

No. 26-3244

**In the United States Court of Appeals
for the Sixth Circuit**

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

CHRISTOPHER J. MACHAMER,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Ohio

No. 5:24-cr-00311

The Honorable David A. Ruiz

**BRIEF OF THE NATIONAL RIFLE ASSOCIATION OF
AMERICA, FIREARMS POLICY COALITION, SECOND
AMENDMENT FOUNDATION, AND AMERICAN SUPPRESSOR
ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF
DEFENDANT–APPELLANT**

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 26-3244

Case Name: United States of America v. Machamer

Name of counsel: Joseph G.S. Greenlee

National Rifle Association of America, Firearms Policy Coalition,
Pursuant to 6th Cir. R. 26.1, Second Amendment Foundation, American Suppressor Association
Name of Party

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1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

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s/ Joseph G.S. Greenlee

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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STATEMENT OF *AMICI 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 veterans—a general and a colonel—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.

Firearms Policy Coalition (FPC) is a nonprofit membership organization that works to create a world of maximal human liberty and freedom. It seeks to protect, defend, and advance the People's rights, especially but not limited to the inalienable, fundamental, and individual right to keep and bear arms. FPC accomplishes its mission through legislative and grassroots advocacy, legal and historical research,

¹ No counsel for a party authored this brief in any part. No party or counsel contributed money intended to fund its preparation or submission. Only *amici* and their members contributed money intended to fund its preparation or submission.

litigation, education, and outreach programs. Since its founding in 2014, FPC has emerged as a leading advocate for individual liberty in state and federal courts, regularly participating as a party or *amicus curiae*.

Second Amendment Foundation (SAF) is a nonprofit membership organization founded in 1974 with over 720,000 members and supporters in every state of the Union. Its purposes include education, research, publishing, and legal action focusing on the constitutional right to keep and bear arms. SAF is currently involved in several Second Amendment-related lawsuits and thus has great interest in the outcome of this case.

The American Suppressor Association (ASA) is a 501(c)(6) nonprofit dedicated to the advancement of pro-suppressor reform nationwide. Founded in 2011, ASA has lobbied for suppressor rights in dozens of states, was instrumental in the legalization of suppressors in Iowa, Minnesota, Vermont, and Guam, and helped legalize the use of suppressors for hunting in 19 states. It also played a pivotal role in the elimination of the transfer tax on suppressors, short-barreled firearms, and “any other weapons” as part of the One Big Beautiful Bill Act.

CONSENT TO FILE

All parties consented to the filing of this brief.

SUMMARY OF ARGUMENT

A law regulating conduct covered by the Second Amendment’s plain text is unconstitutional unless the government demonstrates that it is consistent with the Nation’s historical tradition of firearm regulation. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022).

A challenged law falls within the plain text by placing any restriction on the possession or carrying of an implement used for offense or defense. *See Wolford v. Lopez*, No. 24-1046, 2026 WL 1825723, at *6 (U.S. June 25, 2026). The challenged registration and taxation requirements for short-barreled rifles thus fall within the plain text. Accordingly, the government must prove that they do not infringe the historical understanding of the Second Amendment. It cannot do so.

Historical tradition recognizes only a narrow class of arms that fall outside the Second Amendment’s protections: weapons that are *both* dangerous *and* unusual. Short-barreled rifles are neither. Short-barreled rifles are lawful to possess in 45 states, and more than 1.1 million are lawfully possessed nationwide, so they are “in common use” and necessarily not “unusual.” Nor are they uniquely “dangerous.” Short-barreled rifles do not meaningfully differ in function or lethality from

other common rifles (long-barreled rifled-firearms) or handguns (short-barreled rifled-firearms). Therefore, short-barreled rifles are protected arms.

There is no tradition of regulation that justifies registering and taxing protected arms. The smattering of disanalogous historical laws the government proffered below—restrictions on dangerous and unusual weapons, early-17th-century laws restricting sales to hostile foreign nations, a 1631 census law, and outlier laws requiring that barrels be tested before sale—do not share a “how” or “why” with the challenged registration or taxation requirements, nor do they establish a representative historical tradition. Because the government cannot identify a historical analogue for registering and taxing protected arms, the challenged provisions violate the Second Amendment.

Bruen’s discussion of “shall-issue” licensing regimes does not save the challenged provisions. The National Firearms Act is a registration and taxation regime, not a licensing regime. Yet even if the Act were characterized as a licensing regime, the government would still bear the burden of demonstrating that its registration and taxation requirements

are consistent with this Nation's historical tradition of firearm regulation. It has not, and cannot, make that showing.

