

IN THE
Supreme Court of the United States

NATIONAL ASSOCIATION FOR GUN RIGHTS AND
TONI THERESA SPERA FLANIGAN,

Petitioners,

v.

NED LAMONT, IN HIS OFFICIAL CAPACITY AS THE
GOVERNOR OF THE STATE OF CONNECTICUT, *et al.*,

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT**

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

“The AR-15 is the most popular rifle in the country.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025).¹ AR-15 rifles are “widely legal and bought by many ordinary consumers.” *Id.* “Americans today possess an estimated 20 to 30 million AR-15s. And AR-15s are legal in 41 of the 50 States...” *Snope v. Brown*, 145 S. Ct. 1534 (2025) (Kavanaugh, J., statement respecting denial of certiorari). “AR-15s ‘traditionally have been widely accepted as lawful possessions.’” *Id.* (quoting *Staples v. United States*, 511 U.S. 600, 612 (1994)). Not only are AR-15s ubiquitous, but Connecticut has also conceded the “relative rarity” of their use in crime. Pet.App. 137a. Thus, the State cannot reasonably dispute Justice Thomas’s observation from more than a decade ago: “The overwhelming majority of citizens who own and use such rifles do so for lawful purposes.” *Friedman v. City of Highland Park, Ill.*, 577 U.S. 1039 (2015) (Thomas, J., dissenting from denial of certiorari). Even the Second Circuit previously held that the rifles and magazines banned by the State “are in common use as that term was used in *Heller*.” *New York State Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 255 (2d Cir. 2015) (internal quotation marks omitted).

This is, therefore, a very simple case. The Second Amendment protects those weapons that are in common use by law-abiding citizens. *D.C. v. Heller*, 554 U.S. 570, 624, 627 (2008). AR-15 rifles are in common use by law-abiding citizens. Therefore, they are protected by the

1. Citing Terry Gross, *How the AR-15 Became the Bestselling Rifle in the U. S.*, NPR (Apr. 20, 2023).

Second Amendment.² Notwithstanding the analytical simplicity of this and similar cases, as was true before *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), every circuit court to consider the issue has gotten it wrong. Therefore, as Justice Kavanaugh noted last Term, “this Court should ... address the AR-15 issue soon.” *Snope, supra* (Kavanaugh, J., statement respecting denial of certiorari). Petitioners respectfully urge the Court to use this case as a vehicle for doing so.

ARGUMENT

I. The State Does Not Understand *Bruen* and *Heller*

The State argues that whether a firearm is in common use for lawful purposes is not dispositive under the *Bruen* analysis, because *Heller* requires an additional step—i.e., an “inquiry into whether the restriction falls within the historical tradition of banning ‘dangerous and unusual weapons.’” Opp. 1. This is wrong for at least four reasons.

First, the State implies there is daylight between an analysis under *Bruen* and an analysis under *Heller*. This is not correct. *Heller* established a “text, history and tradition” test, as then-Judge Kavanaugh observed early on in his dissent in *Heller II*. See *Heller v. D.C.*, 670 F.3d 1244, 1271 (D.C. Cir. 2011) (Kavanaugh, J., dissenting). *Bruen*’s text, history, and tradition analysis is the same

2. This discussion focuses on AR-15 rifles. The Second Amendment analysis is even more compelling with respect to magazines that have a capacity greater than ten rounds. Americans own at least 150 million such magazines. Pet.App. 129a. Indeed, the State admitted that 3.8 million such magazines are lawfully owned in Connecticut alone. Pet.App. 132a, n.27.

analysis set forth in *Heller*. *Bruen*, 597 U.S. at 24 (noting that the Court is reiterating the *Heller* standard); and 597 U.S. at 26 (“The test that we set forth in *Heller* and apply today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment’s text and historical understanding.”).

