No. 24-203

In The
Supreme Court of the United States

DAVID SNOPE, ET AL.,

Petitioners,

v.

ANTHONY G. BROWN, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF MARYLAND, ET AL.,

Respondents.

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

BRIEF OF THE NATIONAL RIFLE ASSOCIATION OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The National Rifle Association of America (NRA) is America's oldest civil rights organization and foremost defender of Second Amendment rights. It was founded in 1871 by Union generals who, based on their Civil War experiences, sought to promote firearms marksmanship and expertise amongst the citizenry. Today, the NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA has approximately four million members, and its programs reach millions more.

The NRA is interested in this case because Maryland's ban on common semiautomatic rifles—including the most popular rifle in America—violates the Second Amendment.

[1] All parties received timely notice of *Amicus*'s intent to file this brief. No counsel for any party authored this brief in any part. Only *Amicus* funded its preparation and submission.

SUMMARY OF ARGUMENT

This Court held that bans on common arms violate the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008). The *Heller* Court applied the text-and-history test later expounded in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). Analyzing the Second Amendment's plain text, *Heller* determined that the Second Amendment extends, prima facie, to all bearable arms. Proceeding to our nation's historical tradition of firearm regulation, *Heller* held that only "dangerous and unusual" arms may be banned, and because common arms are not unusual, a ban on common arms violates the Second Amendment.

Under *Heller*, this case is simple: because Maryland bans common semiautomatic rifles—including the most popular rifle in America—the ban violates the Second Amendment.

But the Fourth Circuit, dissatisfied with this Court's "ill-conceived popularity test," invented its own test. The Fourth Circuit's test contradicts *Heller* at every turn.

In its plain text inquiry, the Fourth Circuit: (1) requires plaintiffs to prove that arms are commonly used for self-defense, despite *Heller* establishing that all bearable arms are presumptively protected; (2) limits the Second Amendment to self-defense, despite *Heller* recognizing that hunting, training, and community defense are protected purposes; (3) excludes weapons that the court deems unsuitable for self-defense, despite *Heller* holding that the People decide which arms are protected; (4) counts for

commonality only instances in which the weapon is actively employed in self-defense, despite *Heller* holding that possession alone is dispositive; (5) excludes weapons "most useful in military service," despite *Heller* elucidating that its test applies regardless of the weapon's suitability for military use; and (6) allows common weapons to be banned if they are dangerous, despite *Heller* holding that common weapons cannot be banned.

In its historical analysis, the Fourth Circuit did not identify a tradition of banning common weapons. Instead, the court determined that an assortment of lesser restrictions—including laws regulating the manner of carry or forbidding brandishing—established a tradition allowing governments to "*do something*" about particular weapons. This supposed tradition, the court decided, justifies prohibiting common arms. But if that were the case, the handgun ban would have been upheld in *Heller*.

It is exclusively this Court's prerogative to overrule its precedents. Yet the Fourth Circuit rejected this Court's test for arms prohibitions and replaced it with a test directly contrary to this Court's precedents. The Court should grant the Petition for Certiorari to reaffirm its precedents and restore the right of Americans to possess common weapons.

ARGUMENT

I. *Heller* held that common arms cannot be banned.

This Court held that bans on common arms violate the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008). *Heller*, invalidating the District of Columbia's handgun ban, applied the test later expounded in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*:

> In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation. . . . the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation.

597 U.S. 1, 17 (2022).

Conducting the plain text analysis of the Second Amendment, *Heller* determined that "[t]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms." 554 U.S. at 582.

Proceeding to the historical tradition of firearm regulation, *Heller* held that common arms cannot be banned. *Heller* first determined that commonly possessed weapons are protected arms. "The traditional militia was formed from a pool of men bringing arms 'in common use at the time' for lawful purposes like self-defense." *Id.* at 624 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)). Traditionally, therefore, "the sorts of weapons

protected were those 'in common use at the time.'" *Id.* at 627 (quoting *Miller*, 307 U.S. at 179).

