the trap it set for itself by claiming, “*Miller* said, as we have explained, that the sorts of weapons protected were those “in common use at the time.” *Heller*, 554 U.S. at 627. But the section of *Miller* decision that the *Heller* majority referred to in support of this claim described the types of weapons that civilians were required to furnish for themselves at their own expense and bring with them *when they were called by the government into militia service*, not a constitutional right of civilians to own or carry such weapons for any other purpose. *Miller*, 307 U.S. at 177-82.

Being unable to reconcile its ruling with *Miller*, the *Heller* majority sought to undermine the credibility of the *Miller* decision, claiming:

As for the text of the Court's opinion itself, that discusses *none* of the history of the Second Amendment... Not a word (*not a word*) about the history of the Second Amendment. This is the mighty rock upon which the dissent rests its case.

Heller, 554 U.S. at 624. Justice Stevens' dissent explained why this was incorrect:

The majority cannot seriously believe that the *Miller* Court did not consider any relevant evidence; the majority simply does not approve of the conclusion the *Miller* Court reached on that evidence.

Id. at 679 (Stevens, J., dissenting).

2. Additional cases in the interval between *Miller* and *Heller*.

Between 1939 and 2008, the Supreme Court commented on the scope of the Second Amendment in *Adams v. Williams*, 407 U.S. 143 (1972), and *Lewis v. United States* 445 U.S. 55 (1980), both involving convictions for illegal possession of handguns, but in which attorneys for the petitioners didn't advance Second Amendment defenses – probably because they realized that in the aftermath of *Miller*, such defenses were likely to fail.

In *Adams*, Justice Douglas dissented from the majority on the question of whether the respondent had been subjected to unreasonable search and seizure, but went out of his way to state:

A powerful lobby dins into the ears of our citizenry that these gun purchases are constitutional rights protected by the Second Amendment.... There is no reason why all pistols should not be barred to everyone except the police.”

Adams, 407 U.S. at 150 (Douglas J., dissenting). This statement indicated an awareness that beginning in the latter part of the Twentieth Century, authors with direct ties to the gun lobby began seeding legal literature with pseudo-academic articles claiming that the Second Amendment was intended to confer an individual right to own guns for personal use. *See, e.g.*, Carl T. Bogus, *The History and Politics of Second Amendment Scholarship: A Primer*, 76 Chi.-Kent L. Rev. 3, 8-9 (2000); Waldman, *supra*.

At the same time, in the face of lagging gun sales, the gun industry began promoting the message to the general public that owning a gun was not only a right, but a responsibility. *See* Tom Diaz, *Making a Killing* (The New Press 1999); Jon S. Vernick, *et al.*, *Regulating Firearm Advertisements That Promise Home Protection: A Public Health Intervention*, JAMA, 1391-97 (1997). Prior to the 1970's, nearly all legal literature endorsed the ruling in *Miller* that the Second Amendment did not confer an individual right to own guns unrelated to militia service. *See* Waldman, *supra*; Bogus, *supra*, at 3-4. Gallup

polls indicated that the majority of Americans supported banning handguns and realized that having a gun in the home made the home more dangerous (a point we discuss in more detail below). *See* Gallup, Historical Trends, available at <https://news.gallup.com/poll/1645/guns.aspx> (last accessed Oct. 24, 2026).

In *Lewis*, Justice Blackmun, writing for the majority, reiterated *Miller*'s holding:

[T]he Second Amendment guarantees no right to keep and bear a firearm that does not have "some reasonable relationship to the preservation or efficiency of a well regulated militia."

Lewis, 445 U.S. at 65 fn. 8, quoting *Miller*, 307 U.S. at 178.