Second, the State implies that Petitioners must prove common use as part of their burden at the plain text step. This is wrong, because under the plain text step, “arms” means “arms,” not “arms in common use.” *Bevis v. City of Naperville, Illinois*, 85 F.4th 1175, 1209 (7th Cir. 2023), cert. denied sub nom. *Harrel v. Raoul*, 144 S. Ct. 2491 (2024) (Brennan, J., dissenting). To be sure, finding that an arm is in common use is a sufficient condition for holding that it is protected under the history and tradition step. *Id.* It is not, however, a necessary condition for finding that it is an arm in the first place. *Id.*

Third, if a weapon is in common use, it cannot be unusual and thus it cannot be both “dangerous and unusual.” As discussed in the Petition, the test is conjunctive. Pet. 16. Contrary to the State’s argument, if a weapon is in common use, its “relative dangerousness” is “irrelevant.” *Caetano v. Massachusetts*, 577 U.S. 411, 418 (2016) (Alito, J. concurring).

Finally, the State fundamentally misunderstands this Court’s Second Amendment precedents when it asserts that *Heller* requires an inquiry into history and tradition even if an arm is found to be in common use for lawful purposes. This is contrary to the whole point of *Heller*’s history and tradition analysis, where the Court found that D.C.’s absolute ban on a weapon in common use for

lawful purposes (i.e., handguns) was a historical outlier and therefore unconstitutional. See *Heller*, 554 U.S. at 629 (“Few laws in the history of our Nation have come close to the severe restriction of the District’s handgun ban.”); and 554 U.S. at 634 (stating that the dissent’s assertion that there were somewhat similar restrictions in the founding period was “a false proposition”). As *Bruen* explained, “after considering ‘founding-era historical precedent,’ including ‘various restrictive laws in the colonial period,’ and finding that none was analogous to the District’s ban, *Heller* concluded that the handgun ban was unconstitutional.”

The historical inquiry in this case is identical. Connecticut has identified a societal problem, firearm violence. To confront that problem, it has employed a regulation that is identical to the ban at issue in *Heller*—i.e., a flat ban (even in the home) on the possession of weapons that are in common use for lawful purposes. The Founders could have adopted such a ban to confront that problem, but they did not. Therefore, the State’s ban is unconstitutional. In summary, *Heller* has already performed the history and tradition inquiry as it applies to flat bans on weapons in common use, and it held that such bans violate the Second Amendment. Therefore, the State is wrong when it asserts that an additional historical inquiry as to a weapon’s “dangerousness” is necessary even if a court finds the weapon is in common use.

II. The Second Circuit: “Uncertainty Abounds”

Connecticut’s Response contradicts the Second Circuit. The State asserts that all is well, and the circuit courts have this Court’s Second Amendment precedents well in hand. Opp. 12 (“There is no reason for this Court to review this unanimity among the lower courts”). But the Second Circuit said exactly the opposite, noting that the “lack of clarity” in this Court’s Second Amendment cases has led to “confusion among courts” and consequently “uncertainty abounds” regarding how those precedents should be applied. Pet.App. 35a. The circuit court is correct. As discussed in the Petition (Pet. 10-16), the lower courts appear to be deeply confused regarding several key components of the *Bruen* analysis.

“Confused” is, of course, a charitable description of the lower courts’ post-*Bruen* Second Amendment jurisprudence. Petitioners lean toward Justice Thomas’s view. Certain lower courts are not so much confused about this Court’s Second Amendment precedents as they are “bent on distorting” them. *Snope*, 145 S. Ct. at 1538 (Thomas, J., dissenting from denial of certiorari). Prior to *Bruen* the circuit courts “coalesced” around interest-balancing to cabin the right to keep and bear arms within unduly narrow bounds.³ After *Bruen*, the lower courts continue to agree on the general principle that the right must be strictly cabined. But they may appear to be confused because they have not yet coalesced around a

3. See *Bruen*, 597 U.S. at 17 (noting that the lower courts erred when they “coalesced” around a judge-empowering interest-balancing test that inevitably restricted the right to keep and bear arms).

particular method for doing so. In either case (confusion or distortion), the Court should grant the Petition and provide additional clarity to the lower courts.

III. The Second Circuit Was Correct to Analyze Plaintiffs' Challenge as an "As Applied" Challenge

The State argues that Plaintiffs' challenge should be analyzed as a "facial" challenge. Opp. 4. This is not correct. The Second Circuit focused its review on Plaintiffs' "specific challenge to the statutes as-applied to the weapons they seek to possess," which included "AR-15-style rifles ... and large capacity magazines." Pet.App. 22a.

