

Nos. 25-238 & 25-566

In the Supreme Court of the United States

CUTBERTO VIRAMONTES, et al.,
Petitioners,

v.

COOK COUNTY, et al.,
Respondents.

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

v.

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

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

**BRIEF OF THE CATO INSTITUTE AS *AMICUS
CURIAE* IN SUPPORT OF PETITIONERS**

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QUESTION PRESENTED

Whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT	4
I. AR-15s Are “Overwhelmingly Chosen” for Lawful Purposes.	4
II. The Second Amendment Protects Arms for the Reserve Militia.	9
A. The Second Amendment Was Enacted to Protect Militia Arms.	10
B. AR-15s Are Suited to the Reserve Militia.....	19
C. Protecting Reserve Militia Arms Will Not Lead to Absurd Results.	22
CONCLUSION	25

TABLE OF AUTHORITIES

Cases

<i>Andrews v. State</i> , 50 Tenn. (3 Heisk.) 165 (1871)	13, 16, 17, 18
<i>Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Atty. Gen. N.J.</i> , Nos. 24-2415 et al., 2026 U.S. App. LEXIS 21156 (3d Cir. July 17, 2026) (en banc)	3, 4, 5, 8, 9, 18
<i>Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Platkin</i> , 742 F. Supp. 3d 421 (D.N.J. 2024)	3, 5, 8, 21
<i>Aymette v. State</i> , 21 Tenn. (2 Hum.) 154 (1840)	11, 12, 13, 16, 18, 19
<i>Barnett v. Raoul</i> , Nos. 24-3060 et al., 2026 U.S. App. LEXIS 20150 (7th Cir. July 9, 2026)	9, 18
<i>Bevis v. City of Naperville</i> , 85 F.4th 1175 (7th Cir. 2023)	3, 8, 9, 10, 21
<i>Bianchi v. Brown</i> , 111 F.4th 438 (4th Cir. 2024) (en banc)	3, 11, 12, 13, 14
<i>Bliss v. Commonwealth</i> , 12 Ky. (2 Litt.) 90 (1822)	18
<i>Caetano v. Massachusetts</i> , 577 U.S. 411 (2016)	2, 18
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	1, 2, 5, 6, 10, 13, 14, 15, 16, 17, 18, 23, 24
<i>Duncan v. Becerra</i> , 970 F.3d 1133 (9th Cir. 2020)	20
<i>Fife v. State</i> , 31 Ark. 455 (1876)	16, 18

<i>Friedman v. City of Highland Park</i> , 577 U.S. 1039 (2015)	9
<i>Glasscock v. City of Chattanooga</i> , 157 Tenn. 518 (1928)	18
<i>Hanson v. District of Columbia</i> , 120 F.4th 223 (D.C. Cir. 2024) (per curiam)	18
<i>Harrel v. Raoul</i> , 144 S. Ct. 2491 (2024)	3
<i>Heller v. District of Columbia</i> , 670 F.3d 1244 (D.C. Cir. 2011)	5, 6, 8
<i>Kolbe v. Hogan</i> , 849 F.3d 114 (4th Cir. 2017) (en banc)	3, 7, 8, 9, 21, 24
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010)	1, 10, 11, 13
<i>Miller v. Bonta</i> , 542 F. Supp. 3d 1009 (S.D. Cal. 2021)	6, 7, 16, 20, 22, 23
<i>N.Y. State Rifle & Pistol Ass’n v. Cuomo</i> , 804 F.3d 242 (2d Cir. 2015)	4, 7
<i>Nunn v. State</i> , 1 Ga. 243 (1846)	11, 14, 24
<i>Presser v. Illinois</i> , 116 U.S. 252 (1886)	12, 13
<i>Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos</i> , 605 U.S. 280 (2025)	5
<i>Snope v. Brown</i> , 145 S. Ct. 1534 (2025)	2, 5, 6, 7, 9, 22
<i>Staples v. United States</i> , 511 U.S. 600 (1994)	2
<i>State v. Chandler</i> , 5 La. Ann. 489 (1850).....	18
<i>State v. Kerner</i> , 181 N.C. 574 (1921).....	8, 18, 24, 25
<i>State v. Workman</i> , 35 W. Va. 367 (1891)	18

<i>United States v. Miller</i> , 307 U.S. 174 (1939)	
.....	2, 4, 5, 11, 12, 15, 19
<i>Wilson v. State</i> , 33 Ark. 557 (1878).....	16
<i>Wolford v. Lopez</i> , 225 L. Ed. 2d 494 (2026)	11
Statutes	
Act of May 8, 1792 (Militia Act of 1792),	
1 Stat. 271	23
Bill of Rights, 1 W. & M., Sess. 2, c. 2 (1688)	11
Other Authorities	
1 SEN. OF THE STATE OF N.Y., REPORT OF THE	
ADJUTANT-GENERAL (1832).....	17
1 WILLIAM BLACKSTONE, COMMENTARIES.....	11
2 JOSEPH STORY, COMMENTARIES ON THE	
CONSTITUTION OF THE UNITED STATES (1833).....	17
2 WILLIAM BLACKSTONE, COMMENTARIES.....	11
Clayton E. Cramer et al., “ <i>This Right is Not</i>	
<i>Allowed by Governments that are Afraid of</i>	
<i>the People</i> ”: <i>The Public Meaning of the</i>	
<i>Second Amendment When the Fourteenth</i>	
<i>Amendment was Ratified</i> , 17 GEO. MASON	
L. REV. 823 (2010)	16, 17
David B. Kopel & Joseph G.S. Greenlee, <i>The</i>	
<i>History of Bans on Types of Arms Before</i>	
<i>1900</i> , 50 J. LEGIS. 223 (2024).....	12, 15, 16, 19, 20
<i>Duncan v. Bonta</i> , 19 F.4th 1087 (9th Cir.	
2021) (en banc)	15
Eugene Volokh, “ <i>Necessary to the Security of a</i>	
<i>Free State</i> ”, 83 NOTRE DAME L. REV. 1	
(2007)	15