Retired Chief Justice Warren Burger also recognized the gun lobby's disinformation campaign. In an interview on the PBS NewsHour in 1991, he stated, "This has been the subject of one of the greatest pieces of fraud – I repeat the word "fraud" – on the American public by special interest groups that I have ever seen in my lifetime. *PBS News-Hour* (Dec. 16, 1991).⁵

3. Federal appellate cases between *Miller* and *Parker v. District of Columbia*, 375 U.S. App. D.C. 140 (2007).

As Justice Stevens observed in his dissent in *Heller*, "Since our decision in *Miller*, hundreds of judges have

5. Available at https://www.youtube.com/shorts/LNn_AfSagSg (last accessed Oct. 24, 2026).

relied on the view of the Amendment we endorsed there....” *Heller*, 554 U.S. at 638 (Stevens, J., dissenting). Stevens supported this statement with a footnote listing all 20 federal appeals court cases that considered the Second Amendment in the interval between the 1939 *Miller* decision and the 2007 *Parker* decision. *Id.*, n. 2. In all 19 cases in which the interpretation of the Second Amendment was directly relevant, the courts endorsed *Miller’s* holding that the Second Amendment confers no right to private gun ownership unrelated to service in a well regulated militia. *Ibid.* The *Heller* majority’s only rebuttal was:

As for the “hundreds of judges,” [citing Stevens’ dissent] who have relied on the view of the Second Amendment Justice STEVENS claims we endorsed in *Miller*: If so, they overread *Miller*.

Id. at 624 n. 24.

E. The *Heller* decision both rests upon and promotes the deadly myth of “guns for protection.”

The *Heller* Court was provided with extensive evidence documenting the deadly consequences of lax gun control laws and related high rates of private gun ownership in the United States. For example:

- The American Academy of Pediatrics *et al.* cited a study of fatal and non-fatal shootings in three major U.S. cities over a period of 18 months in which it was found that just 2% were legally justifiable as an act of self-defense; 9% were accidental; 19% were

attempted or completed suicides; and 70% were assaults or homicides. *See* Arthur L. Kellermann *et al.*, *Injuries and Deaths Due to Firearms in the Home*, 45 *Journal of Trauma and Acute Care Surgery*, 263-67 (1998).

- The American Public Health Association *et al.* cited multiple studies showing that having a gun in the home is associated with an increased risk of a household member committing suicide or becoming a victim of homicide. Brief for American Public Health Association, *et al.*, in Support of Petitioners, 9-14 (Jan. 11, 2008).
- The Petitioners' Brief cited a study of the effectiveness of the District of Columbia's restrictive handgun licensing law – the law the *Heller* majority declared unconstitutional – which showed that during the 10-year period following the adoption of the law, there was a 25% reduction in the rate of gun-related homicides and a 23% reduction in the rate of gun-related suicides in the District, with no increase in homicides or suicides by other means and no similar decreases in homicides and suicides in adjacent metropolitan areas. *See* Colin Loftin, *et al.*, *Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia*, 325 *New England Journal of Medicine* 1615-20 (1991).

In his dissenting opinion in *Heller*, Justice Breyer mentioned the briefs of some of these *amici*. *Heller*, 554 U.S. at 694 (Breyer, J., dissenting). He also cited numerous other studies concerning the dangers of lax

gun control laws and widespread private gun ownership, including a 1976 congressional committee report that focused “particularly on the relation between handguns and crime and the proliferation of handguns” within the District of Columbia. *Id.* at 693-94, citing Firearm Control Regulations Act of 1975 (Council Act No. 1-142), Hearing and Disposition before the House Committee on the District of Columbia, 94th Cong., 2d Sess., on H. Con. Res. 694, Ser. No. 94-24, p. 25 (1976) (hereinafter “DC Rep.”).

Breyer quoted excerpts from the congressional report, including:

- “The easy availability of firearms in the United States has been a major factor contributing to the drastic increase in gun-related violence and crime over the past 40 years.”
- “Contrary to popular opinion in this subject, firearms are more frequently involved in deaths and violence among relatives and friends than in premeditated criminal activities.”
- “Most murders are committed by previously law-abiding citizens, in situations where spontaneous violence is generated by anger, passion or intoxication, and where the killer and victim are acquainted.”

