

No. 25-421

IN THE
Supreme Court of the United States

NATIONAL ASSOCIATION FOR GUN RIGHTS AND TONI
THERESA SPERA FLANIGAN, *Petitioners*,

v.

NED LAMONT, in His Official Capacity as the
Governor of the State of Connecticut, *et al.*,
Respondents.

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

**Brief *Amicus Curiae* of Gun Owners of
America, Gun Owners Fdn., Gun Owners of
California, Coalition of New Jersey Firearm
Owners, Tennessee Firearms Association,
Tennessee Firearms Fdn., Virginia Citizens
Defense League, Virginia Citizens Defense
Fdn., America's Future, U.S. Constitutional
Rights Legal Defense Fund, and Conservative
Legal Defense and Education Fund
in Support of Petitioners**

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November 6, 2025

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INTEREST OF THE *AMICI CURIAE*¹

Amici Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Inc., Coalition of New Jersey Firearm Owners, Tennessee Firearms Association, Tennessee Firearms Foundation, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, America's Future, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

Some of these *amici* are currently litigating a Second Amendment challenge to an assault weapons ban imposed by the State of Illinois, and previously had petitioned this Court for a writ of certiorari. See *Gun Owners of Am., Inc. v. Raoul*, No. 23-1010, cert. denied, *Harrel v. Raoul*, 144 S. Ct. 2491 (2024). Some of these *amici* also filed an *amicus* brief in this Court

¹ It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

in another case challenging an assault weapons ban similar to the one challenged here.²

STATEMENT OF THE CASE

In 1993, Connecticut joined a small minority of states in banning the possession of so-called “assault weapons,” a term used to describe popular semi-automatic rifles like the AR-15, the AK-47, and their derivatives.³ These firearms “are both widely legal and bought by many ordinary consumers” nationwide. *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025) (unanimous opinion). Specifically, “[t]he AR-15 is the most popular rifle in the country.” *Id.*; accord *Garland v. Cargill*, 602 U.S. 406, 432, 430 (2024) (Sotomayor, Kagan & Jackson, JJ., dissenting) (“AR-15-style semiautomatic rifle[s]” are “commonly available”). For this reason, Justices of this Court have described the AR-15 as being “undeniably ‘in common use today.’” *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (Thomas, J., respecting denial of certiorari) (quoting *Heller v. District of Columbia*, 670 F.3d 1244, 1287 (D.C. Cir. 2011) (Kavanaugh, J., dissenting)).

² See *Snope v. Brown*, No. 24-203, Brief Amici Curiae of Gun Owners of America, et al. (Sept. 23, 2024).

³ Coined in the 1980s by gun control activists, the pejorative political term “assault weapon” has been described as a tool of “misdirection and obfuscation” intended to “increase the chance of public support for restrictions” on semiautomatic firearms with ergonomic features thought to look “menacing.” J. Sullum, “‘Assault Weapons,’ Explained,” *Reason* (June 2018).

But even more common are the ammunition magazines sold with these weapons, which feature standard capacities of 30 rounds or more. *See* Petition Appendix (“Pet.App.”) at 129a (reporting “[a]t least 150 million magazines with a capacity greater than ten rounds’ are owned by law-abiding American citizens”).

Yet despite the objective popularity of these firearms and magazines, the State of Connecticut imposes severe penalties on their simple possession. As amended, Connecticut’s assault weapons ban generally makes it a “class D felony” to so much as “possess[] an assault weapon....” Conn. Gen. Stat. § 53-202c(a). Likewise, Connecticut generally punishes as a “class A misdemeanor” the simple possession of a “large capacity magazine” (“LCM”), defined to mean “any firearm magazine, belt, drum, feed strip or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition....” *Id.* §§ 53-202w(c), (a)(1). Transfers of these magazines are punished more severely than their possession, being “a class D felony” per violation. *Id.* § 53-202w(b).

In 2022, Petitioners filed suit, challenging these restrictions under the Second and Fourteenth Amendments to the U.S. Constitution and moving the district court for a preliminary injunction against the restrictions’ enforcement. In 2023, the district court denied Petitioners’ request for preliminary relief, on the theory that “there is ... *no likelihood* [Petitioners] can succeed on the merits.” Pet.App.147a (emphasis added). Specifically, the district court upheld the

challenged statutes based on the Second Amendment’s plain text, balancing four rationales why assault weapons and LCMs are not entitled even to presumptive protection under *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022).

