No. 25-238, 25-566

In the
Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,
Petitioners,
v.
COOK COUNTY, ILLINOIS, *et al.*,
Respondents.

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

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

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INTRODUCTION

Laws banning AR-15 platform and similar semi-automatic rifles are unconstitutional under a straightforward application of this Court's precedents. *Heller* concerned a ban on possession of a class of firearms, focused on the historical tradition of dangerous and unusual weapons, and held that the class of firearms at issue could not be banned because they were in common use. No more need be said to resolve this case in Petitioners' favor.

By contrast, it is not possible for this Court to affirm without overruling the core holdings of *Heller* and *Bruen*. Respondents claim that "neither *Heller* nor *Bruen* 'decide[d] anything about the kinds of weapons that people may possess.' " Br. for the Conn. Respondents 16 ("Conn.") (quoting *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 72 (2022) (Alito, J., concurring)). But *Heller* held that "the sorts of weapons protected were those in common use." *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008) (quotation marks omitted). And *Bruen* repeatedly applied this holding. *See Bruen*, 597 U.S. at 21, 32, 47.

Respondents further claim that "neither *Heller* nor *Bruen* had cause to consider the historical tradition of regulating unusually dangerous weapons." Conn. 23. But "regulating unusually dangerous weapons" is just Respondents' name for the "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons' " that *Heller* found to "fairly support[]" the common use test, 554 U.S. at 627, and that *Bruen* traced from medieval England through 19th-century America, *see* 597 U.S. at 38–70. *Bruen* concluded that this tradition did not justify "broadly prohibit[ing] the public carry of commonly used firearms

for personal defense." *Id.* at 70. Much less does it support a categorical ban on mere possession of commonly used firearms.

Rather than apply the common-use test, Respondents ask this Court to adopt an "unusually dangerous weapons" test that would require courts to assess whether "weapons are especially dangerous and not proportional to the end of self-defense," Br. for the Cook County Respondents 25 ("County"). But *Bruen* expressly rejected "independent means-end scrutiny under the guise of an analogical inquiry." *Bruen*, 597 U.S. at 29 n.7. Asking courts whether arms are "especially dangerous" is no different from asking whether the government has a compelling or substantial interest, and asking whether the arms are "proportional to the end of self-defense" is no different from asking whether a ban is tailored to that interest.

Under this Court's precedents, then, the question is whether AR-15 platform and similar semiautomatic rifles are in common use. They are. In *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025), this Court unanimously described semiautomatic rifles that Respondents ban as "both widely legal and bought by many ordinary consumers," identifying the AR-15 as "the most popular rifle in the country." *Id.* at 297. Respondents do not explain how such firearms could fail to be in common use.

This Court need break no new ground to rule for Petitioners. Because AR-15 platform and similar semiautomatic rifles are in common use, this Court must reverse the judgments below.

ARGUMENT

I. Respondents' Semiautomatic Rifle Bans Are Unconstitutional.

A. Laws Banning AR-15 Platform and Similar Semiautomatic Rifles Implicate the Plain Text of the Second Amendment.

Respondents do not dispute that their bans of AR-15 platform and similar semiautomatic rifles implicate the plain text at *Bruen* step one. *See* Conn. 9; County 14. Cook County briefly argues that common use is a step one issue, *see* County 47, but it does so by improperly conflating common use and *Wolford*'s plain-text definition of arms as "weapons … 'customarily used for offensive or defensive purposes,' " *id.* (*quoting Wolford v. Lopez*, 609 U.S. 185, 195 (2026)). The County elsewhere reads that definition correctly, as screening out items when "weaponry is not their customary use." *Id.* at 14 n.3; *see Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. N.J.*, 183 F.4th 211, 236 n.22 (3d Cir. 2026).

B. Arms in Common Use Cannot be Categorically Banned.

1. Because common use is the governing historical principle, the possession of arms in common use cannot be categorically banned. Respondents make no real effort to show that AR-15 platform and similar semiautomatic rifles are not in common use as this Court's precedents use that term. That is no surprise because the AR-15 is a "commonplace," "generally available," "traditionally … lawful" firearm, *Staples v. United States*, 511 U.S. 600, 611–12 (1994), and "the

most popular rifle in the country," *Smith & Wesson*, 605 U.S. at 297.

