Nos. 25-238 and 25-566

IN THE

Supreme Court of the United States

CUTBERTO VIRAMONTES, ET AL.,

Petitioners,

v.

COOK COUNTY, ILLINOIS, ET AL.,

Respondents.

EDDIE GRANT, JR., ET AL.,

Petitioners,

v.

RONNELL HIGGINS, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE CONNECTICUT DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC TRANSPORTATION, ET AL.,

Respondents.

On Writs Of Certiorari To The United States Courts Of Appeals For The Seventh And Second Circuits

BRIEF OF NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ET AL., AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici are eleven nonprofit organizations and seven individuals who share a direct interest in the question presented: whether the rifles and magazines most suitable for militia service — and therefore, amici submit, most clearly protected by the Second Amendment — may be banned on precisely that account.

The organizational amici are the New York State Rifle & Pistol Association; the Ohio Rifle and Pistol Association; the Indiana State Rifle and Pistol Association; the Virginia Shooting Sports Association; the Vermont Federation of Sportsmen's Clubs, Inc.; Gun Owners of Vermont, Inc.; the New Hampshire Firearms Coalition, Inc.; Florida Carry, Inc.; the Montana Shooting Sports Association, Inc.; the Oregon Firearms Educational Foundation; and Rights Watch International. Each is a nonprofit organization devoted to firearms-safety education, marksmanship training, competitive shooting, or the legal defense of the right to keep and bear arms — most to all four. Their members are law-abiding gun owners who own, train with, and compete with rifles and magazines of the very types Respondents have banned.

That membership sustains, in modern form, the tradition this brief recounts. The Vermont Federation of Sportsmen's Clubs, organized in 1875, is an umbrella association of more than fifty Vermont clubs whose members' most commonly owned long guns are semiautomatic rifles of the banned pattern. The Ohio Rifle and Pistol Association, an affiliate of the

[1] No counsel for a party authored this brief in whole or in part, and no person other than amici, their members or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

National Rifle Association and the Civilian Marksmanship Program, hosts Ohio's state championship "Across-the-Course" Service Rifle matches — fired today principally with AR-15-pattern rifles, as they once were with the 1903 Springfield and the M1 Garand — and prepares Ohio's shooters for the National Matches held each summer at Camp Perry, where marksmanship distinctions recognized by Congress and the United States military are earned. Bans of the kind at issue here reach directly into that world: they expose traveling competitors to legal jeopardy and deter ranges from hosting the matches through which ordinary citizens attain proficiency with the standard rifle of the era.

The individual amici Dennis Fusaro of Virginia and Robert L. Beckman of Ohio are members of the Board of Directors of the National Rifle Association; Larry C. Johnson of Florida is an NRA-certified firearms instructor and training counselor; and Bruce A. Beckman of Indiana is a competitive shooter (institutional titles are given for identification only). Each is a gun owner and a leader in firearms education, training, and advocacy, with a concrete personal stake in the right this case tests.

Amici Colonel Douglas A. Macgregor, U.S. Army (Ret.), and James R. Webb add the perspective of professional soldiers. Colonel Macgregor, a decorated combat veteran of the Gulf War, served as chief of strategic planning at Supreme Headquarters Allied Powers Europe and later as senior advisor to the Acting Secretary of Defense, and has written extensively on military strategy and force design. Mr. Webb served as a Marine infantryman from 2005 to 2010, completing a combat tour in Iraq, and now reports and comments on war and foreign policy. Their service acquainted them firsthand with the

relationship between the citizen's arms and the soldier's — the relationship at the heart of this case.

The Honorable Tom Parker served as Chief Justice of the Supreme Court of Alabama. His interest lies in the faithful application of constitutional text, history, and this Court's precedents in the courts below — the very thing amici submit the decisions under review failed to deliver.

All amici share one conviction, developed in this brief: the Second Amendment's militia clause marks the core of the right — arms suitable for the common defense, kept by ordinary citizens in ordinary civilian life. The decisions below each offend that guarantee, though by different routes. The Seventh Circuit held the AR-15 too much like a military rifle to be an "Arm" within the Amendment's protection at all — treating suitability for militia service itself as a ground for prohibition. The Second Circuit reached the same result by recasting the historical "dangerous and unusual" exception as a license to ban arms whose military-derived features it deems "unusually dangerous," notwithstanding their common use. The first rationale inverts the constitutional text outright; the second does so through the "dangerous and unusual" exception, dissolving the test this Court's precedents mandate. Amici file to place before the Court the founding-era statutory record that answers both.