Heller, 554 U.S. at 694 (Breyer J., dissenting) (citing DC Rep. at 25). One striking fact in the congressional report that Breyer didn’t mention in his dissent was:

Since 1900, more people have been killed by private citizens using firearms than in all our wars.

DC Rep. at 25.

This sentence is now an understatement. **In just the 46 years from 1968 through 2013, more U.S. civilians died of gunshot wounds than all the U.S. soldiers killed by any means in all the wars in which our country has ever been involved.** Louis Jacobson, *More Americans Killed by Guns since 1968 than in All U.S. Wars, Columnist Nicholas Kristof Writes*, Politifact (Aug. 27, 2015).⁶

Breyer also acknowledged the claims by Dick Heller and his *amici* that guns are used for self-defense more often than they're used in crimes. We discuss some of the more flagrant false claims concerning the frequency of defensive gun uses (DGU's) below, but Breyer didn't take sides in this debate. *See Heller*, 554 U.S. at 699-702 (Breyer, J., dissenting). Instead, after citing many examples in which "the Court has in a wide variety of constitutional contexts found such public-safety concerns sufficiently forceful to justify restrictions on individual liberties," Breyer concluded:

Thus, any attempt *in theory* to apply strict scrutiny to gun regulations will *in practice* turn into an interest-balancing inquiry, with the interests protected by the Second Amendment on one side and the governmental

6. Available at <https://politifact.com/factchecks/2015/aug/27/nicholas-kristof/more-americans-killed-guns-1968-all-wars-says-colu/> (last accessed Oct. 25, 2026).

public-safety concerns on the other, the only question being whether the regulation at issue impermissibly burdens the former in the course of advancing the latter.

I would simply adopt such an interest-balancing inquiry explicitly.

Id. at 689. The *Heller* majority responded by claiming:

Like the First, [the Second Amendment] is the very *product* of an interest balancing by the people—which Justice BREYER would now conduct for them anew. And whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.

Id. at 635.

The *Heller* majority presented no evidence that “the people” who drafted and ratified the Second Amendment weighed the risks versus benefits of private gun ownership for any purpose other than providing for a well regulated militia. Instead, the *Heller* majority made more than 30 references to the purported right to, need for, or benefit of private gun ownership for the purpose of “self-defense.” *See Heller*, 554 U.S. at 576-630.

For example, the *Heller* majority described handguns as “the quintessential self-defense weapon,” claiming:

Under any of the standards of scrutiny that we have applied to enumerated constitutional

rights....banning from the home “the most preferred firearm in the nation to ‘keep’ and use for protection of one’s home and family,” would fail constitutional muster.

Heller, 554 U.S. at 628-29. The majority took the phrase, “the most preferred firearm in the nation to ‘keep’ and use for protection of one’s home and family,” from the majority opinion in *Parker v. District of Columbia*, 478 F.3d 370, 400 (D.C. Cir. 2007), which in turn, cited an article by Gary Kleck and Marc Gertz as the basis for the claim that there are 2.5 million DGU’s annually in the United States. *Heller*, 554 U.S. at 628-29; *Parker*, 478 F.3d at 400, citing Gary Kleck, *et al.*, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. Crim. L. & Criminology 150, 164 (1995). The 2.5 million number is an extrapolation from the finding that 66 out of 4,977 respondents (1.3%) in a telephone survey claimed that they had used a gun defensively in the past year. Kleck, *supra*, at 163-64. Not a single one of these alleged DGU’s was confirmed by any independent means. *Ibid.*

Since *Heller*, a large body of additional evidence has been amassed that demonstrates beyond any reasonable doubt that private gun ownership in the United States confers far greater risk than benefit to U.S. civilians. For example:

A meta-analysis published in 2014 of all the relevant medical literature to date on the subject of the risks versus benefits of gun ownership showed that owning a gun or having access to one in the home was associated with a significantly increased risk of becoming a homicide or suicide victim.