Respondents contend that rifles are involved in a small percentage of defensive gun uses. *See* County 37. But Professor English's recent survey found that 16.4% of defensive gun uses involved rifles, which equates to hundreds of thousands of defensive rifle uses a year. *See* Br. of Amicus Curia Professor William English, 11 ("English Br."). Professor Kleck's survey found that rifles were involved in 6.4% of defensive gun uses over 30 years ago, when AR-15 platform rifles were less prevalent. *See* Gary Kleck & Marc Gertz, *Armed Resistance to Crime*, 86 J. CRIM. L. & CRIMINOLOGY 150, 185 (1995). But regardless, possessing a firearm *for* self-defense does not require actively using a firearm *in* self-defense. "Individuals often 'keep' firearms in their home, at the ready for self-defense." *Bruen*, 597 U.S. at 32. Such a firearm is "used" for self-defense even if never actively employed for that purpose. *See Bailey v. United States*, 516 U.S. 137, 143 (1995). And self-defense is not the only lawful purpose relevant to the right's exercise. *See Bianchi v. Brown*, 111 F.4th 438, 521–22 (4th Cir. 2024) (en banc) (Richardson, J., dissenting). Individuals also value the right for "hunting" and "learning to handle and use" arms. *See Heller*, 554 U.S. at 599, 618. And the common defense purposes that motivated the inclusion of the right in the Bill of Rights retain their vitality. *See* Br. for the United States as Amicus Curiae, 25 ("U.S. Br."); *contra* County 55–56.

2. Because Respondents cannot plausibly dispute that AR-15 platform and similar semiautomatic rifles are in common use, they argue against common use as the governing historical principle.

Respondents contend that *Heller* did not "decide[] anything about the kinds of weapons that people may possess." Conn. 16. But *Heller* decided that "the sorts of weapons protected were those in common use," 554 U.S. at 627 (quotation marks omitted), and it applied that principle to invalidate D.C.'s handgun ban, *id.* at 629.

Connecticut, focusing on *Bruen*'s statement that "the Second Amendment protects only the carrying of weapons that are those in common use," *Bruen*, 597 U.S. at 47 (quotation marks omitted), argues that while an arm that is *not* in common use is *unprotected*, it does not necessarily follow that an arm *in* common use *is* protected. Conn. 44. But this argument is refuted by *Bruen* itself, which reasoned that the arms at issue were protected because no "party dispute[d] that handguns are weapons 'in common use' today for self-defense." 597 U.S. at 32 (citation omitted)*; see also id. at* 21, 47, 70.

Respondents also repeatedly insist that arms in common use are not immune from *regulation*. *See, e.g.*, Conn. 37, 39; County 47. But they are immune from *categorical prohibition*. *See Heller*, 554 U.S. at 636. In a variation on this theme, Cook County argues that common use cannot be decisive because *Bruen* "undertook an extended analysis of the Government's proposed historical analogs" after recognizing that handguns are in common use. County 47 (quotation marks omitted). *Bruen* required further analysis because the Court had not yet determined how far the public carry of common arms could be regulated. In *Heller*, by contrast, common use was decisive to invalidate D.C.'s categorical ban on possessing handguns.

Respondents deride the common use test as a "trivial counting exercise," Conn. 37 (citation omitted), that turns on "raw ownership numbers," County 46. But this is a caricature. The test distinguishes those arms that are "in common use" from those that are "not typically possessed by law-abiding citizens for lawful purposes." *Heller*, 554 U.S. at 625, 627. While ownership numbers are relevant, legality across the States also is relevant. *See* Pet'rs' Br. 13 (Aug. 28, 2026) ("Br."); U.S. Br. 18. *Heller* noted that "[f]ew laws in the history of our Nation have come close to the severe restriction of the District's handgun ban." 554 U.S. at 629. *See also Caetano v. Massachusetts*, 577 U.S. 411, 420 (2016) (Alito, J., concurring); *Snope v. Brown*, 145 S. Ct. 1534, 1534 (2025) (Kavanaugh, J., statement). Considering state legislation makes sense when making this assessment. One would expect a "national consensus so broad, so clear, and so enduring as to justify" excluding an arm from constitutional protection to "appear in the operative acts … that the people have approved." *See Stanford v. Kentucky*, 492 U.S. 361, 377 (1989) (plurality), *abrogated by Roper v. Simmons*, 543 U.S. 551 (2005).

Cook County's suggestion that people can "vote with their feet and move to a jurisdiction where their views have prevailed," County 51 (citation omitted), is "profoundly mistaken. … It's hard to imagine anyone suggesting that Chicago may prohibit the exercise of a free-speech or religious-liberty right within its borders on the rationale that those rights may be freely enjoyed" elsewhere. *Ezell v. City of Chicago*, 651 F.3d 684, 697 (7th Cir. 2011). The Second Amendment sets a uniform national standard that does not "yield to the spirit of … the Windy City." *Wolford*, 609 U.S. at 206.