SUMMARY OF ARGUMENT

The Seventh Circuit sustained Cook County's ban on the theory that the AR-15 is too much like a military rifle to be an "Arm" within the Second Amendment's protection at all; the Second Circuit sustained Connecticut's ban on the related theory that the AR-15's military-derived features make it

"unusually dangerous" and therefore subject to prohibition despite its common use. Both rationales invert the constitutional text they purport to apply. The Amendment's very text announces its purpose: "the security of a free State" through "[a] well regulated Militia." This Court's cases give that purpose doctrinal form. Under *United States* v. *Miller*, the arms protected by the Amendment are those bearing "some reasonable relationship to the preservation or efficiency of a well regulated militia" — arms that are "part of the ordinary military equipment" or whose use "could contribute to the common defense." 307 U.S. 174, 178 (1939). *District of Columbia* v. *Heller* adopted *Miller*'s test and equated it with common use, because in the founding era, the militiaman's arm and the citizen's arm were "one and the same." 554 U.S. 570, 624–25 (2008). Militia utility is where Second Amendment protection begins. It cannot be the reason to nullify that protection.

History confirms what the text declares. For a century and a half before ratification and for more than a century after, American law did not merely tolerate the private keeping of military-pattern arms — it commanded it. Massachusetts, Connecticut, Rhode Island, Virginia, and Maryland ordered householders — not merely enrolled soldiers — to keep the specified infantry arm of the day at home, and enforced the command with inspections and fines. Virginia's 1785 militia act supplied the near-verbatim template for the Militia Act of May 8, 1792, ch. 33, § 1, 1 Stat. 271, in which the First Congress directed every enrolled citizen to "provide himself" with a musket or rifle — a requirement that remained federal law in substance until 1903, when Congress began issuing "the United States standard service magazine arms, with bayonets" to the organized

militia. Militia Act of 1903 (the Dick Act), Pub. L. No. 57-33, ch. 196, §§ 1, 13, 32 Stat. 775, 777. At no point in that unbroken chain did any American legislature treat military utility as a reason the citizen should *not* have the arm.

The historical record is equally bare of any bans on militia-suitable arms. No colonial or founding-era jurisdiction banned a type of arm. The nineteenth century's few sustained restrictions ran against small, sub-military pistols, expressly sparing army- and navy-pattern arms from regulation. Every court of the era held that militia-suitable arms could not be outlawed from possession by the citizenry. Respondents' own theory — that the AR-15 is meaningfully similar to the M-16 — concedes militia suitability. Under the American tradition, that concession completes the case against them.

Nor can the out-of-context phrase from *Heller*, "dangerous and unusual," carry the weight the Second Circuit places on it. The phrase refers to the manner-of-carry tradition, not the weapons themselves. The test itself is conjunctive; thus, a weapon in common use, by definition, cannot be unusual. The judgments should be reversed.

ARGUMENT

I. *Miller* and *Heller* Already Decide This Case.

A. Militia utility and common use are two descriptions of one protected class.

Miller explained who made up the militia: "civilians primarily, soldiers on occasion," who when called "were expected to appear bearing arms supplied by themselves and of the kind in common use at the

time." 307 U.S. at 179[2]. To obtain Second Amendment protection, there must be evidence that a weapon has "some reasonable relationship to the preservation or efficiency of a well regulated militia," and that it is "part of the ordinary military equipment or that its use could contribute to the common defense." Under that rubric, the *Miller* Court could not say[3] the Amendment guarantees the right to keep the short-barreled shotgun in question. 307 U.S. at 178.