First, the district court required Petitioners to show not only that assault weapons and LCMs were “in common use,” but more specifically that these instruments were “commonly used or ... particularly suitable *for self-defense*....” Pet.App.135a (emphasis added). Second, the district court cited the concerns of law enforcement officers to declare assault weapons and LCMs more suitable for crime than other firearms and magazines, which “outweigh[ed] the limited evidence ... on the use of these weapons for self-defense.” Pet.App.139a. Third, the district court claimed that “mass shootings demonstrate[] that the weapons are commonly used for reasons *other than* lawful self-defense.” Pet.App.141a (emphasis added). And fourth, positing that the Second Amendment does not protect weapons of purportedly “militaristic character,” the district court declared that “assault weapons and LCMs are more suitable for military use than civilian self-defense.” Pet.App.147a.

Central to the district court’s holding was this Court’s reference to “the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008). Observing that “all firearms are ‘dangerous’ in the sense that they are lethal,” the district court “read[] the term ‘unusual’ as implying that there must be some level of lethality or capacity

for injury beyond societally accepted norms that makes it especially dangerous.” Pet.App.117a. Thus, the district court interpreted this standard to authorize the outright *banning* of any weapon a judge declares to be “*unusually dangerous*.” *Id.* (emphasis added). As the district court explained it, “the purpose of the ‘dangerous and unusual’ *exception to the Second Amendment* is to determine whether the firearm’s character is ... for the purpose of causing unlawful or *excessive* harm or fatalities.” Pet.App.119a (emphases added). The district court concluded that assault weapons and LCMs fit that bill. *See* Pet.App.141a.

Despite concluding that assault weapons and LCMs are not even “Arms” presumptively protected under the Second Amendment’s plain text, the district court also opined on the government’s proffer of historical firearm regulations. Citing modern mass shootings as “unprecedented,” the district court first adopted a “more nuanced approach” to historical analysis. Pet.App.148a-149a (citing *Bruen*, 597 U.S. at 27). And under what it called “step two of the *Bruen* analysis,” the district court believed that the challenged statutes had “relevantly similar historical analogues....” Pet.App.148a. First citing 19th-century regulations of “folding knives, dirk knives, Bowie knives, and percussion-cap pistols,” the district court concluded that governments may ban “new and dangerous weapon technology.” Pet.App.160a (capitalization omitted). Second, the district court found that “laws banning or restricting the carrying of concealed weapons ... between 1813 and 1838” also justified a flat ban on firearm possession, even within the home. Pet.App.164a.

On August 22, 2025, a panel of the Second Circuit affirmed the district court’s denial of preliminary relief. Assuming without deciding that Petitioners’ “proposed possession of the firearms and magazines at issue is presumptively entitled to constitutional protection,” the panel upheld the challenged statutes as “consistent” with a purported “historical tradition” of banning “unusually dangerous weapons unsuitable for and disproportionate to the objective of individual self-defense.” Pet.App.6a. In many respects, the panel’s opinion tracked the district court’s reasoning.

Beginning with a discussion of “preliminary considerations,” the panel rejected Petitioners’ argument that “the Second Amendment *necessarily* protects *all* weapons in common use.” Pet.App.30a (capitalization omitted). Rather, the panel posited that “common use” “do[es] not shield popular weapons from review of their potentially *unusually dangerous character*.” *Id.* (emphasis added). Thus, “[e]ven assuming *arguendo* that the desired firearms and magazines are ‘typically possessed’ and ‘in common use’ for lawful purposes,” the panel believed that courts may override the preferences of the American people if weapons are, in the estimation of judges, *dangerous enough*. *Id.* Second and relatedly, the panel derived its “unusually dangerous” formulation from the same source as the district court: this Court’s reference to historical regulation of “the carrying of ‘dangerous and unusual weapons.’” *Id.* Observing that historical sources often adopted the phrase “dangerous *or* unusual” rather than “dangerous *and* unusual,” the panel interpreted these textual variations as evidence that the phrase is a literary

“hendiadys, which individuals in the founding era would have interpreted as ‘unusually dangerous.’” Pet.App.32a n.19. However, the panel did not articulate how publicly *carrying* weapons in an “unusually dangerous” manner — so as to cause an “affray” — could justify the challenged statutes’ flat ban on assault weapons and LCMs in all contexts. Pet.App.31a.