Andrew Anglemeyer *et al.*, *The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: A Systematic Review and Meta-Analysis*, 160 *Annals of Internal Medicine*, 101-10 (2014).

Moreover, pooled data from the FBI’s Expanded Homicide reports showed that **from 2011 through 2019, the number of gun-related murders committed by civilians (86,047) was more than 35 times the number of justifiable homicides (2,440).**⁷

F. *Heller* effectively elevates the interests of the gun lobby over the intent of the Founders and the interests of the American people.

The *Heller* majority claimed, “[T]his case represents this Court’s first in-depth examination of the Second Amendment.” *Heller*, 554 U.S. at 635. However, this analysis omitted the drafting history of the Second Amendment. In his dissenting opinion in *Heller*, Justice Stevens presented a detailed analysis of the drafting history, including records of state conventions and debates in Congress, (*id.* at 640-62) (Stevens, J., dissenting), and he concluded:

7. *Uniform Crime Report, 2015, Crime in the United States, Expanded Homicide Data*, FBI (2016), available at https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/offenses-known-to-law-enforcement/expanded-homicide/expandhomicidemain_final (last accessed Oct. 25, 2026); *Uniform Crime Report, 2019, Crime in the United States, Expanded Homicide Data*, FBI (2020), available at <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/expanded-homicide> (last accessed Oct. 25, 2026).

Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms.

Id. at 637. The same *Heller* majority that claims to have conducted the “first in-depth examination of the Second Amendment” chided Stevens for conducting such an examination:

Justice STEVENS relies on the drafting history of the Second Amendment—the various proposals in the state conventions and the debates in Congress. It is dubious to rely on such history to interpret a text that was widely understood to codify a pre-existing right, rather than to fashion a new one.

Id. at 603.

As we have documented above, there was no “pre-existing right” to private gun ownership that the Second Amendment could possibly have codified into the U.S. Constitution. In the final section of his dissenting opinion, Stevens stated:

The Court concludes its opinion by declaring that it is not the proper role of this Court to change the meaning of rights “enshrine[d]” in the Constitution.... But the right the Court announces was not “enshrined” in the Second Amendment by the Framers; it is the product of today’s law-changing decision.

Heller, 554 U.S. at 679 (Stevens, J., dissenting).

As we discuss below, the *Heller* decision is far worse than being “law changing.” And as we have documented above, rather than being “this Court’s first in-depth examination of the Second Amendment,” the effect of *Heller* was to elevate the interests of the gun lobby, including its false assertion that private gun ownership is synonymous with “self-defense,” over the intent of the Founders who drafted the Amendment with “[w]ith obvious purpose to assure the continuation and render possible the effectiveness of” a well regulated militia. *Miller*, 307 U.S. at 178.

II. The Progeny of *Heller*, Including Petitioners’ Arguments in the Current Case, Not Only Rest Upon the Egregious Flaws in *Heller*, They Compound Them.

A. Compounding the deadly myth of “guns for protection.”

Petitioners claim, referring to the final page in the *Heller* majority opinion, “[T]his Court has made clear that criminal misuse is irrelevant to whether an arm in common use is protected.” Brief of Petitioners, at 13. To the extent that petitioners’ claim is true, it should be recognized as a condemnation, rather than an endorsement, of the *Heller* decision and its progeny.

Despite claiming that criminal misuse is “irrelevant,” petitioners also claim that criminal misuse of AR-15’s is “rare,” ignoring the fact that in just the last two decades, there have been at least 50 mass shootings committed with

AR-15's, with at least 480 people killed and more than 1,000 wounded. Mark Follman *et al.*, *US Mass Shootings, 1982–2026: Data from Mother Jones' Investigation*, Mother Jones, (October 16, 2026).⁸ While committing mass murder is obviously a criminal act, excluding cases in which the source of the AR-15 was unknown and two cases in which youth used AR-15's that their parents owned, in 97% of the other mass shootings the perpetrators obtained their weapons legally. *Ibid.* And as far as “misuse” goes, the shooters all used AR-15's to do exactly what they're designed to do, “killing as many people as possible, as quickly as possible.” *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 44 (1st Cir. 2024).