The Supreme Court's decision in *United States v. Miller*, 307 U.S. 174 (1939), does not salvage the challenged provisions either. *Miller* addressed short-barreled shotguns, a distinct category of firearms that the National Firearms Act itself regulates separately from short-barreled rifles. Nor did *Miller* hold that short-barreled shotguns fall outside the Second Amendment's protections. Even if it had, and even if short-barreled shotguns could properly be equated with short-barreled rifles, subsequent Supreme Court precedent makes clear that unprotected arms may acquire protection through common use. Short-barreled rifles are in common use today.

ARGUMENT

Amici address only 26 U.S.C. §§ 5812, 5841, and 5861(d), insofar as those provisions implement the National Firearms Act’s (NFA) registration and taxation scheme as applied to short-barreled rifles. *See* 26 U.S.C. § 5845(a)(3).² Those provisions are unconstitutional because short-barreled rifles are “Arms” covered by the Second Amendment’s plain text; they are in common use and thus among the types of arms traditionally protected; and no historical tradition supports registering or taxing protected arms.

I. The Supreme Court held that the Second Amendment’s plain text covers all bearable arms.

The Supreme Court conducted the plain text analysis of the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570, 576–600 (2008). Interpreting the term “Arms,” the Court held that “the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms.” *Id.* at 582. The Court has repeatedly reaffirmed that

² *Amici* do not address Machamer’s charges for making firearms in violation of the National Firearms Act. Nevertheless, making firearms is an essential right protected by the Second Amendment. *See, e.g.,* Joseph G.S. Greenlee, *The American Tradition of Self-Made Arms*, 54 ST. MARY’S L.J. 35 (2023).

holding. *See Caetano v. Massachusetts*, 577 U.S. 411, 411 (2016) (quoting *Heller*, 554 U.S. at 582, and describing *Heller*’s definition of “Arms” as a holding); *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 28 (2022) (quoting *Heller*, 554 U.S. at 582); *United States v. Rahimi*, 602 U.S. 680, 691 (2024) (same). Most recently, in *Wolford v. Lopez*, the Court reiterated that “‘Arms,’ we explained [in *Heller*], refers to implements used for offense or defense.” No. 24-1046, 2026 WL 1825723, at *4 (U.S. June 25, 2026) (quoting *Heller*, 554 U.S. at 581).

Wolford further clarified that, with respect to whether a law regulates “Arms,” the plain-text inquiry only asks: “does [the law] concern any form of ‘Arms,’” and “does the law place any restrictions on either the ‘keeping’ (*i.e.*, possession) or the ‘bearing’ (*i.e.*, carrying) of arms?” *Id.* at *6 (brackets omitted).

The challenged registration requirements plainly concern implements used for offense or defense and restrict their keeping and bearing. Those requirements therefore regulate conduct covered by the Second Amendment’s plain text and are “presumptively unconstitutional.” *Id.* (citing *Bruen*, 597 U.S. at 24). The government accordingly bears the burden of demonstrating that those requirements

are consistent with our nation’s historical tradition of firearm regulation.

See Bruen, 597 U.S. at 17, 24.

II. Short-barreled rifles are not “dangerous and unusual”; they are “in common use.”

The district court held that short-barreled rifles are not “Arms” under the Second Amendment’s plain text because they “constitute ‘unusual or dangerous’ firearms.” Order, R. 36, PageID # 145; *see also id.* at 146 (“it is unnecessary for the Court to engage in a historical analysis”). But that holding contradicts *United States v. Bridges*, which recognized that, “to the founding generation, all firearms constituted ‘arms,’” and therefore held that “the Second Amendment’s plain text covers ... possession of a machinegun.” 150 F.4th 517, 524 (6th Cir. 2025) (quoting *Heller*, 554 U.S. at 581–82) (cleaned up). As explained next, the district court’s holding also contradicts Supreme Court precedent.

A. The “dangerous and unusual” and “common use” considerations are part of the historical analysis—not the plain text analysis.

The district court erred by considering whether short-barreled rifles are in “common use” or “unusual or dangerous” in its plain text analysis. Order, R. 36, PageID ## 144–46.

The Supreme Court has made clear that the consideration of whether an arm is “in common use,” and the corresponding consideration of whether an arm is “dangerous and unusual,” must be considered in the historical analysis—where the government bears the burden—rather than in the plain text analysis.

Heller referred to “the *historical tradition*” of regulating “dangerous and unusual weapons.” 554 U.S. at 627 (emphasis added). And *Bruen* explained that the *Heller* Court was “[d]rawing from this *historical tradition*” of regulating “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.’” 597 U.S. at 47 (quoting *Heller*, 554 U.S. at 627) (emphasis added).