Next, the panel proceeded to discuss what it labeled “*Bruen* step one.” Pet.App.33a. But the panel did not analyze the Second Amendment’s plain text or decide whether the assault weapons and LCMs at issue were presumptively protected bearable “Arms.” Instead, the panel cited “confusion among courts” on the proper textual analysis, noting that “Supreme Court authority has not settled the precise scope of the Second Amendment’s protections.” Pet.App.35a, 34a. Thus, the panel simply “assume[d] without deciding that the desired firearms and magazines are ... presumptively entitled to constitutional protection,” and proceeded to historical analysis. Pet.App.35a.

At the outset, the panel conceded that “we have not independently found in the record before us[] any exact historical analogues to the challenged statutes.” Pet.App.37a-38a. Instead, the panel cited the progression of firearms technology as a “dramatic technological change[]” and the prospect of mass shootings as an “unprecedented societal concern,” and “adopt[ed] a ‘more nuanced’ approach” to justify the challenged statutes using *other* firearm regulations. Pet.App.39a, 43a, 45a.

Applying this approach, the panel blessed much of the district court’s “unusually dangerous” historical analysis, relying on the same historical regulations the district court discussed to conclude that:

[H]istorical prohibitions on unusually dangerous weapons used in affray and restrictions on the concealed or open carry of unusually dangerous weapons, when accompanied by statutes that imposed taxes on the sale and possession of such weapons, provide an historical tradition of restricting unusual weapons that is relevantly similar to the challenged statutes. [Pet.App.59a.]

Finally, while acknowledging this case’s “preliminary stage,” the panel provided little guidance as to how Petitioners might distinguish these conclusions on remand. Pet.App.60a. Rather, the panel had “no difficulty” issuing its holding, which aligned with “every Circuit to address the question” thus far. Pet.App.61a, 60a n.40.

SUMMARY OF ARGUMENT

Yet another circuit court has ruled that the Second Amendment simply has nothing to say about a ban on “the most popular rifle in the country” and the millions of standard ammunition magazines sold with it. That conclusion is *obviously* atextual and ahistorical, yet it is representative of the lower courts’ continued rebellion against original meaning. The opinion below also marks a broader problem with the lower courts’ administration of *Heller* and *Bruen* — they believe

history supports broad possessory bans on supposedly “dangerous and unusual” firearms and accessories. It does not.

This Court should grant certiorari for three reasons in addition to those discussed in the Petition. First, this case would allow the Court to clarify that any “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons’” at best *concerns only public carry*. Indeed, this common-law “offence against the public peace” never criminalized the simple possession of weapons, no matter how “dangerous” or “unusual” judges estimated them to be. It certainly never reached possession within the home. Accordingly, the lower courts’ reliance on this tradition to justify categorical bans on purportedly “military-style” weapons not only flunks *Bruen*’s analogical test, but also it defies the intent of the Framers.

Second, review is necessary to reiterate this Court’s “common use” precedents. The American people’s overwhelming preferences are the final say on a weapon’s Second Amendment protection, and federal judges are in no position to second-guess. But rather than accepting the AR-15’s “common use” — indeed its ubiquity — as dispositive, the court below transformed the “common use” test into a threshold that all firearms must clear. Requiring affirmative proof that weapons are “in common use” *for* particular purposes — but then discounting Petitioners’ proof on this point — the court below entirely absolved the government of its historical burden and interest-balanced itself back into a pre-*Heller* world.

Third, this Court should put an end to the lower courts' circumvention of *Bruen*'s analogical framework. For the result-oriented judge, it would seem that every modern arm and every violent crime is an "unprecedented" development warranting "a more nuanced approach" under *Bruen*. To say that the exception has swallowed the rule understates the problem. And, once liberated from *Bruen*'s analogical rigor, the lower courts have cobbled together disparate and anachronistic firearm regulations to justify any gun law that suits their sensibilities. The opinion below is a textbook example of this anti-*Bruen* approach, and this Court should grant the Petition to safeguard its precedents from further attack.

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THE LIMITED SCOPE OF HISTORICAL REGULATIONS OF "DANGEROUS AND/OR UNUSUAL WEAPONS," WHICH NEVER BANNED THE SIMPLE POSSESSION OF ARMS.