FBI CRIM. JUST. INFO. SERVS. DIV., CRIME IN THE UNITED STATES (2019)	7
JOHN NORTON POMEROY, AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF THE UNITED STATES (1868)	17
NOAH WEBSTER, AN EXAMINATION OF THE LEADING PRINCIPLES OF THE FEDERAL CONSTITUTION (1787)	14
Robert Leider, <i>Our Non-Originalist Right to Bear Arms</i> , 89 IND. L.J. 1587 (2014)	10, 11, 18, 21, 23, 24
Robert Leider, <i>The Individual Right to Bear Arms for Common Defense</i> (Aug. 21, 2024)	5, 13, 15, 16
THE FEDERALIST No. 29 (Alexander Hamilton)	14
THE FEDERALIST No. 46 (James Madison)	14
The Pennsylvania Convention (Dec. 6, 1787) (statement of John Smilie), in 2 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION (John P. Kaminski & Gaspare J. Saladino eds., 1981)	14
William Baude & Robert Leider, <i>The General- Law Right to Bear Arms</i> , 99 NOTRE DAME L. REV. 1467 (2024)	19
WILLIAM WIRT, SKETCHES OF THE LIFE AND CHARACTER OF PATRICK HENRY (1826)	14
Constitutional Provisions	
U.S. CONST. amend. II	2, 10, 15, 23, 24
U.S. CONST. art. I, § 8, cl. 16.....	15

INTEREST OF *AMICUS CURIAE*¹

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato’s Project on Criminal Justice was founded in 1999 and focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement.

These cases interest Cato because of their implications for the right to keep and bear arms—both to advance individual liberty and to protect constitutional freedom.

INTRODUCTION AND SUMMARY OF ARGUMENT

Semiautomatic rifles using the AR-15 platform are “typically possessed by law-abiding citizens for lawful purposes”—including self-defense, which this Court has identified as “the core lawful purpose”—and are thus protected under the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 625, 630 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010). The Second Amendment also guarantees the

¹ Rule 37 statement: No part of this brief was authored by any party’s counsel, and no person or entity other than *amici* funded its preparation or submission.

right to keep and bear certain arms for another key purpose: “the security of a free State.” U.S. CONST. amend. II. AR-15s help secure both individual rights and constitutional freedom.

These consolidated cases challenge Cook County’s and Connecticut’s bans on certain firearms: namely, AR-15-platform rifles that can accept more than ten rounds of ammunition and have (among other listed features) a pistol grip, an adjustable stock, or a muzzle brake.² Affixing one or more of this hodgepodge of features to a rifle cannot transform it into what this Court has denominated a “dangerous and unusual” firearm. *Heller*, 554 U.S. at 627; *see also Caetano v. Massachusetts*, 577 U.S. 411, 417 (2016) (Alito, J., concurring in the judgment) (“A weapon may not be banned unless it is *both* dangerous *and* unusual.”). “Americans today possess an estimated 20 to 30 million AR-15s,” using them for self-defense, sport, and hunting. *Snope v. Brown*, 145 S. Ct. 1534, 1534 (2025) (statement of Kavanaugh, J., respecting denial of cert.); *cf. Staples v. United States*, 511 U.S. 600, 612 (1994) (noting that AR-15-type guns “traditionally have been widely accepted as lawful possessions”). Under *Heller*, AR-15s are “in common use” and are thus protected by the Second Amendment. 554 U.S. at 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)).

² *Viramontes* Cert. Pet. at 4–5; *cf. Grant* Cert. Pet. at 4–5.

Lower courts have not always determined with precision the meaning of *Heller*’s concept of “common use.”³ Several such decisions appear to have placed undue emphasis on AR-15s’ usefulness for self-defense, as compared with other potential uses and weapons. *See, e.g., Bevis v. City of Naperville*, 85 F.4th 1175, 1201 (7th Cir. 2023), *cert. den’d sub nom. Harrel v. Raoul*, 144 S. Ct. 2491 (2024) (holding that “the military and law enforcement may have access to especially dangerous weapons” while “civilian ownership of those weapons may be restricted”); *Kolbe v. Hogan*, 849 F.3d 114, 144 (4th Cir. 2017) (en banc) (asking whether certain firearms are “most useful in military service”); *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024) (en banc), *cert. den’d sub nom. Snope*, 145 S. Ct. 1534.

That lopsided focus on the self-defense uses of AR-15s reads *Heller* incorrectly: It wrongly assumes that *Heller* “severed” the link between the militia and Second Amendment protection. *Bevis*, 85 F.4th at 1188. This Court should clarify that such a “contrived ‘non-militaristic’ limitation” is atextual and ahistorical. *Harrel*, 144 S. Ct. at 2492 (statement of Thomas, J., respecting denial of cert.). The Constitution protects AR-15s because they advance

³ *See, e.g., Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Platkin*, 742 F. Supp. 3d 421, 443 (D.N.J. 2024), *modified and aff’d in relevant part sub nom. Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Atty. Gen. N.J.*, Nos. 24-2415 et al., 2026 U.S. App. LEXIS 21156 (3d Cir. July 17, 2026) (en banc).

more than one constitutionally guaranteed purpose: They are suited both to self-defense and to the militia. *Cf. Ass’n of N.J. Rifle & Pistol Clubs, Inc.*, 2026 U.S. App. LEXIS 21156, at *32 (“[S]elf-defense is one lawful purpose relevant to the common-use inquiry, but it is not the only one.”).

