

Nos. 25-238, 25-566

In the Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,
Petitioners,

v.

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

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

v.

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

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

**BRIEF OF FORMER U.S. REPRESENTATIVES
PETER KING AND CHRISTOPHER SHAYS AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

Amici curiae are former Republican Members of the United States House of Representatives who voted for passage of the 1994 Assault Weapons Ban (as defined below) and have long-standing experience addressing matters of public safety, law enforcement, and firearms policy. *Amici* share a strong interest in preserving the constitutional right protected by the Second Amendment while ensuring that elected legislatures retain authority to enact lawful measures protecting public safety.

Representative Peter King represented New York in the United States House of Representatives for 28 years from 1993 to 2021. He twice served as Chairman of the House Committee on Homeland Security (2005–2007 and 2011–2013), in which capacity he worked closely with federal, state, and local law-enforcement agencies on counterterrorism and domestic security issues. Since leaving Congress, Representative King has continued to work as a consultant on law-enforcement and counterterrorism matters. Representative King also has a long-standing interest in federal gun-safety legislation, having introduced or sponsored major proposals including the bipartisan Public Safety and Second Amendment Rights Protection Act, which would have expanded background checks for commercial firearm sales, and

¹ Pursuant to Rule 37.6, *Amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *Amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief. *Amici* further affirm that all parties were timely provided with the notice required by this Court’s Rule 37.2.

the Denying Firearms and Explosives to Dangerous Terrorists Act of 2013, which would have authorized the Attorney General to prevent individuals suspected of terrorism from purchasing firearms or explosives. His experience addressing threats to public safety and supporting legislation intended to reduce the risks posed by dangerous access to firearms gives him a substantial interest in the issues presented in this case.

Representative Christopher Shays represented Connecticut's Fourth Congressional District in the United States House of Representatives for 22 years, from 1987 to 2009. Representative Shays served on the House Committee on Homeland Security and chaired the Subcommittee on National Security, Emerging Threats, and International Relations. In that capacity, Representative Shays conducted hearings related to terrorism, first-responder preparedness, weapons of mass destruction, and domestic public safety. Representative Shays cosponsored the 1993 House legislation establishing federal background-check requirements for firearm purchases from licensed dealers and later cosponsored legislation to renew the 1994 Assault Weapons Ban before its 2004 expiration.

Amici, as former members of Congress, have a strong interest in promoting public safety by preventing violence caused by assault weapons, consistent with the Second Amendment. As members of Congress who supported the 1994 Assault Weapons Ban, *Amici* are well qualified to address the scope of the assault weapons regulations at issue in the cases presented here. *Amici* swore an oath to protect the

Constitution and have a profound and abiding interest in preserving the right of Congress and State Legislatures to legislate without forfeiting their powers to do so in the future based on shifting trends. *Amici* firmly believe that assault weapons bans are both necessary to promote public and law-enforcement safety and entirely consistent with the Second Amendment.

SUMMARY OF THE ARGUMENT

In 1994, a bipartisan Congress enacted the Public Safety and Recreational Firearms Use Protection Act (the “1994 Assault Weapons Ban”), which prohibited the manufacture, transfer, and possession of specified semiautomatic assault weapons and large-capacity magazines, subject to the statute’s grandfathering provisions. Pub. L. No. 103-322, tit. XI, subtit. A, 108 Stat. 1796, 1996 (1994) (formerly codified at 18 U.S.C. § 922(v)–(w)). Responding to a series of high-profile mass shootings in the preceding years, Congress acted to prevent the further proliferation of highly dangerous weapons that posed a grave threat to public and law-enforcement safety. *See* H.R. Rep. No. 103-489, at 13–15 (1994); *see also* Jeffrey A. Roth & Christopher S. Koper, *Impacts of the 1994 Assault Weapons Ban: 1994–96*, Nat’l Inst. Just. (1999).

I. The 1994 Assault Weapons Ban was passed with bipartisan support, including dozens of Republicans who firmly believed that the prohibition of the specified weapons was a reasonable public-safety measure and was consistent with their strong respect for the rights protected by the Second Amendment. Former Republican Presidents and Republican Representatives and Senators alike emphatically endorsed the 1994 Assault Weapons Ban. Former President Reagan joined former Presidents Carter and Ford in a 1994 letter urging Congress to pass the 1994 Assault Weapons Ban, calling it “absolutely necessary.” Republican members of Congress avowed their abiding support for the Second Amendment while also affirming their belief that the 1994 Assault Weapons Ban was an essential measure to fight crime

and to protect both the public and law-enforcement officers from these unusually lethal weapons. While the 1994 Assault Weapons Ban preceded the Court's more recent clarifications of the scope of the Second Amendment, it was, and remains, consistent with the Second Amendment's guarantee of the individual's right to possess firearms for self-defense—a right that is not, and has never been, an absolute freedom to possess every highly dangerous firearm that new weapons technologies may devise and make available. *See District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

II. The 1994 Assault Weapons Ban was predicated on a congressional finding that assault weapons, including AR-15-style rifles, were unusually dangerous and were not necessary to preserve individual citizens' fundamental Second Amendment rights. This finding was supported by years of hearings and empirical evidence demonstrating that these weapons were “a growing menace to our society” out of proportion to their numbers. H.R. Rep. No. 103-489, at 13.

