

IN THE
Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*, *Petitioners*,

v.

COOK COUNTY, ILLINOIS, *et al.*, *Respondents*.

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

v.

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

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

**BRIEF OF MASSACHUSETTS, NEW JERSEY,
16 OTHER STATES, AND THE DISTRICT OF
COLUMBIA AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

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QUESTION PRESENTED

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

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*

Massachusetts, New Jersey, Arizona, California, Colorado, the District of Columbia, Delaware, Hawai'i, Illinois, Maine, Maryland, Michigan, Minnesota, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington share strong governmental interests in protecting public safety and preventing crime. In furtherance of those interests, *Amici* submit this brief to explain why Cook County's and Connecticut's regulation of the sale and possession of assault weapons such as the AR-15 within their own borders is wholly consistent with the Second Amendment.

There are few interests more important to States than protecting public safety, and especially "the suppression of violent crime and vindication of its victims." *United States v. Morrison*, 529 U.S. 598, 618 (2000). *Amici* bear a solemn responsibility: to keep our residents safe in the public and private spaces that are part of the fabric of daily life in a free and democratic society. To that end, *Amici* enact and enforce laws that protect the health, safety, and security of our residents, including by taking steps to prevent mass shootings and other forms of gun violence that imperil the safety of our residents and inhibit their exercise of constitutionally protected freedoms.

Using their police powers in service of these goals, *Amici* have adopted a range of measures that regulate weapons and weapon accessories, while ensuring their residents have access to weapons for individual self-defense. These measures include laws that restrict particularly lethal weapons that pose a disproportionate threat to public safety. A number of *Amici* have prohibited the purchase and possession of certain

semiautomatic assault weapons,¹ just as the federal government did from 1994 to 2004.² Although state definitions of the prohibited class of weapons differ, they typically encompass weapons like AR-15 and AK-47-style rifles that inflict catastrophic injuries and have distinct combat capabilities, rendering them uniquely devastating in mass shootings.³ Many States and jurisdictions have also enacted laws prohibiting or restricting other unusually dangerous weapons, including automatic-fire machine guns,⁴ short-barreled shotguns and rifles,⁵ high-caliber rifles,⁶ guns hidden in canes and other covert weapons,⁷ and grenades, rocket launchers, and other hand-held destructive devices.⁸ Those laws are central to *Amici*'s efforts to protect public safety.

Amici share the conviction that the Constitution allows States—consistent with our Nation's historical tradition—to adopt these types of targeted protections against gun violence in a manner adapted to their local needs. For centuries now, States have exercised their police powers to protect the public from unusually dangerous weapons that pose a disproportionate danger to public safety. *Amici* have a strong interest in ensuring that States retain their longstanding

¹ See Appendix Table 1.

² Public Safety and Recreational Firearms Use Protection Act, Pub. L. No. 103-322, 108 Stat. 1996-2010, codified at 18 U.S.C. §§ 921 (a), 922 (v) (2000).

³ See Appendix Table 1.

⁴ See Appendix Tables 2 and 3.

⁵ See Appendix Tables 4 and 5.

⁶ See Appendix Table 6.

⁷ See Appendix Table 7.

⁸ See Appendix Table 8.

constitutional authority to do so “with reasonable firearms regulations” that are consistent with the Second Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010). That is more true than ever today, as “dramatic technological changes” in firearms have forced governments across the country to grapple with “unprecedented” threats to public safety. *NYSRPA v. Bruen*, 597 U.S. 1, 27 (2022). In confronting these novel threats, *Amici* must be able to protect their residents by imposing measured restrictions on unusually dangerous weapons, including assault weapons built from the AR-15 platform.⁹

SUMMARY OF ARGUMENT

Since the earliest days of the Republic, States have regulated unusually dangerous weapons that have contributed disproportionately to serious public safety threats. The regulation of assault weapons fits easily within that longstanding historical tradition.

I. From English common law to the Founding to Reconstruction, governments have consistently regulated weapons that are unusually dangerous—even when the danger of those weapons was clear only after they were widely owned. That well-established regulatory tradition dates back to medieval England and has persisted throughout American history.

That historical tradition amply justifies Cook County’s and Connecticut’s measured restrictions on assault weapons like the AR-15. Like other similar laws, the challenged restrictions preserve the right of law-abiding, responsible citizens to use firearms for self-defense while targeting a narrow subset of

⁹ Subsequent references in this brief to the “AR-15” are a shorthand for assault weapons built from the AR-15 platform.

weapons that pose a disproportionate risk to public safety.

II. Petitioners’ circulation-based common use test would grant inviolable Second Amendment protection to any weapon that reaches an arbitrary popularity threshold and reduce the Second Amendment to a mere counting exercise. That test should be rejected because it is ahistorical, results in unqualified protections for machineguns, is inconsistent with this Court’s interpretation of other rights, creates an illogical arms race between firearms manufacturers and legislatures, and runs counter to this Court’s recent Second Amendment decisions.

ARGUMENT

I. Regulation of Assault Weapons Falls Well Within Our Historical Tradition.

This Court has repeatedly affirmed that courts reviewing firearm regulations must evaluate them based on the “principles that underpin our regulatory tradition.” *Wolford v. Lopez*, 609 U.S. 185, 198 (2026) (quoting *United States v. Rahimi*, 602 U.S. 680, 692 (2024)). Given “dramatic technological changes” in firearms that have precipitated “unprecedented” threats to public safety, *NYSRPA v. Bruen*, 597 U.S. 1, 27 (2022), these principles “can[] and must” be identified broadly enough that States may address “circumstances beyond those the Founders specifically anticipated,” *United States v. Hemani*, 608 U.S. 772, 783 (2026) (quoting *Bruen*, 597 U.S. at 28). Otherwise, courts risk “trapp[ing]” the law “in amber” and depriving States of their constitutional authority when the People seek to respond to the threat of mass firearm violence. *Rahimi*, 602 U.S. at 691.

Against this backdrop, States responding to the threat of mass shootings by regulating assault weapons stand on solid historical ground. The historical evidence underscores the longstanding constitutional authority of States to protect their residents from unusually dangerous weapons that contribute disproportionately to serious public safety threats. Laws regulating assault weapons are a modern application of this longstanding and diverse tradition of regulating unusually dangerous weapons—that is, weapons whose features are disproportionately dangerous compared to their civilian self-defense uses. That regulatory tradition dates back to 14th-century England, finds support in sources like Blackstone, and has persisted throughout American history. The diversity of restrictions is indicative of how broadly this tradition sweeps.

Under any reasonable understanding of that tradition, assault weapons are disproportionately dangerous compared to their civilian self-defense uses. Assault weapons like the AR-15 were designed to kill armored enemy combatants in offensive battlefield situations. They are rarely used in real-world self-defense situations. But they are used with increasing frequency in the deadliest mass shootings across the Nation. State and local laws restricting assault weapons like the AR-15 thus comport fully with the principles underlying our Nation’s historical tradition of firearms regulation.

A. Under Our Historical Tradition, States Can Regulate Unusually Dangerous Weapons That Contribute Disproportionately to a Public Safety Problem.

Our nation has a long historical tradition of regulating unusually dangerous weapons. A “variety

of sources,” including “historical analogues,” “scholarship,” and this Court’s own precedent, support that conclusion. *Wolford*, 609 U.S. at 196. From before the Founding to the present, State legislatures have consistently regulated unusually dangerous weapons, including launcegays, crossbows, hagbuts, trap guns, slungshots, clubs, pistols, machineguns, semiautomatic firearms, and Bowie knives. They have done so on the ground that, despite their popular appeal for ostensibly lawful purposes, these weapons nonetheless disproportionately threaten public safety. This evidence “confirm[s] what common sense suggests”: States are not powerless to respond to the growing public safety threat posed by mass shootings. *Rahimi*, 602 U.S. at 698. Together with the fact that States are facing public-safety threats “that could not have arisen when the Second or Fourteenth Amendment was adopted,” *Wolford*, 609 U.S. at 197, the historical record underscores the broad tradition of regulating disproportionately dangerous weapons.

