Nos. 25-238, 25-566

In the Supreme Court of the United States

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

v.

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

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

v.

RONNELL HIGGINS, in His Official Capacity as Commissioner of the Connecticut Department of Emergency Services and Public Transportation, *et al.*,
Respondents.

On Petitions for Writs of Certiorari

AMICUS BRIEF OF MEMBERS OF CONGRESS AND THE AMERICAN CENTER FOR LAW & JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI[1]

Amici are Members of the United States House of Representatives, listed in the Appendix, including Representative Andrew Clyde of Georgia, together with the American Center for Law & Justice.

Representative Clyde and the other congressional *amici* are elected Members of the United States House of Representatives who have sworn an oath to support and defend the Constitution of the United States. They have a direct interest in the proper interpretation of the Second Amendment, both as legislators charged with preserving constitutional rights and as representatives of constituents who lawfully keep and bear arms. Representative Clyde has an additional, particularized expertise: as a Federal Firearms Licensee he has over three decades of subject matter experience.

The American Center for Law & Justice ("ACLJ") is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have appeared before this Court as counsel for parties and as amici in numerous cases involving the Bill of Rights. The ACLJ has a longstanding interest in the correct interpretation of the Second Amendment and has previously filed amicus briefs in this Court in support of the individual right to keep and bear arms, *e.g., District of Columbia v. Heller*, 540 U.S. 570 (2008); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). The proper resolution of

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[1] No counsel for any party authored this brief in whole or in part. No such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity aside from the ACLJ, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

these cases is a matter of substantial interest to the ACLJ because it concerns whether arms in common use that bear a reasonable relationship to the citizen-militia tradition remain protected, or whether lower courts may invert that tradition by treating military utility as a reason to ban them.

SUMMARY OF ARGUMENT

The Second Amendment's prefatory clause is not surplusage. *Heller* correctly rejected the mistaken interpretation that treated the clause as converting the right into a purely collective guarantee against Congress. But the clause remains illuminating. It reveals a Founding-era preference for "the body of the people, trained to arms," Va. Declaration of Rights § 13 (1776), over large standing armies, and it tells us something important about the scope of the individual right the operative clause protects.

Heller established that the right is an individual one belonging to the people. Many lower courts, however, have treated that holding as exhausting the right's content—limiting protection to arms with immediate usefulness for self-defense against common criminals. That reading is as incomplete as the pure communal view it replaced. The militia clause demonstrates that the individual right includes common arms suitable for militia service. Military usefulness is not dispositive, and the Second Amendment does not protect every weapon merely because it is militarily useful. But Military usefulness is, if anything, an indication that an arm lies within the Amendment's guarantee, not outside it.

That understanding is continuous from the Founding through this Court's decision in *Miller*. *United States v. Miller*, 307 U.S. 174 (1939). The

Virginia Declaration of Rights described a militia "composed of the body of the people, trained to arms." The Militia Act of 1792 required ordinary citizens to provide themselves with the standard infantry arm of the era. Nineteenth-century courts treated as protected arms "usually employed in civilized warfare" or "proper for the defense of the State." *Miller* itself denied protection to a short-barreled shotgun precisely because it *lacked* a reasonable relationship to the militia, not because it possessed too much military utility.

Many lower courts have inverted this rule. Some Circuit courts have treated an AR-15 platform rifle's military character—"battlefield prowess," design for combat, resemblance to the M-16—as the reason it may be banned. That approach reads the prefatory clause out of the Constitution.

The Second Amendment protects, at a minimum, arms that are in common use for lawful purposes and that bear a reasonable relationship to the citizen-militia tradition the prefatory clause celebrates. Military small arms that meet the common-use test therefore sit near the heart of the right, not outside it.

ARGUMENT

I. The Prefatory Clause Illuminates the Scope of the Individual Right: Arms Suited to the Citizen-Soldier.

Heller held that the Second Amendment protects an individual right to keep and bear arms, and that the prefatory clause does not convert that right into a collective one limited to members of an organized militia. 554 U.S. at 577–81, 595–96. At the same time, the Court made clear that the two clauses are related: the prefatory clause announces the purpose that the operative clause was designed to serve. *Id*. at 577–78. That purpose—the preservation of a militia composed of the body of the people—has direct implications for the kinds of arms the right protects. Arms that ordinary citizens keep and that are suitable for militia service stand at the core of the guarantee, not outside it.