Although assault weapons made up only about one percent of firearms in circulation, they rose from 5.9 percent of ATF crime-gun traces in 1990 to 8.1 percent in 1993. *Id.* (citing *Public Safety and Recreational Firearms Use Protection Act: Hearing on H.R. 4296 and H.R. 3527 Before the Subcomm. on Crime & Crim. J. of the H. Comm. on the Judiciary*, 103d Cong. (1994) (statement of John Magaw, Director, Bureau of Alcohol, Tobacco and Firearms)). They were “18 times more likely than other guns to be cop-killers, and 16 times more likely to be traced to crime than other

firearms.” 140 Cong. Rec. 9338 (May 5, 1994) (statement of Rep. Derrick), <https://perma.cc/N2AP-ZVBF>. Assault weapons had become “the weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder.” H.R. Rep. No. 103-489, at 13. As a result, police forces were “required to upgrade their service weapons merely as a matter of self-defense.” *Id.* at 13–14. The weapons’ military features were found to be “not merely cosmetic,” but instead to “serve specific, combat-functional ends.” *Id.* at 18. Unlike the 650 sporting guns the Assault Weapons Ban expressly exempted, these weapons were “used by criminals, not hunters or sport shooters,” and their “sole purpose . . . is to kill a lot of people quickly.” 140 Cong. Rec. 9338 (May 5, 1994) (statement of Rep. Derrick), <https://perma.cc/N2AP-ZVBF>.

Moreover, subsequent research has corroborated Congress’s carefully considered judgment, showing that the 1994 Assault Weapons Ban coincided with significant reductions in criminal use of assault weapons and fewer deadly mass shootings during the 1994 Assault Weapons Ban period (1994–2004). For example, a 2004 study commissioned by the National Institute of Justice found that assault weapons fell from 5.4 percent of ATF crime-gun traces in 1992–1993 to 1.6 percent in 2001–2002, a decline of 70 percent. William J. Krouse, Cong. Rsch. Serv., RL32585, *Semiautomatic Assault Weapons Ban* 19 (2004). Local police data pointed the same way: in the six localities studied, assault weapons “typically fell by one-third or more as a share of firearms used in crime” from the late 1990s through 2002. *Id.* at 20. This research confirms what Congress reasonably

believed based on extensive evidence at the time the 1994 Assault Weapons Ban was adopted: assault weapons are unusually dangerous and pose unique threats to public safety that undermine law-abiding citizens' overall ability to effectively defend themselves. Assault weapons bans reduce violence by keeping these unusually lethal instruments off the streets.

III. The expiration of the 1994 Assault Weapons Ban in 2004 was a product of constitutionally appropriate legislative policymaking and did not reflect a judgment by Congress that the Second Amendment stood in the way of a continued nationwide ban on AR-15-style assault weapons. To the contrary, even Second Amendment absolutists such as then-Senator (and former Attorney General) John Ashcroft criticized the policy wisdom of the 1994 Assault Weapons Ban but squarely affirmed that the 1994 Assault Weapons Ban did *not* violate the Constitution. Numerous Republican Representatives and Senators publicly supported an extension of the 1994 Assault Weapons Ban, and then-President George W. Bush himself indicated that it should have been extended. Congress clearly had the authority in 2004 to keep these weapons out of our communities and protect the safety of the public and law enforcement by renewing and extending the 1994 Assault Weapons Ban while remaining consistent with the Second Amendment.

This Court should reject Petitioners' and the federal government's misguided "use it or lose it" view of legislative authority," *United States v. Rahimi*, 602 U.S. 680, 740 (2024) (Barrett, J., concurring)—under

which Congress and State Legislatures would confront a rapidly closing Second Amendment window that requires them to act quickly or not at all in response to highly dangerous new weapons technologies that gain popularity in the commercial market. Under Petitioners' theory, if a legislature does not regulate an unusually dangerous new weapon before it becomes prevalent, the legislature somehow forfeits its constitutional authority and allows the breadth of the Second Amendment right to rapidly expand and encompass new weaponry in a matter of a few years. That cannot be right: the ambit of the Second Amendment right to keep and bear arms is grounded in historical tradition and cannot hinge loosely upon the short-term popularity of particular new weapons incorporating rapidly advancing weapons technologies. In the 22 years since the 1994 Assault Weapons Ban lapsed, AR-15 platform assault weapons have proliferated, but such weapons have become no less unusual and extraordinary in their power to inflict mayhem, increase risks to law enforcement, and threaten public safety. By the same token, federal and state legislative authority to express the People's will by regulating such weaponry cannot reasonably be held to have shrunk in its constitutional scope over such a short span of years.