1. The historical record underscores that there is a longstanding tradition of regulating unusually dangerous weapons. “From the earliest days of the common law, firearm regulations have included provisions barring people from misusing weapons to harm or menace others.” *Rahimi*, 602 U.S. at 693. Regulations like the 1328 Statute of Northampton codified the common-law rule that “go[ing] armed to terrify the King’s subjects” was a “great offence.” *Id.*¹⁰

¹⁰ The United States suggests that Englishmen were exempt from these laws if they carried common weapons. See US.Br.11 (quoting 1 William Hawkins, *A Treatise of the Pleas of the Crown* 136 (1716)). But the citation says that “Persons of Quality are in no Danger of Offending against this Statute by wearing common

But the Statute of Northampton did not apply only to conduct; it also prohibited dangerous weapons like “the launcegay,” a “10- to 12-foot-long lightweight lance” often used to “breach the peace.” *Bruen*, 597 U.S. at 41. So even before the Founding, the government regulated particularly dangerous weapons in addition to conduct.

Beyond prohibitions on particular weapons, “going armed” laws also made it “a crime against the public peace” to carry “dangerous or unusual weapons” to “terrify[] the good people of the land.” William Blackstone, 4 *Commentaries on the Laws of England* 55, 149 (1769). That reference to “dangerous or unusual weapons” was a hendiadys, a “figure of speech in which two terms, separated by a conjunction, are melded together to form a single complex expression.” Samuel Bray, “*Necessary and Proper*” and “*Cruel and Unusual*”: *Hendiadys in the Constitution*, 102 VA. L. REV. 687, 695 (2016). And given their familiarity with hendiadyses, “[e]ducated readers in the Founding era would have interpreted [dangerous or unusual weapons]” to be “a ban on weapons that were ‘unusually dangerous.’” *Nat’l Ass’n for Gun Rts. v.*

Weapons, or having their usual Number of Attendants with them for their Ornament or Defence.” Hawkins, at 136 (emphasis added). Because “Persons of Quality” simply meant nobility, this “exemption was a categorical privilege of class and rank,” recognized because nobility traveling “did not produce a ‘terror to the people.’” Saul Cornell, *History, Text, Tradition, and the Future of Second Amendment Jurisprudence: Limits on Armed Travel Under Anglo-American Law, 1688-1868*, 83 L. & CONTEMP. PROBS. 73, 84–85 (2020). The law that applied to the vast majority of the country, and thus informs our understanding of the right, did not hinge on the commonality of the weapon.

Lamont (“NAGR”), 153 F.4th 213, 233 (2d Cir. 2025).¹¹ That broad allowance for regulating unusually dangerous weapons tracks closely the Statute of Northampton’s prohibition on launcegays and bespeaks a regulatory framework designed to mitigate the public safety threat posed by unusually dangerous weapons.

That tradition continued through the 1689 English Bill of Rights, a “predecessor” to the Second Amendment, which secured for certain Englishmen the right to “have Arms for their Defence suitable to their Conditions, and as allowed by Law.” *District of Columbia v. Heller*, 554 U.S. 570, 593 (2008) (quoting 1 W. & M., c. 2, §7, in 3 Eng. Stat. at Large 441 (1689)). Scholars of the time recognized that, despite the broad right, the Crown could still “restrain the use of some

¹¹ Many Founding-era sources used “dangerous or unusual” interchangeably with “dangerous and unusual,” *NAGR*, 153 F.4th at 233 & n.18; compare *Heller*, 554 U.S. at 627 (“dangerous and unusual weapons”), with *id.* at 623 (“dangerous or unusual weapons”), and *Rahimi*, 602 U.S. at 697 (same), demonstrating that this was not a simple conjunctive or disjunctive test giving each word its dictionary meaning. Indeed, a test that treats “dangerous” and “unusual” as two separate inquiries makes little sense. All arms are dangerous, so a test where “dangerous” is dispositive would encompass all firearms. See *Hanson v. District of Columbia*, 120 F.4th 223, 238 n.7 (D.C. Cir. 2024) (per curiam). And a test where “unusual” is dispositive hinges entirely on popularity, particularly if read to refer to numerical availability instead of conveying some heightened level of lethality. See *NAGR*, 153 F.4th at 233. Instead, the best reading of this phrase—both historically and linguistically—is that it contemplates the regulation of unusually dangerous weapons. See *NAGR*, 153 F.4th at 234 n.19; *Hanson*, 120 F.4th at 238 n.7. “[D]angerous’ needs a modifier and its companion ‘unusual’ needs something to modify.” *NAGR*, 153 F.4th at 234. So as Judge Walker on the Second Circuit rightly concluded, “[u]nusually dangerous is the obvious fit.” *Id.*

particular sort of arms.” Granville Sharp, *Tracts, Concerning the Ancient and Only True Legal Means of National Defence, by a Free Militia* 17–18 (1782). And the Crown exercised that authority to regulate weapons—like “cross-bows” and “hagbuts”—that were particularly dangerous, had little value in self-defense, and were likely to “favour the designs of murderers.” *Id.* at 18.

This “ancient common law tradition of singling out weapons capable of producing a terror” not only persisted in English law for centuries; it also traveled with the colonists across the Atlantic. *NAGR*, 153 F.4th at 246. For that reason, state legislatures in the 18th and 19th centuries “passed laws in a number of states that restricted the use or ownership of certain types of weapons once it became obvious that those weapons” threatened public safety, especially by “contributing to rising crime rates.” *Bianchi v. Brown*, 111 F.4th 438, 468 (4th Cir. 2024) (en banc). That historical evidence, which involves restrictions on several different types of weapons, underscores the broad authority of States to regulate unusually dangerous weapons. Four prominent examples are illustrative:

Trap Guns. These weapons involved “the rigging of a firearm to discharge when a person unwittingly trips a string or wire.” *Duncan v. Bonta*, 133 F.4th 852, 875 (9th Cir. 2025) (en banc). Although they were “popular” in the early days of the Republic, *id.*, it quickly became clear that widespread use of trap guns resulted in the death of innocent civilians. New Jersey criminalized their usage in 1771, finding that they were “most dangerous” and “too much prevailed in this Province.” 1763–1775 N.J. Laws 346, ch. 539, § 10. Other States followed suit, with nine “bann[ing] the

setting of trap guns in the 18th and 19th centuries.” *Duncan*, 133 F.4th at 875.

Bowie Knives. Bowie knives are a “leading example” of the longstanding tradition of regulating unusually dangerous weapons. *Barnett v. Raoul*, 180 F.4th 1035, 1047 (7th Cir. 2026). These 19th-century arms “were technological advancements over ordinary defensive arms” of the time “because they were designed ‘expressly for fighting,’ with longer blades, crossguards to protect fighters’ hands, and clip points to facilitate cutting or stabbing adversaries.” *NAGR*, 153 F.4th at 243; *see also Knife Rights, Inc. v. Bonta*, 165 F.4th 1330, 1343 (9th Cir. 2026). Thanks to their design, these weapons were used in “widely-publicized act[s] of violence resulting in multiple fatalities” and “an alarming proportion of the era’s murders and serious assaults.” *NAGR*, 153 F.4th at 243.

“[W]hen the country experienced a ‘nationwide surge of homicides’ in the nineteenth century, states reacted by ‘passing laws severely restricting access’” to, among other “dangerous weapons,” the popularly owned Bowie knife. *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 48 (1st Cir. 2024) (“*OST*”). These “ubiquitous historical restrictions,” *NAGR*, 153 F.4th at 243, appeared in “forty-nine states and the District of Columbia” when “their popularity in the hands of murderers became apparent,” *OST*, 95 F.4th at 46. The laws “ranged from outright bans on their manufacture, sale, and possession; to enhanced criminal penalties for those who used the weapons to commit crimes; to prohibitions on both open and concealed carry.” *Bianchi*, 111 F.4th at 467; *see also id.* at n.5 (collecting citations); *Hanson v. District of Columbia*, 120 F.4th 223, 237 (D.C. Cir. 2024) (*per curiam*) (reiterating that some States “ban[ned] the

carrying, rather than only the concealment, of Bowie knives with no or narrow exceptions” and collecting citations).