Because common use is not a simple counting exercise, Respondents' arguments regarding the alleged similarity in the number of stun guns and machineguns and the 1994 federal assault weapon statute fall flat. *See* Conn. 45, 49; County 48.[1] "While less popular than handguns, stun guns are widely owned and accepted as a legitimate means of self-defense across the country." *Caetano*, 577 U.S. at 420 (Alito, J., concurring). The same was true of AR-15s in 1994. *See Staples*, 511 U.S. at 612; *Firearm Production in the United States With Firearm Import and Export Data* at 7, NSSF (2025), https://perma.cc/TPZ7-3HHB. This Court, however, has indicated that machineguns have not "traditionally … been widely accepted as lawful possessions." *Staples*, 511 U.S. at 612; *see also United States v. Morgan*, 150 F.4th 1339, 1348–49 (5th Cir. 2025).

Connecticut's "use-it-or-lose-it" critique, Conn. 8, is based on a caution against "assum[ing] that founding-era legislatures maximally exercised their power to regulate." *United States v. Rahimi*, 602 U.S. 680, 739–40 (2024) (Barrett, J., concurring). Common use makes no such assumption; it rests on what the American people have chosen to keep. Nor is the test logically a "one-way ratchet." Conn. 3. It asks which arms are "in common use at the time," *Heller*, 554 U.S. at 627 (citation omitted), so its answer is not fixed forever. Arms in common use today are protected, *see Bruen*, 597 U.S. at 47, and the banned arms without doubt are. Manufacturers offer arms; the people

[1] That law was not comparable to Respondents' because it did not restrict arms that were "lawfully possessed" when enacted, had a two-feature test for covered arms, and had a built-in expiration date. *See* 18 U.S.C. § 922(v) (2000) (repealed 2004).

choose which to keep, "whatever the reason." *Heller*, 554 U.S. at 629; *contra* Conn. 46.

Finally, the common use test does not make the Second Amendment unique by applying an unchanging standard to contemporary circumstances. *See Heller*, 554 U.S. at 582; *Bruen*, 597 U.S. at 28.

II. Respondents' Alternative Historical Principle Cannot Justify Banning AR-15 Platform and Similar Semiautomatic Rifles.

Respondents propose a different governing historical principle: unusually dangerous weapons can be banned. Under this principle, Respondents insist that an arm can be banned if the government somehow demonstrates that it is too dangerous for ordinary Americans to own *despite* being in common use. Respondents' test therefore invites courts to "balanc[e] away the right that the Second Amendment was adopted to protect." *Wolford*, 609 U.S. at 193.

Respondents argue that "neither *Heller* nor *Bruen* had cause to consider the historical tradition of regulating unusually dangerous weapons." Conn. 23. But *Heller*'s adoption of the common use test was based on it being "fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons,' " 554 U.S. at 627, and *Bruen*'s "long journey through the Anglo-American history of public carry" examined this historical tradition in detail, 597 U.S. at 70.

Neither *Heller* nor *Bruen called* this tradition one of regulating unusually dangerous weapons, because that is not what it is called in the historical sources—they sometimes used the phrase "dangerous and

unusual" and sometimes "dangerous or unusual." Conn. 16. This variation in phrasing, however, undermines Connecticut's argument that the phrase is a figure of speech of a type that "joins two words by 'and.' " *See* Elizabeth Fajans & Mary R. Falk, *Hendiadys in the Language of the Law*, 17 LEGAL COMMC'N & RHETORIC: JALWD 39, 39 (2020); Hendiadys, *Merriam-Webster Online*, https://perma.cc/A3LV-BJUY.

Further, this tradition did not regulate weapons as such but rather certain *conduct* with weapons—carrying them "with evil intent or malice" to terrify. *Bruen*, 597 U.S. at 44. Such terroristic behavior could be carried out with common weapons wielded in a threatening manner, or with highly unusual weapons that were typically used for unlawful purposes such that carrying them openly evinced evil intent. Only by analogy to restricting this latter type of behavior could this tradition "fairly support" a categorical ban on the possession of a type of arm.