IV. The State Misunderstands its Burden Under *Heller* and *Bruen*

The State asserts that to prevail in this case, Petitioners must show that the banned weapons are in common use. Opp. 2. This is wrong. Petitioners' only burden is to demonstrate that they intend to engage in arms-bearing conduct, *Bruen*, 597 U.S. at 17, which they have easily done.⁴ And "when the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to 'justify its regulation.'" *United States v. Rahimi*, 602 U.S. 680, 691 (2024) (quoting *Bruen*, 597 U.S. at 24).

The government may justify its regulation by showing that it is consistent with the historical tradition of banning dangerous and unusual weapons. *Heller*, 554 U.S. at 627.

4. It should go without saying that bearing semi-automatic rifles and the magazines that make them possible constitutes arms-bearing conduct.

To meet this burden, Connecticut must show that the banned arms are *not* in common use, i.e., that they are “unusual.” *Bevis* 84 F.4th at 1214 (Brennan, J., dissenting). Connecticut has not made this showing. Indeed, in the Second Circuit, it is futile for a government to attempt to make such a showing, because the law of the circuit is that the banned rifles and magazines “are in common use as that term was used in *Heller*.” *New York State Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 255 (2d Cir. 2015) (internal quotation marks omitted).⁵

V. The “Why” Cannot be “Advances Government’s Policy Interest”

Bruen stated that the “why” of a firearms regulation is one of the metrics used to determine whether a modern regulation is relevantly similar to a founding-era regulation. *Id.*, 597 U.S. at 29. In other words, whether the burden imposed by modern and historical regulations “is comparably justified” is a central consideration when engaging in an analogical inquiry. *Id.*

The State began its brief with an emotional appeal to Sandy Hook.⁶ Opp. 1. Unsurprisingly, it then argued that the “why” of the arms ban – i.e., Connecticut’s

5. Petitioners introduced common use evidence not to meet their burden under the plain text step but to demonstrate that the State has no hope of meeting its burden under the history and tradition step. If Petitioners had introduced no common use evidence at all, they would still win because the government has failed to justify its regulation under the tradition of banning dangerous and unusual weapons.

6. For a response to a similar emotional appeal, see *Bruen*, 597 U.S. at 72 (Alito, J., concurring) (“what legitimate purpose can possibly be served” by recounting mass shootings).

justification for the ban – is that the banned arms are too dangerous. Opp. 28. The State writes that the Connecticut legislature recognized the “*threat to public safety*” posed by these particularly dangerous weapons when it adopted its assault weapon ban. Opp. 4 (emphasis added). Thus, the State admits that the “why” of its regulation is to advance its governmental interest in banning weapons it believes are too dangerous for its citizens to possess. Unfortunately for the State, *Bruen* specifically prohibited such a justification as a “why” in support of an arms ban. *Id.* at 17 (“To justify its regulation, the government may not simply posit that the regulation promotes an important interest.”).

VI. The State Ignored the Radically Different “How” of its Historical Regulations

The “how” of a firearms regulation is also a key metric. *Bruen*, 597 U.S. at 29. This metric measures whether the modern and historical regulations impose a “comparable burden on the right of armed self-defense.” *Id. Heller* has already informed us that “[f]ew laws in the history of our Nation have come close to the severe restriction of” a flat ban on a weapon in common use. *Id.*, 554 U.S. at 629. There were no similar restrictions in the founding period. *Id.* at 634. The State does not even begin to explain why its flat ban on weapons in common use does not impose a burden that was already rejected in *Heller* or why the ban should not be invalidated for the same reason. Instead, it points to certain historical regulations of Bowie knives, which *Bruen* held did not even justify a restriction on public carriage. Opp. 26. If these historical regulations were not sufficiently analogous to the carriage regulation at issue in *Bruen*, how can they possibly justify a flat ban of possession even in the home in this case?