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. As this Court explained, the prefatory clause "does not limit the latter grammatically, but rather announces a purpose." *Heller*, 554 U.S. at 577. "Logic demands that there be a link between the stated purpose and the command," but "apart from that clarifying function, a prefatory clause does not limit or expand the scope of the operative clause." *Id.* at 577-78.

The holder of the right to keep and bear arms is "the people," a phrase that is not ambiguous and not synonymous with the States. "The ultimate right to keep and bear arms belongs to 'the people,' not the 'states.' As the language of the Tenth Amendment

shows, these two are of course not identical and when the Constitution means 'states,' it says so." Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L.J. 1131, 1165 (1991).[2] The people at the core of the Second Amendment were "the same 'We the People' who in conventions had 'ordain[ed] and establish[ed]' the Constitution." *Id.* at 1163.

Pre-founding sources confirm this view. Blackstone identified among the auxiliary rights of the subject "that of having arms for their defence, suitable to their condition and degree, and such as are allowed by law," which he described as "a public allowance, under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression." 1 William Blackstone, *Commentaries* *143-144.

The prefatory clause does not limit the amendment's scope, but neither is it meaningless. *See Price v. Forrest*, 173 U.S. 410, 427 (1899) (a preamble "may be referred to in order to assist in ascertaining the intent and meaning" of the operative text).

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[2] Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L.J. 1131, 1165 (1991). The "state's rights" reading refers to the, now rejected, view that the right of resistance and self-preservation operates "through the medium of the State or federal governments, not the individual exertions of 'the people.'" Patrick J. Charles, *The 1792 Militia Act, the Second Amendment, and Individual Militia Rights: a Legal and Historical Perspective*, 9 GEO. J.L. & PUB. POL'Y 323, 376 (2011); *see also* Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* (2006). As Prof. Amar explains, that reading cannot be reconciled with the text: the Amendment secures the right to the "people," and the Tenth Amendment demonstrates that the drafters said States when they meant States.

The Founding generation understood the militia as the body of the people themselves. George Mason's Virginia Declaration of Rights—widely recognized as a major source for the federal Bill of Rights[3]—declared "[t]hat a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power." Va. Declaration of Rights § 13 (1776).[4] That formulation was no innovation. It reflected a long Anglo-American tradition that preferred an armed citizenry to a professional army controlled by the monarch. The Constitution did not change this, largely adopting the British model: Congress controls the funds, while the President is the commander-in-chief and commissions all officers. U.S. const. art. II. *See also* THE FEDERALIST NO. 69 (Hamilton) (comparing and contrasting the President's powers with the British monarch's).

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[3] *See Heller*, 554 U.S. at 594, 600–03 (discussing state declarations of rights, including Virginia's, as evidence of the public understanding). *See also McDonald v. City of Chicago*, 561 U.S. 742, 769 (2010) (noting the influence of state constitutional provisions on the understanding of the right);

Warren M. Billings, *"That All Men Are Born Equally Free and Independent": Virginians and the Origins of the Bill of Rights*, in *The Bill of Rights and the States: The Colonial and Revolutionary Origins of American Liberties* 335 (1992)

[4] The phrase, "composed of the body of the people" makes it explicit that this is a "general militia," composed of all able-bodied men, rather than what was sometimes called a "select militia," a volunteer army, akin to the modern National Guard. *See* Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* 148, 162 (1994).

Congress acted on the same understanding. The Militia Act of 1792 required that all able-bodied men between eighteen and forty-five must "provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges . . . or with a good rifle, knapsack, shot-pouch and powder-horn." Militia Act of 1792, ch. 33, § 1, 1 Stat. 271. The statute imposed an affirmative duty on the private citizen to own the standard infantry arm of the era. The arms the citizen was expected to keep were the arms he would bring to militia service. Contemporary state constitutions before and after the National Constitution struck the same note, protecting the right to bear arms for defense of both self and the state. *See, e.g.*, Vt. Const. ch. I, § XV (1777); Tenn. Const. art. XI, § 26 (1796); Ind. Const. art. I, § 20 (1816); Ala. Const. art. I, § 23 (1819). Contemporary commentaries offer additional support to this view, with Joseph Story explicitly connecting the right with protection against "sudden foreign invasions, domestic insurrections, and domestic usurpation of power by rulers." 3 Joseph Story, *Commentaries* § 1001 (1833 ed.). *See also* Thomas Cooley, *Const. Lim.*, 350 (5th ed. 1883) ("A standing army is peculiarly obnoxious in any free government . . . The alternative to a standing army is a well regulated militia, but this cannot exist unless the people are trained to bearing arms.").