Regardless of what this historical practice is *called*, after examining its *substance Bruen* concluded that "[a]part from a few late-19th-century outlier jurisdictions, American governments simply have not broadly prohibited" even "the public carry of commonly used firearms for personal defense." *Id.* at 70. Respondents' arguments do not alter this conclusion, much less with the clarity that would be required to support a historical limit on the Second Amendment. *See Bruen*, 597 U.S. at 44 n.11; *Wolford*, 609 U.S. at 196–97.

A. Medieval to Early Modern English History Does Not Support Respondents.

The foundation of Respondents' historical narrative is the 1328 Statute of Northampton. *See* Conn. 10; County 17. That Statute "has little bearing on the Second Amendment adopted in 1791." *Bruen*, 597 U.S. at 41. By the founding, it was understood that " 'Persons of Quality' were 'in no Danger of Offending against this Statute by wearing common Weapons' because, in those circumstances, it would be clear that they had no 'Intention to commit any Act of Violence or Disturbance of the Peace.' " *Id*. at 45 (citation omitted). This is reinforced by an 1820 English case cited by Connecticut, which explained that "a man has a clear right to arms to protect himself in his house" as well as "when he is going singly or in a small party upon the road where he is travelling or going for the ordinary purposes of business." *Rex v. Dewhurst*, 1 State Trials (n.s.) 529, 601–02 (1820).

Respondents also cite "subsequent enactments" that "reinforced" the Statute. *See* Conn. 11. These subsequent enactments predate the 1689 Declaration of Right, the first time "Englishmen had … claimed … the right of the individual to arms." *Bruen*, 597 U.S. at 44–45 (quotation marks omitted). Therefore, Respondents' subsequent enactments have little bearing on the original understanding of the Second Amendment. Like the Statute itself, however, they do not demonstrate that "unusually dangerous" weapons could be banned; rather, if anything, they support *Heller*'s conclusion that the right does not extend to "weapons not typically possessed by law-abiding

citizens for lawful purposes," 554 U.S. at 625, as the following examples demonstrate.

Launcegays. As *Bruen* explains, launcegays "were generally worn or carried only when one intended to engage in lawful combat or … to breach the peace." 597 U.S. at 41. Respondents' source confirms that the launcegay was especially popular with "mounted men-at-arms" and was "the preferred weapon of armed bands who rode throughout the countryside terrorising the population." Michael John Harbinson, *The Lancegay and Associated Weapons*, 20 J. MEDIEVAL MIL. HIST. 137, 157 (2022).

Crossbows and Small Handguns. As Respondents' own source explains (a source that *Bruen* cited for a similar proposition, *see* 597 U.S. at 42), "all the statutes against crossbows and hand-guns were introduced to prevent the yeoman and peasantry of England from practising with, or even handling a weapon of any kind other than the cherished longbow." RALPH PAYNE-GALLWEY, THE CROSSBOW 34 (1903). The "cherished longbow" was a deadlier weapon than the crossbow—it "completely overmatched" it. *Id*. at 31.

Connecticut places particular emphasis on a 1541 statute restricting the use of crossbows and handguns. *See* Conn. 11–14, 34, 38. This law's restriction on "those without sufficient means" keeping handguns in their homes is "inconsistent with *Heller*'s historical analysis regarding the Second Amendment's meaning at the founding and thereafter" and was "not incorporated into the Second Amendment." *Bruen*, 597 U.S. at 43 n.10. Connecticut's source, writing in 1769, acknowledged that the law "seemeth now to be obsolete" and confirmed that its "original intention was solely for the incouragement of the use of the long

bow." RICHARD BURN, 2 THE JUSTICE OF THE PEACE AND PARISH OFFICER 243 n.† (11th ed. 1769).

Early-17th-century proclamations against handguns further demonstrate that lack of typical use for lawful purposes was the animating principle. A 1616 declaration regarding pocket pistols and other concealable weapons called them "utterly unserviceable for Defence, Militarie practice, or other lawful use, but odious, and noted Instruments of murder, and mischiefe." 1 *Stuart Royal Proclamations* No. 160 (1616). Connecticut quotes a 1613 proclamation noting that "pocket dagges had 'grown very common' before they were banned." Conn. 39. But the proclamation explains that it had become common for debtors to carry them to defend against arrest—"a case so farre from just excuse, as it is of it selfe a grievous offence for any man to arme himselfe against Justice." 1 *Stuart Royal Proclamations* No. 126 (1613).