Moreover, *Heller* considered that “historical tradition” in its own historical analysis. In Part II of its opinion, the Court conducted the plain text analysis, 554 U.S. at 576–600, and then confirmed its interpretation by reviewing Founding-Era and nineteenth-century sources, as well as prior Supreme Court precedents, *id.* at 600–26. Only in Part III, when the Court turned to historical regulations, did it identify the “historical tradition” of regulating “dangerous and unusual weapons” and conclude

that “the sorts of weapons protected were those ‘in common use at the time.’” *Id.* at 627 (quotations omitted).³

What is more, the Court identified the traditional “dangerous and unusual” 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*).

Justice Kavanaugh recently reinforced the Court’s precedents by referring to “the *historically based* ‘common use’ test with respect to the possession of particular weapons.” *Snope v. Brown*, 145 S. Ct. 1534, 1534

³ The Court had adverted to this historical tradition in Part II.E of the opinion, discussing the Court’s decision in *United States v. Miller*, 307 U.S. 174 (1939), but it made clear that it was anticipating the historical analysis to follow in the next Part. See *Heller*, 554 U.S. at 624–25 (explaining that “*what* types of weapons *Miller* permits.... accords with the historical understanding of the scope of the right, see Part III, *infra*.”).

(2025) (Kavanaugh, J., statement respecting the denial of certiorari) (emphasis added).

Finally, as *Wolford* made clear, there is no room for “common use” or “dangerous and unusual” considerations at the plain-text step. The only plain-text consideration is, “does [the law] concern any form of ‘Arms,’ *i.e.*, any weapon customarily used for offensive or defensive purposes?” 2026 WL 1825723, at *6. As Justice Barrett explained in her concurring opinion, it is improper for courts to “smuggle additional limits, drawn from our regulatory tradition, into the plain-text stage of the inquiry.” *Id.* at *15 n.1 (Barrett, J., concurring). As the principle dissent properly recognized, “the majority essentially directs courts to start by simply asking whether a gun owner cannot do what she wants with her firearm.” *Id.* at *23 (Jackson, J., dissenting). If she cannot, the plain text is implicated, the analysis shifts to the second, historical step, and the burden shifts to the government.

Consistent with Supreme Court precedent, this Court has acknowledged that the “tradition of prohibiting the carrying of ‘dangerous and unusual weapons’” and “the corollary” protection for arms “possessed by law-abiding citizens for lawful purposes” are “rooted in

historical analysis.” *Bridges*, 150 F.4th at 523 (quoting *Heller*, 554 U.S. at 625, 627) (quotation marks omitted); *see also id.* at 525 (“whether machineguns fall within the right’s historical scope turns on whether machineguns are ‘dangerous and unusual’”).

B. The Second Amendment protects arms unless they are *both* dangerous *and* unusual.

It is not enough for a firearm to be “unusual or dangerous” to lose Second Amendment protection. Order, R. 36, PageID ## 145, 146. Rather, to be a “dangerous and unusual” weapon, an arm must be *both* dangerous *and* unusual.

“The Supreme Court carefully uses the phrase ‘dangerous and unusual arms.’” *Miller v. Bonta*, 699 F. Supp. 3d 956, 969 (S.D. Cal. 2023). And the Court has consistently demonstrated that common arms cannot be banned, regardless of dangerousness.

For example, the *Heller* Court did not undertake a separate analysis of whether modern handguns were “dangerous” after concluding that they are in common use—even though the alleged “danger” of handguns was extensively briefed and highlighted by a dissenting opinion, which argued that they were “particularly dangerous.” 554 U.S. at 711 (Breyer, J., dissenting). Despite the Court being told that

handguns were used in an “extraordinary percentage of this country’s well-publicized shootings, including the large majority of mass shootings,” *Heller* still stopped the analysis upon concluding they were in common use. *See Hanson v. District of Columbia*, 120 F.4th 223, 272 (D.C. Cir. 2024) (Walker, J., dissenting).

In *Bruen*, the Court noted that handguns may have been “considered ‘dangerous and unusual weapons’ in the 1690s,” but determined they are nevertheless protected today because they “are unquestionably in common use today.” 597 U.S. at 47. It was irrelevant to the Court whether handguns are still considered “dangerous” today.

Likewise, in *Caetano*, after determining that the lower court’s analysis of whether stun guns were “unusual” was flawed, the Supreme Court declined to review the lower court’s conclusion that stun guns were also “dangerous.” 577 U.S. at 412. If dangerousness alone sufficed to justify a prohibition, the Court would have proceeded to consider the dangerousness of stun guns. Justice Alito made this point explicitly in the concurrence:

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). Thus, as the concurrence points out, the *Caetano* opinion—which is binding—makes plain that an arm must be *both* dangerous *and* unusual to be “dangerous and unusual.”