ARGUMENT

I. AR-15s Are “Overwhelmingly Chosen” for Lawful Purposes.

AR-15s are protected because they are in common use for lawful purposes. *See N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 255 (2d Cir. 2015) (finding that even “the most conservative estimates” show such rifles to be “in common use”); *Ass’n of N.J. Rifle & Pistol Clubs, Inc.*, 2026 U.S. App. LEXIS 21156, at *75 (Matey, J., concurring) (noting that AR-15s are “in common use for lawful purposes and have been for generations”). The common-use test arises from *Heller*’s treatment of *Miller*, 307 U.S. at 178, which found no evidence in the record supporting a constitutional right to own a sawed-off shotgun. As *Miller* observed, men called for militia service “were expected to appear bearing arms supplied by themselves and of the kind in common use.” *Id.* at 179. *Miller* found no evidence showing that the sawed-off shotgun was “any part of the ordinary military equipment or that its use could contribute to the

common defense.” *Id.* at 178.⁴ *Heller* understood *Miller* “to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes.” *Heller*, 554 U.S. at 625; *see also Ass’n of N.J. Rifle & Pistol Clubs, Inc.*, 2026 U.S. App. LEXIS 21156 at *32 (distilling *Heller*’s holding here as protecting arms “*in common use for lawful purposes at the time of the modern restriction*”) (italics in original).

The rifles at issue here are “overwhelmingly chosen” for lawful purposes. *Heller*, 554 U.S. at 628; *see also Snope*, 145 S. Ct. at 1536 (Thomas, J., dissenting from denial of cert.). “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 then-Judge Kavanaugh noted, in 2011 AR-15s accounted for 5.5 percent of guns and 14.4 percent of rifles made in America for domestic sale. *Heller v. District of Columbia*, 670 F.3d 1244, 1287 (D.C. Cir. 2011) (Kavanaugh, J., dissenting). By 2022, “there were around 24 million AR-15s and similar . . . weapons in circulation,” a number “exceeded only by the number of registered handgun owners.”⁵

⁴ *See also* Robert Leider, *The Individual Right to Bear Arms for Common Defense*, at *13 (Aug. 21, 2024) (explaining that short-barrel guns are “less adapted to military use” than criminal use because they trade accuracy for concealability), *available at* <https://tinyurl.com/38zhhbey> [hereinafter “Leider, *Individual Right*”].

⁵ *Ass’n of N.J. Rifle & Pistol Clubs, Inc.*, 742 F. Supp. 3d at 433.

Estimates of the number of privately owned AR-15s go as high as 30 million. *Snope*, 145 S. Ct. at 1534 (statement of Kavanaugh, J., respecting denial of cert.).

These weapons have been legal in most of the country since their introduction more than a half-century ago. As of 2011, only “a few states and municipalities ban[ned] some categories of semi-automatic rifles.” *Heller*, 670 F.3d at 1288 (Kavanaugh, J., dissenting). Last year, AR-15s were “legal in 41 of the 50 States.” *Snope*, 145 S. Ct. at 1534 (statement of Kavanaugh, J., respecting denial of cert.).

AR-15s are “typically possessed by law-abiding citizens for lawful purposes.” *Heller*, 554 U.S. at 625. A 2018 survey reported that “34% of buyers purchased a modern rifle for personal protection, while 36% purchased for target practice or informal shooting, and 29% purchased for hunting.”⁶ It found that the semiautomatic rifle is the second most popular choice after the handgun for female and first-time firearm buyers.⁷ Nearly 20 million Americans used such guns for sport shooting that year.⁸

⁶ *Miller v. Bonta*, 542 F. Supp. 3d 1009, 1022 (S.D. Cal. 2021), *vacated and remanded by* No. 21-55608 (9th Cir. Aug. 1, 2022), *reaff’d by* 699 F. Supp. 3d 956 (S.D. Cal. 2023).

⁷ *Id.*

⁸ *Id.*

America is not “awash with murderous” AR-15 owners or users.⁹ According to FBI statistics from 2019, “killing by knife attack is far more common than murder by any kind of rifle,” while a Californian was “three times more likely to be murdered by an attacker’s bare hands, fists, or feet.”¹⁰ Handguns, which are “more easily carried and concealed,” “are used in the vast majority” of violent gun crimes. *Snope*, 145 S. Ct. at 1534 (statement of Kavanaugh, J., respecting denial of cert.).

The distinctive features at issue here (pistol grips, adjustable stocks, and muzzle brakes) have no particular connection to criminality.¹¹ These features simply make arms “easier to use.” *Kolbe*, 849 F.3d at 158 (Traxler, J., dissenting).¹² A pistol grip makes loading, unloading, and clearing a gun easier and improves accuracy.¹³ Its use can keep bystanders safer.¹⁴ A telescoping stock makes a rifle easier to use for people of different sizes. *Kolbe*, 849 F.3d at 159 (Traxler, J., dissenting). Muzzle brakes increase comfort and accuracy by reducing recoil. *Cuomo*, 804 F.3d at 268. Such features enhance the utility of a

⁹ *Id.* at 1015.

¹⁰ *Id.* (citing FBI CRIM. JUST. INFO. SERVS. DIV., CRIME IN THE UNITED STATES (2019), available at <https://tinyurl.com/ftkkhj5h>).