Heller took both halves of that opinion and welded them together. *Miller*'s "ordinary military equipment" language, the Court explained, "must be read in tandem with what comes after" — the arms the citizen-soldier supplied himself, "of the kind in common use at the time." 554 U.S. at 624. "The traditional militia was formed from a pool of men bringing arms 'in common use at the time' for lawful purposes like self-defense," because "[i]n the colonial and revolutionary war era, [small-arms] weapons used by militiamen and weapons used in defense of person and home were one and the same." *Id.* at 624–25 (quoting *State* v. *Kessler*, 614 P.2d 94, 98 (Or. 1980)). "Indeed," the Court continued, "that is precisely the way in which the Second Amendment's operative clause furthers the purpose announced in its preface." *Id.* at 625. *Heller* thus construed *Miller* "to say only that the Second Amendment does not protect

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[2] *Miller*'s own historical review corroborates this understanding: the Court catalogued colonial and founding-era militia statutes from Massachusetts, New York, and Virginia, each obligating militiamen to arm themselves, and concluded that they reflected "the general obligation of all adult male inhabitants to possess arms." 307 U.S. at 179–82.

[3] As the *Miller* Court acknowledged, no evidence was presented in the case of whether the particular firearm at issue had "some reasonable relationship to the preservation or efficiency of a well regulated militia." 307 U.S. at 178.

those weapons not typically possessed by law-abiding citizens for lawful purposes." *Id.*

Militia suitability and common use are therefore not competing tests; they are two descriptions of the same protected class of arms, and the AR-15 answers both at once. A court faithfully applying *Miller* and *Heller* does not ask whether a banned rifle resembles military equipment *in order to strip protection*. Likeness to militia arms is what the Amendment has protected under this Court's precedents since 1939.

B. The same rule prevailed in the nineteenth century.

Miller did not invent its test; it cited *Aymette* v. *State*, the 1840 Tennessee decision holding that the arms whose keeping is secured "are such as are usually employed in civilized warfare, and that constitute the ordinary military equipment." 21 Tenn. (2 Hum.) 154, 158; see 307 U.S. at 178 (citing *Aymette*). Tennessee's highest court applied that principle again after the Civil War: the constitutionally protected arms include "the rifle of all descriptions, the shot gun, the musket, and repeater," and "the right to keep such arms[] can not be infringed or forbidden by the Legislature." *Andrews* v. *State*, 50 Tenn. 165, 179 (1871). In direct contradiction, the rule applied below — military usefulness *forfeits* protection, whether at the threshold or as a ground for prohibition — is precisely the rule rejected throughout the nineteenth century. See also Part II.D, *infra.*

C. Common use is not open to serious dispute.

This Court has already said so plainly: "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); see *Staples* v. *United States*,

511 U.S. 600, 612 (1994) (noting that AR-15s "traditionally have been widely accepted as lawful possessions"). The scale is a matter of record. "Americans today possess an estimated 20 to 30 million AR-15s," and those rifles "are legal in 41 of the 50 States"; their owners accordingly "have a strong argument that AR-15s are in 'common use' by law-abiding citizens and therefore are protected by the Second Amendment under *Heller*." *Snope* v. *Brown*, 145 S. Ct. 1534 (2025) (Kavanaugh, J., statement respecting denial of certiorari).

D. *Heller*'s M-16 dictum cannot be inverted into a militariness penalty.

The Seventh Circuit's decision below rested on a single sentence in *Heller*: "It may be objected that if weapons that are most useful in military service — M-16 rifles and the like — may be banned, then the Second Amendment right is completely detached from the prefatory clause." 554 U.S. at 627. Three points cabin that dictum. *First*, it is conditional — an objection acknowledged, not a holding announced; the very next sentences answer the objection through the common-use limitation, observing that a modern militia's ideal equipment "may" include "sophisticated arms that are highly unusual in society at large." *Id.* Arms owned by tens of millions are the opposite of "highly unusual in society at large." *Second*, the dictum concerns arms *not* in common use; it nowhere licenses courts to strip protection from commonly possessed arms *because of* their military kinship — that reading collides with the pages immediately preceding it, which define the protected class by the militiaman's privately kept arm. *Id.* at 624–25. *Third*, after *New York State Rifle & Pistol Ass'n* v. *Bruen*, 597 U.S. 1 (2022), *United States* v. *Rahimi*, 602 U.S. 680

(2024), and *United States* v. *Hemani*, 146 S. Ct. 1677 (2026), the Court's analytical framework is plain: when "the Amendment's terms cover the conduct in question," the Constitution "presumptively" protects it, and "the government then bears the burden" of justification from historical tradition. *Hemani*, 146 S. Ct. at 1685 (citing *Bruen*, 597 U.S. at 24). There is no extratextual escape from that framework.

