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

BRIEF OF THE NATIONAL RIFLE ASSOCIATION OF AMERICA, AMERICAN SUPPRESSOR ASSOCIATION, AND INDEPENDENCE INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST 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 among the citizenry. 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 American Suppressor Association (ASA) is a 501(c)(6) nonprofit dedicated to advancing suppressor reform nationwide. Since its founding in 2011, ASA has advocated for suppressor rights in dozens of States, helped relegalize suppressors in Iowa, Minnesota, Vermont, and Guam, and helped relegalize their use for hunting in nineteen States. ASA played a pivotal role in eliminating the federal transfer tax on suppressors, short-barreled firearms, and "any other weapons."

Founded in 1985 on the eternal truths of the Declaration of Independence, the Independence Institute is a 501(c)(3) public policy research organization based in Denver, Colorado. The briefs and scholarship of Research Director David Kopel have been cited in seven opinions of this Court,

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[1] No counsel for any party authored this brief in any part. No person or entity other than *amici* funded its preparation or submission.

including *Bruen*, *McDonald* (under the name of lead *amicus* Int'l Law Enforcement Educators & Trainers Association (ILEETA)), and *Heller* (same). Kopel has been cited in 140 opinions of lower courts.

Amici are interested in this case because a prohibition on many of the Nation's most common arms violates the Second Amendment.

SUMMARY OF ARGUMENT

The courts below upheld bans on common semiautomatic rifles on the theory that such arms constitute a "dramatic technological change" warranting a "more nuanced approach" to the historical inquiry required by *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*.[2] That approach, as they applied it, sidestepped this Court's holdings that common—including modern—arms cannot be banned. The premise contradicts this Court's precedents and the historical record.

Both *District of Columbia v. Heller*[3] and *Bruen* involved laws restricting semiautomatic handguns. In both cases, this Court employed a "straightforward historical inquiry."[4] If restrictions on semiautomatic handguns do not warrant a "more nuanced" historical analysis, restrictions on semiautomatic rifles do not either.

Modern semiautomatic firearms are the product of five centuries of incremental advances in repeating-arm technology. Repeating arms date to around 1490; successful repeaters emerged in seventeenth-century Europe with the Kalthoff and Lorenzoni designs. In 1777, the Continental Congress ordered 100 of Joseph Belton's repeaters after he successfully demonstrated a 16-shot musket. Within two years of the Second Amendment's ratification, Joseph Chambers—who would later sell numerous types of repeating arms to

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[2] 597 U.S. 1 (2022).

[3] 554 U.S. 570 (2008).

[4] *Bruen*, 597 U.S. at 27.

the U.S. Navy and Pennsylvania militia—demonstrated his repeater for Secretary of State Thomas Jefferson and the general public and corresponded with President George Washington about it. The 22-shot Girardoni air rifle was famously carried on the Lewis and Clark Expedition.

Nineteenth-century Americans made further improvements in accuracy, rate of fire, capacity, and ease of use. Pepperboxes and revolvers brought repeating handguns into popular commerce in the 1830s. Henry, Spencer, and Winchester lever-actions did the same for rifles in the 1860s. Functional semiautomatics followed in 1885—the latest step in a long tradition of improving the repeating capability of ordinary citizen arms.

Advances in firearms have always been part of the American experience. Early settlers used matchlock muskets, whose military lethality was nearly double that of the sixteenth-century arquebus. The eighteenth-century flintlock more than doubled that of the matchlock muskets. The Pennsylvania-Kentucky rifle, among the most popular arms of the Founding era, achieved the demanding standard Americans had set for accuracy, portability, and economy of ammunition for hunting expeditions and frontier fighting. The Founders inherited and embraced this American tradition of continuing technological improvement and understood that advances would continue in the future.

The challenged bans aim to halt this tradition and trap firearms in nineteenth-century amber. But this Court has repeatedly emphasized that modern arms are protected. And the Court has twice highlighted the

Amendment's protection of modern arms to illustrate how its historically fixed meaning applies to new circumstances.

No historical tradition of regulation supports the challenged bans. Only one law before the twentieth century singled out repeating arms for specially unfavorable treatment—a racist 1893 Florida licensing law that was never intended to be applied to the White population and recognized as unconstitutional if contested.

Reliance on Bowie-knife laws proceeds at the wrong level of abstraction. *Bruen* calls for the closest available analogues, making repeating-arm laws the proper frame. Regardless, Bowie-knife laws fail on their own terms. Most States regulated Bowie knives in some manner, but, except in a few outlier jurisdictions, adults were free to buy, possess, and openly carry them. Regulations typically restricted concealed carry, sales to minors, or imposed enhanced penalties for criminal misuse. No State banned possession. Three States imposed sales bans, and one of those laws was held to violate the Second Amendment; a few Southern outliers imposed taxes to prevent ownership by poor people; and a couple States banned carry. Those laws—nearly all of which applied to handguns as well—could not save the handgun possession ban in *Heller* or the handgun carry ban in *Bruen*. They cannot save bans on the Nation's most popular rifles.