This understanding of the militia as the body of the people, expected to keep arms suitable for service, has never been repudiated. The Militia Act of 1903 created the organized militia (today's National Guard) while leaving the unorganized militia intact. Federal law continues to define the militia of the United States as including "all able-bodied males at least 17 years of

age and . . . under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States," divided into the organized and unorganized militia. 10 U.S.C. § 246. This law does not itself confer a right to any particular arm, and its coverage is narrower than the Second Amendment's. It does, however, confirm that the militia concept the Founders wrote into the Constitution remains one that encompasses a significant portion of the citizen population.

The English background against which the Founders wrote reinforces the point. For centuries English law had required subjects to keep and practice with arms useful for the defense of the realm. The Statute of Winchester and its successors obligated villages to maintain butts and subjects to train with the longbow and later with firearms. Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right* 3-4 (1994). An act of Henry VIII expressly permitted ordinary subjects to "have and keep in every of their houses any such handgun or hand-guns, of the length of one whole yard," so that they might "the better aid and assist to the defence of this realm, when need shall require." *Id.* at 5–6. The militia was emphatically not the standing army; it was the body of the people, organized locally and ultimately accountable to civil authority rather than the Crown. That distinction—between a citizen militia and a professional army—was central to the English Bill of Rights' condemnation of James II for "raising and keeping a standing army within this kingdom in time of peace without consent of Parliament." 1 W. & M., sess. 2, c. 2 (1689). The American texts simply carried the same preference forward and made it constitutional.

This is not to deny the existence of the many weapons laws in the early United States upon which Respondents rely heavily. Cook County, Illinois *et al.* Br. in Opp. at 31–33, No. 25-238 (Oct. 29, 2025); Grant Higgins *et al.* Br. in Opp. at 11–12, No. 25-566 (Jan. 12, 2026). That tradition exists, but it does not support banning simple possession of dangerous arms. This tradition of regulation originates in the common law offense of "affray," that is, an assault on the public as opposed to an individual. Blackstone catalogued the offense among crimes against the public peace. "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 . . . in like manner as, by the laws of Solon, every Athenian was finable who walked about the city in armour." 4 William Blackstone, *Commentaries* *148-49. Three features of that offense are critical to understanding it. First, the prohibited act is riding or going armed, which regulates *conduct*, not mere possession. Second, it is classed with affrays, riots, and routs, not with offenses against property or ownership. Third, Blackstone's own example from Solon confirms the point: the Athenian was fined for the act of walking about the city in armor, not for owning armor. Thus, Respondents' heavy reliance on the term "dangerous and unusual weapons," without that context and meaningful from the founding era, is misplaced.

This Court noted recently in *Wolford* that eighteenth century American firearm restrictions were even more limited. *Wolford v. Lopez*, 146 S. Ct. 2032 (2026). Rather than ban the carrying of firearms in all public places, they reflect a "principle that when a State identifies specific places that are prone to particular 'abuse[s]' of the right, it can respond with 'focused regulations' to address the threat." *Id.* at

2058 (internal citations omitted). Likewise, *Heller*'s supporting authorities for firearms regulation are collected at 554 U.S. 627 and consist almost entirely of treatises describing the affray offense and cases applying it.

What this Court has never held, and what *Heller*'s discussion of "dangerous and unusual weapons" cannot support, is that the Second Amendment would allow a State to prohibit mere possession of an arm with a military characteristic or usefulness, let alone an entire class of arms owned by tens of millions of Americans. *Id*. at 627.

II. From the Founding Through *Miller*, Military Usefulness Was a Qualifying Criterion.

The historical rule established at the Founding did not disappear: Across the nineteenth century and through this Court's 1939 decision in *Miller*, American courts consistently treated an arm's suitability for military or militia service as a reason it fell within the right, not outside it. No court of that era held that an arm lost protection because it was too useful for the common defense.

a. Nineteenth Century Courts Treated as Protected Arms "Usually Employed in Civilized Warfare" or "Proper for the Defense of the State."