A. The Lower Courts Have Misused this Court's "Dangerous and Unusual Weapons" Dicta to Rewrite History.

The Second Amendment guarantees "the right of the people to keep and bear Arms." In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court instructed that the term "Arms" means "[w]eapons of offence, or armour of defence," and "any thing that a man wears for his defence, or takes into his hands, or

useth in wrath to cast at or strike another,” and includes “all firearms” as originally understood. *Id.* at 581. And, because the Constitution must protect enumerated rights in modern contexts, this Court explained that “the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Id.* at 582.

Even so, this Court “recognize[d] an[] important limitation on the right to keep and carry arms.” *Heller* at 627. At the time, this Court appeared to suggest that the Second Amendment “protected” only those weapons “in common use,” and that the Second Amendment accordingly “does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes....” *Id.* at 627, 625. *Heller* postulated that “limitation” to be “fairly supported by the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons,’” but it never explained why. *Id.* at 627. Indeed, this Court noted that *Heller* was only its “first in-depth examination of the Second Amendment,” and there would be future opportunities “to expound upon the historical justifications ... if and when those exceptions come before us.” *Id.* at 635.

Then, *Bruen* later explained what *Heller* meant. Elaborating on the historical regulation of “dangerous and unusual weapons,” *Bruen* concluded that “the Second Amendment protects only the *carrying* of weapons that are those ‘in common use at the time,’ as opposed to those that ‘are highly unusual in society at large.’” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597

U.S. 1, 47 (2022) (emphasis added).⁴ In other words, historical regulations of public *carry* only inform the scope of public *carry*. Of course, this clarification comports with *Bruen*’s own analogical guidance. And a historical regulation of “*carrying*” weapons provides no justification for a broader prohibition on simply *owning* or *possessing* those weapons. Those broader prohibitions do not “impose a *comparable* burden on the right of armed self-defense,” and they fail *Bruen*’s “how.” *Id.* at 29 (emphasis added).

Yet despite this important clarification, the lower courts have run amok. The panel below ignored *Bruen*’s methodological guidance, claiming that “dangerous and unusual weapons” are simply “unprotected” in all contexts — *i.e.*, that they are not “Arms” at all. Pet.App.18a. The district court made the same error, asserting that there is a “‘historical tradition’ of *prohibiting* dangerous and unusual arms” altogether. Pet.App.114a (emphasis added). However, this Court “ha[s] never squarely addressed what types of weapons are ‘Arms’ protected by the Second Amendment,” leaving “open essential questions such as what makes a weapon ‘bearable,’ ‘dangerous,’ or

⁴ This Court reiterated this understanding in *United States v. Rahimi*, 602 U.S. 680 (2024), observing that “the *bearing* of arms was subject to” some regulation at the Founding, as “[s]ome jurisdictions banned the *carrying* of ‘dangerous and unusual weapons.’” *Id.* at 691 (emphases added). Regulation of how one may publicly “bear” (*i.e.*, carry) weapons is distinct from regulation of what weapons one may “keep” ... in their home” in the first instance. *Bruen* at 32. Indeed, they implicate different portions of the Second Amendment’s plain text.

‘unusual.’” *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (Thomas, J., respecting denial of certiorari).

The lower courts’ historical confusion should be addressed, and this case presents an ideal vehicle to do so. Indeed, the courts below expressly relied on “the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons’” to fashion their “*unusually dangerous*” standard for the ownership and simple possession of firearms. *Heller* at 627; Pet.App.31a. And this standard permitted the panel to uphold the challenged statutes based not on the intent of the Framers, but rather the judges’ own estimations of the scariness of weapons. For example, the panel declared assault weapons and LCMs to be “unsuitable” and “disproportionate” for self-defense (Pet.App.6a), despite being perfectly capable of “facilitat[ing] armed self-defense.” *Bruen* at 28. Without this Court’s guidance as to how courts are to approach historical regulations banning the carrying of “dangerous and unusual weapons,” the lower courts seem intent on interest-balancing popular firearms out of Americans’ hands altogether, a trend that appears to be spreading.

B. Historical Regulations of “Dangerous and Unusual Weapons” Did Not Prohibit Simple Possession, but Rather the Public Brandishing of Arms in a Manner that Disturbed the Peace.