Petitioners in the current case quote Justice Clarence Thomas as stating in his dissent from denial of *certiorari* in *Snope v. Brown*, 145 S. Ct. 1534, 1538 (2025), that this Court has “never relied on [its] own assessment of how useful an arm is for self-defense before deeming it protected.” Brief of Petitioners, at 25. Justice Thomas's claim is incorrect. As we've documented above, the *Heller* majority made more than 30 references to private gun ownership for the purpose of “self-defense.” See Section I.E., *supra*. In his majority opinion in *Bruen*, Justice Thomas himself quoted the claim in *Heller* that handguns are “the quintessential self-defense weapon” (*Bruen*, 597 U.S. at 23), and made more than 40 other references to private gun ownership for the purpose of “self-defense.”

8. Available at <https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/> (last accessed Oct. 25, 2026).

Despite claiming that both “criminal misuse” and an “assessment of how useful an arm is for self-defense” are irrelevant in deciding whether ownership of a certain kind of firearm is constitutionally protected, petitioners still attempt to persuade the Court that AR-15’s are used more often for self-defense than to kill innocent people. In making this argument, petitioners cite a survey of AR-15 owners conducted by the Washington Post, a summary of an online survey in an unpublished “working paper,” and a statement in a 2013 monograph published by the National Research Council (NRC) that refers to a chapter written by Gary Kleck in a book co-edited by Kleck. See Brief of Petitioners, at 11-12 and citations therein; see also Gary Kleck, *The Frequency of Defensive Gun Use in ARMED: New Perspectives on Gun Control* (Prometheus Books 2001). None of these references include a single case of an alleged DGU that was confirmed by any independent means.

The NRC published a much more thorough evaluation of gun violence in the United States in 2005 in which it devoted a full chapter to the issue of DGU’s. See National Research Council *et al.*, *Firearms and Violence: A Critical Review* (National Academies Press 2005). Concerning the question of how many times each year civilians use firearms defensively, the NRC concluded, “The answers provided to this seemingly simple question have been confusing.” *Id.* at 103. Among other factors in this conundrum, the NRC noted:

Self-defense is an ambiguous term....Whether one is a defender (of oneself or others) or a perpetrator, for example, may depend on perspective....Some reports of defensive

gun use may involve illegal carrying and possession...and some uses against supposed criminals may legally amount to aggravated assault.

Id. at 106.

In the interim between the strikingly different 2005 and 2013 NRC reports, Gary Kleck became a member of a key committee involved in drafting the 2013 report.⁹

B. Compounding the elevation of the gun lobby’s interests over the Founders’ intent of the Founders and interests of the American people.

Petitioners in the current case claim:

Because AR-15s and similar semiautomatic rifles are covered by the plain text of the Second Amendment, the burden shifts to Respondents to “demonstrate that the[ir] regulation[s]” banning such rifles are “consistent with this Nation’s historical tradition of firearm regulation.”

Brief of Petitioners, at 28.

If any of the 27 words in the “plain text” of the Second Amendment include any mention of a right of private

9. Compare committee members listed at pages “iv-v” of the 2004 NRC report *with* page “v” of the 2013 report, Alan I. Leshner, *et al.*, *Priorities for Research to Reduce the Threat of Firearm-Related Violence* (National Academies Press 2013).

individuals to own “AR-15’s and similar semiautomatic rifles,” like the child who pointed out that the emperor was naked in Hans Christian Anderson’s fable of *The Emperor’s New Clothes*, we do not see them.