B. Colonial to Early American Republic History Does Not Support Respondents.

Respondents fare no better when they turn to America from the colonial period through the founding. They point to colonial analogues for the Statute of Northampton, a 1686 East New Jersey law banning concealed carry of "unusual or unlawful weapons," and laws forbidding the setting of trap guns, *see* Conn. 17–18; County 19.

The Statute of Northampton analogues provide no support for prohibiting arms "in common use." *Bruen*, 597 U.S. at 46–47, 49–50. The 1686 East New Jersey statute did not restrict the "presumably more common" varieties of arms from the period, and it

generally only restricted concealed carry, *id.* at 48–49. It "sheds little light on how to properly interpret the Second Amendment." *Id.* at 49. Finally, trap gun laws prohibited setting firearms to fire when a trap was sprung, regardless of whether lethal force was justified. A person inflicting lethal force by such means was "no more justified than if he had held the gun and fired it." *United Zinc & Chem. Co. v. Britt*, 258 U.S. 268, 275 (1922).

Respondents also point to laws restricting armed assemblies. *See* County 20. The County asserts that such laws were like bans on AR-15s because it would take an assembly of persons at the founding to approximate modern arms' "capacity to kill or seriously injure." *Id.* But these restrictions were "vastly different" from a ban on common semiautomatic rifles. *Wolford*, 609 U.S. at 207. They grew out of the common law tradition of restricting riots and unlawful assemblies, and they were aimed at terroristic conduct, not the weapons themselves.

"A riot is where three or more … do any … unlawful act with force and violence; or even do a lawful act … in a violent and tumultuous manner," while an unlawful assembly "is when three, or more, do assemble themselves together to do an unlawful act, … and part without doing it, or making any motion towards it." 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 146 (1769); *see also* WILLIAM RUSSELL, A TREATISE ON CRIMES AND MISDEMEANORS 350 (1824). It was not enough simply to charge that a group of people was armed to make out a riot case; rather, "the words *in terrorem populi* [were] essential," because "the offence consists in terrifying the public." *Commonwealth v. Runnels*, 10 Mass. 518, 520

(1813). This understanding is consistent with John Adams's defense of the British soldiers on trial for the Boston Massacre in 1770, where he conceded that the colonists "had a right to arm themselves at that time, for their defence." John Adams, *Adams' Argument for the Defense: 3–4 December 1770*, NAT'L ARCHIVES FOUNDERS ONLINE, https://perma.cc/C82Q-WT7R.

This tradition was directed at those terrorizing the public, not their potential victims. A private person remained free to assemble his "friends in his own house, for the defence of the possession thereof, against those who threaten to make an unlawful entry thereinto, or for the defence of his Person against those who threaten to beat him therein." 1 WILLIAM HAWKINS, TREATISE OF THE PLEAS OF THE CROWN 158 (1716) (capitalization normalized). It also was lawful "perhaps even for a private person to assemble a competent number of people in order with force to suppress rebels, or enemies, or rioters; and afterwards with such force actually to suppress them." RUSSELL, *supra,* at 350; *see also* HAWKINS, *supra,* at 159. In the face of terroristic violence, it is perverse to pass laws that disarm the law-abiding. *Cf. Bruen*, 597 U.S. at 73–74 (Alito, J., concurring); Mark W. Smith, *Enlightenment Thinker Cesare Beccaria and His Influence on the Founders,* 2020 PEPP. L. REV. 71, 83 (2020).

Connecticut excuses the lack of supporting founding-era laws by claiming that firearm violence was not prevalent at the founding. *See* Conn. 18. But there was not a dearth of arms regulation at the founding. There was a centuries-long practice of restricting the threatening *misuse* of weapons. Nor was there a dearth of firearm violence. Around the time of the Revolution "the proportion of homicides

committed with firearms rose … to 46 percent in New England and 33 percent in Virginia." Randolph Roth, *Why Guns Are and Are Not the Problem*, *in* A RIGHT TO BEAR ARMS? THE CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND AMENDMENT 119 (Jennifer Tucker et al. eds., 2019).

C. Later Periods in American History Do Not Support Respondents.

1. Any later tradition cannot limit the scope of the right. "[T]o the extent later history contradicts what the text says, the text controls." *Bruen*, 597 U.S. at 36. Respondents do not argue that the Second Amendment's meaning was set in 1868 rather than 1791, so the Court should assume 1791. *See* Br. 40–41. Connecticut does say that the Court looks to examples from later history when "those examples form part of a longer regular course of practice," Conn. 23 (quotation marks omitted), but any tradition supporting banning common arms would be a departure from earlier practice.