When this Court first recognized the “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons’” (*Heller* at 627), it did so by citing

Sir William Blackstone's Commentaries on the Laws of England. Importantly, Blackstone categorized this prohibition as an "Offence[] Against the *Public Peace*."⁵ Thus, it shared a common theme with the 12 other common-law offenses with which it was codified. All were "either ... an actual breach of the peace; or constructively so, by tending to make others break it." *Id.* The relevant text of this historical regulation reads:

The offence of riding or going armed, with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land; and is particularly prohibited by the statute of Northampton....
[*Id.* at 148-49.]

In other words, this sort of regulation was nothing more than a "[h]istorical prohibition[] on affray...." Pet.App.31a. Affray laws "regulated a niche subset of Second Amendment-protected activity," not all possession. *Rahimi* at 770 (Thomas, J., dissenting). Indeed, Blackstone made clear that the common-law offense required something more than simple possession of a "dangerous or unusual weapon" in order for criminal liability to attach. The law required that the weapon not only be possessed, and not even just that it be present in public ("riding or going armed"), but *also* that its presence breach "the public peace" and cause "terr[or]." And obviously, for this to

⁵ 4 William Blackstone, Commentaries on the Laws of England at 142 (John Taylor Coleridge ed., 1825) (emphasis added).

happen, such weapon must have been carried openly and visibly.

Confirming this understanding, a later treatise by Francis Wharton explained that this prohibition did not reach peaceful possession of weapons *within the home*:

[T]here may be an affray where there is no actual violence; as where a man arms himself with dangerous and unusual weapons, in such a manner as will naturally cause a terror to the people, which is said to have been always an offence at common law ... *but it is clear that no one incurs the penalty of the statute for assembling his neighbours and friends in his own house, against those who threaten to do him any violence therein, because a man's house is his castle.*⁶

This Court should grant the Petition to clarify the correct scope of this historical tradition of regulating public carry. Courts have been misreading it to justify atextual and ahistorical arms bans on *possession* ever since *Heller* was decided.

⁶ F. Wharton, A Treatise on the Criminal Law of the United States at 726-27 (2d ed. 1852) (emphasis added).

C. The Lower Courts Are Misapplying the History of “Dangerous and Unusual Weapons” to Uphold Bans on Purportedly “Military” Weapons, which the Founders Expressly Intended the Second Amendment to Protect.

Adopting a sanitized view of the Second Amendment, the panel posited that firearms with “military-like features” cannot possibly be protected “Arms,” given the Amendment’s “core lawful purpose of self-defense.” Pet.App.39a, 46a. But self-defense against urban criminals using small, concealable handguns is not the *only* purpose of the Second Amendment, nor is it even the “core” self-defense purpose for which the Framers included it in the Bill of Rights. This Court should grant the Petition to correct this restrictive reading of “self-defense,” which “is a virus that may spread if not promptly eliminated.” *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 218 L. Ed. 2d 71, 75 (2024) (Alito & Thomas, JJ., dissenting from denial of certiorari).

As this Court explained in *Heller*, the Founders sought to guarantee a failsafe against despotism after having just thrown off the yoke of the then-most powerful empire in the world. The Second Amendment’s own text and structure confirms this understanding. Its prefatory militia clause “does not limit the latter [operative clause] grammatically, but rather announces a purpose.” *Heller* at 577. The militia clause therefore serves a “clarifying function,” because “[l]ogic demands that there be a link between the stated purpose and the command.” *Id.* at 578, 577.

The Founders understood the militia — “a subset of ‘the people’” described in the operative clause — to be “useful in repelling invasions and suppressing insurrections,” to “render[] large standing armies unnecessary,” and to “train[] in arms and organize[] ... to resist tyranny.” *Id.* at 580, 597-98. All of these functions, they explained, were “necessary to the security of a free State.” *Id.* at 597. Thus, the Second Amendment must protect, at a minimum, that conduct which effectuates its prefatory clause — the citizen ownership, “proper discipline,” “training,” and use, if necessary, of “ordinary military equipment” as a “safeguard against tyranny.” *Id.* at 597, 624, 600; *see also United States v. Miller*, 307 U.S. 174, 178 (1939).⁷

Unsurprisingly, the Founders intended the Second Amendment to guarantee a parity of armament between the citizen-soldier and the government infantryman — “military-like features” included. James Madison famously “doubted whether a militia thus circumstanced could ever be conquered by ... regular troops.”⁸ Alexander Hamilton likewise contemplated “a large body of citizens, little if at all inferior ... in discipline and the use of arms” to a

⁷ Even so, the assault weapons at issue here are not actually “military” arms, as they are only semiautomatic. *See* E. Wallace, “Assault Weapon” Myths, 43 S. ILL. U. L.J. 193, 205 (2018) (“No military in the world uses a service rifle that is semiautomatic only.”).