Because “dangerous and unusual” is a conjunctive test, and a weapon that is common is the antithesis of a weapon that is unusual, common arms cannot be banned even if they are dangerous. *Accord Bridges*, 150 F.4th at 528 (“Machineguns are both dangerous and unusual—not weapons typically possessed by law-abiding citizens for lawful purposes.”).

Indeed, contrary to the district court’s holding, “[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); *see also id.* (Alito, J., joined by Thomas, J., concurring) (“[T]he relative dangerousness of a weapon is irrelevant when the weapon belongs to a class of arms commonly used for lawful purposes.”).

C. Short-barreled rifles are “in common use,” and thus not “unusual.”

To determine whether particular arms are “unusual,” the inquiry centers on whether the arms “are weapons that are ‘in common use’ or ‘typically possessed by law-abiding citizens for lawful purposes’ like ‘self-defense.’” *Bridges*, 150 F.4th at 525–26 (quoting *Heller*, 554 U.S. at 624–25).

From the battle for independence through westward expansion and continuing to the present, the rifle has been a quintessential American firearm. Rifles are indisputably in common use in the United States today. Americans use rifles for, among other lawful purposes, hunting, recreational target shooting, and self-defense. *See* MODERN SPORTING RIFLE: COMPREHENSIVE CONSUMER REPORT 40–51, NAT’L SHOOTING SPORTS FOUND. (July 14, 2022).⁴ According to one national survey, as of mid-2021, Americans owned over 146 million rifles. William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned*, GEO. UNIV. RSCH. PAPER NO. 4109494, at 20 (May 13,

⁴ <https://perma.cc/GT6M-C97D>.

2022)).⁵ From 2013 to 2023, there were millions of rifles manufactured each year, with over 3.1 million manufactured in 2023 alone. BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, FIREARMS COMMERCE IN THE UNITED STATES: STATISTICAL UPDATE 2024, at 1 (2024).⁶ Short-barreled rifles, as their name implies, are just rifles with a relatively shorter barrel, and their commonality should therefore be analyzed the same as rifles generally. See Joseph G.S. Greenlee, *The Tradition of Short-Barreled Rifle Use and Regulation in America*, 25 WYO. L. REV. 111, 147 (2025) [hereinafter *The Tradition of Short-Barreled Rifle Use*].

Even if the Court analyzes short-barreled rifles' commonality distinct from rifles generally, short-barreled rifles themselves are also in common use in the United States and have been since the Colonial Era. See *id.* at 113–28, 141–42. Like rifles generally, Americans use short-barreled rifles for many lawful purposes, including hunting and self-defense.⁷ See, e.g., Ron Spomer, *Short Rifle Barrel Performance*

⁵ <https://perma.cc/XMB6-GBC9>.

⁶ <https://perma.cc/DJC5-VBJZ>.

⁷ The Supreme Court has deemed hunting a lawful purpose protected by the Second Amendment. See *Wolford*, No. 24-1046, 2026 WL 1825723, at *4 (“As *Heller* noted, most Americans in the late 18th century also

Advantages, RON SPOMER OUTDOORS;⁸ *Why SBRs Are Becoming Popular for Home Defense*, SUMMERLIN ARMORY (Feb. 4, 2025).⁹

In line with their utility, short-barreled rifles are numerically common in the United States. As of June 8, 2026, there were 1,178,348 total registered short-barreled rifles. *Current Processing Times*, ATF.GOV.¹⁰ This is similar to the number of active lawyers in the country—around 1.3 million, as of 2024. *Demographics*, AMERICANBAR.ORG.¹¹ Being a lawyer is not “highly unusual in society at large,” *Heller*, 554 U.S. at 627, and neither are short-barreled rifles.

Short-barreled rifles are also widely permitted throughout the United States. *See Bridges*, 150 F.4th at 526 (“as several cases illustrate,

‘undoubtedly thought’ that the codified Second Amendment was ‘important for hunting,’ which, particularly for those moving west, was an important source of sustenance.” (quoting *Heller*, 554 U.S. at 599)); *see also Heller*, 554 U.S. at 636–37 (Stevens, J., dissenting) (“Whether [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.”).

⁸ <https://perma.cc/3PXD-4F4P>.

⁹ <https://perma.cc/Z2XN-SJHF>.

¹⁰ <https://www.atf.gov/resource-center/current-processing-times> (last visited July 10, 2026).