Restrictions on Bowie knives were prevalent even though these knives were commonplace and were not used for criminal ends alone. In the 19th century, these weapons had become “widespread” and were sometimes “used for lawful purposes” like self-defense and hunting before they were restricted. *Barnett*, 180 F.4th at 1047–48. Indeed, Bowie knives were a “common part of American life” in the 1800s. *Id.* (quoting David B. Kopel, Clayton E. Cramer & Joseph Edward Olson, *Knives and the Second Amendment*, 47 U. MICH. J.L. REFORM 167, 184 (2013)). They were “widely carried by Americans of all stripes,” including “upstanding citizens and villains’ alike.” *Id.* at 1047 (quoting Norm Flayderman, *The Bowie Knife: Unsheathing an American Legend* 20, 125, 130 (2004)). In fact, they were so popular that “European visitors who ventured beyond the Appalachians found [the Bowie knife] such an integral part of the American way of life that they felt compelled to comment on it at length in accounts of their adventures.” *Id.* (quoting Harold L. Peterson, *American Knives: The First History and Collectors’ Guide* 25 (1958)) (alteration in original).

Nonetheless, restrictions on Bowie knives repeatedly survived legal challenges, with several “[c]ontemporaneous court decisions” upholding “laws targeting Bowie knives against challenges based upon the Second Amendment or a state equivalent.” *Hanson*, 120 F.4th at 238. In upholding restrictions on Bowie knives, the Tennessee Supreme Court looked specifically to their comparative capacity for violence against civilians, explaining that the knives were

“usually employed in private broils,” “efficient only in the hands of the robber and the assassin,” and “could not be employed advantageously in the common defense of the citizen”—despite their obvious popularity and capacity to stave off attackers. *Aymette v. State*, 21 Tenn. 154, 158 (1840). The Texas Supreme Court agreed that “[t]he Bowie Knife differs from [guns or swords] in its device and design: it is the instrument of almost certain death.” *Cockrum v. State*, 24 Tex. 394, 402 (1859). It explained that “[h]e who carries such a weapon,” even ostensibly “for lawful defense,” “makes himself more dangerous to the rights of others.” *Id.* at 403; *see also id.* (referring to the Bowie knife as “the most deadly of all weapons in common use”); *Haynes v. Tennessee*, 24 Tenn. 120, 122 (1844) (noting Bowie knives were “extremely dangerous and destructive to human life”); *State v. Workman*, 35 W. Va. 367, 373 (1891) (holding that Bowie knives are not protected by the Second Amendment). These cases make clear that the weapon’s capacity for carnage, not its rarity, was what rendered it “uncommon.”

The United States incorrectly suggests that state courts endorsed the regulation of Bowie knives because they were “not in common use” and were instead employed primarily for criminal ends. US.Br.12–14. That assertion cannot be squared with the historical evidence described above, which demonstrates the ubiquity of Bowie-knife use for lawful purposes. The special danger posed by Bowie knives, rather than any lack of popularity with the public, explains why 19th-century courts refused to treat Bowie knives as “usual arms.” *See NAGR*, 153 F.4th at 243 (“In certain respects, [Bowie] knives were superior even to contemporary firearms, which had limited effectiveness in close quarters.”); *Barnett*, 180

F.4th at 1047 (contrasting the Bowie knife’s ease of repeated use with a key “technological shortcoming” of the “era’s prominent firearms”: the cumbersome need to reload).

Meanwhile, Petitioners raise the Georgia Supreme Court’s decision in *Nunn v. State*, 1 Ga. 243 (1846), Pet.Br.47, which struck down “an ambiguous statute” insofar as it “prohibited open carry” of Bowie knives. *Barnett*, 180 F.4th at 1049. But as Judge St. Eve explained in *Barnett*, courts should not “place on *Nunn* more weight than it can bear,” particularly given *Nunn*’s legal infirmities and limited adoption elsewhere. *Id.* *Nunn* says that the Second Amendment protects the “right to bear arms of every description.” 1 Ga. at 251. As Judge Richardson observed in *Bianchi*, that holding implies that the “Second Amendment does not permit the banning of *any* weapons,” which is “inconsistent with the overwhelming authority to the contrary.” *Bianchi*, 111 F.4th at 513 n.47 (Richardson, J., dissenting); see *Heller*, 554 U.S. at 626 (“From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”). *Bruen* instructs courts not to give “disproportionate weight” to outlier cases that “contradict[] the overwhelming majority of other evidence.” 597 U.S. at 65–66. That applies to *Nunn*, which “is an outlier of little value in discerning the nature of ‘dangerous and unusual’ weapons in the Anglo-American legal tradition.” *Bianchi*, 111 F.4th at 513 n.47 (Richardson, J., dissenting).

Slungshots. These weapons, which were comprised of “a weight fastened to the end of a chain or rope that

can be swung around to apply blunt force to an opponent,” were, like Bowie knives, “particularly suitable for fighting.” *Bianchi*, 111 F.4th at 467 & n.9. Given their particular dangerousness, “[r]estrictions on slungshots were more severe and widespread than restrictions on other excessively dangerous weapons,” and many States outright banned their “sale and possession.” *Id.* at 467 n.9. By the end of the 19th century, “nearly every State had enacted anti-slungshot laws.” *Duncan*, 133 F.4th at 876; *see also*, e.g., 1850 Mass. Acts & Resolves 401, 401 (making it a crime to “manufacture, or cause to be manufactured, or sell, or expose for sale, any instrument or weapon of the kind usually known as a slung shot”); 1868 Fla. Laws 95, Of Offenses Against the Public Peace, ch. 7, § 11; 1881 Ill. Crim. Code 73, Regulating the Traffic in Deadly Weapons, § 1; 1885 Minn. Penal Code, Title 12, Of Crimes Against the Public Health and Safety §§ 333-334; 1890 Okla. Sess. Laws 475, ch. 25, art. 38, § 18.

Machineguns and semiautomatic firearms. Semiautomatic firearms “became available to consumers in the 1890s,” and “automatic weapons quickly followed.” *Bianchi*, 111 F.4th at 469. Civilian use of automatic weapons led to “a different type of homicide”: “mass murder spurred by the commercial availability of weaponry that empowered individuals to kill many people quickly.” *Id.* at 468. And, as with other weapons, “their use in multiple-fatality homicides and terror” led to regulation, including the “National Firearms Act of 1934, which prohibited ownership of machine guns, submachine guns, and short-barreled shotguns.” *NAGR*, 153 F.4th at 245–46. That Act followed the 29 states which had already enacted “anti-machine-gun laws between 1925 and

1934.” *Bianchi*, 111 F.4th at 470; *see id.* at nn.14–15 (collecting statutes).

* * *

Drawing on the historical evidence—from the Statute of Northampton to the National Firearms Act and beyond—six circuits have identified a tradition of States regulating weapons that are unusually dangerous and contribute disproportionately to serious public safety threats. *See OST*, 95 F.4th at 46 (recognizing that States have long regulated dangerous weapons “once their popularity in the hands of murderers became apparent”); *NAGR*, 153 F.4th at 245 n.40 (identifying “a historical tradition of regulating unusually dangerous weapons after their use in terror or to perpetuate mass casualties”); *Bianchi*, 111 F.4th at 471 (describing “a strong tradition of regulating those weapons that were invented for offensive purposes and were ultimately proven to pose exceptional dangers to innocent civilians”); *Barnett*, 180 F.4th at 1046 (explaining States have “long imposed restrictions on particularly dangerous weapons”); *Duncan*, 133 F.4th at 874 (noting a tradition of “protect[ing] innocent persons from especially dangerous uses of weapons once those perils have become clear”); *Hanson*, 120 F.4th at 237–38 (observing a tradition of regulating “weapons that are particularly capable of unprecedented lethality”). Dozens of judges from across the country have agreed that our nation’s historical tradition permits States to regulate certain unusually dangerous weapons even when they are popular.