The contrary line of authority at issue here flagrantly inverts the text-history standard. As the Fourth Circuit summarized, "Put simply, we have no power to extend Second Amendment protection to the weapons of war that the *Heller* decision explicitly excluded from such coverage." *Kolbe* v. *Hogan*, 849 F.3d 114, 121 (4th Cir. 2017) (en banc), cert. denied, 583 U.S. 1007 (2017); accord *Bianchi* v. *Brown*, 111 F.4th 438 (4th Cir. 2024) (en banc), cert. denied sub nom. *Snope* v. *Brown*, 145 S. Ct. 1534 (2025); *Bevis* v. *City of Naperville*, 85 F.4th 1175, 1194 (7th Cir. 2023) (holding that protected arms exclude "a militaristic weapon such as the AR-15"), cert. denied sub nom. *Harrel* v. *Raoul*, 144 S. Ct. 2491 (2024); *Barnett* v. *Raoul*, 180 F.4th 1035 (7th Cir. 2026) (reaffirming *Bevis* after certiorari was granted here). On their view, the closer a common arm is to the militia arm, the weaker its protection. This is exactly wrong. Were that the rule, *Miller* would fail on its own facts, since the short-barreled shotgun there could not be shown to bear the requisite relationship to militia service — not because none existed, but because no evidence on the question had been presented. *Miller*, 307 U.S. at 178. The Fourth and Seventh Circuits' inversion of this Court's rule detaches the Amendment's operative clause from its declared object. It must be rejected.

E. Arms suitable for the common defense sit at the core of the right, not its perimeter.

The Amendment's prefatory clause "announces the purpose for which the right was codified: to prevent elimination of the militia." *Heller*, 554 U.S. at 599. "[T]he threat that the new Federal Government would destroy the citizens' militia by taking away their arms was the reason that right — unlike some other English rights — was codified in a written Constitution." *Id.* Hence, arms suitable for the common defense occupy the guarantee's heartland. The banned rifles at issue here "appear to fall within the heartland of the Second Amendment protection — an 'individual right to own privately and keep weapons suitable for militia service.'" *Ass'n of N.J. Rifle & Pistol Clubs* v. *Att'y Gen. N.J.* (ANJRPC), 183 F.4th 211, 257 n.14 (3d Cir. 2026) (en banc) (Matey, J., joined by Mascott, J., concurring) (quoting Marcus Armstrong, *The Militia II: Armed Self-Defense, the Second Amendment, and the Citizen*, 56 St. Mary's L.J. 739, 763 (2025)). Both decisions below fail as a matter of textual structure. Whether militariness defeats coverage at the threshold, as the Seventh Circuit held, or supplies the justification for prohibition, as the Second Circuit held, the result is a doctrine placing the militia-suitable arm at the *bottom* of the Second Amendment — protection strongest for derringers, weakest for the militiaman's rifle. That has the Amendment exactly backwards.

II. The Founding-Era Tradition Affirmatively Commanded Civilians to Possess Militia-Pattern Arms.

Under *Bruen*, once the text covers the arms at issue the burden is Respondents' to show their categorical prohibition of such arms is "consistent with the

Nation's historical tradition of firearm regulation." 597 U.S. at 24. The robust historical tradition is not silent on this point; it runs affirmatively the other way. The founders' arms statutes — colonial, state, and federal — *commanded* the private keeping of military-pattern arms, specified the arms by statute, extended the duty beyond the muster rolls to householders generally, audited compliance in ordinary civilian life, and never once banned possession of a category of arm.

A. Five colonies, one command: universal private arms, enforced.

The command is as old as the first surviving American legislation. Virginia's Assembly of 1623–24 ordered "that men go not to worke in the ground without their arms (and a centinell upon them)" and "that the commander of every plantation take care that there be sufficient of powder and amunition within the plantation under his command and their pieces fixt and their arms compleate." Acts of Mar. 1623–24, Nos. 25 & 27, 1 William Waller Hening, *The Statutes at Large; Being a Collection of All the Laws of Virginia* 127 (1823) (Hening). From the earliest settlements, the command was universal and personal. Rhode Island's 1647 code ordered that "every Inhabitant of the Island above sixteen or under sixty yeares of age, shall alwayes be provided of a Musket, one pound of powder, twenty bullets, and two fadom of Match, with sword, rest, bandaleers … all completely furnished." Acts and Orders of 1647, 1 *Records of the Colony of Rhode Island and Providence Plantations, in New England* 154 (John Russell Bartlett ed., 1856) (*R.I. Records*). In 1659–60, Virginia enacted the requirement "[t]hat every man able to beare armes have in his house a fixt gunn two pounds

of powder and eight pound of shott at least," on pain of a fine of fifty pounds of tobacco, 1 Hening 525, and reenacted the mandate in 1661–62, 2 Hening 126.