Nor do we see any support for the argument by the *Bruen* majority that a ban on civilian firearm ownership must be “consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 17. As justification for this claim, the *Bruen* majority cited a footnote in the 1961 case of *Konigsberg v. State Bar of California*, 366 U.S. 36 (1960). *Ibid.* The footnote mentions the Second Amendment as an example of the principle that a constitutional right may be either narrower or broader than the scope of a “literal reading” of an amendment, but the footnote refers to *Miller* as being an example of the proper determination of the scope of a constitutional right. *Konigsberg*, 366 U.S. at 49, n. 10. As we’ve discussed above, the *Heller* decision is incompatible with the *Miller* decision.

Konigsberg also directly refutes another aspect of *Bruen*. Citing the incorrect claim in *Heller* that, “The Second Amendment ‘is the very product of an interest balancing by the people,’” the *Bruen* majority stated, “While judicial deference to legislative interest balancing is understandable – and, elsewhere, appropriate – it is not deference that the Constitution demands here.” *Bruen*, 597 U.S. at 2. The *Konigsberg* Court opined otherwise, stating, “Whenever, in such a context, these constitutional protections are asserted against the exercise of valid governmental powers a reconciliation must be effected, and that perforce requires an appropriate weighing of the respective interests involved.” *Konigsberg*, 366 U.S. at 51.

The people of the District of Columbia conducted an interest balancing analysis through their democratically elected representatives and passed legislation to stringently regulate handgun ownership in the District D.C. Code §§ 7-2501.01(12), 7-2502.01(a), 7-2502.02(a) (4) (2001). The people of Chicago did the same thing Chicago, Ill., Municipal Code § 8-20-040(a), § 8-20-050(c) (2009). After interest balancing analyses, the people of Massachusetts decided to ban stun guns Mass. Gen. Laws, ch. 140, § 131J (2014); the people of New York decided to stringently regulate concealed carry of handguns N.Y. Penal Law § 400.00(2)(f); and the people of Hawaii decided to ban carrying concealed weapons on private property without owners' permission. Haw. Rev. Stat. § 134-9.5(a) (2023). The Court's majority has nullified these efforts, effectively ruling in accordance with the gun lobby's interests and against the interests of the people and the intent of the Founders in *Heller* and its progeny. See *Heller*, 554 U.S. at 635-36; *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010); *Caetano v. Massachusetts*, 577 U.S. 411, 411-12 (2016) (per curiam); *Bruen*, 597 U.S. at 70-71; *Wolford v. Lopez*, 146 S. Ct. 2032, 2053 (2026).

The day following the announcement of the *Bruen* decision, the majority on this Court opined in *Dobbs* that the State has an "interest in protecting fetal life." *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 262 (2022). We urge this Court that to recognize that the State also has an interest in protecting human life after birth, like the lives of the 20 first-graders and six female staff members who were slaughtered at Sandy Hook Elementary School with an AR-15.

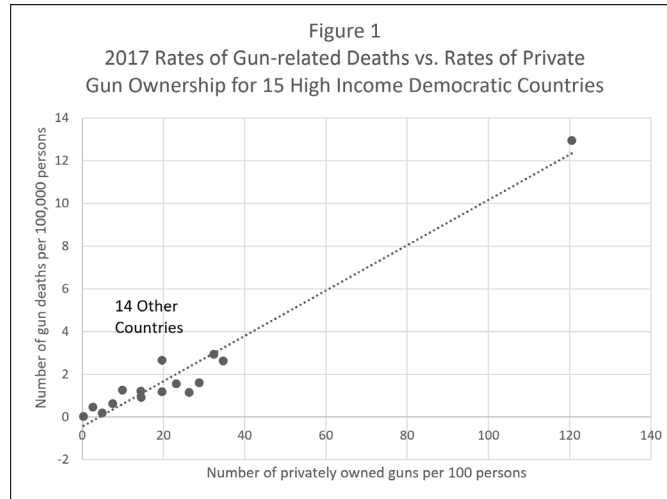
III. *Heller* and Its Progeny Are Literally Death Sentences for Tens of Thousands of U.S. Residents Annually.