2. The widespread agreement among the circuits—based on multiple historical analogues—is reinforced by this Court’s recent precedents explaining how to appropriately define the relevant historical tradition.

For one thing, while this Court has acknowledged that a party defending firearm regulations may “rely on” either “a single analogue or a group of analogues,” it has made clear that a regulatory tradition derived from multiple historical analogues (as here) sweeps more broadly than those traditions defined by a single historical legal regime. *Wolford*, 609 U.S. at 196. That principle is clear from *Rahimi*. There, the Court identified a tradition of disarming those “who threaten physical harm to others from misusing firearms” by relying on “two distinct legal regimes”: surety and affray laws. 602 U.S. at 690, 694–95. The Court recognized that the statute at issue was “by no means identical to these founding era regimes”; neither analogue disarmed dangerous persons, let alone focused specifically on domestic violence. *Id.* at 698. Nonetheless, the Court identified a common purpose of “address[ing] firearms violence” by individuals who “pose[] a clear threat of physical violence to another” (the “why”). *Id.* at 694. And because the tradition itself included various approaches to regulating firearm usage by dangerous individuals (the “how”), the Court held that the modern law—although certainly without any historical twin—“fit[] neatly” into the relevant tradition, *id.* at 698, when defined at the “right level of generality,” *id.* at 740 (Barrett, J., concurring).

By contrast, *Wolford* and *Hemani* show how a comparatively sparse historical record leads to a more limited definition of the relevant historical traditions. In both cases, the Court seriously considered only one single set of regulations. *See Wolford*, 609 U.S. at 208 (noting that the State’s main argument relies “almost entirely” on “laws that prohibited unauthorized hunting”); *Hemani*, 608 U.S. at 781 (observing that the government relies on “habitual drunkard laws”). So the Court’s analysis focused on a narrower “how” and

“why” undergirding those specific laws, making it more challenging for the government to place its modern restrictions within the relevant tradition. *Wolford*, 609 U.S. at 208–10.

It therefore follows that where a historical tradition draws from multiple historical analogues, the tradition should be defined at a higher level of generality. If a historical legislature dealt with a discrete issue—like unauthorized hunting on private lands—it is difficult to show that a distinct, if similar, modern tradition shares a “how” and a “why.” By contrast, if multiple historical legislatures repeatedly addressed the same issue at different times and in different ways, it is more likely that a law which is not “identical” to any of its forebearers nonetheless comports with a general historical principle that connects those various historical analogues. *Rahimi*, 602 U.S. at 698. In other words, when there are multiple historical analogues that form the basis for a historical tradition, modern regulatory approaches (the “how”) to addressing the same overarching problems (the “why”) are more likely to be “consistent with [the] right,” and it is far less likely that any specific historical law perfectly demarcates the outer limits of state authority. *Wolford*, 609 U.S. at 196. That principle applies here. States have taken multiple historical approaches to addressing the misuse of unusually dangerous weapons. So modern regulatory approaches to addressing that same overarching problem are more likely to fit comfortably within the historical tradition.

To be clear, courts should not assume that a prior legislature’s inaction implies an absence of authority. See *Rahimi*, 602 U.S. at 739–40 (Barrett, J., concurring) (rejecting “a ‘use it or lose it’ view of

legislative authority”). The Constitution does not require States to legislate to the zenith of their authority by, for example, restricting novel weapons that have yet to pose a public safety problem. The Second Amendment, like the First Amendment, allows States the flexibility to “adopt laws to address the problems that confront them.” *McCullen v. Coakley*, 573 U.S. 464, 481 (2014).

The “distinctively modern” nature of mass-shootings provides yet another reason to define the historical tradition broadly. *Wolford*, 609 U.S. at 198. Since *Bruen*, this Court has recognized that cases “implying unprecedented societal concerns or dramatic technological changes may require” courts to define the relevant traditions at higher levels of generality. 597 U.S. at 27–28. That “more nuanced approach,” *id.*, is triggered not only when social or technological change presents a novel issue, but also when our understanding of the problem has changed with time, as *Rahimi* underscored. After all, women have “feared [] domestic violence” since the Founding. *Rahimi*, 602 U.S. at 763 (Thomas, J., dissenting). But it is not until relatively recently that legislatures have intervened to handle the “potentially deadly combination” of “[f]irearms and domestic strife.” *Voisine v. United States*, 579 U.S. 686, 689 (2016). So as in *Rahimi*, this Court should define the relevant historical tradition at a higher level of generality when the legislature is responding to new manifestations of a longstanding harm. *See also Wolford*, 609 U.S. at 198.

In other words, whether this Court understands mass shootings as a new threat or a new manifestation of longstanding concerns about firearm violence, “[t]he dramatic technological change embodied in AR-15s equipped with large-capacity magazines” has fueled

the “unprecedented societal concern of mass killings speedily carried out by lone shooters.” *Barnett*, 180 F.4th at 1055. In the 18th century, “the ubiquitous firearm was a single-shot, muzzle-loaded firearm” that “could not fire consecutive rounds.” *Id.* at 1055–56. At the time, repeating rifles were “technologically flawed curios with limited practical utility.” *Id.*; *see also Hanson*, 120 F.4th at 248–51 (explaining why the Winchester Repeater rifle of 1866, among other dissimilar historic weaponry, “lacks the potential lethality of a modern weapon equipped with [a large capacity magazine]”). By contrast, “a modern shooter armed with an AR-15 and thirty-round magazines can fire almost sixty extraordinarily lethal rounds . . . in the time it took to fire a pair of far less damaging shots at the Founding.” *Barnett*, 180 F.4th at 1055–56. Although multi-casualty murders did occur in the Founding Era, they were accomplished by large groups armed with ordinary weapons. *Id.* at 1057. The historical method of addressing mass murder—targeting armed *groups* rather than the particular weapons they carried—“is self-evidently unfit” to the modern societal harm of mass shootings. *Id.*; *see also OST*, 95 F.4th at 44 (finding “no direct precedent for the contemporary and growing societal concern that [assault] weapons have become the preferred tool for murderous individuals intent on killing as many people as possible, as quickly as possible”).

The restrictions at issue in this case fit comfortably in our regulatory tradition at any level of generality. Still, in describing the underlying principles, this Court should not unduly circumscribe its definition of the relevant historical tradition—or the authority of States and localities, as the People’s representatives, to respond to those public safety concerns. *Bruen*, 597 U.S. at 27–28; *see also Wolford*, 609 U.S. at 220

(Barrett, J., concurring) (“Today, the right to bear arms is misused in other ways that were unknown to our forebears but pose an equivalent risk to persons or property.”).

Here, the historical evidence demonstrates the longstanding authority of States to regulate unusually dangerous weapons that contribute disproportionately to serious public safety concerns. That historical tradition sweeps broadly, and it permits States to respond to new technologies and to unprecedented threats to public safety “that could not have arisen when the Second or Fourteenth Amendment was adopted.” *Wolford*, 609 U.S. at 197.

B. The Regulation of Assault Weapons Falls Well Within Historical Tradition.

Limitations on the possession of assault weapons like the AR-15 fit easily within this historical tradition, both with respect to “how and why” these limitations “burden” the “right to armed self-defense.” *Bruen*, 597 U.S. at 29.