In 1631, Massachusetts ordered every town to ensure every person was "furnished with good & sufficient armes," with the town arming those too poor to arm themselves, 1 *Records of the Governor and Company of the Massachusetts Bay in New England* 84 (Nathaniel B. Shurtleff ed., 1853) (*Mass. Records*). In 1636, Connecticut ordered "that every souldier in each plantacon shall haue in his howse in a readines … twoe pounde of powder," shown "to the Constable whenever he shall call them vnto it vppon the penalty of Xs. [ten shillings] for every failure," 1 *The Public Records of the Colony of Connecticut* 3 (J. Hammond Trumbull ed., 1850) (*Conn. Public Records*). Connecticut's Code of 1650 required every male above sixteen to "have in continuall readines, a good muskitt or other gunn, fitt for service." *The Code of 1650, Being a Compilation of the Earliest Laws and Orders of the General Court of Connecticut* 72 (Silas Andrus prtg. 1822). Maryland ran the same course. Its Council ordered on June 23, 1642, "[t]hat all housekeepers provide fixed gunn and Sufficient powder and Shott for each person able to bear arms," 3 *Archives of Maryland: Proceedings of the Council of Maryland, 1636–1667*, at 103 (William Hand Browne ed., 1885) (*Archives of Maryland*); its instructions to the militia captains (1657–60) directed them to "take an exact vieue of euery mans Armes that they be well fixed" and to "make euery householder provide himselfe speedyly with Armes & Ammunicon according to a former Act of Assembly viz 2ld of powder and 5ld of shott & one good Gun well fixed for euery man able to beare Armes in his house." 3 *Archives of Maryland*

345. And its militia act of May 1756 was still arming enrolled men who lacked arms at public expense — against repayment of "the first Cost thereof" within nine months, excused only for those whose whole estate was under forty pounds sterling — with free public arms reserved "to Such Persons of the Militia as are by this Act deemed unable to provide the Same." An Act for regulating the Militia of the Province of Maryland (May 1756), 52 *Archives of Maryland* 453, 455 (Lower House Journal, Liber No. 48).

These mandates were not hortatory. Rhode Island sent inspectors house to house "to take an account … of the powder, arms and ammunition" of each inhabitant, Order of 1775, 7 *R.I. Records* 356; Virginia fined the unarmed in tobacco, Act of 1723, 4 Hening 119–20; Rhode Island's 1718 act exacted "Three Shillings, for each time he shall be found not provided," R.I. Act of 1718, in *Acts and Laws of His Majesties Colony of Rhode-Island, and Providence-Plantations in America* 87 (1719 prtg.) (*R.I. Acts and Laws*); and its 1665 order fined the "parents and masters" obliged to "find armes and amunition (as they must doe) for their sones and sarvants that are listable." 2 *R.I. Records* 115. Where poverty stood in the way, government subsidized rather than excused: Massachusetts' towns armed those unable to arm themselves, with repayment "when they shalbe able." Order of 1631, 1 *Mass. Records* 84. Government audited, financed, and compelled private arms ownership — to ensure there was *enough* of it.

B. The arms civilians were obligated to possess were the statutorily specified military arms of the day.

The statutes did not say "a gun." They specified the infantry arm. Rhode Island, 1718: "one good Musket, or Fuzee, the Barrel whereof not to be less than three foot and an half in length … one pound of good Gunpowder, thirty Bullets, … one good Sword, or Baionet, a Cartouch Box, ready fitted with Cartriges of Gunpowder and Bullets." *R.I. Acts and Laws* 87. Massachusetts, 1693: "a well fixt firelock musket … the barrel not less than three foot and a half long," with "one pound of good powder, twenty bullets … and twelve flints" — required of "every listed souldier *and other householder*." 1693 Mass. Acts ch. 3, 129 (emphasis added). Connecticut, 1741: materially identical, again reaching every "listed souldier *and other house-holder*." 8 *Conn. Public Records* 380 (emphasis added). Massachusetts, 1776: each militiaman "shall equip himself, and be constantly provided with a good fire-arm … a bayonet fixed to his gun … a cartridge-box that will hold fifteen rounds of cartridges, at least, a hundred buck-shot … one pound of powder, forty leaden balls." 1776 Mass. Acts ch. 10, 448.