2. Regardless, after ratification there was no regular practice of categorically banning the possession of common arms. As an article Respondents cite repeatedly explains, "the history of nineteenth century bans on particular types of firearms is close to nil." David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. LEGIS. 223, 381 (2024). This also is true of other arms such as Bowie knives, which were regulated like handguns. "The mainstream approach … was to ban concealed carry, to forbid sales to minors, or to impose extra punishment for criminal misuse." *Id*. at 227. While Connecticut claims that "[a]t least a dozen States and territories barred the carrying of Bowie knives or dirks,

whether open or concealed," Conn. 20, none was a categorical state ban on carrying Bowie knives even in public. *See* Conn. App. B. A number were territorial laws entitled to little weight (joined by a law from the Kingdom of Hawaii). Those laws also applied to handguns, and *Bruen* rejected many of them as valid analogues. *See* 597 U.S. at 67–68. Of the state laws, Tennessee's did not apply to Bowie knives, and the laws of Indiana, New York, Minnesota, and Maryland barred open carry only with the intent to harm another person. That leaves post-1868 laws from Texas, Arkansas, and West Virginia, but even those were not categorical bans, as they included exceptions for self-defense (Texas and West Virginia) or for travelers (Arkansas and Texas). They also regulated at least some handguns, and *Bruen* dismissed the Texas and West Virginia laws as outliers. 597 U.S. at 65. Apart from these laws, there were isolated state bans on sales (one of which likely did not survive *Nunn v. State*, 1 Ga. 243 (1846)), and a short-lived $100 transfer tax. *See* Kopel & Greenlee, 50 J. LEGIS. at 369. This did not meaningfully distinguish regulation of Bowie knives from regulation of handguns. *See id.* at 369–70.

The Arkansas carry law cited by Respondents further undermines their case. It exempted "pistols as are used in the army or navy of the United States." *Bruen*, 597 U.S. at 69 n.31 (citation omitted). Exempting military-grade firearms (which was not unique, *see id.* at 54 n.21) refutes the notion that "unusual danger" in the form of lethality or military utility was the operative principle. So do the late-19th-century laws restricting slungshots, which "were not designed to inflict maximum damage," and which some burglars preferred because they were "less lethal for dealing with interruptions; murder only being a way of

increasing police attention after the fact." Kopel & Greenlee, 50 J. LEGIS. at 342–45 (citations omitted). And slungshots also were rarely banned; "[t]he majority approach was similar to Bowie knives." *Id.* at 347.

3. Respondents rely heavily on cases that this Court has deemed unpersuasive, with Connecticut in a single paragraph, Conn. 21–22, citing *Aymette v. State*, 21 Tenn. 154 (1840) (*Heller*: "odd reading of the right" and "not the one we adopt." 554 U.S. at 613), *City of Salina v. Blaksley*, 83 P. 619 (Kan. 1905) (*Bruen*: "clearly erroneous." 597 U.S. at 68), *English v. State*, 35 Tex. 473 (1871) (*Bruen*: "outlier[]." 597 U.S. at 65), and *State v. Workman*, 14 S.E. 9 (W.V. 1891) (*Bruen*: "a rationale endorsed by no other court during this period." 597 U.S. at 65).

These decisions on their own terms do not help Respondents. Their principal error was overemphasizing the militia purposes of the right. They therefore departed from the view that the Second Amendment protected the right "to keep and bear arms of every description, and not such merely as are used by the militia." *Nunn*, 1 Ga. at 251. Tennessee and Texas later course corrected, in cases emphasizing the right to have protected arms in the home. *See Andrews v. State*, 50 Tenn. 165, 179, 185–86 (1871); *State v. Duke*, 42 Tex. 455, 458–59 (1875). The correction should not be surprising, given the central role the right to armed self-defense of freedmen played in the adoption of the Fourteenth Amendment. *See, e.g., Bruen*, 597 U.S. at 60–66; *McDonald v. Chicago*, 561 U.S. 742, 770–78 (2010). But neither side of this divide supports Respondents. Under the view adopted by this Court in *Heller*, the right extends to *all* common arms, regardless of military or common defense utility. Under the

more restrictive, militia-focused view, the right extends *only* to arms useful for military or common defense purposes. Under neither view would a common arm lack protection *because* of its military or common defense utility. Indeed, courts on either side of the divide routinely listed the rifle as a protected arm. *See, e.g.*, *Andrews*, 50 Tenn. at 179–80; *Aymette*, 21 Tenn. at 161–62; *Duke*, 42 Tex. at 458–60; *Workman*, 14 S.E. at 11.[2]

