

No. 25-566

**In the
Supreme Court of the United States**

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

Petitioners,

v.

JAMES ROVELLA, IN HIS OFFICIAL CAPACITY, *et al.*,

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

REPLY BRIEF FOR THE 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). As this Court held almost 20 years ago, the Second Amendment protects the right to possess those arms that are “in common use.” *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008) (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)). Yet the decision below upheld a ban on popular semiautomatic rifles like the AR-15 based on little more than the Connecticut legislature’s assessment that—contrary to the judgment of the American people—the rifles are too “dangerous.” Several courts have upheld similar laws, but they have not coalesced around a consistent rationale because there is none; these laws are flatly unconstitutional under this Court’s precedents. The constitutionality of semiautomatic rifle bans is a question of critical importance to millions of law-abiding Americans. *See Snope v. Brown*, 605 U.S. ---, 145 S. Ct. 1534, 1534 (2025) (mem.) (Kavanaugh, J., statement respecting denial). The time has come for this Court to address the lower courts’ repeated errors in answering it.

ARGUMENT

I.A. In *Snope*, four Justices of this Court recognized that the Court should review the constitutionality of AR-15 bans either in that case or a similar case in the near future. *See id.* (Order) (noting that Justices Alito and Gorsuch would have granted certiorari); *see also id.* (Kavanaugh, J., statement respecting denial); *id.* at 1538–39 (Thomas, J., dissenting from the denial of certiorari). Additional Justices have recognized the conflict and confusion in the lower

federal courts about how to apply *Bruen*’s framework generally and the need for additional guidance from this Court. *See, e.g., United States v. Rahimi*, 602 U.S. 680, 739 (2024) (Barrett, J., concurring); *id.* at 742–43, 747 (Jackson, J., concurring). This case demonstrates that these calls for guidance are well-founded. While misapplying this Court’s Second Amendment caselaw, the panel observed that the “lack of clarity” in this Court’s precedents “has led to ... confusion among courts generally.” Pet.App. 35a.

This confusion extends to several issues relevant to this case. To begin, courts have disagreed about whether to conduct *Heller*’s “common use” analysis at the “text” or the “history” stage of the *Bruen* framework. *See* Pet. 21–22. The disagreement on this question is so acute that the panel below elected not to answer it. *See id.*

More fundamentally, courts disagree about what “common use” means. Under *Heller*, “common use” is the correlative of the historical tradition of restricting “dangerous and unusual arms”; an arm may be banned pursuant to this tradition only if it is not “in common use.” *See id.* at 22. The Sixth Circuit has held that an arm is not “in common use” only if it is *both* dangerous *and* unusual. *See United States v. Bridges*, 150 F.4th 517, 525 (6th Cir. 2025). The panel below, in contrast, held that an arm is not “in common use” if it is “unusually dangerous.” Pet. App. 31a–32a; *see* Pet. 24. Moreover—in rejecting challenges to bans on AR-15s and similar rifles—courts have grafted inconsistent requirements onto *Heller*’s “common use” test: an arm is not in common use if it is more dangerous than a traditionally styled handgun or rifle, or if it is

ill-suited for self-defense, or if it is most useful for the military. *See* Pet. 23–24. These requirements have been sharply criticized by several dissenting judges, which demonstrates significant disagreement among the judiciary as a whole. *See id.* at 24–25.

B. Respondents answer this inconsistency with misstatements and red herrings. *First*, Respondents contend that none of the issues on which lower courts have disagreed are outcome-determinative in this case. *See* BIO. 18–19. But that is incorrect. If the tradition of banning “dangerous and unusual” weapons justifies banning only those arms that are *both* dangerous *and* unusual, then the decision below was plainly wrong to reject Petitioners’ challenge on the ground that AR-15s and similar rifles are “unusually dangerous.” And that error was outcome-determinative because AR-15s are not “unusual”—and therefore are in common use—in any sense of the word. *See* Pet.App. 29a–30a.