The premise that the required arms be privately owned was explicit. Massachusetts' January 1776 act ordered each militiaman to "equip *himself*" (emphasis added), *id.*; Rhode Island's October 1779 act required "each and every effective Man" to be furnished "at his own Expence" with "one good Musquet, and a Bayonet fitted thereto," excepting only those the town councils "shall adjudge unable to purchase the same," and its March 1781 act required "a good Gun, being his own Property." 1779 R.I. Acts & Resolves (Oct. Sess.) 29, 31–32 (Bennett

Wheeler prtg.); 1781 R.I. Acts & Resolves (Mar. Sess.) 51, 52 (Bennett Wheeler prtg.). The arm the militia would bear was, by legislative design, the arm the citizen owned.

Virginia's post-Independence militia act of 1785 specified private ownership of "a good, clean musket carrying an ounce ball, and three feet eight inches long in the barrel, with a good bayonet and iron ramrod well fitted thereto, a cartridge box properly made, to contain and secure twenty cartridges," with rifles permitted in lieu west of the Blue Ridge. 12 Hening 12. On the eve of ratification of the U.S. Constitution, the same legislature ordered that "each of the militia in the several counties on the western waters, shall keep always ready a good musket or rifle, half a pound of good powder, and one pound of lead, to be produced whenever called for by his commanding officer." Act of 1788, 12 Hening 697. The 1785 act was the near-verbatim template for the First Congress's Militia Act of 1792, which commanded that "every citizen so enrolled … shall … provide himself with a good musket or firelock, a sufficient bayonet and belt … a pouch with a box therein to contain not less than twenty-four cartridges … or with a good rifle." § 1, 1 Stat. 271. Congress even shielded the mandated arm from creditors and the tax collector: every citizen so armed "shall hold the same exempted from all suits, distresses, executions or sales, for debt or for the payment of taxes." § 1, 1 Stat. 272.

The federal command endured. It was carried forward as Section 1628 of the Revised Statutes (1874): "[e]very citizen shall … be constantly provided with a good musket or firelock … or with a good rifle." When the Dick Act finally ended universal self-provision in 1903, Congress replaced it — for the organized militia, the National Guard — with

issuance of "the United States standard service magazine arms, with bayonets," while continuing to define the reserve militia as the whole body of able-bodied male citizens. Dick Act §§ 1, 13, 32 Stat. 777. Stated precisely: for the one hundred eleven years immediately following the Second Amendment's ratification, federal law commanded the ordinary citizen to purchase and keep the current military arm at home at his own expense. Thereafter, the organized militia was armed to the Army's own standard. For that entire period, no Congress or State ever treated military utility as a reason the citizen should *not* have the arm. Doing so would have been the antithesis of having a militia capable of securing a free State.

C. The duty ran to the whole population, in ordinary civilian life.

The arms duty was not confined to musters. Virginia ordered "masters of every family" to "bring with them to church on Sondays one fixed and serviceable gun," Act of 1643, 1 Hening 263, and was fining ordinary militia members delinquent in appearance or equipment five shillings in 1738. 5 Hening 19–21. In 1639, Rhode Island mandated that "none shall come to any public Meeting without his weapon." 1 *R.I. Records* 94. Even the militia-*exempt* were armed by law: Virginia's exempted officials — councillors, the Speaker, justices — were "required and enjoyned to provide and keep at their respective places of abode a troopers horse, furniture, arms and ammunition," produced annually for inspection. Act of 1705, 3 Hening 337. Rhode Island required those excused from training to keep the same arms as trainband members. *R.I. Acts and Laws* 86, 88. Exemption from mustering never meant exemption

from arms.[4] The keeping of the military-pattern arm was the ordinary condition of civilian life — which is why *Heller* could say the militiaman's weapon and the household weapon "were one and the same." 554 U.S. at 624–25.