Amici respectfully submit that this Court should affirm the judgments of the Seventh and Second Circuits in these consolidated cases. The Court's *Heller* decision leaves no doubt that the Second Amendment right is "not a right to keep and carry any weapon whatsoever in any manner and for whatever purpose." 554 U.S. at 626. While the Second Amendment may take some issues "off the table," *id.*

at 636, it does not prevent the People’s elected representatives from prohibiting assault weapons found by Congress, State Legislatures, or local governments to pose unusual dangers to civilians and law enforcement. Congress reached that judgment on an extensive record in 1994, and nothing about the 1994 Assault Weapons Ban’s expiration a decade later or other developments since then can be construed to deprive the People’s representatives of constitutional authority to reach the same judgment today.

ARGUMENT

I. As Strong Supporters of the Second Amendment, Dozens of Republican Elected Officials Recognized That the 1994 Assault Weapons Ban Stood Well Within the Nation’s Historical Tradition of Gun Regulation.

The 1994 Assault Weapons Ban was passed with bipartisan support that included 38 Republican Representatives, 10 Republican Senators, and former Republican Presidents—all of whom believed that the prohibition of the specified weapons was a reasonable public-safety measure consistent with a strong respect for the rights protected by the Second Amendment.

To be sure, elected officials in the lead-up to the 1994 Assault Weapons Ban were not arguing over launces or Bowie knives. In enacting the 1994 Assault Weapons Ban, however, Congress most certainly was responding to “unprecedented societal concerns” caused by “dramatic technological changes,” *N.Y. State. Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1,

27 (2022), which had produced a new category of unusually dangerous weapons that were inflicting wanton violence against the American people. For example, in 1984, a gunman armed with an Uzi carbine and other firearms killed 21 people at a McDonald’s restaurant in San Ysidro, California. *See* Michael Granberry, *A 77-Minute Moment in History That Will Never Be Forgotten*, L.A. Times (July 16, 1989), <https://perma.cc/Z68R-RX8D>. In 1989, a gunman with an AK-47 and a 75-round magazine fired 106 rounds in less than two minutes into the schoolyard of Cleveland Elementary School in Stockton, California, killing five children and wounding 29 others. H.R. Rep. No. 103-489, at 15; Opp’n Br. for Resps. 2, *Viramontes v. Cook County*, No. 25-238 (U.S. Oct. 29, 2025). In 1993, a gunman with two TEC-DC9 assault pistols and 50-round magazines killed eight people at 101 California Street in San Francisco, and another gunman, reloading 15-round magazines, killed six commuters on the Long Island Rail Road. H.R. Rep. No. 103-489, at 14–15.

The 1994 Assault Weapons Ban was not a sudden swerve away from prior regulations addressing new weapons technologies, but rather a measured and proportional action consistent with prior legislative and executive initiatives. In the 1930s, Congress responded to the advent of fully automatic weaponry by passing the National Firearms Act of 1934, imposing a stringent registration scheme for automatic weapons as well as prohibitive taxes on their transfer. *See* Pub. L. No. 73-474, 48 Stat. 1236

(1934).² AR-15 platform semi-automatic weapons were not designed until the late 1950s, as a result of a U.S. military request for a lightweight, high-velocity rifle comparable in firepower to the Soviet AK-47. See Dallas T. Durham, *The M-16: Tradition, Innovation, and Controversy*, U.S. Army Command & Gen. Staff Coll. (2021). The potential for mayhem associated with these weapons materialized over the ensuing decades. In 1989, the George H.W. Bush administration responded to growing concerns by taking executive action to impose a permanent import ban on 43 types of assault rifles. Charles Mohr, *U.S. Bans Imports of Assault Rifles in Shift by Bush*, N.Y. Times (Mar. 15, 1989), <https://perma.cc/432N-MEYW>; Susan F. Rasky, *Import Ban on Assault Rifles Becomes Permanent*, N.Y. Times (July 8, 1989), <https://perma.cc/SYH6-L8QJ>. Five years later, as Congress was considering the 1994 Assault Weapons Ban, former President Ronald Reagan commended the “impressive 40% drop in imported assault weapons traced to crime between 1989 and 1991”; but President Reagan urged Congress to support the 1994 Assault Weapons Ban because the “killing continues.” 162 Cong. Rec. H3763–H3764 (daily ed. June 14, 2016), <https://perma.cc/5ULG-XDRJ>.

Against this backdrop, support for the 1994 Assault Weapons Ban crossed party lines in Congress. *Amici* supported the 1994 Assault Weapons Ban, not despite their deep commitment to the Second

² This Court affirmed the constitutionality of the National Firearms Act in *United States v. Miller*, 307 U.S. 174, 178 (1939); see also *Heller*, 554 U.S. at 627 (acknowledging that M-16 rifles “may be banned”).