Respondents disagree because, on their telling, Petitioners failed to proffer evidence establishing that AR-15s and similar rifles are commonly used for self-defense. *See* BIO. 25 (“Petitioners submitted *no evidence about why* Americans choose to own [AR-15s].” (emphasis added)). This criticism is misguided for several reasons. *See* pp. 10–11, *infra*. But even taken at face value, it only underscores the importance of a question on which the lower courts are unquestionably split: whether the “common use” inquiry is properly situated at the “text” or the “history” stage of *Bruen*’s analysis. If this inquiry occurs at *Bruen*’s historical stage, as the court below assumed, *see* Pet.App. 35a, then it was Respondents’ burden to demonstrate

that AR-15s are *not* in “common use,” *see* Pet. 23–24. Given that millions of Americans own AR-15s and similar rifles, and most do so for defensive purposes, *see id.* at 10, Respondents cannot seriously contend that they made that showing. In short, applying the correct “common use” standard, and situating it at the proper stage of *Bruen*’s framework, could change the outcome of this case.

Second, the inconsistency in the lower courts is relevant for a different reason: It calls into question whether the court below applied the correct legal rule. The lower courts have not coalesced around a single rationale for upholding AR-15 bans, which suggests that something has gone awry. Indeed, the lower courts’ varying rationales leads one to the conclusion that they are groping for a way to uphold AR-15 bans in spite of this Court’s precedents. On the other hand, dissenting judges have consistently opined that those precedents make clear a firearm cannot be banned if it is in “common use,” as measured by its popularity for lawful purposes. *See id.* at 24–25. Under that rule, Petitioners win this case. Respondents’ attempt to downplay the importance of the judiciary’s evident confusion is therefore a red herring.

II. Even putting the judiciary’s confusion aside, this case warrants review because the court below decided an exceptionally important question of federal law in a way that conflicts with this Court’s precedents.

Respondents contend that Petitioners seek “little more than error correction,” BIO. 30, but the importance of the question presented can hardly be disputed. This Court has unanimously recognized that

the AR-15 is “the most popular rifle in the country.” *Smith & Wesson*, 605 U.S. at 297. That courts around the country have nevertheless ratified AR-15 bans is a “surprising conclusion” that is “of critical importance to tens of millions” of Americans. *Snope*, 145 S. Ct. at 1535, 1538 (Thomas, J., dissenting from denial).

That is reason enough to grant the petition. But the decision below has implications far beyond AR-15s. The panel held that the Second Amendment permits governments to ban “unusually dangerous weapons.” And it held that “unusually dangerous weapons” are those arms that “are so lethal that legislators have presumed that they are not used or intended to be used for lawful purposes.” Pet.App. 32a. By that logic, the legislature can ban *any* firearm it wishes as long as it makes the subjective judgment that the firearm is too dangerous for civilians to possess. While the panel did at least suggest that governments cannot ban *every* weapon that is useful for self-defense, *see id.* at 50a, that weak limit still leaves governments with vast authority to decide which otherwise ordinary and popular weapons their citizens may possess. There can be no doubt that it is an important question whether the Second Amendment entitles governments to exercise that awesome power.

Respondents argue that, in laying down its important holding, the panel was simply following this Court’s precedents. *See* BIO. 32. But that is plainly wrong; if *Heller* had applied the rationale of the decision below, that case would have come out the other way. *See* Pet. 19. In fact, the panel simply deferred to the judgment of the Connecticut legislature that AR-

15s should not be available. In doing so, the panel defied this Court’s unambiguous holding that the Second Amendment does not tolerate “judicial deference to legislative interest balancing.” *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 26 (2022).

According to Respondents, the panel’s deference merely reflected its “consideration of the ‘why’ part of the *Bruen* analysis.” BIO. 32. In other words, Respondents contend that the panel canvassed this Nation’s history and divined a tradition of bans on weapons that legislatures deemed too dangerous. But there is no such tradition. If there were, *Heller* would have been decided differently, as handguns “are the overwhelmingly favorite weapon of armed criminals.” 554 U.S. at 682 (Breyer, J., dissenting); *see also Snope*, 145 S. Ct. at 1534 (Kavanaugh, J., statement respecting denial) (“[H]andguns—not rifles—are used in the vast majority of murders and other violent crimes that individuals commit with guns in America.”). Respondents’ claim that *Heller* requires a freewheeling inquiry into a weapon’s “dangerousness,” BIO. 34, is therefore simply not true.