D. The negative record: no ban, ever — and the early courts said why.

Respondents have no historical tradition answer to those mandates requiring civilians to own militia-standard arms. No colonial or founding-era American jurisdiction banned any type of arm. When nineteenth-century legislatures first restricted particular weapons, the courts drew a line no tribunal of the era disputed, namely, that militia arms could not be banned. Georgia's handgun ban fell in *Nunn* v. *State*, 1 Ga. 243, 251 (1846) — the decision whose reasoning *Heller* said "perfectly captured the way in which the operative clause of the Second Amendment furthers the purpose announced in the prefatory clause." 554 U.S. at 612. Tennessee held that the arms "usually employed in civilized warfare" are the

[4] The tradition's shameful exception proves its rule. The same legislatures that commanded universal arms-keeping withheld arms from those they excluded from the political community itself. Virginia's 1639–40 assembly directed that "ALL persons except negroes to be provided with arms and ammunition or be fined at pleasure of the Governor and Council," 1 Hening 226, and its 1723 act made it unlawful for any "negro, mulatto, or Indian whatsoever … to keep, or carry any gun, powder, shot, or any club, or other weapon whatsoever, offensive or defensive." Act of May 1723, 4 Hening 126, 131. Arms-keeping was a badge and duty of membership in the political community; the era's disgraceful exclusions from arms tracked, precisely, its exclusions from that community. That is the tradition's own confirmation that the keeping of militia-suitable arms lay at the core of the right of "the people."

protected core, *Aymette*, 21 Tenn. at 158, and that the citizen's right to keep "the rifle of all descriptions, the shot gun, the musket, and repeater … can not be infringed or forbidden," *Andrews*, 50 Tenn. at 179.

In contrast, the era's only sustained *sales* bans prove the same rule from the other side: they ran against small, sub-military pistols and expressly spared army- and navy-pattern revolvers. *State* v. *Burgoyne*, 75 Tenn. 173, 174 (1881) (construing an 1879 statute as exempting "army or navy" pistols); *Dabbs* v. *State*, 39 Ark. 353, 357 (1882) (upholding a statute banning concealable weapons because it "in no wise restrains the use or sale of such arms as are useful in warfare"). "The unanimous judicial view of the time was that, at the least, no government could outlaw militia-suitable arms." David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. Legis. 223, 382 (2024). Respondents' central factual claim — the AR-15's kinship to the M-16 — thus concedes the very feature that placed militia-suitable arms beyond prohibition in every precedent of the era, including the cases that upheld bans.

Only one honest reading comes from that historical record. In the era when the Second Amendment's meaning was fixed and first expounded, the militia-suitable arm marked the inner boundary of legislative power. It was the one category of arm every court of the era agreed could not be taken from the citizen. A ban aimed at the AR-15 precisely *because of* its military kinship does not merely sit uneasily with that tradition; it contradicts the tradition's only unanimous rule.

E. *Bruen*'s "why" and "how" requirements both condemn Respondents' bans.

Bruen directs courts to analyze "how and why" purportedly analogous historical regulations burden a citizen's right to armed self-defense. 597 U.S. at 29; see *Rahimi*, 602 U.S. at 692 (the question is whether the modern law "is consistent with the principles that underpin our regulatory tradition"). The *why* of founding-era arms law was to maximize — not minimize — the defensive capability resident in the citizenry: legislatures' fear was for an underarmed people, never an overarmed one. That was the codification concern itself — the fear of a disarmed militia, voiced in the ratification debates by George Mason (disarming the people was "the best and most effectual way to enslave them," 3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 380 (Jonathan Elliot ed., 2d ed. 1836)) and Patrick Henry ("The great object is, that every man be armed," *id*. at 386) — and answered by the Amendment. The *how* was mandates, statutory specifications, subsidies for the poor, and inspections — never a possession ban on a type of arm. Cook County's and Connecticut's bans fail on both questions: their *why* (reducing civilian stocks of militia-suitable arms) is the precise evil the founders legislated against, and their *how* (categorical prohibition) has no forebear in the relevant period. Under *Bruen*'s allocation of the burden upon proponents of firearms regulations to produce a tradition of historical analogues, Respondents' case is at an end. 597 U.S. at 24; *Hemani*, 146 S. Ct. at 1685–86.