¹¹ *Viramontes* Cert. Pet. at 4–5; cf. *Grant* Cert. Pet. at 4–5.

¹² See also *Miller*, 699 F. Supp. 3d at 967–68 (recounting how a pregnant Texas mother and a disabled Florida man used AR-15s to fend off armed intruders).

¹³ *Miller*, 542 F. Supp. 3d at 1063.

¹⁴ *Id.* at 1018.

firearm generally, but they do not enhance firearms' illegal use as such.

"None of these features convert a semiautomatic rifle into a weapon of war like a machinegun carried into battle by actual soldiers." *Kolbe*, 849 F.3d at 159 (Traxler, J., dissenting). Unlike a machinegun, an AR-15 rifle is semiautomatic: it fires only one round for each pull of the trigger. *Id.* at 158. Like handguns, the firing rate "is determined by how fast the shooter can squeeze the trigger." *Id.* Like handguns, semiautomatic rifles were first introduced for hunting and law enforcement, whereas fully automatic guns (and more exotic armaments¹⁵) "were developed for the battlefield and were never in widespread civilian use." *Heller*, 670 F.3d at 1287 (Kavanaugh, J., dissenting).¹⁶ AR-15s differ from machineguns—but are "analytically difficult to distinguish" from pistols.

¹⁵ See *Bevis*, 85 F.4th at 1182 (mentioning "the now-retired M388 Davy Crockett system, with its 51-pound W54 [nuclear] warhead"); see also *State v. Kerner*, 181 N.C. 574, 577 (1921) (contrasting "guns with a carrying range of probably 100 miles, submarines, deadly gasses, and . . . aeroplanes carrying bombs" with "the rifle, the musket, the shotgun, and the pistol").

¹⁶ See also *Ass'n of N.J. Rifle & Pistol Clubs, Inc.*, 742 F. Supp. 3d at 432 (recounting Congress's 1934 restrictions on machineguns); *Bevis*, 85 F.4th at 1202 (noting more machinegun restrictions enacted in 1968 and a 1986 general ownership ban); *Ass'n of N.J. Rifle & Pistol Clubs, Inc.*, 2026 U.S. App. LEXIS 21156, at *53 n.45 (observing that "20th-century regulations restricting the broad classes of machineguns and semi-automatic firearms" are "far too late in time to suggest, on their own, a tradition dating back to the Founding.").

Snope, 145 S. Ct. at 1534 (statement of Kavanaugh, J., respecting denial of cert.).

Under *Heller*, the Second Amendment protects “what private citizens commonly possess.” *Friedman v. City of Highland Park*, 577 U.S. 1039, 1041 (2015) (Thomas, J., dissenting from denial of cert.). No military routinely issues soldiers “an AR-15 or other semiautomatic sporting rifles.” *Kolbe*, 849 F.3d at 159 (Traxler, J., dissenting); *see also Bevis*, 85 F.4th at 1222 (Brennan, J., dissenting). Millions of Americans choose AR-15s for lawful purposes, and the Second Amendment protects that choice. *Ass’n of N.J. Rifle & Pistol Clubs, Inc.*, 2026 U.S. App. LEXIS 21156, at *74 (Matey, J., concurring) (“When a commonly accepted practice is incompatible with a regulator’s proposed definition of the Second Amendment liberty, that is powerful evidence that the proposed definition is inapt.”); *see also Barnett v. Raoul*, Nos. 24-3060 et al., 2026 U.S. App. LEXIS 20150, at *59 (7th Cir. July 9, 2026) (Brennan, J., dissenting).

II. The Second Amendment Protects Arms for the Reserve Militia.

Although *Heller*’s holding that guns in “common use” for self-defense resolves this case, the Second Amendment protects AR-15s for a further reason: they are suited to the reserve militia. This is not to say the Second Amendment protects arms *because* of their military utility (which would mean that private citizens need access to weapons that could win a modern war). Rather, the non-lethal features of AR-

15s that align with those of the small arms historically used by the reserve militia are an independent reason for constitutional protection.

Heller centered on self-defense, perhaps because it focused on whether the Second Amendment guarantees an individual right. *Contrast Heller*, 554 U.S. at 599, 625, 630; *McDonald*, 561 U.S. at 767 *with Heller*, 554 U.S. at 645 (Stevens, J., dissenting); *see also Bevis*, 85 F.4th at 1222 (Brennan, J., dissenting) (“[T]he Court was refuting the argument that the Second Amendment only protected a military right to keep and bear arms.”). This Court should confirm that the Amendment’s prefatory clause—“A well regulated Militia, being necessary to the security of a free State”—also helps define “the right of the people to keep and bear Arms.” U.S. CONST. amend. II.

As originally understood, the Second Amendment’s protection extends to those arms suitable for militia service. In 2026, that includes AR-15s. Applying constitutional principles to 21st-century realities is an appropriate method of interpretation here, and that application leads to appropriate results.