Respondents’ counterarguments are unpersuasive. They first argue that Petitioners’ interpretation conflicts with the portion of *Heller* that indicated the National Firearms Act’s restrictions on certain weapons—such as machine guns and short-barreled shotguns—are constitutional. *See id.* 33–34. But *Heller* indicated that these weapons may be restricted precisely because they are “not typically possessed by law-abiding citizens for lawful purposes.” 554 U.S. at 625. Respondents also note that their “unopposed historical expert” rejected a “conjunctive reading of

‘dangerous and unusual.’” BIO. 33. Expert testimony, however, is no basis for a lower court to disregard this Court’s interpretation of the Second Amendment. *Contra* Pet.App. 31a.

Respondents also attempt to reconcile the panel’s logic with *Heller*’s “common use” test. They say that test “necessarily requires an analysis of a weapon’s actual use and functionality for self-defense—not its popularity in the abstract.” BIO. 35. But *Heller* flatly rejected the notion that a weapon’s constitutional status depends on courts’ assessment of its functionality. While this Court proffered some reasons why Americans might prefer handguns to other arms, *see* 554 U.S. at 629, it ultimately concluded that these reasons did not matter. “*Whatever the reason,*” it explained, “handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.” *Id.* (emphasis added).

Respondents barely contest the importance of the question presented. And neither they nor the panel have explained how AR-15s and similar rifles can be distinguished from the handguns at issue in *Heller*. *See Snope*, 145 S. Ct. at 1534 (Kavanaugh, J., statement respecting denial) (suggesting that distinctions are hard to come by). This untenable state of affairs has persisted since *Heller* and has not improved after *Bruen*. It is time for this Court to intervene. *Id.* at 1538–39 (Thomas, J., dissenting from denial).

III. That leaves Respondents’ contention that this case is “a uniquely poor vehicle.” BIO. 19 (citation

modified). While Respondents note this case has not reached final judgment, *id.* at 29–30, that is no reason to deny the Petition, *see* Pet. 32. And their other arguments are similarly unpersuasive.

A. Respondents contend that this Court’s review would make no difference because, in addition to holding that Petitioners were unlikely to succeed on the merits, the panel denied them a preliminary injunction on the basis of the last two *Winter* factors—the balance of the equities and the public interest. *See* BIO. 20–23; *see also Winter v. NRDC*, 555 U.S. 7, 20 (2008). But as the Petition explained, the panel found that Petitioners did not satisfy these factors “[f]or reasons that flowed from its merits analysis.” Pet. 15.

In analyzing these factors, the panel asserted that an injunction would harm Respondents in two ways. First, it observed that an injunction would prevent Respondents “from effectuating [a] statute[] enacted by representatives of its people.” Pet.App. 65a (cleaned up). But the magnitude of this harm plainly depends on statute’s constitutionality. If the statute is unconstitutional, as Petitioners contend, then Respondents’ interest in enforcing it is vitiated, or at the very least significantly diminished. *See, e.g., Ortega v. Grisham*, 148 F.4th 1134, 1154 n.13 (10th Cir. 2025) (State has “no interest” in enforcing a law that violates the Second Amendment (internal quotation marks omitted)); *Volokh v. James*, 148 F.4th 71, 82 (2d Cir. 2025).

Second, the panel reasoned that an injunction would cause “currently restricted weapons,” which the panel deemed harmful, to enter Connecticut. Pet.App. 65a. This harm, too, turns on the statute’s constitutionality. If the Second Amendment protects the right

to possess the weapons at issue in this case, then Connecticut cannot claim to be harmed by the fact that its residents may exercise that right.