Amendment, but consistent with it. *Amici* understood, as this Court later held, that the Second Amendment protects an individual right to bear arms, but that right is “not unlimited” and does not guarantee “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Heller*, 554 U.S. at 626. The United States had already sharply restricted fully automatic machine guns to military uses and barred the importation of most foreign semi-automatic weapons. Mass violence and horrific injuries and death left no doubt that AR-15-style assault weapons are highly dangerous and pose unusual threats. Support for the 1994 Assault Weapons Ban was entirely consistent with the Second Amendment’s protection of citizens’ right to keep and bear arms for lawful self-defense.

Floor statements in the House debate on the 1994 standalone bill to ban assault weapons reflect House Republicans’ abiding commitments to the Second Amendment right. *Amicus* Christopher Shays (CT-4) strongly affirmed that he believed “Americans have the constitutional right and protection to bear arms,” but—in the face of the violence and disorder caused by the proliferation of assault weapons—the “Government has the constitutional responsibility to regulate that right.” 140 Cong. Rec. 9372 (May 5, 1994), <https://perma.cc/N2AP-ZVBF>. Representative Sherwood Boehlert (NY-23) similarly pointed out that Second Amendment rights are fundamental but not absolute, and he analogized the 1994 Assault Weapons Ban to the reasonable limits that the Constitution permits on the freedoms of speech and press. 140 Cong. Rec. 9369 (May 5, 1994).

Numerous other Republicans with a deep commitment to the Second Amendment also recognized the compelling public safety justification for the 1994 Assault Weapons Ban, as well as the absence of any Second Amendment barrier to its enactment. For example, Representative Rick Lazio (NY-2) affirmed that, while he was “a staunch supporter of the [S]econd [A]mendment,” assault weapons are highly dangerous and can be regulated without jeopardizing individuals’ constitutional rights. 140 Cong. Rec. 9353 (May 5, 1994), <https://perma.cc/J69K-4B7E>. Representative Lazio stated that he did “not believe that these weapons—whose functions are so adaptable to the destruction of human life—are protected under [S]econd [A]mendment rights.” *Id.* He concluded by stating that if assault weapons *were* protected by the Second Amendment, he would oppose the bill. *Id.* Similarly, Representative Bill Young (FL-10), another strong defender of Americans’ right to own guns, stated that he could not support allowing the continued production of the specified assault weapons for use by anyone other than a member of the Nation’s uniformed services or law enforcement agencies. 140 Cong. Rec. 9375–76 (May 5, 1994). These statements reflect the same principle later recognized in *Heller* and its progeny: a commitment to the individual right to keep and bear arms can coexist with reasonable restrictions on unusually dangerous weapons to protect the public.³

³ *H.R. 3355 (103rd): Violent Crime Control and Law Enforcement Act of 1994* (Aug. 25, 1994), <https://perma.cc/U8SE-GVSA>. (continued...)

These Republican members of Congress were far from alone in their Second Amendment judgment: they were also forcefully supported by former Republican Presidents, who joined former President Jimmy Carter in publicly advocating for the 1994 Assault Weapons Ban. In a joint letter to Congress signed by Presidents Gerald Ford, Carter, and Reagan, the former Presidents described the problem of assault weapons as “a matter of vital importance to the public safety” because, among other things, such weapons already accounted for a disproportionate share of “guns traced to crime.” 162 Cong. Rec. H3763–H3764 (daily ed. June 14, 2016), <https://perma.cc/5ULG-XDRJ>. President Reagan went even further in his efforts to ensure the legislation’s passage, lobbying individual Republican legislators and sending additional letters urging legislators to pass the 1994 Assault Weapons Ban. Andrew Kaczynski, *The Assault Weapon Ban Would Have Never Passed If It Wasn’t for Ronald Reagan*, BuzzFeed News, (Dec. 19, 2012), <https://perma.cc/4DZF-7RYP>.

Ten years later, when the 1994 Assault Weapons Ban was up for renewal, then-President George W. Bush—a “longstanding advocate of the rights of gun owners in America”⁴—added his voice in support of the 1994 Assault Weapons Ban and backed its

Representative Young supported the standalone 1994 Assault Weapons Ban but voted against the omnibus bill.

⁴ *Statement on the United States Supreme Court Ruling on Individual Gun Rights*, Am. Presidency Project (June 26, 2008), <https://perma.cc/8FXN-JW2A>.

reauthorization. *Washington in Brief*, Wash. Post (Apr. 11, 2003), <https://perma.cc/FK7C-GG2P>. Even after the 1994 Assault Weapons Ban lapsed in 2004, President Bush maintained that he favored extending it, stating in a 2004 debate that he believed Congress “ought to extend the [A]ssault [W]eapons [B]an.” *Transcript: Bush, Kerry Debate Domestic Policies*, CNN (Oct. 14, 2004), <https://perma.cc/A49F-BL8J>. President Bush recognized, as did many Republican leaders before him, that commitment to protecting Second Amendment rights and support for the prohibition of semi-automatic assault weapons were not at odds but in harmony.