A. The Second Amendment Protects Militia Arms.

The Second Amendment was enacted so “the people could resist oppression” as well as private violence.¹⁷

¹⁷ Robert Leider, *Our Non-Originalist Right to Bear Arms*, 89 IND. L.J. 1587, 1634 (2014); *see also* *Wolford v. Lopez*, 225 L. Ed. 2d

William Blackstone wrote that the right to keep arms was a way to combat “the violence of oppression.” 1 WILLIAM BLACKSTONE, COMMENTARIES *139. Blackstone was alluding to the people’s remedy against tyranny: armed resistance.¹⁸

Historical suspicion of standing armies provides the backdrop. The militia dates back to the English middle ages, when subjects were required to keep arms to defend the realm. *Miller*, 307 U.S. at 179 (citing 2 WILLIAM BLACKSTONE, COMMENTARIES *409); *Bianchi*, 111 F.4th at 486 (Richardson, J., dissenting). King James II (r. 1685–1688) disarmed his Protestant subjects. *Aymette v. State*, 21 Tenn. (2 Hum.) 154, 156 (1840). Following his downfall, the Glorious Revolution-era Parliament forbade the raising of a standing army during peace without legislative consent, leaving arms “in the hands of the people.” *Nunn v. State*, 1 Ga. 243, 249–50 (1846).¹⁹ It also protected the right of Protestant subjects to have “Arms for their Defence suitable to their Condition and as allowed by Law.” Bill of Rights, 1 W. & M., Sess. 2, c. 2 (1688) (quoted in *Bianchi*, 111 F.4th at 486 (Richardson, J., dissenting)); *see also Aymette*, 21

494, 504 (2026) (describing the need for armed self-defense in largely rural early America).

¹⁸ Leider, 89 IND. L.J. at 1643–44.

¹⁹ *Nunn* and several other cases cited here looked to the federal Bill of Rights arguing that it “declared rights that no legitimate government could abridge.” *McDonald*, 561 U.S. at 842 (Thomas, J., concurring in part and concurring in the judgment).

Tenn. (2 Hum.) at 157 (identifying the exceptions here as shortcomings remedied by the Second Amendment).

The law of the militia was transplanted to colonial New England. In 1632, for instance, Massachusetts required every man to keep arms. *Bianchi*, 111 F.4th at 488; *see also id.* (“[E]very colony except Pennsylvania required most able-bodied, free, white men, usually those between ages sixteen and sixty, to enlist in the militia.”); *Miller*, 307 U.S. at 180. Militia service remained a duty after Independence. *See Miller*, 307 U.S. at 180–81 (discussing mid-1780s Virginia and New York statutes).²⁰

Most men were not typically on active militia duty. *See Bianchi*, 111 F.4th at 485 (Richardson, J., dissenting) (noting mobilization during “large-scale emergencies like invasion or insurrection”). Rather, the entire population of “citizens capable of bearing arms” composed the “reserve militia,” which this Court called America’s “rightful resource for maintaining the public security.” *Presser v. Illinois*, 116 U.S. 252, 265 (1886); *see also Miller*, 307 U.S. at 179. As in England, the reserve militia kept suitable arms and practiced

²⁰ *See also* David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. LEGIS. 223, 242 (2024) (“Typical militia statutes required militia-eligible males to own at least one cutting weapon (such as a sword or bayonet) and at least one firearm. Many colonies also required ownership by people who were not in the militia. . . . Massachusetts, Maryland, Virginia, New Hampshire, Vermont, and Connecticut at least sometimes required females to have the same arms . . .”).

with them. *Bianchi*, 111 F.4th at 485 (Richardson, J., dissenting); *Andrews v. State*, 50 Tenn. (3 Heisk.) 165, 178 (1871).

The Founding Generation was suspicious of standing armies. *Heller*, 554 U.S. at 598. The reserve militia would reduce “civil-military tensions” and deter the prospect of devolution into tyranny that was thought to be inherent in democracy.²¹ This cultural outlook was a pillar of civic republicanism, and it was meant to ensure that the people “could readily resist” any government oppression.²² *See also Heller*, 554 U.S. at 598; *Andrews*, 50 Tenn. (3 Heisk.) at 179 (speaking of “the defence of a free people”); *Aymette*, 21 Tenn. (2 Hum.) at 157 (“[The English Bill of Rights meant subjects] may as a body, rise up to defend their just rights, and compel their rulers to respect the laws.”). After King George III ordered the confiscation of colonists’ arms and munitions, they assembled “special militias free from royal control.”²³ A militia of this kind fought the British troops who were headed to seize arms and munitions at Lexington and Concord.²⁴

²¹ Leider, *Individual Right*, at *11.

²² *Id.* at *14; *Bianchi*, 111 F.4th at 490 (Richardson, J., dissenting).

²³ *Bianchi*, 111 F.4th at 490–91 (Richardson, J., dissenting).

²⁴ *Id.* at 491. This is not to imply that there is a Second Amendment right to organize a private militia. *See McDonald*, 561 U.S. at 780; *Presser*, 116 U.S. at 264–65.

The reserve militia was meant to protect American liberty after Independence as well.²⁵ *Heller*, 554 U.S. at 599. Patrick Henry described “Three millions of people, armed in the holy cause of liberty” as “invincible.”²⁶ Alexander Hamilton envisioned “a large body of citizens . . . who stand ready to defend their own rights and those of their fellow-citizens.” THE FEDERALIST No. 29 (Alexander Hamilton). James Madison boasted that any attempt at tyranny would face “near half a million of citizens with arms in their hands.” THE FEDERALIST No. 46 (James Madison).

During the ratification debates, Pennsylvania ordered militia lieutenants to retrieve publicly

²⁵ *Bianchi*, 111 F.4th at 491 n.19 (noting concerns that Congress would create either a select militia chosen by the government or disarm the reserve militia outright) (citing The Pennsylvania Convention (Dec. 6, 1787) (statement of John Smilie), in 2 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 507, 508–09 (John P. Kaminski & Gaspare J. Saladino eds., 1981)); *see also Heller*, 554 U.S. at 600 (distinguishing “a select militia of the sort the Stuart kings found useful” from “the people’s militia that was the concern of the founding generation”); *Nunn*, 1 Ga. at 251 (“What advantage would it be to tie up the hands of the national legislature, if it were in the power of the *States* to destroy this bulwark of defence?”), *cited approvingly by Heller*, 554 U.S. at 612.