¹¹ <https://www.americanbar.org/news/profile-legal-profession/demographics/?login> (last visited July 10, 2026).

deciding whether weapons are ‘unusual’ requires more than simply contrasting the number of that kind of weapon against the total number of firearms”). Forty-five states permit their citizens to possess and use short-barreled rifles. And the NFA allows individuals to make, transfer, or receive short-barreled rifles, subject to its registration requirements. *See* 26 U.S.C. §§ 5811, 5812, 5821, 5822, 5841; 27 C.F.R. §§ 479.62, 479.84.

D. Short-barreled rifles are not “dangerous.”

There is nothing about short-barreled rifles that makes them more dangerous than other constitutionally protected arms, as short-barreled rifles do not differ in function or lethality from other common rifles or handguns. Rather, a short-barreled rifle is an intermediate-size firearm that is more accurate, though less portable, than a handgun, while also being more portable, though somewhat less accurate, than a rifle with a longer barrel. *See* Stephen P. Halbrook, *The Power to Tax, the Second Amendment, and the Search for Which “Gangster’ Weapons” to Tax*, 25 WYO. L. REV. 149, 181 (2025); *The Tradition of Short-Barreled Rifle Use*, 25 WYO. L. REV. at 141. Thus, short-barreled rifles offer greater stability and accuracy than handguns, making them safer to operate. And they

offer greater maneuverability and portability than standard rifles, which are desirable traits for lawful defense. *See Heller*, 554 U.S. at 629.

Although irrelevant to this Court’s constitutional inquiry, statistical surveys demonstrate that short-barreled rifles are rarely used by criminals. *See The Tradition of Short-Barreled Rifle Use*, 25 WYO. L. REV. at 141. For example, a survey conducted by the National Institute for Justice found that only seven of the 157 firearm criminals that they interviewed had used a short-barreled rifle. James D. Wright & Peter H. Rossi, *ARMED AND CONSIDERED DANGEROUS* 95 tbl. 4.6 (2d ed. 2008). That number is lower than pistols, sawed-off shotguns, regular shotguns, and regular rifles. *Id.*

The legislative history of the NFA itself demonstrates that Congress did not even view short-barreled rifles as particularly dangerous. *See The Tradition of Short-Barreled Rifle Use*, 25 WYO. L. REV. at 130–36. The bill that became the NFA did not originally restrict possession of short-barreled rifles. But without any mention of the barrel length of rifles in the statute, Representative Harold Knutson of Minnesota was concerned that the category of “any other firearm capable of being concealed on the person” could be interpreted to include some

hunting rifles. *National Firearms Act: Hearings on H.R. 9066 Before the H. Comm. on Ways & Means*, 73d Cong. 13 (1934) (statement of Rep. Harold Knutson). His constituents would not stand for a steep tax on popular hunting rifles. *Id.* Thus, Knutson suggested adding an express minimum barrel length for rifles as a safe harbor to ensure that rifles with longer barrels would not be taxed. *See Halbrook, The Power to Tax*, 25 WYO. L. REV. at 169. The NFA’s application to short-barreled rifles was thus a historical accident and not a necessary measure to keep arms away from criminals. Indeed, “no one mentioned a short-barreled rifle having any criminal use” during the Senate hearings after the tax on short-barrel rifles was added to the bill. *Id.* at 170.

III. There is no historical justification for modern registration and taxation requirements for protected arms.

A. The government’s historical analogues do not regulate arms in a comparable manner or for a comparable purpose.

The government bears the burden of identifying a “well-established and representative historical analogue.” *Bruen*, 597 U.S. at 30 (emphasis omitted). There are “three important inquiries that courts should undertake in evaluating proffered analogues.” *Wolford*, 2026 WL 1825723, at *6. “The first is the number of jurisdictions in which they

were adopted”; “[t]he second is the extent to which they were well-accepted”; and “[t]he third is whether any analogue or collection of analogues is ‘relevantly similar’ to the modern law”—this latter inquiry requires considering “how” and “why” “the analogue restricted the keeping or bearing of arms.” *Id.*

The government will be unable to carry its burden because there is no historical tradition consistent with subjecting protected arms to requirements of registration and taxation—complete with fingerprinting, photo submission, potentially multi-month approval delays, and felony criminal penalties for noncompliance, *see* 26 U.S.C. § 5861(d); *see also Rahimi*, 602 U.S. at 699 (“the penalty [is] another relevant aspect of the burden”).

Rifles with short barrels and pistols with shoulder stocks were considered ordinary arms throughout American history and never singled out for regulation before the twentieth century. *See The Tradition of Short-Barreled Rifle Use*, at 113–30. The fact that they were traditionally unregulated “is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.” *Bruen*, 597 U.S. at 26.