As for prohibitions on particular arms, *Heller*'s extensive historical analysis identified only "the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" *Id.* This traditional regulation "fairly supported" *Heller*'s holding that the Second Amendment protects common arms because common arms are necessarily not dangerous *and unusual*. *Id.*; *see also Bruen*, 597 U.S. at 47 ("Drawing from this historical tradition [of restrictions on 'dangerous and unusual weapons'], we explained [in *Heller*] 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.'") (quoting *Heller*, 554 U.S. at 627).

Heller's "historical understanding of the scope of the right" was consistent with *Miller*—which held that short-barreled shotguns were not protected arms—because *Miller* established that "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes." *Heller*, 554 U.S. at 625.[2]

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[2] *Bruen* made clear that "dangerous and unusual" arms can become common—and thus protected—arms:

> Whatever the likelihood that handguns were considered "dangerous and unusual" during the colonial period, they are indisputably in "common use" for self-defense today. They are, in fact, "the quintessential self-defense weapon." [*Heller*, 554 U.S. at 629.] Thus, even if these colonial laws prohibited the carrying of handguns because they were considered

Concluding that the nation's tradition of firearm regulation allows only dangerous and unusual weapons to be banned, and that handguns—as "the most popular weapon chosen by Americans"—are common, *Heller* held that "a complete prohibition of their use is invalid." *Id.* at 629.

After *Heller*, this Court invalidated Chicago's handgun ban in *McDonald v. City of Chicago*, 561 U.S. 742 (2010). *McDonald* reaffirmed that the Second Amendment "applies to handguns because they are 'the most preferred firearm in the nation'" for self-defense. 561 U.S. at 767 (quoting *Heller*, 554 U.S. at 628–29).

In *Caetano v. Massachusetts*, this Court reversed a ruling that upheld a stun gun prohibition. 577 U.S. 411 (2016). Concurring, Justice Alito, joined by Justice Thomas, explained that because "stun guns are widely owned and accepted as a legitimate means of self-defense across the country[,] Massachusetts' categorical ban of such weapons therefore violates the Second Amendment." *Id.* at 420 (Alito, J., joined by Thomas, J., concurring).

Justice Thomas, joined by Justice Scalia, provided additional confirmation of this application of the Court's test in a dissent from a denial of certiorari:

> "dangerous and unusual weapons" in the 1690s, they provide no justification for laws restricting the public carry of weapons that are unquestionably in common use today.

597 U.S. at 47.

> *Heller* asks whether the law bans types of firearms commonly used for a lawful purpose. . . . Roughly five million Americans own AR-style semiautomatic rifles. The overwhelming majority of citizens who own and use such rifles do so for lawful purposes, including self-defense and target shooting. Under our precedents, *that is all that is needed* for citizens to have a right under the Second Amendment to keep such weapons.

Friedman v. City of Highland Park, Ill., 577 U.S. 1039, 1042 (2015) (Thomas, J., joined by Scalia, J., dissenting from the denial of certiorari) (citations omitted and emphasis added).

Thus, for arms prohibitions, "the pertinent Second Amendment inquiry is whether [the arms] are commonly possessed by law-abiding citizens for lawful purposes today." *Caetano*, 577 U.S. at 420 (Alito, J., joined by Thomas, J., concurring) (emphasis omitted).[3]

In sum, this Court's precedents establish that the plain text covers all bearable arms, and that historical tradition supports banning only dangerous and unusual weapons. Arms commonly possessed for lawful purposes are not unusual and thus cannot be banned.

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[3] To be sure, the specific make and model of a particular arm need not be popular. Rather, the arm must be among "the sorts of weapons" or "of the kind" that are "in common use at the time." *Heller*, 554 U.S. at 624, 627. The function of the arm is what matters. Thus, *Heller* paid no attention to the Colt Buntline nine-shot revolver that Dick Heller sought to possess and instead focused on the commonality of handguns in general.

II. The Fourth Circuit injected several factors that contradict *Heller* into the plain text analysis.

The plain text analysis in this case should be simple: the plain text covers the banned weapons because they are bearable arms. *See Heller*, 554 U.S. at 582; *Caetano*, 577 U.S. at 411. Yet the Fourth Circuit held that the arms are not covered by the plain text after injecting into the analysis several factors that contradict *Heller*.