²⁶ *Bianchi*, 111 F.4th at 491 n.18 (Richardson, J., dissenting) (quoting WILLIAM WIRT, SKETCHES OF THE LIFE AND CHARACTER OF PATRICK HENRY 141 (1826)); *see also id.* at 491 n.20 (“The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed”) (quoting NOAH WEBSTER, AN EXAMINATION OF THE LEADING PRINCIPLES OF THE FEDERAL CONSTITUTION 43 (1787)).

supplied guns for repair.²⁷ Citizens accused the government of “disarming” them and warned that the militia would fight these “despots and monarchy-men.”²⁸ The state quickly yielded.²⁹

The Second Amendment then declared the importance of the militia for “the security of a free State.” U.S. CONST. amend. II. A “free state” meant a republic or constitutional monarchy, not despotic rule.³⁰ *Heller*, 554 U.S. at 597. The Amendment checked military power and would deter tyranny.³¹

The Constitution allowed Congress to organize, arm, discipline, and train the militia, U.S. CONST. art. I, § 8, cl. 16, but not to “materially interfere” with citizens’ right to keep “appropriate military arms.”³² *See also Duncan v. Bonta*, 19 F.4th 1087, 1153 (9th Cir. 2021) (en banc) (Bumatay, J., dissenting) (“[T]he lifeblood of militia service was citizens armed with weapons typically possessed at home for lawful purposes.”), *vacated and remanded*, No. 21-1194 (U.S. June 30, 2022); *see also Miller*, 307 U.S. at 178 (deeming the Second Amendment’s “obvious purpose” “to assure the continuation and render possible the

²⁷ Kopel & Greenlee, 50 J. LEGIS. at 262.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Eugene Volokh, “*Necessary to the Security of a Free State*”, 83 NOTRE DAME L. REV. 1, 5, 19–20 (2007).

³¹ Volokh, 83 NOTRE DAME L. REV. at 5, 19–20; Kopel & Greenlee, 50 J. LEGIS. at 229.

³² Leider, *Individual Right*, at *28.

effectiveness of [militia] forces”). Every American could keep and bear arms “such as are necessary and suitable to a free people, to enable them to resist oppression, prevent usurpation, repel invasion, etc., etc.” *Fife v. State*, 31 Ark. 455, 458 (1876); *accord Wilson v. State*, 33 Ark. 557, 560 (1878). The foundation of the reserve militia was a well-armed populace. *Andrews*, 50 Tenn. (3 Heisk.) at 182 (“[T]he right to *keep* [arms] . . . is a private individual right, guaranteed to the citizen, not the soldier.”); *Aymette*, 21 Tenn. (2 Hum.) at 158 (“If the citizens have these arms in their hands, they are prepared in the best possible manner to repel any encroachments upon their rights by those in authority.”).

Early state constitutions and American practice reflected this constitutional arrangement, uniting “around the idea that the right to bear arms protects at least the individual possession of military arms for public defense.”³³ Restrictions on keeping “particular types of firearms” were “close to nil.”³⁴ Nineteenth-century precedent reflected the “purpose of resisting tyranny.”³⁵ Justice Story described the right to keep and bear arms as “the palladium of the liberties of the

³³ Leider, *Individual Right*, at *42; *see also Heller*, 554 U.S. at 602–03.

³⁴ Kopel & Greenlee, 50 J. LEGIS. at 381; *see also Miller*, 699 F. Supp. 3d at 981–82.

³⁵ Clayton E. Cramer et al., “*This Right is Not Allowed by Governments that are Afraid of the People*”: *The Public Meaning of the Second Amendment When the Fourteenth Amendment was Ratified*, 17 GEO. MASON L. REV. 823, 825–26 (2010).

republic,” the reserve militia being “the natural defense of a free country.” 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1897 (1833) (quoted in *Andrews*, 50 Tenn. (3 Heisk.) at 183).

The reserve militia endured. An 1832 report by New York’s adjutant-general described “arming and disciplining every citizen” as the bulwark of public order.³⁶ The reserve militia was as “indispensable to the existence” of constitutional liberty as it was “dangerous to the existence of an arbitrary government.”³⁷ According to this report, the Second Amendment was “a protection to the people against the government itself.”³⁸ As *Heller* noted, Thomas Cooley agreed that the Second Amendment “secur[ed] the militia by ensuring a populace familiar with arms.” *Heller*, 554 U.S. at 617; *see also id.* at 618 (quoting a contemporary of Cooley: “a militia would be useless unless the citizens were enabled to exercise themselves in the use of warlike weapons”).³⁹

Even for courts with a relatively narrow understanding of the right to keep and bear arms—some of them unduly narrow in light of this Court’s

³⁶ 1 SEN. OF THE STATE OF N.Y., REPORT OF THE ADJUTANT-GENERAL 2 (1832), quoted in Cramer et al., 17 GEO. MASON L. REV. at 837.

³⁷ *Id.*

³⁸ *Id.*

³⁹ JOHN NORTON POMEROY, AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF THE UNITED STATES 152–53 (1868).

modern jurisprudence, *see Caetano*, 577 U.S. at 412 (majority op.) (recognizing protection for non-military arms) (citing *Heller*, 554 U.S. at 624–25)—the suitability of arms for militia use weighed in favor of their protection. Courts consistently protected “rifles, muskets, and army pistols.”⁴⁰ *See, e.g., Kerner*, 181 N.C. at 577–78; *Andrews*, 50 Tenn. (3 Heisk.) at 179, 186–87 (exempting pistols qualifying as “a soldier’s weapon” from a carry ban); *Glasscock v. City of Chattanooga*, 157 Tenn. 518, 520 (1928) (holding pistols “usually used in warfare” protected). Although outright bans of arms “not ordinarily employed by soldiers as personal weapons” were uncommon,⁴¹ some authorities regulated such weapons more closely.⁴² *Miller* itself deemed the sawed-off shotgun

⁴⁰ Leider, 89 IND. L.J. at 1625.