First, with respect to “why” these laws were enacted, the reason is relevantly similar to the purpose of the historical tradition of regulation: to enhance public safety by regulating unusually dangerous weapons that threaten, or have already inflicted, significant harm on Americans. *See Wolford*, 609 U.S. at 220 (Barrett, J., concurring) (discussing proper level of generality for historical inquiry and suggesting that the Constitution would not prohibit modern laws that respond to a “specific, heightened risk of [firearm] misuse”). Assault weapons, including the AR-15, are designed to inflict catastrophic injuries to enemy combatants by firing high-velocity ammunition at long range and allowing for sustained fire against many

targets over prolonged periods of time. They were developed for the battlefield as offensive, rather than defensive, weapons. As then-Governor Mitt Romney of Massachusetts stated upon signing that state’s legislation related to assault weapons, “[t]hese guns are not made for recreation or self-defense. They are instruments of destruction with the sole purpose of hunting down and killing people.” *Capen v. Campbell*, 134 F.4th 660, 671 (1st Cir. 2025).

The AR-15 was “[b]uilt to generate ‘maximum wound effect.’” *Bianchi*, 111 F.4th at 455. “[T]he injuries inflicted by assault weapons can be catastrophic, . . . far surpassing the destructive power of typical semiautomatic handguns.” *Capen*, 134 F.4th at 666. In particular, the bullets most commonly fired by AR-15s “are more likely than slower, heavier handgun bullets to rotate within the body and potentially fragment, which causes additional damage to tissue and organs adjacent to the bullet’s entry point.” *Barnett*, 180 F.4th at 1053–54. This effect—known as cavitation—causes the organs to resemble “an overripe melon smashed by a sledgehammer,” according to one trauma surgeon who reviewed the scans of victims from the mass shooting at Marjory Stoneman Douglas High School, in Parkland, Florida.¹² Bullets fired from AR-15s likewise can

¹² Heather Sher, *What I Saw Treating the Victims from Parkland Should Change the Debate on Guns*, THE ATLANTIC (Feb. 22, 2018), <https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victims-from-parkland-should-change-the-debate-on-guns/553937/>. An autopsy report of one of the victims of the Parkland shooting similarly described the 15-year-old victim’s head as “deformed” after he was shot four times in the head by the shooter, who purchased an AR-15 legally. See *The Blast Effect: This is how bullets from an AR-15 blow the body*

“readily penetrate police body armor.” *See Bianchi*, 111 F.4th at 457.

The AR-15 and similar assault weapons also have several “military-like features.” *NAGR*, 153 F.4th at 225–26. The pistol grip counters muzzle rise and recoil under conditions of continuous rapid fire, allowing a shooter to “spray[] . . . a large number of bullets over a broad killing zone, without having to aim at each individual target.” *Id.* And the barrel shroud allows a shooter to “hold the overheated barrel during continuous firing.” *Id.* These and other properties provide individuals intent on indiscriminately shooting many people quickly with a uniquely dangerous combination of features facilitating sustained rapid fire and unusually destructive capacity. This combination has led to the “all too frequent use” of AR-15s “in terrorism, mass killing, and police murder,” which demonstrates that such weapons “offer[] firepower ill-suited and disproportionate to fulfilling the Second Amendment’s purpose of armed self-defense.” *Bianchi*, 111 F.4th at 459.

The same features that make assault weapons ideal for offensive combat in a war zone also make them “ill-suited for the vast majority of self-defense situations in which civilians find themselves.” *Id.* at 458. Assault weapons are “significantly heavier and longer than typical handguns, making them less concealable, more difficult to use, and less readily accessible.” *Capen v. Campbell*, 708 F. Supp. 3d 65, 86 (D. Mass. 2023), *aff’d* 134 F.4th 660. They also can easily penetrate walls to injure bystanders, making them poor civilian self-

apart, THE WASHINGTON POST (Mar. 27, 2023), <https://www.washingtonpost.com/nation/interactive/2023/ar-15-damage-to-human-body/>.

defense weapons. *See Bianchi*, 111 F.4th at 458 (“[F]iring an AR-15 in close quarters will often put the safety of cohabitants and neighbors in jeopardy[.]”).

Indeed, the modern AR-15 is the semi-automatic version of the M-16 (itself originally called the “AR-15”), a military weapon that the U.S. Army adopted for “its phenomenal lethality and reliability, as well as its increased ability to penetrate helmets and body armor.” *Bianchi*, 111 F.4th at 451–56; *see also Heller*, 554 U.S. at 627 (explaining that the M-16 is a weapon “most useful in military service” that “may be banned” without violating the Second Amendment). AR-15s and M-16s firing the same ammunition have “approximately the same velocity”—three times the velocity of a standard handgun bullet. *Barnett*, 180 F.4th at 1053. And they have the same effective range of about 500 yards—ten times greater than the 50-yard range of a 9mm handgun. *Id.* Both the AR-15 and M-16 also inflict the same type of “maximum wound effect” discussed above. *Bianchi*, 111 F.4th at 455.

The M-16’s automatic-fire and burst-fire capabilities—that gun’s only functional differences compared to an AR-15—do not justify a categorical distinction between the two weapons. *See id.* at 456. For one, simple after-market modifications to an AR-15 can essentially erase that difference, as “the AR-15’s rate of fire can be easily converted to . . . mimic military-grade machine guns with devices like bump stocks, trigger cranks, and binary triggers.” *Id.* (cleaned up); *see also Garland v. Cargill*, 602 U.S. 406, 428 (2024) (acknowledging a semiautomatic rifle equipped with a bump stock “can achieve a rate of fire that rivals traditional machineguns” and that even “an *unmodified* semiautomatic rifle” can be operated to achieve similar rates of fire “using the manual

bump-firing technique”). Furthermore, the U.S. Army “instructs that semiautomatic fire is [t]he most important firing technique during fast-moving, modern combat because it is the most accurate technique of placing a large volume of fire on . . . multiple, or moving[,] targets.” *Bianchi*, 111 F.4th at 456 (cleaned up). The M-16’s automatic capability thus “pales in significance compared to the plethora of combat-functional features that makes the [M16 and AR-15] so similar.” *Id.*

In sum, AR-15s are regulated for the same reasons the historic weapon-specific regulations were enacted: to address the narrow categories of weaponry that have been demonstrated to pose unusually significant risk to innocent victims. The AR-15’s design and characteristics place it at the center of these narrow categories. In other words, the *why* for AR-15 regulations is on all fours with the historical tradition.

Second, with respect to *how* the challenged laws operate: like their historical antecedents, and unlike the laws in *Heller* and *Bruen*, the enactments here do not effectively prohibit citizens from carrying or possessing firearms for self-defense. Regulating “a device that is virtually never used in self-defense imposes less of a burden” on the Second Amendment right than restricting “a weapon that is, in fact, traditionally used in self-defense.” *OST*, 95 F.4th at 50.

Not only are assault weapons ill-suited to self-defense purposes, but they are also not typically used for those purposes as an empirical matter. The Seventh Circuit explained that it is “quite rare” for individuals to use *any* type of rifle in self-defense; in one analysis, only four percent of self-defensive uses involved rifles. *Barnett*, 180 F.4th at 1051. The subset

of cases involving AR-15s or other assault rifles prohibited by the challenged laws would be even smaller. Moreover, “[t]hese figures remained the same after excluding states with assault weapon bans, meaning they reflect self-defenders’ choices when unfettered by regulation.” *Id.* Given the AR-15’s lack of utility or actual use in self-defense, Cook County’s and Connecticut’s laws impose at most a negligible burden on the right to armed self-defense.

By contrast, these instruments *are* used disproportionately in mass shootings committed by lone gunmen, especially those causing many fatalities. In a sample of mass shootings with at least twenty fatalities from 1991 to 2022, 75% involved assault weapons. *Barnett*, 180 F.4th at 1058. Put simply, “[t]he more people killed, the more likely it is that the killer used an assault weapon and large-capacity magazines.” *Id.*; *see also Bianchi*, 111 F.4th at 457 (“AR-15 or AK-47 type assault rifles . . . have been used in every major terrorist attack on U.S. soil in the past decade . . .”). In short, assault weapons like AR-15s pose “particular dangerousness in mass-shooting scenarios,” while offering “limited self-defense utility.” *Capen*, 134 F.4th at 670, 673; *see also Worman v. Healey*, 922 F.3d 26, 37 (1st Cir. 2019) (law regulating assault weapons “does not heavily burden the core right of self-defense” because using these weapons for self-defense “is tantamount to using a sledgehammer to crack open the shell of a peanut”), *abrogated in part on other grounds by Bruen*, 597 U.S. 1.