The leading cases confirm the point. In *Aymette v. State*, the Tennessee Supreme Court interpreted both the Second Amendment and the state constitution's analogue. 21 Tenn. (2 Hum.) 154 (1840) (discussing Tenn. Const. art. I § XXVI (1835) ("That the free white men of this State have a right to keep and to bear

arms for their common defence.")). After recounting the English history of resistance to standing armies and the preference for an armed citizenry, the court drew a sharp distinction: the arms protected are those "usually employed in civilized warfare, and that constitute the ordinary military equipment," as opposed to weapons "usually employed in private broils, and which are efficient only in the hands of the robber and the assassin." *Id*. at 158 . The legislature could prohibit the *carrying* of weapons dangerous to the peace, but it could not ban the keeping of arms that "would contribute to the common defence." *Id.* A "spear within a cane" could be restricted precisely because it had no military use. *Id.* at 161. Military character was the qualifying criterion; military weapons could not be prohibited.

The Georgia Supreme Court struck the same note in *Nunn v. State*. 1 Ga. 243 (1846) It asked whether the legislature could "take away this security, by disarming the people," if a well-regulated militia was necessary to the security of the state. *Id*. 251.[5] The right belonged to "the whole people," and it protected "arms of every description," not merely those used by an organized force. *Id.*

Texas law followed the same logic. In *English v. State*, the court upheld restrictions on Bowie knives and similar weapons on the ground that they "belong to no military vocabulary." 35 Tex. 473, 477 (1872). A soldier found with such weapons "would be punished for an offense against discipline." *Id.* Two years later

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[5] Georgia did not have an explicit constitutional protection of arms, but even before the ratification of the Fourteenth Amendment, the Georgia court held that the rights codified in the National constitution were "as perfect under the State as the national legislature and can not be violated by either." *Nunn*, 1 Ga. at 251.

the same court refined the standard: the arms protected are those "commonly kept, according to the customs of the people, and are appropriate for open and manly use in self-defense, as well as such as are proper for the defense of the State." *State v. Duke*, 42 Tex. 455, 458–59 (1874). The dual purpose—self-defense and defense of the state—remained explicit. Arms suitable for the latter were protected.

Arkansas reached the identical conclusion. In *Fife v. State*, the court explained that the arms guaranteed by the Constitution "are such as are needful to, and ordinarily used by a well regulated militia," and held that "the rifle, of all descriptions, the shot gun, the musket and repeater, are such arms, and that, under the Constitution, the right to keep such arms cannot be infringed or forbidden by the legislature." 31 Ark. 455, 460–61 (1876). Once more, suitability for militia service defined the core of the right.

In *State v. Workman*, the West Virginia Supreme Court of Appeals held that the arms protected by the Second Amendment "must be held to refer to the weapons of warfare to be used by the militia, such as swords, guns, rifles, and muskets—arms to be used in defending the State and civil liberty—and not to pistols, bowie-knives, brass knuckles, billies, and other weapons as are usually employed in brawls, street fights, duels, and affrays." 35 W. Va. 367, 373 (1891). Military character was again the dividing line.

Across these decisions, the pattern is consistent. Courts that upheld restrictions did so because the weapon lacked military character. Courts that struck restrictions did so in part because the right extended to arms useful for the common defense. None treated military usefulness as a reason to exclude an arm from protection.

b. *Miller* Applied the Same Rule and Denied Protection for Want of Military Character.

United States v. Miller continued this line of authority. 307 U.S. 174 (1939). The Court held that it could not say the Second Amendment protected a short-barreled shotgun "[i]n the absence of any evidence tending to show that possession or use of [it] at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia." *Id.* at 178. "Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense." *Id.* (citing *Aymette*). Indeed, *Miller* explicitly cited and relied upon the same nineteenth century authorities discussed here such as *Aymette, Duke*, *Fife*, and *Workman*. *See Miller*, 307 U.S. at 182 n.3 (holding that the decision was in conformity with the listed State cases).

The test *Miller* applied was the same one the nineteenth-century courts had used. The short-barreled shotgun failed because it *lacked* demonstrated military utility, not because it possessed too much. The Court described the militia as "all males physically capable of acting in concert for the common defense," who "when called for service were expected to appear bearing arms supplied by themselves and of the kind in common use at the time." *Id.* at 179. The arms protected were the arms a citizen would keep and bring to that service.