A. It is not plaintiffs' burden to prove that the plain text covers bearable arms; rather, the Second Amendment extends prima facie to all bearable arms.

The Fourth Circuit determined that the Second Amendment's plain text covers arms only if the plaintiffs "overcome th[e] barrier" of proving that they are "in common use today for self-defense." Pet. App. 29a.

But *Heller*'s plain text analysis establishes that "[t]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms." 554 U.S. at 582; *see also Caetano*, 577 U.S. at 411. "In other words," *Heller* "identifies a presumption in favor of Second Amendment protection." *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 257 n.73 (2d Cir. 2015); *see also Virginia v. Black*, 538 U.S. 343, 369 (2003) (Scalia, J., concurring in part, concurring in the judgment in part, and dissenting in part) (defining "prima facie evidence" as "'sufficient to establish a given fact'" and "'if unexplained or uncontradicted . . .

sufficient to sustain a judgment in favor of the issue which it supports'") (quoting BLACK'S LAW DICTIONARY 1190 (6th ed. 1990)). Thus, in *Cuomo*, the Second Circuit appropriately struck a ban on a pump-action rifle when the state failed to present any evidence regarding the rifle and "the presumption that the Amendment applies remain[ed] unrebutted." 804 F.3d at 257 n.73.

Here, the fact that the banned weapons are bearable arms should have triggered the historical analysis in which the State bears the burden of justifying its regulation with historical tradition. *See Heller*, 554 U.S. at 582; *Bruen*, 597 U.S. at 17, 24.

B. The Second Amendment protects arms commonly possessed for all lawful purposes, not only self-defense.

The Fourth Circuit further erred by limiting "the scope of the constitutional right to keep and bear arms" to protect only "self-defense." Pet. App. 14a.

To be sure, the banned arms are commonly possessed for self-defense. As Judge Richardson's dissent noted, over 60% of the approximately 25 million Americans who own AR-style rifles possess them for self-defense. Pet. App. 172a–73a.

But self-defense is not the only purpose the Second Amendment protects. *Heller* explained that the right protects weapons "typically possessed by law-abiding citizens *for lawful purposes*," 554 U.S. at 625 (emphasis added), which made sense because "[t]he traditional militia was formed from a pool of men bringing arms 'in common use at the time' *for lawful*

purposes like self-defense," *id.* at 624 (emphasis added).

Heller approvingly quoted the Supreme Court of Tennessee stating that "the right to keep arms involves, necessarily, the right to use such arms *for all the ordinary purposes*." *Id.* at 614 (quoting *Andrews v. State*, 50 Tenn. 165, 178 (1871)) (emphasis added). *Heller* also acknowledged that "most [founding-era Americans] undoubtedly thought [the right] even more important for self-defense *and hunting*" than militia service, *id.* at 599 (emphasis added), and that the right includes "learning to handle and use [arms] in a way that makes those who keep them ready for their efficient use," *id.* at 618 (quoting Thomas M. Cooley, THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW IN THE UNITED STATES OF AMERICA 271 (1880)). Indeed, Justice Stevens's dissent recognized that "[w]hether [the Second Amendment] also protects the right to possess and use guns for nonmilitary purposes like hunting and personal self-defense is the question presented by this case." *Id.* at 636–37 (Stevens, J., dissenting).

In *McDonald*, this Court summarized the "central holding in *Heller*: that the Second Amendment protects a personal right to keep and bear arms *for lawful purposes*, most notably for self-defense within the home." 561 U.S. at 780 (emphasis added); *see also Friedman*, 136 S. Ct. at 1042 (Thomas, J., joined by Scalia, J., dissenting from the denial of certiorari) ("The overwhelming majority of citizens who own and use such rifles do so for lawful purposes, including self-defense and target shooting. Under our precedents, that is all that is needed[.]") (citation omitted).