Before the district court, the government relied on a smattering of historical firearm regulations—mostly from the seventeenth century—that, upon examination, are either mischaracterized, irrelevant, or materially distinguishable from the challenged provisions.

The government first cited Blackstone’s *Commentaries* and *State v. Langford*, 10 N.C. 381, 383 (1824), for the proposition that at common law, a person was prohibited from “arm[ing] himself with dangerous and unusual weapons, in such a manner as will naturally cause a terror to the people.” Gov’t Opp’n, R. 31, PageID # 101–02 (quoting *Langford*, 10 N.C. at 383). But, as established above, short-barreled rifles are not dangerous and unusual, and historical restrictions on dangerous and unusual weapons cannot justify modern restrictions on protected arms—otherwise all firearms could be prohibited and the restrictions in *Heller* and *Bruen* would have been upheld.

The government next claimed that “[r]egulations targeting the concealment of those weapons that were *not* dangerous and unusual were also common.” Gov’t Opp’n, R. 31, PageID # 102. For support, the government curiously cited *Bruen*, which held unconstitutional a concealed-carry licensing regime. *See id.* In any event, *Heller* held that

the Second Amendment protects handgun possession and *Bruen* held that the Amendment protects handgun carry, regardless of their concealability. So concealability does not remove an arm from Second Amendment protection.

The government additionally argued that “[l]aws that tax or regulate firearms sales also have close analogues in our nation’s historical traditions”—specifically, a 1652 New York law, 1646 Connecticut law, 1631 Virginia law, and 1619 Virginia law. Gov’t Opp’n, R. 31, PageID # 102.

Starting with the “1652 New York law,” the text of this law no longer exists. LAWS AND ORDINANCES OF NEW NETHERLAND, 1638–1674, at 128 (E. B. O’Callaghan ed., 1868). But it seems to have echoed a 1639 law, which forbade the sale of “Guns, Powder or Lead” to “*the Indians* in these parts.” *Id.* at 19 (emphasis added). And it “seems, indeed, not to have been very strictly enforced.” *Id.* at 128. Most importantly, it was not a “New York law,” as the government claims, but rather a New Netherland law. New Netherland was a Dutch colony. And the Dutch law did not survive when the English seized control of the colony in 1664.

This law therefore does not reflect English—let alone American—tradition.

The 1631 Virginia law was a census law. It required the “comanders of all the severall plantations” to take a census of the inhabitants and their goods, including “armes and munition” as well as a variety of other items including “corne, cattle, hoggs, goates, barques, boates, gardens, and orchards.” 1 THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 174–75 (William Waller Hening ed., 1823). This law intended to ensure that Virginians could fulfill their legal duties under Virginia law for mandatory firearms possession and carrying—for example, Virginians were required to carry firearms while working in the fields or attending church. *See id.* at 127, 174. This “why” fulfills a purpose opposite that of the NFA—to ensure possession and carriage of firearms rather than discourage it. Moreover, the census law was enacted 160 years prior to the Second Amendment’s ratification, and the Court has emphasized that historical laws that became obsolete long before the Founding “shed[] little light” on the Second Amendment. *Bruen*, 597 U.S. at 49. The Court has also expressed “doubt that *three* colonial regulations

could suffice to show a tradition of ... regulation,” *id.* at 46, let alone one. *See also Heller*, 554 U.S. at 632 (“we would not stake our interpretation of the Second Amendment upon a single law, in effect in a single city, that contradicts the overwhelming weight of other evidence”).

The 1646 Connecticut law fares no better. The government claims that it “banned residents from selling firearms outside the colony.” Gov’t Opp’n, R. 31, PageID # 102. But this is misleading. First, the law was not a ban, but rather required a license to sell arms “to any out of the Jurisdiction.” THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, PRIOR TO THE UNION WITH NEW HAVEN COLONY, MAY, 1665, at 145 (J. Hammond Trumbull ed., 1850). Second, the “Jurisdiction” did not refer to “the colony,” as the government contends, but rather to “the confederate jurisdictions.” *Id.* “The confederate jurisdictions” was another name for the United Colonies of New England—including “the plantations under the government of the Massachusetts, the plantations under the government of New Plimouth, the plantations under the government of Connecticut and the government of New Haven, with the Plantations in combination therewith”—which agreed upon “articles of confederation” in 1643. 2 John Winthrop, THE HISTORY OF NEW ENGLAND

FROM 1630 TO 1649, at 101 (James Savage ed., 1826). Third, the law was enacted to restrict trade to hostile foreign nations. Connecticut’s General Court ordered in 1644 that “no prson ... shall at any tyme hereafter sell nēther gun nor pistoll nor any Instrument of warre, nether to Dutch nor French men,” because “the Dutch and French doe sell and trade to the Indeans, guns, pistolls and warlike instruments.” THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, at 113–14. Next, in 1646, the General Court expressed its desire “that the Com̃issiors should be moved that noe Am̃unition should be traded wth any that live out of the Jurisdictions in combinatiō, whereby [they] might supply the Indeans[.]” *Id.* at 138. Later that year, the Court confirmed the order of the Commissioners requiring a license to sell arms “to any out of the Jurisdiction.” *Id.* at 145.