In 2024, the most recent year for which fatal injury data are currently available from the Centers for Disease Control, 44,447 U.S. residents died of gunshot wounds.¹⁰ Since 2020, gunshot wounds have become the leading cause of death for children and youth in our country from ages 1-19. Jason E. Goldstick, *et al.*, *Current Causes of Death in Children and Adolescents in the United States*, 386 New England Journal of Medicine 1955-56 (2022).

The rate of gun-related deaths in the United States is *11.4 times higher than the average rate for the other high income democratic countries of the world*. Erin Grinshteyn and David Hemenway, *Violent death rates in the US compared to those of the other high-income countries, 2015*, 123 Preventive Medicine 20-26 (2019).

As demonstrated below in Figure 1, international comparisons show a direct relationship between rates of per capita gun ownership and rates of gun-related deaths, with the United States being an extreme outlier in both categories.

10. Centers for Disease Control and Prevention, WISQARS Fatal and Nonfatal Injury Reports, *All Intent Firearm Deaths and Rates per 100,000* (for 2024), available at: <https://wisqars.cdc.gov/reports/?o=MORT&y1=2024&y2=2024&t=0&d=&i=0&m=20890&g=00&me=0&s=0&r=0&ry=2&e=0&yp=65&a=ALL&g1=0&g2=199&a1=0&a2=199&r1=INTENT&r2=NONE&r3=NONE&r4=NONE> (last accessed Oct. 26, 2026).



Legend: The 14 other countries are, from lowest to highest rates of private gun ownership, Japan, United Kingdom, Spain, Denmark, Italy, Australia, France, Germany, Sweden, New Zealand, Norway, Finland, and Canada. The data used includes estimates by the Small Arms Survey for rates of private gun ownership in 2017, the most recent year for which data was available for all 15 countries;¹¹ and 2017 estimates of rates of gun-related deaths generated using the Global Burden of Disease interactive database of the Institute for Health Metrics and Evaluation.¹² Pearson's correlation coefficient (r-value) is 0.98, with an r-value of 1 indicating a perfectly linear correlation, as

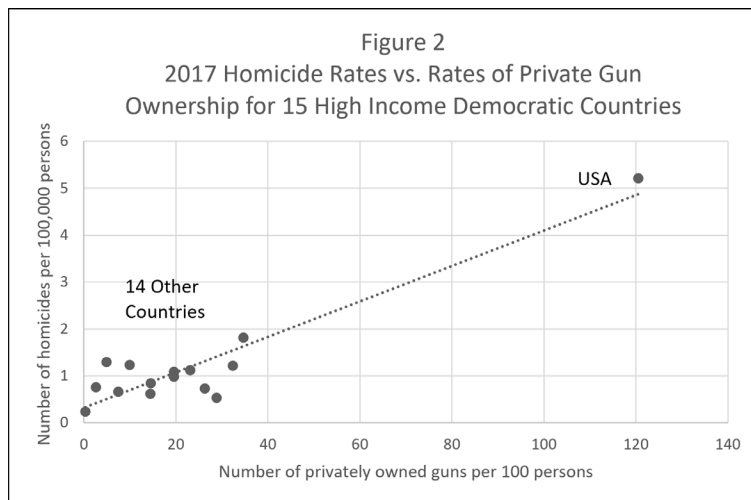
11. *Civilian Firearms Holdings, 2017*, Small Arms Survey (2017), available at <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-BP-Civilian-held-firearms-annexe.pdf> (last accessed Oct. 25, 2026).

12. See Institute for Health Metrics and Evaluation, *Explore GBD 2023 Study Estimates with Claude*, <https://www.healthdata.org/explore-gbd-2023-study-estimates-claude> (last accessed Oct. 25, 2026).

depicted by the dotted line, between rates of gun deaths and rates of gun ownership.