Miller has sometimes been misread as reducing the Second Amendment right to a collective right limited to members of an organized force. That reading cannot be reconciled with the opinion. The Court never asked whether the defendants were

enrolled in a militia. It asked whether the *weapon* had a reasonable relationship to the militia's purpose. The answer turned on the arm's military character. That is the opposite of the rule some lower courts now erroneously apply, treating an AR-15's military utility as a reason for its prohibition.

III. Lower Courts Have Inverted the Rule by Treating Military Utility as Disqualifying.

The history and tradition set out above establish a clear rule. The Second Amendment protects an individual right belonging to the people. The prefatory clause does not convert that right into a collective one, but it does illuminate its scope: the arms the people have a right to keep include those suitable for the citizen-militia the clause describes. Military usefulness is therefore a qualifying characteristic, not a disqualifying one. An arm does not lose constitutional protection because it is effective in the hands of a citizen-soldier. On the contrary, that is the very category of arm the Amendment was written to secure.

a. The Correct Reading of *Heller*'s M-16 Passage

Lower courts repeatedly rely on a single passage in *Heller* to justify banning semi-automatic rifles of military pattern. The passage does not support that result. In responding to an anticipated objection, the Court observed:

> It may be objected that if weapons that are most useful in military service—M-16 rifles and the like—may be banned, then the Second

> Amendment right is completely detached from the prefatory clause. But as we have said, the conception of the militia at the time of the Second Amendment's ratification was the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty. It may well be true today that a militia, to be as effective as militias in the 18th century, would require sophisticated arms that are highly unusual in society at large. Indeed, it may be true that no amount of small arms could be useful against modern-day bombers and tanks. But the fact that modern developments have limited the degree of fit between the prefatory clause and the protected right cannot change our interpretation of the right.

Heller, 554 U.S. at 627-28. Three points are critical.

First, nothing in the passage indicates that weapons useful for military service may be banned. It is a response to a hypothetical objection. The Court was explaining why the right remains connected to the prefatory clause even if some highly sophisticated military weapons fall outside the Amendment's protection.

Second, the Court immediately reaffirmed the historical understanding of the militia: it was "the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty." The arms the people already kept—and that were suitable for that duty—remain the core of the right.

Third, nothing in the passage suggests that an arm loses constitutional protection because it is useful for militia service. The Court was addressing the opposite

concern: that modern military technology might have weakened the fit between the prefatory clause and the right. It did not invent a new exclusion for arms that are effective in the hands of a citizen-soldier.

Lower courts have inverted this limited observation. They treat the very characteristic that historically qualified an arm for protection—its suitability for the citizen-militia—as the reason it may be banned. That reading cannot be reconciled with the passage, with Miller, or with the nineteenth-century cases that treated military usefulness as a floor, not a ceiling.[6]

b. Some Lower Courts Have Flipped the Test

Beginning with *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc), a series of decisions have treated military usefulness as disqualifying. The Fourth Circuit held that because the banned rifles are "like" "M-16 rifles"—"weapons that are most useful in military service"—they "are among those arms that the Second Amendment does not shield." *Id.* at 135.[7]

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[6] For additional modern scholarship on this point, and the "common defense" purpose of the Second Amendment more broadly, *see* Robert Leider, *The Individual Right to Bear Arms for Common Defense*, 102 Notre Dame L. Rev. __ (forthcoming 2027).

[7] It should be stressed that, although common parlance treats the M-16 as the select fire counterpart of the "civilian" AR-15, the two platforms fire the same ammunition and accept the same magazines; the sole material distinction is the presence or absence of select-fire capability—the "single, essential feature" that separates a military service rifle from its civilian counterpart. Gregory Wallace, *"Assault Weapon" Myths*, 43 S. ILL. U. L.J. 193 (2018). That difference is one of configuration, not of a different design family. *Id.* If courts treat that single

It emphasized the rifles' design for military use, manufacturers' references to "battlefield prowess," and the supposed slight difference between semi-automatic and fully automatic fire. *Id.* at 124–25. After *Bruen*, the same court reaffirmed the approach, describing the banned arms as "military-style weapons designed for sustained combat operations that are ill-suited and disproportionate to the need for self-defense." *Bianchi v. Brown*, 111 F.4th 438, 441 (4th Cir. 2024) (en banc).