⁸ The Federalist No. 46, at 299 (James Madison) (Clinton Rossiter ed., 1961).

standing army.⁹ And Tench Coxe explained that “Congress have no power to disarm the militia. Their swords, and *every other terrible implement of the soldier, are the birth-right of an American.*”¹⁰

This understanding persisted well into the 19th century. *See Bruen* at 37 (“19th-century evidence [i]s ‘treated as ... confirmation of what the Court thought had already been established.’”). Decades after the Founding, the Supreme Court of Tennessee explained that “arms ... are such as are usually employed in civilized warfare, and that constitute the ordinary military equipment.” *Aymette v. State*, 21 Tenn. 154, 158 (1840). And in discussing the Second Amendment in 1897, Henry Campbell Black, author of the eponymous law dictionary, recognized that “[t]he ‘arms’ here meant are those of a soldier. ... The citizen has at all times the right to keep arms of modern warfare.”¹¹

By excising protection of firearms with “military-like features” from the Second Amendment, the panel below eradicated the Second Amendment’s foremost protection. This Court should grant the Petition and apply this guiding principle to this and all other arms-ban challenges.

⁹ The Federalist No. 29, *supra*, at 185 (Alexander Hamilton).

¹⁰ T. Coxe, A Pennsylvanian, No. 3, Pa. Gazette, Feb. 20, 1788, at 2 (emphasis added).

¹¹ H.C. Black, Handbook of American Constitutional Law § 203 (2d ed. 1897).

**II. REVIEW IS NECESSARY TO CLARIFY THAT
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In *Heller*, this Court observed that “handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.” *Heller* at 629. Full stop. In fact, the handgun’s “overwhelming[]” popularity and entry into “common use” meant that the District of Columbia’s ban would have “fail[ed] constitutional muster” “[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights...” *Id.* at 628-29. It did not even seem to matter to the Court whether historical analogues might have supported the District’s ban — even though “[f]ew laws in the history of our Nation” could have done even that. *Id.* at 629. Rather, it was “enough to note” a weapon’s modern popularity in order to conclude not only that the Second Amendment had something to say about its regulation, but also that a flat *ban* on such a weapon was simply “invalid” at the starting gate. *Id.* at 629.

Reiterating and reinforcing this principle in *Bruen*, this Court explained that “the traditions of the American people ... demand[] our unqualified deference.” *Bruen* at 26. Thus, even if historical “laws prohibited the carrying of handguns” in the past, this Court cautioned that “they provide no justification for laws restricting the public carry of weapons that are

unquestionably in common use today.” *Id.* at 47. Taken together, these precedents stand for the simple proposition: courts are to defer to the widespread exercise of individual rights. The *people’s preferences prevail*. Indeed, “[o]ur Constitution allows the American people — not the government — to decide which weapons are useful for self-defense.” *Snope v. Brown*, 145 S. Ct. 1534, 1537 (2025) (Thomas, J., dissenting from denial of certiorari). And if millions — if not tens of millions — of Americans overwhelmingly choose a particular arm for lawful purposes, its protection as a protected “Arm” is secured.

But if this “baseline” approach is supposed to keep “easy cases easy,”¹² the courts below never got the memo. Contrary to this Court’s precedents, the district court declared “common use” to be a *prerequisite* to a weapon even “fall[ing] *within the scope of the Second Amendment*” in the first instance. Pet.App.120a (capitalization omitted) (emphasis added). In other words, demonstrating “common use” became *Petitioners’* burden to bear, even though this Court made clear that “the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms” (*Heller* at 582), and “we use history to determine which modern ‘arms’ are protected by the Second Amendment....” *Bruen* at 28. This Court has never sanctioned a popularity test for a firearm to receive even presumptive protection. Requiring proof

¹² See, e.g., *Florida v. Jardines*, 569 U.S. 1, 11 (2013) (obviating analysis of “reasonable expectations of privacy” under the Fourth Amendment when the “property-rights baseline” can resolve a case).

of “common use” to proceed beyond the Second Amendment’s plain text absolves the government of the historical tradition that it alone “must demonstrate.” *Id.* at 17.