The U.S. homicide rate is 7.5 times higher than the average rate in other high income democratic countries, driven by a gun-related homicide rate that is 24.9 times higher. Grinshteyn, *supra*. Critics of gun control argue that if guns aren't available, people will just find other means of committing murders. However, our extraordinarily high homicide rate is not a result of Americans being inherently more violent than people in peer countries; instead, it is the result of far greater access to guns. Brief for American Public Health Association, *et al.*, in *Heller*, *supra*, at 16.

As the graph in Figure 2 below demonstrates, there is also direct correlation at the international level between rates of private gun ownership and overall homicide rates, not just gun-related homicide rates. In other words, when guns are less available, people don't generally use other means of committing murders. Instead, they commit fewer murders.



Legend: The 14 other countries are the same as in the legend to Figure 1. The data for 2017 homicide rates were generated using the United Nations Office on Drugs and Crime interactive Data Portal.¹³ Pearson’s correlation coefficient (r-value) for the degree to which there is a perfectly linear correlation, as depicted by the dotted line, between rates of homicide and rates of gun ownership is 0.93.

Britain, Australia, and New Zealand responded promptly and definitively to mass shootings by banning civilian ownership of the types of weapons used in the shootings. See Michael J. Webster and Jon S. Vernick, *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*, 185-194, 205-212 (The Johns Hopkins University Press, 2013); see also Firearm Safety and Education, New Zealand (2019 firearms law changes).¹⁴ Like most other high income democratic countries, they require prospective gun owners to provide a legitimate reason for acquiring a firearm; and recognizing that there is no net protective value in private gun ownership in a democratic society, they don’t accept “self-defense” as a sufficient reason for private gun ownership. Philip Alpers *et al.*, *Global Firearm Legislation Compared* (2026).¹⁵

13. See Office on Drugs and Crimes – Data Portal, International Homicide (United Nations), available at <https://data.unodc.org/datareport/hom-victim> (last accessed Oct. 25, 2026).

14. Available at <https://www.firearmssafety.govt.nz/about-us/about-regulator/other-recent-firearms-law-changes/2019-firearms-law-changes> (last accessed Oct. 25, 2026).

15. Available at <https://doi.org/10.6084/m9.figshare.32656452.v2> (last accessed Oct. 25, 2026).

If the United States were to adopt stringent gun control laws comparable to the laws in other high income democratic countries, we could reasonably expect to reduce our rate of gun related deaths to comparable levels, which would be one tenth the current U.S. rate. Assuming that under existing laws, the number of gun related deaths would plateau at the 2024 rate of approximately 44,500 annually in the United States – an assumption that is undoubtedly overly “optimistic” –adopting stringent gun control laws would save approximately 40,000 lives a year. We can’t adopt such laws, though, until the *Heller* decision and its progeny are overturned.

The majority on this Court opined in *Dobbs* that although *Roe* had been considered *stare decisis* for the previous half century, “*Roe* was also egregiously wrong and deeply damaging.” *Dobbs*, 597 U.S. at 268. It is undeniable that the *Heller* decision and its progeny are “deeply damaging.” In creating constitutional obstacles, where none previously existed, to the adoption of stringent gun control laws in the United States comparable to the laws in other high income democratic countries, the *Heller* decision and its progeny are literally death sentences for tens of thousands of Americans annually. In overturning *Roe*, the majority on this Court also stated, “We have long recognized, however, that *stare decisis* is ‘not an inexorable command.’” *Id.* at 292. Applying the same reasoning, the *Heller* decision, which itself violated the principle of *stare decisis*, should not be considered “an inexorable command.”

CONCLUSION

If this Court adheres to the history and text of the Second Amendment and to its own stated principles, it should not only conclude that banning U.S. civilians from possessing AR-15's does not violate the Second Amendment; this Court should also acknowledge that the *Heller* decision and its progeny were wrongly decided.

Respectfully submitted,

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