The 1994 Assault Weapons Ban was ultimately enacted by Congress as part of the Violent Crime Control and Law Enforcement Act. A total of 38 House Republicans, including *Amici*, voted for the standalone assault-weapons legislation, and ten Republican Senators supported the 1994 Assault Weapons Ban, introduced as the Feinstein Amendment to the 1993 Senate omnibus crime bill.⁵

⁵ Bateman (VA-1), Bereuter (NE-1), Blute (MA-3), Boehlert (NY-23), Castle (DE at-large), Fawell (IL-13), Franks (NJ-7), Gilchrest (MD-1), Greenwood (PA-8), Horn (CA-38), Houghton (NY-31), Huffington (CA-22), Hyde (IL-6), Johnson (CT-6), Kasich (OH-12), King (NY-3), Klug (WI-2), Lazio (NY-2), Leach (IA-1), Levy (NY-4), Machtley (RI-1), McDade (PA-10), Meyers (KS-3), Michel (IL-18), Miller (FL-13), Molinari (NY-13), Morella (MD-8), Porter (IL-10), Pryce (OH-15), Quinn (NY-30), Ridge (PA-21), Ros-Lehtinen (FL-18), Roukema (NJ-5), Saxton (NJ-3), Shaw (FL-22), Shays (CT-4), Smith (NJ-4), and Young (FL-10), *H.R. 4296 (103rd): Public Safety and Recreational Firearms Use Protection Act* (Roll Call 156, May 5, 1994), (continued...)

President Bill Clinton signed the 1994 Assault Weapons Ban into law on September 13, 1994.

The 1994 Assault Weapons Ban prohibited the manufacture, transfer, or possession of specified assault weapons, targeting 19 specified firearms (and their copies), while also establishing a features-based test for semiautomatic rifles, pistols, and shotguns possessing two or more enumerated military-style features. It separately prohibited large-capacity ammunition feeding devices holding more than ten rounds. Congress also expressly *exempted* from the prohibition more than 650 firearms commonly used for hunting and sport; grandfathered weapons and magazines already lawfully possessed; required a study by the Department of Justice of the 1994 Assault Weapons Ban's effectiveness; and included a sunset provision whereby the law would lapse after ten years, in 2004, unless reauthorized by Congress.

The 1994 Assault Weapons Ban is substantially similar to the Connecticut and Cook County, Illinois statutes that are challenged here. Connecticut and Cook County employ the same basic regulatory architecture as the 1994 Assault Weapons Ban: each provides a features-based definition, identifies specific assault weapons, including specified models and their copies, and separately restricts magazines

<https://perma.cc/UW8T-E5VT>; Brown (CO), Chafee (RI), Coats (IN), Danforth (MO), Hatfield (OR), Jeffords (VT), Kassebaum (KS), Lugar (IN), Packwood (OR), and Roth (DE), *Roll Call Vote on Amend. 1132 to S. 1607 (103rd): Violent Crime Control and Law Enforcement Act of 1993* (Nov. 17, 1993), <https://perma.cc/EQ8V-87KU>.

holding more than ten rounds. Notably, contemporaneous with the 1994 Assault Weapons Ban, both Connecticut and Cook County first enacted their laws in 1993, amid the same national debate that culminated in the 1994 Assault Weapons Ban. These state-level actions were updated after the 1994 Assault Weapons Ban lapsed, the number of AR-15 platform assault weapons consequently exploded, and the extreme acts of mass violence perpetrated with these weapons continued. Matthew Loh, *America Has 20 Million AR-15 Style Rifles in Circulation, and More Guns Than People in the Country*, Business Insider (May 30, 2022), <https://perma.cc/J5GV-APPLE>.

The same fundamental regulatory judgment underlies the challenged laws and the 1994 Assault Weapons Ban. Certain unusually dangerous weapons are restricted while the broader universe of firearms—including a vast array of handguns, Americans’ historically most favored instrument of self-defense, *see Heller*, 554 U.S. at 628—remains available for lawful possession. Far from representing a novel or constitutionally deviant approach, the basic framework of the challenged laws traces directly to legislation that commanded robust Republican as well as Democratic support at the federal level, and that many Republican lawmakers and other officials continued to support when Congress considered extending it a decade later.

II. Congress Correctly Found That Assault Weapons Were Unusually Dangerous—a Judgment Confirmed by the Sharp Drop in Gun Violence During the Ban Period.

In enacting the 1994 Assault Weapons Ban, Congress did not act precipitately or on the basis of emotion or whim. To the contrary, over five years of congressional hearings, the House and Senate developed an extensive record demonstrating the disproportionate dangers posed by assault weapons, including AR-15-style rifles. Relying on this extensive factual record, Congress found that such weapons were unusually dangerous. These findings were confirmed by the significant reductions in gun violence that prevailed thereafter during the 1994 Assault Weapons Ban period from 1994 to 2004.