VII. This is Not a Nuanced Case

The State argues that the analogical inquiry in this case is “nuanced.” Opp. 27. This is not correct. *Bruen* specifically contrasted the analogical inquiry in *Heller* (which it characterized as “straightforward” and “relatively simple to draw”) with other cases in which the inquiry might be more “nuanced.” *Id.*, 597 U.S. at 27. Why were the historical analogies in *Heller* relatively simple to draw? Because it was a relatively simple matter for *Heller* to conclude that “[f]ew laws in the history of our Nation have come close to the severe restriction of” a flat ban on a weapon in common use. *Id.*, 554 U.S. at 629. The State, therefore, fails when it attempts to avoid the obvious conclusion that just as in *Heller*, the analogical inquiry into its flat ban on a weapon in common use is straightforward and relatively simple.

VIII. This Court has Never Required Statistical Studies About the “Usefulness” of Weapons

The State insists that “use” of an arm has meaning only in the context of the number of times it is actually fired in specific self-defense situations. Opp. 8. But as explained in the Petition, this Court has never required such evidence regarding the “usefulness” of a particular arm. Pet. 14. As Justice Thomas has aptly stated, the “Constitution allows the American people—not the government—to decide which weapons are useful for self-defense... we have never relied on our own assessment of how useful an arm is for self-defense before deeming it protected ... [Thus,] the scope of the right to bear arms cannot turn on judicial speculation about the American people’s self-defense needs.” *Snope*, 145 S. Ct. at 1537–38 (Thomas, J. dissenting from denial of certiorari).

IX. AR-15s are Not More Dangerous than M-16s

The State makes the fanciful argument that its ban should be upheld because semi-automatic weapons such as AR-15s are *more* dangerous than fully automatic machineguns and therefore have less, not more, protection under the Second Amendment. Opp. 6. This argument ignores *Staples v. United States*, 511 U.S. 600 (1994), in which the Court observed that it was “unthinkable” that Congress intended to subject law-abiding citizens to criminal penalties if they believed they possessed a “conventional semi-automatic weapon” as opposed to a “fully automatic weapon.” *Id.*, at 615 (quoting *United States v. Anderson*, 885 F.2d 1248, 1254 (5th Cir. 1989)). Why was it “unthinkable”? Because common sense dictates that a semi-automatic weapon is less dangerous than an automatic weapon.

The State also attempts to elide the obvious differences between civilian AR-15s and the M-16s used in the military. Opp. 6. But as Justice Kavanaugh recently observed, “[s]emi-automatic handguns and rifles are distinct from automatic firearms such as the M-16 automatic rifle used by the military.” *Snope*, 145 S. Ct. at 1534 (Kavanaugh, J., statement respecting denial of certiorari) (emphasis added).

X. The State Relies on the “Other Guns Available” Argument That *Heller* Emphatically Rejected

The State argues that its regulation should be upheld because it has not banned all firearms and Plaintiffs could choose to purchase the non-banned weapons. Opp. 1. This argument is inexplicable in light of the fact that *Heller* emphatically rejected an identical argument advanced

by the District of Columbia. *Id.*, 554 U.S. at 629 (It is “no answer” to say that it is permissible to ban a protected arm so long as other arms are allowed).

XI. The State’s Evidence Objections Were Waived

The State seeks to litigate various objections to Plaintiffs’ common use evidence. See, e.g. Opp. 8, 21. Evidence objections may not be raised for the first time on appeal. Fed. R. Evid. 103(a)(1). Moreover, the State’s evidence objections are irrelevant in any event because, as discussed above, the law of the circuit in the Second Circuit is that the banned rifles and magazines are in common use. *Cuomo*, 804 F.3d at 255. Thus, notwithstanding any objection to Plaintiffs’ evidence, in the Second Circuit the common use issue is a settled matter for purposes of Plaintiffs’ challenge.

XII. This Case is a Proper Vehicle for Clarifying *Winter*’s “Probable Success on the Merits” Factor

The State suggests that the Court may affirm the Second Circuit on the basis of the *Winter* factors other than the “probable success on the merits” factor. Opp. 12 (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). However, the Court should not defer consideration of the most important issue in any constitutional case—probable success on the merits. As the Second Circuit noted, there is substantial “confusion among courts” regarding this Court’s Second Amendment precedents and therefore “uncertainty abounds” in this vitally important area of constitutional law. Pet.App. 35a. Accordingly, the Court should grant review for the purpose of clarifying these merits issues.

CONCLUSION

This Court should grant the petition.

Respectfully submitted this 5th day of January 2026.

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