⁴¹ Leider, 89 IND. L.J. at 1625; *see also Ass’n of N.J. Rifle & Pistol Clubs, Inc.*, 2026 U.S. App. LEXIS 21156 at *50 (characterizing nineteenth-century regulations on certain exotic arms “too late in time” for constitutional purposes and noting that “none enacted an outright ban on a class of weapons in common use for lawful purposes”); *Barnett*, 2026 U.S. App. LEXIS 20150, at *85–86 (Brennan, J., dissenting); *Hanson v. District of Columbia*, 120 F.4th 223, 273 (D.C. Cir. 2024) (per curiam) (Walker, J., dissenting).

⁴² *Aymette*, 21 Tenn. (2 Hum.) at 160–61; *Kerner*, 181 N.C. at 577; *State v. Workman*, 35 W. Va. 367, 373 (1891); *Fife*, 31 Ark. at 461 (denying protection to arms not “effective as a weapon of war, and useful and necessary for the common defense”) (quotation marks omitted); *State v. Chandler*, 5 La. Ann. 489, 490 (1850); *but see Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822) (interpreting the state constitution even more broadly).

unprotected when there was no evidence that it was “any part of the ordinary military equipment or that its use could contribute to the common defense.” 307 U.S. at 178 (citing *Aymette*, 21 Tenn. (2 Hum.) at 158).

Arms suited for militia service are not outside the Second Amendment’s protection. Historically, they are at its core.⁴³ Although the features triggering the bans at issue here focus more on comfort than on martial effectiveness, *see* Part I *supra*, the usefulness of such arms for militia service should weigh in favor of Second Amendment protection.⁴⁴

B. AR-15s Are Suited to the Reserve Militia.

The AR-15 is a modern semiautomatic firearm of a kind that has long been used for civilian and militia purposes alike. Colonists in the 1600s knew about repeating arms that used hand-rotated cylinders.⁴⁵ A Cookson repeating gun reportedly arrived in colonial Maryland.⁴⁶ In 1722, a Bostonian invented a gun that could fire eleven rounds within two minutes, while another gunsmith exhibited a twenty-shot repeater.⁴⁷ An early 1700s South Carolinian owned a “six times repeating Gun.”⁴⁸ In 1756, a manufacturer offered for sale a “handy Gun” that would “fire 9 Times distinctly,

⁴³ William Baude & Robert Leider, *The General-Law Right to Bear Arms*, 99 NOTRE DAME L. REV. 1467, 1501 (2024).

⁴⁴ Baude & Leider, 99 NOTRE DAME L. REV. at 1501.

⁴⁵ Kopel & Greenlee, 50 J. LEGIS. at 254.

⁴⁶ *Id.*

⁴⁷ *Id.* at 255.

⁴⁸ *Id.*

as quick, or slow as you please, with one turn with the Handle.”⁴⁹ In 1777, a Philadelphian demonstrated a musket that shot sixteen rounds at once.⁵⁰ Two years later, the repeating Girandoni air rifle was invented; the Lewis and Clark expedition later carried one.⁵¹

Antebellum Americans could buy the repeating Jennings flintlock rifle, as well as repeating handguns like the Mariette Repeating Pepperbox.⁵² (Such revolvers “maintained popularity . . . for decades.”⁵³) Revolver rifles were introduced too, including the Hall rifle and the Volcanic Arms lever-action rifle.⁵⁴ Just after the Civil War, Winchester released its lever-action Model 66, with a carbine variant.⁵⁵ In that era, such arms “were not novelties; they were common.”⁵⁶ “Repeating rifles could fire 18 rounds in half as many seconds, and over 170,000 were sold domestically.”⁵⁷ Winchester sold 1.7 million units of its next two rifle models from 1873 to 1941.⁵⁸ By 1898, Sears Roebuck & Co. offered them for home delivery.⁵⁹ Throughout

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Duncan v. Becerra*, 970 F.3d 1133, 1147 (9th Cir. 2020), *vacated and rehearing en banc granted by* 988 F.3d 1209 (9th Cir. 2021).

⁵² *Id.* at 1148.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*; *Miller*, 699 F. Supp. 3d at 988.

⁵⁶ *Miller*, 699 F. Supp. 3d at 988.

⁵⁷ *Duncan*, 970 F.3d at 1148.

⁵⁸ *Id.*

⁵⁹ *Miller*, 699 F. Supp. 3d at 988.

early America, “war arms’ and arms appropriate for ‘manly self-defense’ were one and the same.”⁶⁰ *See also Bevis*, 85 F.4th at 1222 (Brennan, J., dissenting) (“[N]either *Heller* nor *Bruen* draw a military/civilian line for the Second Amendment.”); *Kolbe*, 849 F.3d at 157 (Traxler, J., dissenting) (“Weapons useful in warfare are obviously protected by the Second Amendment If it were otherwise, the ‘most useful in military service’ rubric would remove nearly *all* firearms from Second Amendment protection as nearly all firearms can be useful in military service.”).