The legislative record supporting Congress's enactment of the 1994 Assault Weapons Ban documented the distinctive and unusual dangers posed by the covered weapons, including the disproportionate use of assault weapons in crime, against police, and in mass killings. The then-Director of the Bureau of Alcohol, Tobacco and Firearms testified that assault weapons were disproportionately more often used in crimes. H.R. Rep. No. 103-489, at 13. The record showed that assault weapons dramatically increased the firepower available to perpetrators of violent crime. *Id.* at 14. The House Judiciary Committee likewise found mounting evidence that assault weapons had become “the weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder.” *Id.* In 1993 alone, ATF traced

5,397 assault weapons, roughly 10 percent of the 55,665 crime guns it traced, with the Colt AR-15 among the most common. 140 Cong. Rec. 3018–19 (Feb. 24, 1994) (statement of Sen. Feinstein), <https://perma.cc/23YD-YQTY>. Law-enforcement testimony reinforced that concern: officers reported that “it is not at all unusual for a cop to look down the barrel of a TEC-9 with a 32 round clip,” and the Committee found that police departments were being forced “to upgrade their service weapons merely as a matter of self-defense.” *Id.* at 13–14.

The record also identified characteristics of assault weapons that magnified those dangers. The House Judiciary Committee explained that most covered weapons were equipped with 30-round magazines, allowing “a single person with a single assault weapon [to] easily fire literally hundreds of rounds within minutes,” in contrast to hunting rifles and shotguns that typically held only three to five rounds. *Id.* at 18–19. Those findings drew support from legislators across the political spectrum. Republican Representative and Judiciary Committee member Henry Hyde reversed his previous opposition and supported the 1994 Assault Weapons Ban, explaining: “I believe in the right to own weapons, protect your home or property or hunt. . . . *But these are dangerous weapons.*” Karen Hosler, *Assault Gun Ban Faces Tight Vote in House*, Balt. Sun (May 5, 1994), <https://perma.cc/4DUD-RS53> (emphasis added). House Republican leader Robert Michel similarly explained that, “[w]hen our police need to increase their firepower so that they can match the firepower of the criminals, it is time to ban assault weapons.” See Kenneth J. Cooper, *House Backs Ban on Assault*

Guns, Wash. Post (May 5, 1994), <https://perma.cc/JB9U-7A3K>. Congress thus acted on extensive evidence that assault weapons presented unusual dangers to the public and law enforcement, including their disproportionate use in crime and capacity for sustained fire.

Witnesses to several of these attacks also testified before the Judiciary Committee. The Judiciary Committee's report recounts that, just months before the House acted in 1994, Los Angeles police officer Christy Hamilton was killed with an AR-15. H.R. Rep. No. 103-489, at 14–15. The House then debated the standalone bill for five hours before passing it 216 to 214, with 38 Republicans voting in favor. *See* 140 Cong. Rec. H3063 (daily ed. May 5, 1994). Congress enacted the 1994 Assault Weapons Ban on the basis of that extensive evidentiary record.

The evidence persuaded *Amici* and their fellow legislators that the military features of these weapons were *not* cosmetic, but combat-functional, producing “a capability for lethality—more wounds, more serious, in more victims—far beyond that of other firearms in general, including other semiautomatic guns.” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 262 (2d Cir. 2015). Under the 1994 law, *Amici* and their fellow members of Congress did not seek to suppress overall gun ownership or hamper Americans’ ability to defend themselves effectively. Congress instead sought to reduce the harms associated with the use of a well-defined category of unusually dangerous weapons and magazines identified in the legislative record.

Moreover, the follow-up studies that Congress required as part of the 1994 Assault Weapons Ban demonstrated that, up until its lapse in 2004, the law was achieving that objective. A Justice Department-funded study found that, in the 1994 Assault Weapons Ban's very first year, traces of assault weapons recovered in crimes declined by 20 percent, compared with an 11 percent decline in all trace requests, suggesting a 9 to 10 percent additional decrease attributable to the 1994 Assault Weapons Ban. See Roth & Koper, *supra*, at 6–7. A later evaluation similarly found that assault weapons declined from 5.4 percent of crime-gun traces in 1992–1993 to 1.6 percent in 2001–2002, a 70 percent decline that (though possibly attributable in part to changes in tracing practices) “did not begin until 1994 (the year of the ban).” Christopher S. Koper, Daniel J. Woods & Jeffrey A. Roth, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994–2003*, at 44, Nat'l Inst. Just. (2004). Analyses of guns recovered by police in six localities confirmed the trend: after the 1994 Assault Weapons Ban, assault weapons fell as a share of crime guns in every jurisdiction studied, with declines ranging from 17 to 72 percent and generally falling between 32 and 40 percent. *Id.* at 48–49. That congressionally mandated research, and the NIJ-sponsored update that followed, documented a substantial decline in the criminal use of the weapons Congress had targeted. See *id.* at 46, 51.