The Seventh Circuit followed the same path. It reasoned that "the AR-15 is almost the same gun as the M16 machinegun" and may therefore "be reserved for military use." *Bevis v. City of Naperville*, 85 F.4th 1175, 1194–95 (7th Cir. 2023). When applying the "common use" standard, the court ignored the number of such rifles in private hands, calling common use "a slippery concept." *Id.* at 1198. The decision below relies explicitly on *Bevis*, which has been reaffirmed post-trial. *Barnett v. Raoul*, No. 24-3060, 2026 WL 1982951 (7th Cir. July 9, 2026).

Other circuits have reached the same result by related routes. The First Circuit assumed the arms were protected but upheld the ban in part because AR-15s "offer limited self-defense utility" and compared them to the "guns with the mass shooters of their day." *Capen v. Campbell*, 134 F.4th 660, 672 (1st Cir. 2025). The Second Circuit likewise emphasized the rifles' military development and concluded that civilian versions are not "substantially less dangerous than [their] military counterpart," while simultaneously noting features that make them less

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feature as enough to place an entire class of arms outside the Second Amendment, the logic supplies no meaningful stopping point short of any or all semi-automatic firearms. *See Kolbe*, 849 F.3d at 124.

ideal for ordinary self-defense than a handgun. *Nat'l Ass'n for Gun Rights v. Lamont*, 153 F.4th 213, 241 (2d Cir. 2025).

These decisions share a common error. They treat the very characteristic that historically qualified an arm for protection—its suitability for the citizen-soldier—as the reason it may be banned. The prefatory clause is thereby inverted: instead of illuminating why certain arms lie near the core of the right, it is used to push them outside it.

c. The Proper Standard: Arms in Common Use That Bear a Reasonable Relationship to the Citizen-Militia Tradition Lie at the Heart of the Second Amendment's Protection.

The historical rule is not that every militarily useful weapon is protected. Nuclear, chemical, or high-yield explosive devices fall outside of this tradition.[8] But the arms ordinary citizens were expected to keep and bring to service—the standard infantry small arms of the day— were the arms the Second Amendment was written to secure, and their modern counterparts remain within that same protection.

Heller and *Miller* supply the governing metric: arms "of the kind in common use at the time." *Heller*, 554 U.S. at 625; *Miller*, 307 U.S. at 179. That standard is not a pure head-count of how many specimens happen to be in circulation. It asks whether the arm is of the type that ordinary citizens keep for lawful purposes *or* that bears a reasonable relationship to the citizen-militia tradition the prefatory clause

[8] *See* Leider, *supra*, at n. 80.

describes. Semi-automatic rifles of the AR-15 platform satisfy both requirements. They are owned in the millions by law-abiding citizens.[9] They are the modern lineal descendants of the standard infantry arm the Militia Act of 1792 required citizens to keep. And they remain the basic individual weapon of light infantry forces, including the "organized" militia, that is the National Guard,[10] and many law-enforcement agencies.

AR-15/M16 rifles are, undoubtedly, today's equivalent of the muskets and rifles the Militia Act of 1792 required citizens to provide. They are by every measure the most popular rifle in the United States. *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025). Bans like these affect "tens of millions of lawabiding AR-15 owners throughout the country." *Snope v. Brown*, 145 S. Ct. 1534, 1538 (2025) (Thomas, J., dissenting from denial of certiorari).

To hold that these rifles may be banned, not in spite of, but *because* they are effective in military service is to read the prefatory clause out of the Constitution, violate its plain text, and completely ignore this Court's ruling in *Heller*. The Amendment protects, at minimum, arms that are in common use for lawful purposes and that bear a reasonable relationship to the citizen-militia tradition the clause celebrates. Military small arms that meet the

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[9] The National Shooting Sports Foundation estimates that more than 32 million modern sporting rifles (the category that includes AR-15 platform rifles) have entered civilian circulation since 1990, owned bv some 24 million Americans. *See* NSSF, *Firearm Production in the United States* (2025 ed.)

[10] While it is beyond the scope of this case, it is worth mentioning that the National Guard and State Guards are not, in a Second Amendment sense, "militias." *See*, *supra*, note 4.

common-use test, of which the AR-15 is a quintessential example, must therefore sit near the heart of the right, not outside it.

* * *

CONCLUSION

This Court should reverse the judgments below.

Respectfully submitted,

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APPENDIX

APPENDIX
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