III. Merely Asserting the Banned Arms Are "Dangerous and Unusual" Fails to Apply the Tests Mandated by *Heller-Bruen*.

A. The tradition is one of manner-of-carry, and it is conjunctive.

The phrase "dangerous and unusual weapons" emanates from a specific body of law regulating the manner of carrying arms, not their possession. *Heller* grounded the principle in "the historical tradition of prohibiting the *carrying* of 'dangerous and unusual weapons.'" 554 U.S. at 627 (emphasis added) (collecting authorities). The root of that tradition traces back to the Statute of Northampton, which commanded that Englishmen "bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers," upon pain of forfeiting their armour to the King. 2 Edw. 3, c. 3 (1328) (Eng.), *quoted in Bruen*, 597 U.S. at 40. The offense lay in how and where arms were borne — armed "in affray of the peace," to the terror of the people — not in what arms a subject could own: the settled English understanding by the eighteenth century was that "no Wearing of Arms is within the Meaning of [the Statute of Northampton], unless it be accompanied with such Circumstances as are apt to terrify the People." 1 William Hawkins, *A Treatise of the Pleas of the Crown* 136 (1716), quoted in *Bruen*, 597 U.S. at 45. Every source in *Heller*'s discussion of "dangerous and unusual weapons" concerns how arms were carried. None of that discussion pertains to banning possession of an arm. Moreover, the phrase itself states "a conjunctive test: A weapon may not be banned unless it is *both* dangerous *and* unusual."

Caetano v. *Massachusetts*, 577 U.S. 411, 417 (2016) (Alito, J., concurring in the judgment).[5]

B. A weapon in common use cannot be "dangerous and unusual."

Because *Heller* "positioned the two in opposition," a weapon "'in common use for lawful purposes' cannot be 'dangerous and unusual'" — "the two descriptors are mutually exclusive." *ANJRPC*, 183 F.4th at 234 (striking New Jersey's "assault firearms" ban, N.J. Stat. Ann. §§ 2C:39-1(w), 2C:39-5(f) (West 2018), as applied to the Colt AR-15, and striking in full its ban on magazines holding more than ten rounds, *id.* §§ 2C:39-1(y), 2C:39-3(j)) (quoting *Heller*, 554 U.S. at 627). *Bruen* compels that conclusion by holding that colonial-era characterizations of handguns as "dangerous and unusual" could "provide no justification" for restricting arms that are today "unquestionably in common use." 597 U.S. at 47. An arm owned by tens of millions of law-abiding Americans cannot be "unusual."

Nor may "unusual" be manufactured as a consequence of governmental prohibition. The term must mean unusual among the arms law-abiding citizens actually choose — not a rarity that legal suppression itself produced. Were it otherwise,

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[5] The Second Circuit reached the same practical result in the companion case by a different route: rejecting the conjunctive reading urged by Justice Alito's *Caetano* concurrence as resting on a "non-binding" concurrence, it held that the historical dangerous-and-unusual exception "encompasses those arms that legislators determined were unusually dangerous because of their characteristics." *Grant* v. *Lamont*, 153 F.4th 213, 233 (2d Cir. 2025) (companion case), cert. granted sub nom. *Grant* v. *Higgins*, No. 25-566 (June 30, 2026). But a rifle owned by tens of millions cannot be "unusual" under any formulation of the test, conjunctive or not. See Part III.B, *infra*.

government could ban an arm into unusualness and then cite the unusualness it created as the justification; the constitutional baseline would be whatever the last generation of prohibitions left standing — whether addressed by a court or not. Common use is measured by the choices of a free people, not by the success of past confiscations.

CONCLUSION

The judgments below should be reversed. Arms that bear a reasonable relationship to the preservation or efficiency of a well regulated militia — the ordinary individual arms suitable for the common defense and in common use by law-abiding citizens — lie at the core of the Second Amendment's protection, and a State may not prohibit them. The historical tradition of regulating "dangerous and unusual weapons" is a tradition governing the manner of carrying arms and the genuinely exotic; it has never sustained, and does not now permit, a prohibition on arms in common use. A prohibition imposed *because* those arms are useful for the common defense is contrary to the Second Amendment's text, purpose, and history.

Respectfully submitted,

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