But the errors below do not end there. Taking a restrictive approach to enumerated rights, the panel also declared assault weapons and LCMs to be “unsuitable” and “disproportionate” for self-defense, and so they may be banned, especially when “numerous legal alternatives” exist. Pet.App.6a, 4a. But this is precisely the sort of “judge-empowering ‘interest-balancing inquiry’” that this Court “expressly rejected” in *Heller*. *Bruen* at 22. Moreover, the mere existence of “alternatives” to exercising a constitutional right are no cure for its violation. *Heller* already explained that “[i]t is no answer to say ... that it is permissible to ban the possession of handguns so long as the possession of other firearms (*i.e.*, long guns) is allowed.” *Heller* at 629. Judges simply “lack [the] expertise” to second-guess Americans’ overwhelming preferences, and the opinions below are proof positive of that. *Bruen* at 25.

Finally, the panel believed the Second Amendment protects *only* those weapons “[u]nsuitable” for “self-defense.” Pet.App.6a. But the Second Amendment is not so narrow. As this Court explained, early Americans “valued the ancient right” for “preserving the militia” and also “hunting.” *Heller* at 599. None of this Court’s precedents stands for the panel’s proposition, and this Court should grant certiorari to reiterate that the Second Amendment protects arms for all lawful purposes, not just judicially constrained

applications of “self-defense.” Carrying a five-shot revolver to protect against mugging is not *all* that the Framers wrote the Second Amendment to protect.

III. FURTHER CLARIFICATION OF *BRUEN*’S ANALOGICAL METHODOLOGY IS CRITICAL.

Both the district court and the panel purported to apply *Bruen*’s “more nuanced approach,” upholding the challenged statutes by concocting a piecemeal, late-in-time “historical tradition.” Pet.App.148a-149a; Pet.App.39a. This approach is not what this Court had in mind in *Bruen*, and the Court should grant the Petition to clarify this issue for lower courts that have keyed in on this language to entirely circumvent *Bruen*’s analytical framework.

Of course, *Bruen* anticipated two types of Second Amendment cases. The first would be “fairly straightforward” and implicate “a general societal problem that has persisted since the 18th century.” *Bruen* at 26. In such a case, “the lack of a distinctly similar historical regulation addressing that problem” would be “relevant evidence that the challenged regulation is inconsistent with the Second Amendment.” *Id.* In contrast, a far rarer second type of case would “implicat[e] unprecedented societal concerns or dramatic technological changes” and “may require a more nuanced approach.” *Id.* at 27. This approach to “modern regulations that were unimaginable at the founding” would “involve *reasoning by analogy*” to determine “whether the two regulations are ‘relevantly similar.’” *Id.* at 28-29

(emphasis added). In other words, *Bruen*’s “more nuanced approach” is nuance in “analogical *reasoning*,” not nuance in the historical time period. *Bruen* never sanctioned reliance on *later* history to uphold a gun law when Founding-era history proves insufficient. *Id.* at 28 (emphasis added).

Thus, even if there were some “unprecedented societal concerns or dramatic technological change[]” at issue below — and there were not¹³ — then the panel still should have reasoned by analogy *at the Founding*. Pet.App.28a. And if no Founding-era analogue was relevantly similar to the challenged statutes, that should have ended the matter. See Pet.App.37a-38a (conceding that “we have not independently found in the record before us[] any exact historical analogues to the challenged statutes”).

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

¹³ Citing the prospect of mass shootings and increases to the “capacity and the rapidity of firing” of modern firearms, the panel believed these developments rendered assault weapons and LCMs *completely unimaginable* to the Founders. Pet.App.38a. But *Heller* and *Bruen* both concerned modern handguns, which also have grown in firing speed, capacity, and lethality since the Founding. Yet rather than sanction a “more nuanced approach” based on the mere fact that firearms have improved over time, this Court explained that those cases “exemplifie[d]” a “straightforward historical inquiry.” *Bruen* at 27.

Respectfully submitted,

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