Subsequent research has provided further evidence that the 1994 Assault Weapons Ban coincided with fewer and less deadly mass shootings. A 2019 peer-reviewed study found that, after

controlling for the annual trend, the 1994 Assault Weapons Ban period was associated with nine fewer mass-shooting deaths per 10,000 firearm homicides and that mass-shooting fatalities from all firearms were 70 percent less likely to occur while the 1994 Assault Weapons Ban was in effect. See Charles DiMaggio et al., *Changes in US Mass Shooting Deaths Associated with the 1994–2004 Federal Assault Weapons Ban: Analysis of Open-Source Data*, 86 J. Trauma & Acute Care Surgery 11, 14–15 (2019). A 2021 study using regression discontinuity analysis of public mass shootings from 1966 to 2019 found that the 1994 Assault Weapons Ban “resulted in a significant decrease in public mass shootings, number of gun deaths, and number of gun injuries,” and estimated that it prevented 11 public mass shootings while in effect. Lori Post et al., *Impact of Firearm Surveillance on Gun Control Policy: Regression Discontinuity Analysis*, 7 JMIR Pub. Health & Surveillance e26042 (2021). The study also found that the use of assault rifles in these shootings fell by half during the 1994 Assault Weapons Ban and tripled after it lapsed, while “[f]irearm homicides in general follow[ed] no such patterns.” *Id.* at 5. The authors estimated that keeping the 1994 Assault Weapons Ban in place would have prevented 30 additional public mass shootings, which killed 339 people and injured 1,139 more. *Id.* at 1.

More recently, a 2024 study examining public mass shootings from 1966 through 2022 found that the upward trajectory of such shootings “substantially fell” during the 1994 Assault Weapons Ban, specifically for shootings involving an assault weapon or large-capacity magazine. Alex Lars Lundberg et al.,

Public Mass Shootings: Counterfactual Trend Analysis of the Federal Assault Weapons Ban, 10 JMIR Pub. Health & Surveillance e62952 (2024). The study estimated that the 1994 Assault Weapons Ban prevented as many as five public mass shootings while in force and that, had it remained in effect from 2005 through 2022, as many as 38 additional public mass shootings would have been prevented. *Id.* at 1. The evidence thus bears out Congress's practical judgment: although the 1994 Assault Weapons Ban could not eliminate gun violence, the criminal use of the weapons Congress identified as especially dangerous declined during the 1994 Assault Weapons Ban, and that period was associated with reductions in the frequency and lethality of mass shootings.

The public-safety impact of the 1994 Assault Weapons Ban confirms what Congress predicted in its findings undergirding the ban: these weapons are unusually dangerous and attractive to criminals and mass shooters. A ban on a class of weapons that comprised only about one percent of all guns in circulation at the time produced measurable declines in their criminal use and coincided with sharply fewer and less deadly mass shootings. These results would not have occurred if the banned weapons had been ordinary arms interchangeable with the wide variety of semi-automatic pistols, rifles, and other firearms that remained legal during the 1994 Assault Weapons Ban period.

III. The Scope of the Second Amendment Should Not Vary Depending on Historically Contingent Short-Term Changes in the Popularity of Highly Dangerous Weapons.

There is no doubt that AR-15 platform semi-automatic assault weapons are much more widely owned by American citizens today than they were in 1994. Since such ownership exploded after the 1994 Assault Weapons Ban lapsed in 2004, that current state of affairs might not exist if Congress had extended the ban, as then-President George W. Bush and numerous other Second Amendment supporters recommended. But regardless of any such hypothetical consequences, this Court has repeatedly recognized that Congress does not always legislate to the constitutional ceiling, and the scope of individual rights under the Constitution does not wax or wane like the moon. The mere fact that weapons ownership increased after Congress allowed the 1994 Assault Weapons Ban to lapse—or that more State legislatures have not joined the eleven States that ban or sharply restrict AR-15-style assault weapons—cannot be construed as a basis for concluding that the Constitution now forbids such restrictions.

Indeed, as Justice Barrett has observed in the Second Amendment context, it is a “serious problem[]” to “assume[] that founding-era legislatures maximally exercised their power to regulate, thereby adopting a ‘use it or lose it’ view of legislative authority.” *United States v. Rahimi*, 602 U.S. 680, 739–40 (2024) (Barrett, J., concurring). The 2004 failure of Congress to extend the 1994 Assault Weapons Ban concisely reinforces the same point in a more recent timeframe.