While courts converged in finding arms such as rifles that are in common use for both individual and common defense protected, courts also converged in their description of the arms that were not. *Heller*'s characterization of unprotected weapons as those "not typically possessed by law-abiding citizens for lawful purposes" was apt. 554 U.S. at 625; *see Aymette*, 21 Tenn. at 158 ("usually employed in private broils"); *English*, 35 Tex. at 475 ("employed in quarrels and broils, and fights between maddened individuals"); *Fife v. State*, 31 Ark. 455, 461 (1876) ("used in private quarrels and brawls, and not such as is in ordinary use"); *People v. Persce*, 204 N.Y. 397, 403 (1912) ("ordinarily used for criminal and improper purposes"); *State v. Smith*, 11 La. Ann. 633, 633 (1856) ("used most frequently by evil-disposed men"); *Workman*, 14 S.E. at 11 ("only habitually carried by bullies, blackguards, and desperadoes").

Cockrum v. State, 24 Tex. 394 (1859), which Respondents cite repeatedly, undermines their position.

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[2] Petitioners' brief reproduced an image of a "Winchester 1873" rifle from a firearms law textbook. *See* Br. 16–18. That rifle may actually be a Winchester 1894. The difference is immaterial for present purposes. *See* T. Logan Metesh, *Identifying Winchester Lever-Action Rifles*, https://perma.cc/7FZJ-JFF5.

Cockrum concerned a challenge to a law that made manslaughter with a Bowie knife chargeable as murder. The court described the Bowie knife as the "most deadly of all weapons in common use." *Id.* at 403. But it acknowledged that "[t]he right to carry a [B]owie-knife for lawful defense … must be admitted," and it upheld the law because it did not impede the right to carry a Bowie knife for "lawful defense." *Id.* at 402.

4. While 20th-century history need not be addressed, *see Bruen*, 597 U.S. at 66 n.28, Cook County overstates the extent to which semiautomatic firearms were restricted in the 1920s and 1930s. *See* County 41; Br. 7–8. The only cited state law not addressed in Petitioners' brief (at 8–9) is best read as a machinegun restriction; it restricted "any gun which operates automatically after the first shot has been fired." 1927 Mass. Acts 413, 413–14. Even if it somehow swept in semiautomatics, it would be an extreme outlier.

D. Respondents' Unusually Dangerous Test Requires Improper Interest Balancing.

1. *Bruen* cautioned courts against "engag[ing] in independent means-end scrutiny under the guise of an analogical inquiry." 597 U.S. at 29 n.7. That is what Respondents would have courts do in assessing whether the government has properly categorized an arm as unusually dangerous. Indeed, Respondents' approach closely mirrors Justice Breyer's *Heller* dissent, which reasoned that the government may be able to ban "especially dangerous" weapons. 554 U.S. at 713 (Breyer, J., dissenting). Respondents' arguments also closely resemble the reasoning of courts of appeals that justified semiautomatic rifle bans under

intermediate scrutiny pre-*Bruen*. *Compare* Conn. 24, 31, 32; County 31, 36, *with, e.g.*, *Kolbe v. Hogan*, 849 F.3d 114, 140 (4th Cir. 2017) (en banc); *N.Y. State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242, 262 (2d Cir. 2015); *Heller v. District of Columbia (Heller II)*, 670 F.3d 1244, 1262–64 (D.C. Cir. 2011). But although *Heller* acknowledged "the problem of handgun violence in this country," and recognized that "the Constitution leaves the District of Columbia a variety of tools for combating that problem," it concluded that the Second Amendment takes "off the table" the policy choice of categorically prohibiting the possession of commonly used arms. 554 U.S. at 636. "If cowardly and dishonorable men sometimes shoot unarmed men …, the evil must be prevented by the penitentiary and gallows, and not by a general deprivation of a constitutional privilege." *Wilson v. State*, 33 Ark. 557, 560 (1878).