At the time, the Dutch colony of New Netherland, west of New England, was “a powerful and already quarrelsome neighbor” to Connecticut. THE HISTORY OF CONNECTICUT, FROM ITS EARLIEST SETTLEMENT TO THE PRESENT TIME 77–78 (W. H. Carpenter & T. S. Arthur eds., 1872). Plus, north of New England was the French colony of Quebec. “[T]he principal impetus” for forming the United Colonies of New England “was a concern over defense against attacks by the French, the

Dutch, or the Indians.” *New England Confederation*, BRITANNICA.COM.¹²

In sum, Connecticut’s law had a different “why”—to prevent arming hostile foreign nations—and a different “how”—by requiring the seller to obtain a license to sell arms beyond the jurisdiction.

The government next argued that, “[i]n a similar vein, Virginia provided that people were at “liberty to sell armes and ammunition to any of his majesties loyall subjects inhabiting this colony.” Gov’t Opp’n, R. 31, PageID # 102. The government’s description implies that this law was a restriction on sales to Englishmen from other colonies. But this law was enacted in 1619, when Virginia was the *only* English colony in America. So the law did not restrict trade among countrymen, but rather expressly ensured that English colonists *could* freely sell arms to other English colonists. *See* 2 THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 403 (William Waller Hening ed., 1823). What is more, the law also ensured that “the Indians of the Easterne shore have like and equall liberty of trade or otherwayes with any other our friends

¹² <https://www.britannica.com/topic/New-England-Confederation> (last visited July 10, 2026).

and neighbouring Indians.” *Id.* What the Virginia law restricted, therefore, was firearms sales to hostile foreign nations. Far from a restriction analogous to the regulations challenged here, the law secured a right to sell firearms to English colonists without any sort of taxation or registration.

Lastly, the government cited an 1814 Massachusetts law requiring that musket and pistol barrels be tested before sale, and an 1820 New Hampshire law appointing gunpowder inspectors to examine storage and manufacturing sites. Gov’t Opp’n, R. 31, PageID # 103. These laws were intended to prevent harm to the public caused by deficient or negligent manufacturers and did not require a purchaser to pay a tax nor register the firearm with the government.

The government’s proffered analogues not only fail to establish a historical tradition of regulating protected arms through registration and taxation but instead demonstrate that such requirements are extreme outliers.

B. The NFA is not a “shall-issue” licensing regime.

The challenged NFA provisions cannot be salvaged as a “shall-issue” licensing regime. *See Bruen*, 597 U.S. at 38–39 n.9 (explaining that

the Court’s opinion should not “be interpreted to suggest the unconstitutionality” of “shall-issue” licensing regimes, particularly those that “contain only ‘narrow, objective, and definite standards,’” but disapproving of regimes “put toward abusive ends”). The NFA is a registration and taxation regime. “Registration requirements ... do not meaningfully serve the purpose of ensuring that owners know how to operate guns safely” and are instead “often seen as half-a-loaf measures aimed at deterring gun ownership.” *Heller v. District of Columbia*, 670 F.3d 1244, 1291 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (“*Heller II*”).

The Supreme Court has indicated that firearm registration is unconstitutional. In *Miller*, which challenged the NFA’s application to short-barreled shotguns, the Court’s analysis focused on whether short-barreled shotguns were protected arms. Yet “if registration could be required for all guns, [*Miller*] could have just said so and ended its analysis; there would have been no need to go to the trouble of considering whether the gun in question was the kind protected under the Second Amendment.” *Heller II*, 670 F.3d at 1294 (Kavanaugh, J., dissenting); *cf. Heller*, 554 U.S. at 622 (“Had the [*Miller*] Court believed that the Second Amendment protects only those serving in the militia, it

would have been odd to examine the character of the weapon rather than simply note that the two crooks were not militiamen.”). Moreover, *Heller* affirmatively suggested that the “National Firearms Act’s restrictions ... might be unconstitutional” with respect to protected arms. *Id.* at 624.