The AR-15 platform is a modern outcome of this tradition. Its predecessor, the AR-10, was invented in 1956.⁶¹ The AR-15 reached the market in 1964.⁶² Its features have made it a natural choice for personal protection. It is lightweight; physically comfortable for young people, women, and those of smaller stature; and almost recoil-free.⁶³ It fires powerful cartridges and can be quickly refired.⁶⁴ These qualities make it a good fit for civilian use. *See also* Part I *supra*.

They also make it well-suited for the reserve militia. The AR-15 uses many kinds of commonly available ammunition and has interchangeable

⁶⁰ Leider, 89 IND. L.J. at 1635.

⁶¹ *Ass’n of N.J. Rifle & Pistol Clubs, Inc.*, 742 F. Supp. 3d at 432.

⁶² *Id.*

⁶³ *Id.* at 444.

⁶⁴ *Id.*

parts.⁶⁵ It is reliable, affordable, and portable.⁶⁶ It accommodates a variety of users.⁶⁷ Its detachable magazine is “absolutely essential” for militia use.⁶⁸ Although its pistol grip and adjustable stock serve civilian aims by increasing ease of use and accuracy, *see* Part I *supra*, these functions also serve militia purposes.⁶⁹

As with earlier generations of semiautomatic rifles, the aspects that make the AR-15 such a popular civilian arm also make it well-suited for militia use. It is ideal for both the self-defense and the reserve militia uses that are protected by the Second Amendment.

C. Protecting Reserve Militia Arms Will Not Lead to Absurd Results.

Courts have sometimes balked at the prospect of considering military suitability as a factor favoring constitutional protection, perhaps because of a “fantastical” theory that such arguments might somehow entail the private ownership of nuclear weaponry, warplanes, or ballistic rocketry. *See, e.g., Snope*, 145 S. Ct. at 1538 (Thomas, J., dissenting from denial of cert.) (criticizing reliance on this “fantastical

⁶⁵ *Miller*, 542 F. Supp. 3d at 1062.

⁶⁶ *Id.*

⁶⁷ *Id.* at 1063 (citing retired Army Major General and former Kentucky Adjutant General D. Allen Youngman).

⁶⁸ *Id.* (citing Maj. Gen. Youngman).

⁶⁹ *Id.* (citing Maj. Gen. Youngman).

threat”). Three limiting considerations stand in the way of such absurd theoretical results.

First, as *Heller* explained, Second Amendment protections were not meant to equalize the strength of the reserve militia compared with that of the nation’s military. Rather, *Heller* protects Americans by preserving access to “the sorts of lawful weapons that they possessed at home” for use in militia duty. 554 U.S. at 627. “It may well be true” that a modern militia could not stand up to “bombers and tanks.” *Id.*; *but see Miller*, 542 F. Supp. 3d at 1065–66 (noting the effectiveness of small arms in Cuba, Vietnam, Afghanistan, and Iraq: “Citizen militias are not irrelevant.”). Yet this “cannot change” the scope of the Second Amendment. *Id.* at 628. “Our paradigm mental image of the militiaman is the citizen with his musket, not a citizen with a private battleship or cannon.”⁷⁰ The modern-day Minuteman would have an AR-15—not an LGM-30 Minuteman intercontinental ballistic missile. *See* U.S. CONST. amend. II (referring to “arms,” not heavy ordnance); *cf.* Act of May 8, 1792 (Militia Act of 1792), ch. 33, §§ 1, 4, 1 Stat. 271, 271–73 (providing that individuals called for militia duty would provide their own muskets and bayonets while the company would provide artillery).

Second, semiautomatic rifles using the AR-15 platform are easily distinguishable from machineguns. The former are “ordinary military equipment—

⁷⁰ Leider, 89 IND. L.J. at 1639.

commonly issued to each individual soldier.”⁷¹ In contrast, “submachine guns, machine guns, and bombs” are relatively elite technology that, in the military, are employed only by specialists.⁷²

Third, the Second Amendment prevents the right to keep and bear arms from being “infringed.” U.S. CONST. amend. II. This is compatible with regulations on “*the manner* in which arms” shall be kept or borne that do not “amount to a *destruction* of the right.” *Nunn*, 1 Ga. at 249; *see also Heller*, 554 U.S. at 626 (denying a historical “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”); *Kerner*, 181 N.C. at 578. A restriction on fully automatic firing “narrowly regulates” a potential use without banning “an entire class of weapons.”⁷³ To recognize constitutional protection for AR-15s is hardly to authorize private armies.

A contrary approach threatens absurdities of its own. The M1 Garand rifle—“the standard-issue battle rifle for American troops in World War II and the Korean War”—is not covered by the laws at issue here. *Kolbe*, 849 F.3d at 159 n.8 (Traxler, J., dissenting). Yet banning AR-15s makes it “illegal to possess a rifle never used by our military.” *Id.* Fear of “weapons of war,” *id.* at 121 (majority op.), cannot justify a

⁷¹ Leider, 89 IND. L.J. at 1639.

⁷² *Id.* at 1638.

⁷³ Leider, 89 IND. L.J. at 1650.

restriction gerrymandered to apply exclusively to arms that only civilians keep.

CONCLUSION

The discussion of the reserve militia that defends against tyranny may seem quaint. Nonetheless, it is historically true that a people can expect to be disarmed “when a country is overborne by force.” *Kerner*, 181 N.C. at 578. “[W]e know not when the occasion may again require the assertion of that doctrine which was one familiar throughout this country that, ‘Resistance to tyranny is obedience to God,’ or the defense of person and property against mobs and violence.” *Id.* at 579.

AR-15s are the sort of small arms that the Founders expected the American reserve militia to have in the event of such an evil. In the interim, they have proven an extremely popular choice for other lawful purposes. They are protected by the Second Amendment.

Respectfully submitted,

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