The “how” of the many historical analogues thus matches with the current laws, which similarly restrict a narrow subset of weapons that present dangers disproportionate to their use in self-defense. *Rahimi* held that a court’s analogical reasoning may

be informed by several types of historical laws that, “taken together,” form the shared principle underpinning a modern regulation and its historical predecessors. 602 U.S. at 698.; *see also id.* at 739 (Barrett, J., concurring) (“To be *consistent* with historical limits, a challenged regulation need not be an updated model of a historical counterpart.”) (emphasis in original). As discussed above, *Rahimi* demonstrated that a law that is “by no means identical” to historical regulations can survive a Second Amendment challenge. *Id.* at 698. The historical evidence here presents a closer fit than in *Rahimi*, where the analogues were not possession bans but nonetheless supported a modern restriction on firearms possession. *See id.*

In both the why and the how, Cook County’s and Connecticut’s laws are relevantly similar to the historical tradition described above. That historical tradition makes clear that governments have long had authority to regulate unusually dangerous weapons that contribute disproportionately to serious public safety threats. Regulations limiting the possession of assault weapons fit comfortably within that tradition.

II. Petitioners’ Circulation-Based Test Cannot Be Squared With Historical Tradition or Modern Reality.

Notwithstanding the clear historical evidence supporting the regulation of unusually dangerous weapons, Petitioners claim that any firearm “in common use” is “protected by the Second Amendment” and thus beyond a State’s authority to regulate. Pet.Br.34. That position—which reduces the Second Amendment to a mere counting exercise—should be rejected for at least five reasons: it is ahistorical, leads to inviolable protections for machineguns, is

inconsistent with this Court’s interpretation of other rights, creates an illogical arms race between firearms manufacturers and legislatures, and runs counter to this Court’s recent Second Amendment cases.

First, any test that ties inviolable constitutional protection to the modern popularity of a specific item is inconsistent with our historical tradition of firearm regulation. American legislatures have long regulated weapons that are “particularly susceptible to,” and “widely used” for, “multiple homicides and mass injuries”—a notoriety possible only because the weapons were widely circulated. *Hanson*, 120 F.4th at 240; *see also NAGR*, 153 F.4th at 246 n.40 (recognizing that six circuits have identified “a historical tradition of regulating unusually dangerous weapons after their use in terror or to perpetuate mass casualties”). The long tradition of regulating weapons widely used to perpetrate mass violence makes any popularity-based test a non-starter under this Court’s cases. *See Wolford*, 609 U.S. at 195 (“[H]istorical analysis [is] required in a Second Amendment case.”).

English sources confirm that disproportionate danger has historically been a basis for firearm regulation—no matter the weapon’s prevalence. As noted above, the weight of historical authority indicates a tradition of regulating firearms that are unusually dangerous. *See supra* 5-20. That historical tradition emerged from “concern about danger to the public, not statistical commonality of the threatening weapon.” *NAGR*, 153 F.4th at 252 (Nathan, J., concurring).

Nor is the evidence limited to pre-Founding English precepts; historical statutes are likewise incompatible with a circulation test. One clear example of this tradition is widespread restrictions on Bowie knives. *See supra* 10-13 (detailing how the knives were

regulated despite being a mainstay of American life in the mid-1800s). Against this evidence, Petitioners cannot muster a single historical example of a court in the Nation’s 250-year history conducting the kind of market survey required by such a test, let alone preventing States from restricting firearms merely because a certain number are in circulation.

Second, Petitioners’ circulation-only test would also lead to a result this Court has already declared “startling” and wrong: a prohibition on the regulation of machineguns. *Heller*, 554 U.S. at 624. As of 2021, there were “more than 700,000 machine guns registered with the federal government.” *Hanson*, 120 F.4th at 233. The non-binding concurrence on which Petitioners rely endorsed protection for stun guns because 200,000 were in lawful circulation. *See Caetano v. Massachusetts*, 577 U.S. 411, 420 (2016) (Alito, J., concurring in the judgment); *see also* Pet.Br.32-33. And Petitioners offer no limiting principle or alternate theory explaining how the circulation of 200,000 stun guns is dispositive but the circulation of more than three times as many machineguns somehow places these military-grade firearms outside the bounds of common use. Quite the opposite: Petitioners reject *any* feature-based distinctions under the Second Amendment, asserting that mere circulation is the dispositive constitutional criterion. *See* Pet.Br.49–50.

Petitioners’ methodological approach could also extend Second Amendment protections to those items—like bump stocks and large-capacity magazines (“LCMs”)—that render semi-automatic rifles

functionally indistinguishable from machineguns.¹³ As of 2018, there were an estimated 280,000 to 520,000 previously legal bump stocks in circulation, against more than the 200,000 stun guns in lawful circulation. *Bump-Stock-Type Devices*, 83 Fed. Reg. 13,442, 13,451 (March 29, 2018). While this Court held in *Garland v. Cargill* that bump stocks do not meet the statutory definition of machineguns, Justice Alito nevertheless noted that bump stocks can have “the same lethal effect” as machineguns and that Congress is certainly empowered to “act” and “amend the law” to prohibit bump stocks, underscoring the view that such action is plainly within Congress’ authority. 602 U.S. at 429 (Alito, J., concurring); see also *Guedes v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 140 S. Ct. 789, 789 (2020) (statement of Gorsuch, J.) (“Nor do I question that Congress might seek to enact new legislation directly regulating the use and possession of bump stocks.”). Similarly, while millions of LCMs are in civilian hands, see *ANJRPC v. Attorney General of New Jersey*, 183 F.4th 211, 249 (3d Cir. 2026) (en banc), when attached to an AR-15, they render the firearm “far more like the bannable M16” than “the handgun.” *Barnett*, 180 F.4th at 1053. Indeed, “modern firearms equipped with []LCMs,” like machineguns, “have enabled mass shootings to a degree impossible with Founding or Reconstruction era weapons.” *Hanson*, 120 F.4th at 242.

And such a test could eventually sweep in weapons beyond what the Founders could have possibly imagined as falling within the scope of the Second Amendment. For example, while “bazooka[s]” and

¹³ Of course, these items are constitutionally distinct from the firearms at issue here, and Amici may raise separate arguments in future cases concerning bump stocks and LCMs.

“W54 nuclear warhead[s]” are not currently protected by the Second Amendment, under Petitioners’ test, those weapons “or similarly dangerous weapons could gain constitutional protection merely because” they become “popular before the government can sufficiently regulate [them].” *Bianchi*, 111 F.4th at 460. Petitioners dismiss these hypotheticals as “[a]bsurd.” Pet.Br.39. But just as “[t]he Founders faced no problem comparable to a single gunman carrying out a mass murder in seconds,” we today cannot forecast with certainty the popularity of as-yet undercirculated or undeveloped weapons technology. *NAGR*, 153 F.4th at 239. Given the advancement of scientific research—and, in recent years, the advancement of artificial intelligence—it is not unforeseeable that a circulation test could lead to inviolable Second Amendment protections for weapons far deadlier than those the Court is considering here, so long as they penetrate the civilian market prior to regulation.