In *New York State Rifle & Pistol Ass'n, Inc. v. City of New York*, four Justices of this Court recognized that "still another" protected right "is to take a gun to a range in order to gain and maintain the skill necessary to use it responsibly." 590 U.S. 336, 365 (2020) (Alito, J., joined by Thomas and Gorsuch, JJ., dissenting); *id.* at 340 (Kavanaugh, J., concurring) ("agree[ing] with Justice ALITO's general analysis of *Heller* and *McDonald*").

The Fourth Circuit erred by disregarding the other lawful purposes in addition to self-defense—such as hunting, training, and community defense—for which the banned arms are commonly possessed.

C. How commonly the People possess arms for lawful purposes is dispositive, not the government's assessment of their suitability for those purposes.

Also in its plain text analysis, the Fourth Circuit required the Plaintiffs "to demonstrate that the [AR-15] is suitable for self-defense," while relying on its own determination that the AR-15 is "ill-suited for the vast majority of self-defense situations in which civilians find themselves." Pet. App. 40a; *see also id.* at 42a ("Compared to a handgun, the AR-15 is heavier, longer, harder to maneuver in tight quarters, less readily accessible in an emergency, and more difficult to operate with one hand."); *id.* ("Outside the home, the AR-15 has even less utility for self-defense.").

The relevant inquiry is whether the arms are commonly *possessed* for a lawful purpose. As Justice Stevens explained, "The [*Heller*] Court struck down the District of Columbia's handgun ban not because of

the *utility* of handguns for lawful self-defense, but rather because of their *popularity* for that purpose." *McDonald*, 561 U.S. at 890 n.33 (Stevens J., dissenting).

In *McDonald*, this Court explained why it struck the handgun ban in *Heller*: "we found that this right applies to handguns because they are the most preferred firearm in the nation to 'keep' and use for protection of one's home and family. Thus, we concluded, citizens must be permitted to use handguns for the core lawful purpose of self-defense." 561 U.S. at 767–68 (cleaned up). Because handguns are "preferred," they "must be permitted."

It is for the People, not the government, to decide which arms are protected by the Second Amendment. "To limit self-defense to only those methods acceptable to the government is to effect an enormous transfer of authority from the citizens of this country to the government—a result directly contrary to our constitution and to our political tradition." *Friedman v. City of Highland Park, Ill.*, 784 F.3d 406, 413 (7th Cir. 2015) (Manion, J., dissenting); *see also Caetano*, 577 U.S. at 422 (Alito, J., joined by Thomas, J., concurring) (Disapproving "the safety of all Americans [being] left to the mercy of state authorities who may be more concerned about disarming the people than about keeping them safe."). Rather, *Heller* affirmed that the People have the right to choose their preferred arms: "*Whatever the reason*, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid." 554 U.S. at 629 (emphasis added). Whether the government agrees with the choices made by the

People is immaterial. "[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table," *id.* at 636, including the choice to deprive Americans of their preferred arms.

In the First Amendment context, "the general rule" is "that the speaker and the audience, not the government, assess the value of the information presented." *Edenfield v. Fane*, 507 U.S. 761, 767 (1993). Just as the People have the right to determine the value of the information they exchange, they have the right to determine the value—including the defensive value—of the arms they keep and bear.

D. The relevant inquiry is how commonly arms are possessed for self-defense, not how often they are actually fired in self-defense.

Still in its plain text analysis, the Fourth Circuit ruled that "common *possession*" of a weapon is not relevant, rather "only instances of 'active employment' of the weapon should count, and perhaps only active employment in self-defense." Pet. App. 44a.

But *Heller* held that weapons "typically *possessed*" for "lawful purposes" are protected. 554 U.S. at 625 (emphasis added). And the *Caetano* concurrence explained that "the pertinent Second Amendment inquiry is whether [the arms] are commonly *possessed* by law-abiding citizens for lawful purposes today." 577 U.S. at 420 (Alito, J., joined by Thomas, J., concurring) (emphasis altered).