On the other side of the ledger, the panel downplayed Petitioners' harm from the denial of an injunction, observing that Petitioners could defend themselves adequately with the firearms that the challenged restrictions leave available. *See id.* at 66a. Once again, this analysis is downstream from the merits. For starters, it assumes that the Second Amendment protects only Petitioners' right to acquire firearms for self-defense, which is disputed. *See* Pet. 27–28. Moreover, the magnitude of Petitioners' harm surely depends on whether they have a constitutional right to acquire firearms covered by the challenged restrictions. In any event, the panel acknowledged that that enforcement of the challenged restrictions would cause Petitioners *some* harm. *See* Pet.App. 66a (“the potential denial of a party’s constitutional rights is surely a significant consideration”); *see also id.* at 64a (declining to decide whether the challenged statutes caused Petitioners’ irreparable harm). It could not have balanced that harm against the harm to Respondents unless it knew the extent of Respondents’ harm. Since the panel’s merits analysis colored its perception of Respondents’ harm, it follows that the merits affected the entire balance-of-the-equities inquiry.

In short, far from an “independent” and “alternative” “ground[] for” denying a preliminary injunction, BIO. 20, the panel’s analysis of the balance of the equities and the public interest was inextricably intertwined with the merits. For that reason, it is of no

consequence that Petitioners do not seek review of these issues. *Contra id.* at 20. If this Court reverses the panel on the question presented, the panel would be required to reassess the other preliminary injunction factors. Respondents contend that this is insufficient because “the question before this Court on review is only whether the judgment was correct, not the ground on which the judgment professes to proceed.” *Id.* at 19 (cleaned up). But if this Court determines that Petitioners are likely to succeed, the judgment below could not stand. What is more, this Court often resolves questions that may or may not be outcome-determinative. *See, e.g., FDA v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 592 (2025).

B. Respondents next contend that the record in this case is insufficient to resolve the “disputed questions of fact” on which Petitioners’ claim depends—namely, whether AR-15s and similar rifles are commonly owned, and whether they are commonly owned for self-defense. *See* BIO. 23–30. But this Court need not find that AR-15s and similar rifles are commonly owned for self-defense; the question is only whether these rifles are in common use for lawful purposes. *See* Pet. 27–28. And it is not Petitioners’ burden to make that showing. The “common use” inquiry takes place at *Bruen*’s historical prong, which means Respondents must establish that the relevant arms are *not* in “common use.” *See id.* 22–23. If the record is insufficient to make such a finding, it only means that Respondents should lose. *Contra* BIO. 25–26 (faulting Petitioners for failing to submit evidence about why Americans own AR-15s and similar rifles).

In any event, these are questions of legislative fact to which the rules of evidence *explicitly do not apply* and of which this Court’s review is unrestricted. *See* FED. R. EVID. 201(a). That is why this Court decided *Heller* and *Bruen* even though those cases arose from motions to dismiss—and thus came to the Court with no factual record at all. This Court had no trouble determining, based on legislative facts presented by the parties and their amici, that the handguns at issue in *Heller* were in common use, *see* 554 U.S. at 629, and that the may-issue regime at issue in *Bruen* was unsupported by historical tradition, *see* 597 U.S. at 70. It would similarly have no trouble here because it is quite clear that AR-15s and similar rifles are in common use for lawful purposes, including self-defense. *See Smith & Wesson*, 605 U.S. at 297. Respondents counter that there is no evidence that AR-15s and similar rifles are actually *used*—*i.e.*, brandished or discharged—defensively. *See, e.g.*, BIO. 24. But that is wrong. *See* Pet. at 10. More importantly, it is irrelevant; mere ownership of an arm is a “use” in the constitutionally relevant sense. *Cf. Bailey v. United States*, 516 U.S. 137, 143 (1995).

Even if all that were wrong, this Court should grant review for the purpose of clarifying the standard for evaluating a ban on whole categories of arms. The parties could then develop the evidence necessary to evaluate the challenged restrictions under the proper standard. In similar circumstances, this Court has done exactly that. *See Caetano v. Massachusetts*, 577 U.S. 411, 411–12 (2016) (*per curiam*).

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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