The extension faltered because the Senate rejected the gun-industry liability bill to which the reauthorization amendment had been attached. *The Assault Weapons Ban: Lessons about Congress*, Gov't Affs. Inst. (Jan. 16, 2013), <https://perma.cc/SM9P-58RS>. But then-President Bush supported the reauthorization, a bipartisan Senate majority voted 52-47 to extend the 1994 Assault Weapons Ban, and polls showed that roughly two-thirds of Americans favored renewal. Republican Representative Michael Castle (R-Del.) put it plainly: "To allow the ban to sunset is simply irresponsible; every major law enforcement organization in America supports an extension of the ban." 162 Cong. Rec. H3763–H3764 (daily ed. June 14, 2016), <https://perma.cc/5ULG-XDRJ>. In 2004, there was no serious question that Congress had the legislative authority under the Constitution to continue the 1994 Assault Weapons Ban indefinitely. While Congress failed to exercise its full power to regulate in 2004, that failure to regulate maximally does not forfeit that authority or give it a short-term shelf life of only a handful of years.

Congress's failure to reauthorize the 1994 Assault Weapons Ban in 2004 did not reflect, and should not be construed as reflecting, any concerns about the 1994 Assault Weapons Ban's validity under the Second Amendment. *See* Br. of Ronnell Higgins, in his Official Capacity as Commissioner of Connecticut Dept. of Emergency Services and Public Protection, et al, at 49–50. To the contrary, as noted above, then-President George W. Bush supported extension of the 1994 Assault Weapons Ban and lamented the fact that it did not pass in 2004. If anything, AR-15 platform assault weapons were *less* prevalent in 2004

than they had been in 1994, when the 1994 Assault Weapons Ban was imposed.

Nor can constitutional significance be assigned to Congress's timing given that state and local legislatures exercised their regulatory authority on roughly equivalent schedules. Congress did not legislate in a vacuum. As it debated the 1994 Assault Weapons Ban, state and local governments were independently addressing the same issue. Connecticut enacted its assault weapons ban on June 29, 1993, and Cook County followed that autumn, adopting its ordinance on October 19 and amending it on November 16, 1993, one day before the Senate adopted Senator Feinstein's amendment. These laws were also part of the broader wave of state legislation following the 1989 Stockton schoolyard shooting, including measures enacted in California in 1989, New Jersey in 1990, and Maryland in 1994. When the federal ban later expired, state and local regulation did not disappear with it: Cook County reenacted its ordinance as the Blair Holt Assault Weapons Ban in 2006 and revised it in 2013, while Connecticut updated its law in 2013 and again in 2023. That history underscores the error in treating a particular legislature's decision to act or not act as a marker of the constitutional boundary for all legislatures thereafter.

The distinction between legislative policy choices and constitutional limits is evident in the views of the 1994 Assault Weapons Ban's opponents. Even some of the 1994 Assault Weapons Ban's most prominent Republican critics drew a line between policy and constitutionality. Senator John Ashcroft, a staunch

supporter of the Second Amendment, who “unequivocally” believed the Constitution protects the right of individuals to own guns, is a clear example. Dan Eggen, *Ashcroft: Gun Ownership an Individual Right; Letter to NRA Sparks Debate Over 2nd Amendment, Long Interpreted as Applying Collectively*, Wash. Post (May 23, 2001), <https://perma.cc/7LMM-FBHB>. Then-Attorney General-designate Ashcroft publicly criticized the 1994 Assault Weapons Ban, calling it “wrong-headed.” *Attorney General Nominee John Ashcroft’s Senate Confirmation Hearing (Day Two)*, Am. Presidency Project (Jan. 17, 2001), <https://perma.cc/B55C-T48F>. However, when asked under oath whether the 1994 Assault Weapons Ban violated the Second Amendment, Ashcroft answered without qualification: “No.” He then clarified that he did *not* “believe the Second Amendment to be one that forbids any regulation of guns.” *Id.* Senator Ashcroft distinguished his policy opposition to the 1994 Assault Weapons Ban from its constitutionality: “[T]here are a number of enactments which I would not prefer as policy, but which I believe would be constitutional. . . . I believe that there are constitutional inhibitions on the rights of citizens to bear certain kinds of arms. And some of those I would think good judgment, some of those I’d think bad judgment.” *Id.* Senator Ashcroft’s testimony illustrates the distinction between constitutional judgment and policy preference.

Under Petitioners’ theory, legislative restraint would have the anomalous effect of narrowing the government’s regulatory authority as weapons that are unusual in their lethality and capacity for

intimidation and terror become more commonly “used.” That cannot be right. A legislature does not forfeit constitutional authority by deciding—for whatever short-term combination of political reasons, or no demonstrable reason at all—not to exercise it at any given time. An increase in the popularity of assault weapons during a temporal gap in regulation cannot rewrite the boundaries of the Constitution. The Second Amendment’s scope depends on constitutional text and history, not whether legislatures exercise their lawful authority at any particular moment.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in the briefs of Respondents, *Amici* respectfully ask this Court to affirm the judgments of the Seventh and Second Circuits in these consolidated cases.

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