Third, a pure counting exercise runs contrary to this Court’s admonition that the Second Amendment right “is entitled to no less protection than other constitutional rights.” *Wolford*, 609 U.S. at 206 n.13. After all, no other constitutional right, defined by looking to history and tradition, can be reduced to arithmetic. The First Amendment has never defined particular material as more or less obscene simply because it is widespread. *See, e.g., Miller v. California*, 413 U.S. 15, 24 (1973) (offering guidelines for defining obscenity, none of which turns on tallying alone); *New York v. Ferber*, 458 U.S. 747, 758 (1982) (permitting the prohibition on child pornography based on objective “harm[] to the . . . health of the child,” without regard to how much child pornography circulated). So too the Fourth Amendment bars unlawful entry into the home, no matter how popular that investigatory

method might be. *Cf., e.g., Carpenter v. United States*, 585 U.S. 296, 305 (2018) (holding that the scope of Fourth Amendment rights is informed by “Founding-era understandings”). And the Eighth Amendment asks whether, for example, a new method of execution “superadd[s] terror, pain, or disgrace”; the analysis does not rest solely on the prevalence of the execution method. *Bucklew v. Precythe*, 587 U.S. 119, 133 (2019) (cleaned up). The Second Amendment should not be reduced to bare arithmetic either.

Nor do constitutional doctrines that rest in part on qualitative assessments of “contemporary community standards” offer any support for Petitioners’ fundamentally quantitative interpretive theory. *Miller*, 413 U.S. at 24. Even if determining the number of firearms in civilian circulation were somehow similar to assessing broadly accepted norms of privacy or punishment, “questions of gun possession and ownership [are] constantly under public debate.” *Bevis v. City of Naperville*, 85 F.4th 1175, 1219 (7th Cir. 2023) (Brennan, J., dissenting). So, circulation numbers aside, Petitioners cannot come close to demonstrating a “social consensus” on the deeply divisive issue of assault-weapons regulation. *Kennedy v. Louisiana*, 554 U.S. 407, 433 (2008). And Petitioners have not demonstrated why the legislative choices made by some States—which perhaps spurred the circulation numbers upon which Petitioners rely—in turn disempowers other State legislatures.

Fourth, the popularity test is circular and creates perverse outcomes. “A law’s existence can’t be the source of its constitutional validity.” *Friedman v. City of Highland Park*, 784 F.3d 406, 409 (7th Cir. 2015). But by permitting regulation only prior to commercial distribution and then prohibiting regulation following

a particular number of sales of the weapon in question, Petitioners' theory makes the law's existence a but-for cause of its own constitutionality. That is not how constitutional interpretation works.

The incentives created by such a structure are predictable. If adopted, the test would incentivize legislatures to ban *all* new firearms while legislators assess their features and determine whether they are safe, especially because the dangerousness of a weapon is not always immediately recognizable. And it would correspondingly incentivize gun retailers to flood the market with their new items, or include certain features as factory settings, prior to regulation in the hope that enough firearms are obtained in civilian hands "before the government can sufficiently regulate [them]." *NAGR*, 153 F.4th at 233. As the First Circuit noted, "[i]t defies reason to say that legislatures can only ban a weapon if they ban it at (or around) the time of its introduction." *OST*, 95 F.4th at 50. Neither our historical tradition of regulating unusually dangerous firearms nor common sense supports the notion that governments can regulate firearms only if they get in the game early enough.

Fifth, Petitioners' theory runs counter to this Court's Second Amendment cases. If common use were the central inquiry, then *Bruen* need not have proceeded beyond the statement that no "party dispute[s] that handguns are weapons 'in common use' today for self-defense." 597 U.S. at 32.¹⁴ Instead, this

¹⁴ According to Petitioners, *Bruen* prohibits "restricting the public carry of weapons that are unquestionably in common use today." Pet.Br.31. But the quoted language in *Bruen* is more limited, asserting that the colonial laws cited by the government "provide[d] no justification" for the challenged restrictions, which

Court considered the historical analogues over the next forty pages—“hardly an *obiter dictum*.” *Hanson*, 120 F.4th at 234. Reading popularity, or choices about marketing and factory settings made by firearms manufacturers, as an end run around the historical analysis “distort[s] the precedents on which th[is] argument relies”; after all, this Court has never claimed “that the Second Amendment *necessarily* protects *all* weapons in common use.” *NAGR*, 153 F.4th at 233. Rather, the Court has engaged in searching historical review to assess each regulation according to our history. And in line with longstanding tradition, the Amendment “do[es] not shield popular weapons from review of their potentially unusually dangerous character.” *Id.* Indeed, merely counting the number of firearms in private hands does not resemble the historical analysis this Court undertook in *Heller*, *Rahimi*, *Hemani*, or *Wolford*. Nor does our historical tradition support the notion—now pressed by Petitioners—that States are powerless to stop the spread of unusually dangerous weapons once they reach a particular threshold level of circulation.

At bottom, Petitioners’ circulation-based test would represent a remarkable break from history, this Court’s precedent, and common sense. It would risk opening the floodgates for other unusually dangerous weapons—just because sales of those weapons have cleared some arbitrary popularity threshold. No matter whether this Court affirms the judgments of the Second and Seventh Circuits, it should reject Petitioners’ ahistorical Second Amendment test.

heavily restricted the public carry of *any* firearm. 597 U.S. at 47. Because the historical analogues offered in this case are not those offered in *Bruen*, the argument falls flat.

CONCLUSION

The judgments of the U.S. Court of Appeals for the Second and Seventh Circuits should be affirmed.

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APPENDIX

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APPENDIX**Table 1: Assault Weapon Restrictions**

The following jurisdictions restrict the possession or sale of assault weapons.

California	Cal. Penal Code §§ 30500-30515, 30600, 30605.
Connecticut	Conn. Gen. Stat. §§ 53-202a-202c.
Delaware	Del. Code tit. 11, §§ 1465-1466(a).
District of Columbia	D.C. Code Ann. §§ 7-2501.01(3A), 7-2502.01, 7-2502.02(a)(6).
Hawai‘i	Haw. Rev. Stat. Ann. §§ 134-1, 134-4, 134-8(a).
Illinois	720 Ill. Comp. Stat. 5/24-1.9.
Maryland	Md. Code Ann., Crim. Law §§ 4-301, 4-303.
Massachusetts	Mass. Gen. Laws ch. 140, §§ 121, 131M.
New Jersey	N.J. Stat. Ann. §§ 2C:39-1(w), -5(f)
New York	N.Y. Penal Law §§ 265.00(22), 265.02(7).
Rhode Island	R.I. Gen. Laws § 11-47.2

Washington	Wash. Rev. Code §§ 9.41.0001, 9.41.010(2), 9.41.240 (2023 Wash. Sess. Laws, ch. 162, § 1).
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Table 2: Laws Banning Automatic Weapons

The following jurisdictions ban automatic weapons.

California	Cal. Penal Code § 32625.
Colorado	Colo. Rev. Stat. § 18-12-102.
Delaware	Del. Code tit. 11, §§ 1444(a)(5), (b)(1).
District of Columbia	D.C. Code Ann. §§ 7- 2501.01(10), 7-2502.01, 7-2502.02(a)(2).
Hawai‘i	Haw. Rev. Stat. Ann. § 134- 8(a).
Illinois	720 Ill. Comp. Stat. 5/24- 1(a)(7)(i).
Iowa	Iowa Code §§ 724.1(a), 724.3.
Louisiana	La. Rev. Stat. Ann. §§ 40:1751 to 40:1752.
Massachusetts	Mass. Gen. Laws ch. 140, §§ 121, 131(f); Mass. Gen. Laws ch. 269, § 10(c).
Minnesota	Minn. Stat. § 609.67.
New Jersey	N.J. Stat. Ann. §§ 2C:39-1(i), - 5(a)

New York	N.Y. Penal Law § 265.02(2).
Rhode Island	R.I. Gen. Laws § 11-47-8(a).
Wisconsin	Wis. Stat. § 941.26(1g)(a).

**Table 3: Laws Requiring Registration of
Pre-1986 Automatic Weapons**

The following jurisdictions require that all automatic weapons manufactured before 1986 be registered with a licensing agency.