It does not matter how often a firearm is actually fired in self-defense. A firearm that is possessed for self-defense is *used* for self-defense, even when it is not

being fired. *Heller* did not attempt to quantify defensive handgun incidents—it focused only on how commonly handguns were kept for self-defense. Moreover, if Second Amendment protection depended on the frequency of defensive gun uses, the People's rights would diminish as the nation became safer, because their arms would be fired less frequently in self-defense. Rather, unfired firearms are protected by the Second Amendment just as unread books are protected by the First Amendment.

E. The Second Amendment does not exclude arms because they are most useful in military service.

The Fourth Circuit held that under *Heller*, AR-15s and similar weapons can be banned because they are "most useful in military service." Pet. App. 43a (quoting *Heller*, 554 U.S. at 627); *see also id.* at 11a, 18a, 24a, 29a.[4]

The Fourth Circuit misread *Heller*, which merely "acknowledged that advancements in military technology might render many commonly owned weapons ineffective in warfare," *Caetano*, 577 U.S. at 419 (Alito, J., joined by Thomas, J., concurring) (citing *Heller*, 554 U.S. at 627–28), while some weapons most effective in warfare may be unprotected. Immediately after explaining that arms "in common use" are protected but "dangerous and unusual weapons" are not, *Heller* noted that this test may allow some "weapons that are most useful in military service" to be banned *if* they "are highly unusual in society at

[4] No military issues a service rifle that fires only semiautomatically.

large." 554 U.S. at 627 (quotation marks omitted). And even though such applications of the common use test would "limit[] the degree of fit between the prefatory clause and the protected right" in "modern" times, it "cannot change our interpretation of the right," *id.* at 627–28—*i.e.*, that the right protects arms "in common use," *id.* at 627. Put simply, *Heller* explained that "dangerous and unusual weapons" may be banned *despite*—not *because of*—the fact that they are "most useful in military service."

The Fourth Circuit's "most useful in military service" test contradicts the rest of the *Heller* opinion. *Heller* recognized that "[i]n the colonial and revolutionary war era, small-arms weapons used by militiamen and weapons used in defense of person and home were one and the same." 554 U.S. at 624–25 (quoting *State v. Kessler*, 289 Ore. 359, 368 (1980)) (brackets omitted); *see also id.* at 627 ("[T]he 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."). Ordinary people possessing weapons most useful for military service was "precisely the way in which the Second Amendment's operative clause furthers the purpose announced in its preface." *Id.* at 625. But if those arms were not protected, as the Fourth Circuit held, the prefatory and operative clauses would have been completely contradictory.

Indeed, the Second Amendment "could be rephrased, 'Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be

infringed.'" *Id.* at 577. But under the Fourth Circuit's holding, it could read, "Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear *non-militia* Arms shall not be infringed."

The Fourth Circuit's holding also contradicts *Miller*. In *Miller*, the lack of evidence showing that the regulated "weapon is any part of the ordinary military equipment or that its use could contribute to the common defense" precluded this Court from taking judicial notice "that the Second Amendment guarantees the right to keep and bear such an instrument." 307 U.S. at 178. While *Heller* clarified that *Miller* did not hold "that *only* those weapons useful in warfare are protected," 554 U.S. at 624 (emphasis added), *Miller* makes certain that weapons most useful in warfare may be protected.

As the *Caetano* concurrence explained, "*Miller* and *Heller* recognized that militia members traditionally reported for duty carrying 'the sorts of lawful weapons that they possessed at home,' and that the Second Amendment therefore protects such weapons as a class, *regardless of any particular weapon's suitability for military use*." *Caetano*, 577 U.S. at 419 (Alito, J., joined by Thomas, J., concurring) (emphasis added).

The Fourth Circuit's holding leaves unprotected every arm founding-era militiamen were required to keep for militia service and severs the Second Amendment's operative clause from the purpose announced in its preface. This anti-historical military test violates *Miller* and *Heller*, undermines the right to self-defense, and contradicts the purpose for which the Second Amendment was codified. *See Heller*, 554

U.S. at 599 ("[T]he purpose for which the right was codified" was "to prevent elimination of the militia.").