2. This Court need not engage Respondents' arguments that AR-15 platform and similar semiautomatic rifles are "exceptionally lethal weapons that are disproportionate to the end of self-defense." County 12. But the point is not conceded. AR-15s are not particularly powerful compared to other rifles, and fantastical stories about incredible injuries caused by their fully automatic military counterparts in Vietnam were not replicated or confirmed. *See* Br. of Ballistics Experts and Second Amendment Professors, 18, 31–33 ("Ballistics Experts Br."). Matters such as muzzle velocity, firing rate, and ammunition are irrelevant in any event, as Respondents' bans do not regulate them. Rather, they regulate features such as grips and stocks. As Respondents concede, these features promote accuracy, Conn. 26–27, and the usability, adaptability, and accuracy of these firearms are

among the reasons why they are so popular among law-abiding citizens. *See* Br. of California Gun Rights Foundation *et al.* as Amici Curiae, 18–20; Br. of Nat'l African American Gun Ass'n, *et al.* as Amici Curiae, 10–21; *see generally* THE FOUR BOXES DINER, *Firearms and the AR-15 Rifle: A Primer*, (YouTube, Nov. 19, 2026), https://perma.cc/3LN2-685M. Respondents also concede that barrel shrouds "shield the operator from the burning temperatures caused by firing multiple rounds," Conn. 26, which is a critical benefit, especially when training. The Chicago Police Department authorizes the use of AR-15s in "confrontations involving … multiple offenders," County 32, which defensive gun incidents often do, *see* English Br. 11 ("[a]bout half"); Kleck & Gertz, *supra*, at 176 (53%); *see also* JA80–81 (collecting examples). "[W]hatever the reason," AR-15 platform and similar semiautomatic rifles are the most popular rifles in the nation, "and a complete prohibition of their use is invalid." *Heller*, 554 U.S. at 629.

AR-15 rifles cannot be conflated with their automatic military counterparts. *See* PATRICK SWEENEY, THE GUN DIGEST BOOK OF THE AR-15 119–20 (2005). Automatic fire "is inherently less accurate than" and has an effective rate of fire several times faster than semiautomatic fire. FM 3-22.9, *Rifle Marksmanship M16-/M4-Series Weapons*, at tbl. 2-1, 7-32, DEP'T OF THE ARMY (Aug. 2008), https://perma.cc/6Z6L-PB5T. It is useful "in some combat situations," *id.* at 7-36, and armies do not use semiautomatic-only service rifles, *Bevis v. City of Naperville*, 85 F.4th 1175, 1222 (7th Cir. 2023) (Brennan, J., dissenting). Almost any semiautomatic firearm can be modified to function automatically, and devices designed to convert a firearm into a machinegun are regulated as machineguns.

See, e.g., 18 U.S.C. § 921(a)(24); 26 U.S.C. § 5845(b); CONN. GEN. STAT. § 53-202(a)(1)(B); 720 ILL. COMP. STAT. 5/24-1(a)(7)(i).

Under *Heller*, criminal misuse cannot justify banning an arm in common use. But the criminal misuse of handguns is orders of magnitude greater than the criminal misuse of the banned rifles. *See* Br. 13–14. And as with criminal violence generally, handguns "are the firearm most commonly involved in" mass shootings. Rosanna Smart, et al., *Mass Shootings in the United States*, RAND (Jan. 29, 2026), https://perma.cc/DQ9K-9VEP. *See also* Antonis Katsiyannis, et al., *Historical Examination of United States Intentional Mass School Shootings in the 20th and 21st Centuries*, 27 J. CHILD & FAM. STUD. 2562, tbl. 4 (2018) (11 of 13 21st-century intentional mass shootings in U.S. K-12 schools involved handguns). Researchers with a "bias" against assault weapons were "shocked" to find that mass shootings with handguns produced more deaths than those with rifles. *See* Ballistics Experts Br. 35–36.[3] The ability to pierce body armor does not distinguish the banned rifles from other centerfire rifles, *see id.* at 14, and handguns are the most common weapon involved in law enforcement killings, *see Officers Killed and Assaulted in the Line of Duty, 2025*, at 10, U.S. DEP'T OF JUST., FBI (May 2026), https://perma.cc/75UC-KYMZ. "[I]f we [were] constrained to use [Respondents'] rhetoric, we would have to say that *handguns* are the quintessential 'assault weapons' in today's society." *Heller II*, 670 F.3d at 1290 (Kavanaugh, J., dissenting) (emphasis in

[3] Any alleged impacts on mass shootings from magazine capacity are not implicated here. *See* Br. of Gary Kleck as Amici Curiae.

original). If criminal misuse cannot justify banning "the overwhelmingly favorite weapon of armed criminals," *Heller*, 554 U.S. at 682 (Breyer, J., dissenting), it cannot justify banning AR-15 platform and similar semiautomatic rifles.

CONCLUSION

For the foregoing reasons, this Court should reverse and hold that the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.

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