Federal	18 U.S.C. §§ 921(a)(24), 922(o); 26 U.S.C. § 5845(b).
Alaska	Alaska Stat. Ann. §§ 11.61.200(a)(3), (h)(1)(C).
Arizona	Ariz. Rev. Stat. Ann. §§ 13- 3101(A)(8)(a)(iii), 13- 3102(A)(3).
Connecticut	Conn. Gen. Stat. § 53-202.
Florida	Fla. Stat. §§ 790.001(9), 790.221.
Georgia	Ga. Stat. §§ 16-11-121(2), 16- 11-122, 16-11-124(4).
Indiana	Ind. Code Ann. §§ 35-47-5-8 to 35-47-5-8-10.
Kansas	Kan. Stat. Ann. § 21- 6301(a)(5).

Maine	Me. Rev. Stat. Ann. tit. 17-A, §§ 1051-1052.
Maryland	Md. Code Ann. §§ 4-401 to 4-405.
Michigan	Mich. Comp. Laws §§ 750.224(1)(a), (3)(c).
Missouri	Mo. Rev. Stat. § 571.020(1.6)(a).
Montana	Mont. Code Ann. §§ 45-8-302 to 45-8-304.
Nebraska	Neb. Rev. Stat. § 28-1203.
Nevada	Nev. Rev. Stat. Ann. § 202.350(1)(b).
North Carolina	N.C. Gen. Stat. § 14-288.8.
North Dakota	N.D. Cent. Code § 62.1-05-01.
Ohio	Ohio Rev. Code Ann. §§ 2923.11(K)(1), 2923.17.
Oregon	Or. Rev. Stat. § 166.272.
Pennsylvania	18 Pa. Cons. Stat. Ann. § 908.
South Carolina	S.C. Code Ann. §§ 16-23-230 to 16-23-250.
South Dakota	S.D. Codified Laws §§ 22-1-2(8), (23), 22-14-6.
Tennessee	Tenn. Code Ann. §§ 39-17-1302(a)(3), (d).

Texas	Tex. Penal Code §§ 46.01(9), 46.05(a)(1)(B).
Virginia	Va. Code §§ 18.2-288 to 18.2-298.
Washington	Wash. Rev. Code §§ 9.41.010(29), 9.41.190.
West Virginia	W. Va. Code § 61-7-9.

Table 4: Laws Banning Short-Barreled Shotguns or Rifles

The following jurisdictions ban possession of short-barreled shotguns or short-barreled rifles.

California	Cal. Penal Code §§ 33210, 33215.
Delaware	Del. Code tit. 11, §§ 1444(a)(4), (b)(1).
District of Columbia	D.C. Code Ann. §§ 7-2501.01(15), (17), 7-2502.01, 7-2502.02(a)(1), (a)(3).
Hawai‘i	Haw. Rev. Stat. Ann. § 134-8(a).
Illinois	720 Ill. Comp. Stat. 5/24-1(a)(7)(ii).
Massachusetts	Mass. Gen. Laws ch. 140, § 121; Mass. Gen. Laws ch. 269, § 10(c).
Minnesota	Minn. Stat. § 609.67.
New Jersey	N.J. Stat. Ann. §§ 2C:39-1(o), 2C:39-3(b).

Rhode Island	R.I. Gen. Laws §§ 11-47-2(15) to 11-47-2(16), 11-47-8(b).
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Table 5: Laws Restricting Short-Barreled Shotguns or Rifles

The following jurisdictions restrict the possession of short-barreled shotguns or short-barreled rifles.

Federal	18 U.S.C. §§ 921(a)(6), 921(a)(8), 922(a)(4).
Alaska	Alaska Stat. Ann. §§ 11.61.200(a)(3), (h)(1)(D).
Arizona	Ariz. Rev. Stat. Ann. §§ 13-3101(A)(8)(a)(iv), 13-3102(A)(3).
Colorado	Colo. Rev. Stat. § 18-12-102.
Connecticut	Conn. Gen. Stat. § 53a-211.
Florida	Fla. Stat. §§ 790.001(10)-(11), 790.221.
Georgia	Ga. Stat. §§ 16-11-121(4)-(5), 16-11-122, 16-11-124(4).
Iowa	Iowa Code § 724.1C.
Kansas	Kan. Stat. Ann. § 21-6301(a)(5).
Michigan	Mich. Comp. Laws § 750.224b.
Missouri	Mo. Rev. Stat. § 571.020(1.6)(b).
Montana	Mont. Code Ann. § 45-8-340.

Nebraska	Neb. Rev. Stat. § 28-1203.
Nevada	Nev. Rev. Stat. Ann. § 202.275.
North Carolina	N.C. Gen. Stat. § 14-288.8.
North Dakota	N.D. Cent. Code § 62.1-02-03.
Ohio	Ohio Rev. Code Ann. §§ 2923.11(K)(1), 2923.17.
Oregon	Or. Rev. Stat. § 166.272.
Pennsylvania	18 Pa. Cons. Stat. Ann. § 908.
South Carolina	S.C. Code Ann. §§ 16-23-230 to 16-23-250.
South Dakota	S.D. Codified Laws §§ 22-1- 2(8), (46), 22-14-6.
Texas	Tex. Penal Code §§ 46.01(10), 46.05(a)(1)(C).
Washington	Wash. Rev. Code §§ 9.41.010(41)-(42), 9.41.190.
Wisconsin	Wis. Stat. § 941-28.

Table 6: Laws Banning 50-Caliber and Other High-Caliber Rifles

The following jurisdictions ban possession of rifles designed to shoot 50-Caliber and other High-Caliber ammunition.

California	Cal. Penal Code §§ 30530, 30600, 30610.
District of Columbia	D.C. Code Ann. §§ 7-2501.01(8A), 7-2502.01, 7-2502.02(a)(7).
Illinois	720 Ill. Comp. Stat. 5/24-1(a)(15)-(16), 5/24-1.9.
New Jersey	N.J. Stat. Ann. §§ 2C:39-1(c)(3), (5), 2C:39-3(a).

Table 7: Laws Banning Covert Weapons

The following jurisdictions ban possession of covert and hidden firearms.

Alabama	Ala. Code § 13A-11-54.
California	Cal. Penal Code § 24410.
Massachusetts	Mass. Gen. Laws ch. 140, § 131N.
New Jersey	N.J. Stat. Ann. §§ 2C:39-1(hh), 2C:39-3(m).
New York	N.Y. Penal Law § 265.02(6).

Table 8: Laws Banning Destructive Devices

The following jurisdictions ban the possession of grenades, rocket launchers, bombs, and other destructive devices.

California	Cal. Penal Code §§ 16460, 18710.
Colorado	Colo. Rev. Stat. § 18-12-109(2)(a).
Connecticut	Conn. Gen. Stat. § 53-80(a).
Delaware	Del. Code Ann. tit. 11, §§ 1444(a)(1), (b)(1).
District of Columbia	D.C. Code § 22-4515a.
Florida	Fla. Stat. §§ 790.001(4), 790.161.
Hawai‘i	Haw. Rev. Stat. Ann. § 134-8(a).
Illinois	720 Ill. Comp. Stat. 5/24- 1(a)(7)(iii).
Iowa	Iowa Code §§ 101A.1(2A), 724.1(1)(c), 724.3.
Massachusetts	Mass. Gen. Laws ch. 266, § 102(c).
New Jersey	N.J. Stat. Ann. §§ 2C:39-1(c)(1), 2C:39-3(a).
New York	N.Y. Penal Law § 265.02(2).
Oregon	Or. Rev. Stat. § 480.070.
Pennsylvania	18 Pa. Cons. Stat. Ann. §§ 908(a), (c).

Rhode Island	R.I. Gen. Laws §§ 11-47-21.
Utah	Utah Code Ann. § 76-10-306(1)(a)(ii)-(iii), (3).
Virginia	Va. Code Ann. § 18.2-85.
Wisconsin	Wis. Stat. § 941.26(2)(c).