III. The Fourth Circuit failed to follow *Heller*'s historical analysis.

The historical analysis in this case should be simple: the historical tradition shows that common arms cannot be banned. *See Heller*, 554 U.S. at 629. Yet the Fourth Circuit held that common arms may be banned based on a tradition of legislatures "*do[ing] something* about . . . excessively dangerous weapons." Pet. App. 69a. This is contrary to *Heller*'s holding and analysis.

A. The "dangerous and unusual" consideration is part of the historical analysis—not the plain text analysis.

The Fourth Circuit considered whether the banned arms are too "dangerous" for Second Amendment protection in its plain text analysis. *See* Pet. App. 46a. But *Heller* demonstrates that the "dangerous and unusual" consideration must occur in the historical analysis.

Heller referred to "the *historical tradition*" of regulating "dangerous and unusual weapons." 554 U.S. at 627 (emphasis added); *see also Bruen*, 597 U.S. at 47 (explaining that the *Heller* Court was "[d]rawing from this *historical tradition*" of restricting "dangerous and unusual weapons" in holding that the Second Amendment protects arms "'in common use at the time,' as opposed to those that 'are highly unusual in society at large'") (quoting *Heller*, 554 U.S. at 627)

(emphasis added). And the *Heller* Court considered that "historical tradition" in its own historical analysis. After completing the plain text analysis of the Second Amendment, 554 U.S. at 576–600, the Court began focusing on historical tradition, including "how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century," *id.* at 605. Only after reviewing "Postratification Commentary," *id.* at 605–10, "Pre–Civil War Case Law," *id.* at 610–14, "Post–Civil War Legislation," *id.* at 614–16, "Post–Civil War Commentators," *id.* at 616–19, and Supreme Court precedents, *id.* at 619–26, did this Court identify the "historical tradition" of regulating "dangerous and unusual weapons," *id.* at 627. What is more, the Court identified that traditional regulation in the same paragraph as other "longstanding" regulations, *id.* at 626–27, while promising to "expound upon the *historical justifications* for" those regulations another time, *id.* at 635 (emphasis added). Indeed, *Heller* "did not say that dangerous and unusual weapons are not arms," but rather, "that the relevance of a weapon's dangerous and unusual character lies in the '*historical tradition*[.]'" *Teter v. Lopez*, 76 F.4th 938, 949 (9th Cir. 2023), *reh'g en banc granted, opinion vacated*, 93 F.4th 1150 (9th Cir. 2024) (quoting *Heller*, 554 U.S. at 627) (emphasis in *Teter*).

B. Arms can be banned only if they are *both* dangerous *and* unusual.

According to the Fourth Circuit, "Just because a weapon happens to be in common use does not guarantee that it falls within the scope of the right to keep and bear arms." Pet. App. 44a. Rather, the court

decided, a common weapon may be banned if it is dangerous. *Id.* at 45a. Yet this Court has made clear that a weapon may be banned only if it is *both* dangerous *and* unusual.

As noted above, *Heller*'s historical analysis identified only "the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" 554 U.S. at 627. Thus, in *Caetano*, after determining that the Massachusetts Supreme Judicial Court's analysis of whether stun guns were "unusual" was flawed, the Court declined to consider whether stun guns qualified as "dangerous." 577 U.S. at 412. Justice Alito, joined by Justice Thomas, explained in a concurring opinion that the Court ended its analysis there because a weapon must be *both* dangerous *and* unusual to be banned:

> As the *per curiam* opinion recognizes, this is a conjunctive test: A weapon may not be banned unless it is *both* dangerous *and* unusual. Because the Court rejects the lower court's conclusion that stun guns are "unusual," it does not need to consider the lower court's conclusion that they are also "dangerous."

Id. at 417 (Alito, J., joined by Thomas, J., concurring) (citing *Heller*, 554 U.S. at 636); *see also Miller v. Bonta*, 699 F. Supp. 3d 956, 969 (S.D. Cal. 2023), *appeal held in abeyance*, No. 23-2979, 2024 WL 1929016 (9th Cir. Jan. 26, 2024) ("The Supreme Court carefully uses the phrase 'dangerous and unusual arms,' while the State, throughout its briefing, refers to 'dangerous [or] unusual arms.' That the State would advocate such a position is disheartening.") (brackets in original).