Even if the NFA were characterized as a “shall-issue” licensing regime, it must still satisfy *Bruen*’s historical-tradition test. *Bruen* repeatedly stated that the “*only*” way the government can justify an arms-bearing regulation, 597 U.S. at 1, 17, 24, 34 (emphasis added), is by “demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation,” *id.* at 24. The Court has never recognized an exception for “shall-issue” licensing regimes or any other law. *See United States v. Hemani*, 146 S. Ct. 1677, 1685 (2026) (“Our cases demand this attention to history[.]”).

Moreover, the government has applied the NFA “toward abusive ends” by leveraging the Act to establish a registry of protected arms. *See Bruen*, 597 U.S. at 39 n.9. As demonstrated by the government’s scant and inapposite historical analogues discussed above, registration of protected arms is unsupportable as a matter of the Second Amendment’s text and this Nation’s historical tradition.

IV. *United States v. Miller* says nothing about whether short-barreled rifles are in common use today.

The district court concluded that *Miller* forecloses Machamer’s short-barreled rifle challenge because *Miller* “expressly held that the Second Amendment did not guarantee ‘the right to keep and bear [a short-barreled shotgun].’” Order, R. 36, PageID # 142 (quoting *Miller*, 307 U.S. at 178). But *Miller* neither held that short-barreled shotguns are unprotected nor forecloses a challenge to restrictions on short-barreled rifles.¹³

The government presents no evidence that short-barreled shotguns and short-barreled rifles are materially indistinguishable, and such a contention defies reality. Short-barreled shotguns and short-barreled rifles are distinct categories of firearms. The NFA itself acknowledges this distinction by setting different minimum barrel lengths for each. 26 U.S.C. § 5845(a).

¹³ *Miller* was a seemingly collusive case in which “the Court heard from no one but the Government.” *Heller*, 554 U.S. at 623; see also Brian L. Frye, *The Peculiar Story of United States v. Miller*, 3 NYU J.L. & LIBERTY 48, 50, 65 (2008) (“*Miller* was a Second Amendment test case arranged by the government and designed to support the constitutionality of federal gun control.”).

Even if there were a reason to treat short-barreled smooth-bore firearms differently than longer-barreled smooth-bore firearms, that reasoning would have no application to short-barreled rifles. Handguns—the “quintessential self-defense weapon,” *Heller*, 554 U.S. at 629—are themselves short-barreled rifled-firearms, and they are constitutionally protected, *id.* Indeed, a rifle with a 15.9-inch barrel is much more similar to a rifle with a 16-inch barrel or a handgun with a 13-inch barrel than it is to a shotgun with a 17.9-inch barrel. To equate short-barreled rifles with short-barreled shotguns requires ignoring these fundamental mechanical and functional differences.

Furthermore, the *Miller* Court did not hold that short-barreled shotguns are unprotected by the Second Amendment but rather determined that “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.” 307 U.S. at 178. In other words, neither Miller—who “made no appearance in the case, neither filing a brief nor appearing at oral argument,” *Heller*, 554 U.S. at 623—nor the government provided a robust historical discussion of short-barreled shotguns and their commonality or dangerousness upon which the Court could determine

that short-barreled shotguns were protected. This is why *Heller* cautioned lower courts on *Miller*'s limited scope: “[i]t is particularly wrongheaded to read *Miller* for more than what it said.” *Id.*

Because the *Miller* Court declined to conclude that short-barreled shotguns were protected arms, *Miller* stands only for the proposition that the NFA's restrictions are valid as applied to arms that *are not* protected by the Second Amendment.

Even if *Miller* were read to have a bearing on the constitutionality of restrictions on short-barreled *rifles* as opposed to short-barreled *shotguns*, it still could not foreclose a challenge to the NFA's restrictions on short-barreled rifles nearly 90 years later. As *Heller* explained, “*Miller* said ... that the sorts of weapons protected were those ‘in common use *at the time*.’” 554 U.S. at 627 (quoting *Miller*, 307 U.S. at 179) (emphasis added). And *Bruen* makes clear that over time, unprotected 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.... Thus, even if these colonial laws prohibited the carrying of handguns because they were considered “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.

It does not matter whether short-barreled rifles were in common use in 1939 any more than it mattered in *Bruen* whether handguns were in common use in the seventeenth century. *See id.* The focus must be on the present. To hold otherwise and deny that modern weapons can become popular among modern Americans would leave Second Amendment rights “trapped in amber” and “would be as mistaken as applying the protections of the right only to muskets and sabers.” *Rahimi*, 602 U.S. at 691–92.

CONCLUSION

Short-barreled rifles are protected arms, and there is no historical regulatory tradition that justifies registering and taxing protected arms. The district court’s order should be reversed.

Respectfully submitted,

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This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 6,430 words, excluding the parts of the brief excluded by Fed. R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I certify that on July 13, 2026, I served the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

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