Contrary to the Fourth Circuit's ruling, "[i]f *Heller* tells us anything, it is that firearms cannot be categorically prohibited just because they are dangerous." *Caetano*, 577 U.S. at 418 (Alito, J., joined by Thomas, J., concurring).

C. Because the banned arms are common, they are necessarily not dangerous *and unusual*.

The AR-15 is the most common rifle in America. Approximately 25 million Americans own one or more. Pet. App. 172a.

This Court has declared that semiautomatic firearms such as the AR-15 "traditionally have been widely accepted as lawful possessions." *Staples v. United States*, 511 U.S. 600, 612 (1994). And Several Justices of this Court have recognized that AR-15s in particular are common. *See Harrel v. Raoul*, 144 S. Ct. 2491, 2493 (2024) (Thomas, J., statement) (the AR-15 is "America's most common civilian rifle"); *Garland v. Cargill*, 602 U.S. 406, 430 (2024) (Sotomayor, J., joined by Kagan and Jackson, JJ., dissenting) (AR-style rifles are "commonly available, semiautomatic rifles"); *Heller v. District of Columbia*, 670 F.3d 1244, 1287 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) ("The AR-15 is the most popular semi-automatic rifle[.]").

Because AR-15s are common, they necessarily are not "dangerous and unusual" and rifles "of the kind" cannot be banned. *Heller*, 554 U.S. at 624, 629.

D. The Fourth Circuit equated lesser restrictions—such as regulations on the manner in which arms could be carried—with possession prohibitions to establish a historical tradition.

The Fourth Circuit did not identify a historical tradition of banning common weapons. Nor could it; as *Heller* held, there is no such tradition. 554 U.S. at 629; *see also* David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. LEGIS. 223, 369–70 (2024) (listing historical weapon prohibitions, which were "uncommon" and applied only to dangerous and unusual weapons).

Instead, the Fourth Circuit determined that an assortment of lesser restrictions—including laws "regulating the manner of carry" of certain weapons, Pet. App. 69a; laws "forbidding brandishing" weapons in a threatening manner, *id.*; and laws limiting the quantity of gunpowder that could be stored in one place, *id.* at 54a n.3—establish a "tradition" of "states and localities responding to the calls of their citizens to *do something* about the horrors wrought by excessively dangerous weapons," Pet. App. 69a.[5] This supposed tradition, according to the court, justified prohibiting common arms.

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[5] As the *amicus* brief of the International Law Enforcement Educators and Trainers Association proves, AR-style rifles are not "excessively dangerous weapons." But regardless, "*Heller* tells us . . . that firearms cannot be categorically prohibited just because they are dangerous." *Caetano*, 577 U.S. at 418 (Alito, J., joined by Thomas, J., concurring).

Bruen, however, held that lesser historical restrictions—including "restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms"—cannot justify "broadly prohibiting the public carry of commonly used firearms." 597 U.S. at 38. And *United States v. Rahimi* reaffirmed that lesser historical restrictions—including laws requiring sureties or preventing carrying in a terrifying manner to "mitigate demonstrated threats of physical violence"—cannot justify laws that "broadly restrict arms use by the public generally." 144 S. Ct. 1889, 1901 (2024). Likewise, lesser, non-prohibitory restrictions—such as laws regulating the manner of carry or forbidding brandishing arms in a threatening manner—cannot justify a prohibition on possessing common arms. Otherwise, the handgun ban would have been upheld in *Heller*.

CONCLUSION

"It is this Court's prerogative alone to overrule one of its precedents." *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (quoting *United States v. Hatter*, 532 U.S. 557, 567 (2001)) (brackets omitted). Yet the Fourth Circuit rejected this Court's common use test—deriding it as an "ill-conceived popularity test" that "leads to absurd consequences," Pet. App. 44a, 45a—and replaced it with a test directly contrary to this Court's precedents.

The Court should grant the Petition for Certiorari to reaffirm its precedents and restore the right of Americans to possess common weapons.

Respectfully submitted,

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