ARGUMENT

I. Semiautomatic firearms are the product of five centuries of incremental advances in repeating-arm technology.

Several lower courts have upheld bans on AR-style semiautomatic rifles on the ground that they constitute a "dramatic technological change" warranting a "more nuanced approach" to the historical inquiry prescribed in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*.[5]

That approach cannot be reconciled with this Court's precedents. Both *District of Columbia v. Heller*[6] and *Bruen* involved laws restricting semiautomatic handguns, and this Court employed a "straightforward historical inquiry" in both cases while acknowledging that "*other cases* … may require a more nuanced approach."[7] If restrictions on semiautomatic handguns did not warrant a "more nuanced" historical analysis, restrictions on semiautomatic rifles likewise do not. Rather, a challenge to a ban on semiautomatic firearms "falls into the category of cases where 'the historical

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[5] 597 U.S. 1 (2022); *see Barnett v. Raoul*, 180 F.4th 1035, 1055 (7th Cir. 2026); *Nat'l Ass'n for Gun Rts. v. Lamont*, 153 F.4th 213, 236–38 (2d Cir. 2025); *Bianchi v. Brown*, 111 F.4th 438, 463 (4th Cir. 2024) (en banc).

[6] 554 U.S. 570 (2008).

[7] *Bruen*, 597 U.S. at 27 (emphasis added).

analogies ... are relatively simple to draw,' not the category calling for a 'more nuanced approach.'"[8]

Indeed, semiautomatic rifles do not constitute a dramatic technological change. Semiautomatic handguns, rifles, and shotguns have essentially the same rate of fire. They are the product of five centuries of incremental advances in repeating-arm technology. The Founding generation knew of repeating arms and embraced them; nineteenth-century Americans enthusiastically developed and acquired increasingly capable versions. By the time semiautomatic firearms appeared in the late nineteenth century, they represented the latest step in a long and continuous tradition of improving the repeating capability of ordinary citizen arms.

A. Repeating arms in England.

"The desire for … repeating weapons is almost as old as the history of firearms, and there were numerous attempts to achieve this goal, beginning at least as early as the opening years of the sixteenth century."[9]

The first known repeating firearms were ten-shot matchlock arquebuses dating to between 1490 and

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[8] *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Att'y Gen. New Jersey*, 183 F.4th 211, 246 (3d Cir. 2026) (en banc) (quoting *Bruen*, 597 U.S. at 27).

[9] Harold Peterson, ARMS AND ARMOR IN COLONIAL AMERICA 1526–1783, at 215 (1956).

1530.[10] King Henry VIII owned a similar gun.[11] In the sixteenth century, a German gunsmith developed a firearm capable of firing sixteen superposed rounds in Roman-candle fashion[12]—meaning that one round stacked on top of another and the user "could not stop the firing once he had started it."[13] Charles Cardiff patented a similar firearm in England in 1682.[14]

"Successful systems" of repeating arms "had developed by 1640, and within the next twenty years they had spread throughout most of Western Europe and even to Moscow."[15] Most notably, the Kalthoff and Lorenzoni repeaters became "the first guns of their kind to achieve success."[16]

"The Kalthoff repeater was a true magazine gun."[17] It had "two magazines, one for powder and one for balls," and "the number of charges in the magazines ran all the way from six or seven to thirty."[18] Kalthoff repeaters were "the first magazine repeaters ever to be adopted for military purposes,"

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[10] M.L. Brown, FIREARMS IN COLONIAL AMERICA: THE IMPACT ON HISTORY AND TECHNOLOGY 1492–1792, at 50 (1980).

[11] W.W. Greener, THE GUN AND ITS DEVELOPMENT 81–82 (9th ed. 1910).

[12] *16-Shot Wheel Lock*, AM.'S 1ST FREEDOM (May 10, 2014), https://perma.cc/B8YB-XVNA; *see also* Lewis Winant, FIREARMS CURIOSA 168 (1955).

[13] *Id.* at 166.

[14] *Id.* at 167.

[15] Harold Peterson, THE TREASURY OF THE GUN 229 (1962).

[16] *Id.*

[17] *Id.*

[18] *Id.* at 230.

being issued to Royal Foot Guards and seeing service during seventeenth-century wars.[19] Kalthoff-type repeaters "spread throughout Europe wherever there were gunsmiths with sufficient skill and knowledge to make them, and patrons wealthy enough to pay the cost."[20]

"The Lorenzoni also was developed during the first half of the Seventeenth Century."[21] This magazine-fed Italian repeating pistol "used gravity to self-reload,"[22] and typically carried about seven shots. The mechanism spread throughout Europe and the American colonies and was adapted to rifles.[23]

London diarist Samuel Pepys seemingly described Lorenzoni-style firearms when he wrote in 1662 of a firearm that could "discharge seven times," which was "much approved of, and many thereof made,"[24] and another in 1664 that could "shoot off often, one after another, without trouble or danger."[25] Although Abraham Hill patented the Lorenzoni repeating mechanism in 1664,[26] "[m]any other English gunsmiths also made guns with the Lorenzoni action

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[19] *Id.*

[20] *Id.*

[21] *Id.* at 231.

[22] Martin Dougherty, SMALL ARMS VISUAL ENCYCLOPEDIA 34 (2011).

[23] Peterson, TREASURY, at 232.

[24] 2 DIARY AND CORRESPONDENCE OF SAMUEL PEPYS 3 (Bright ed., 1876).

[25] *Id.* at 434; *see also* Peterson, TREASURY, at 232.

[26] Clifford Walton, HISTORY OF THE BRITISH STANDING ARMY. A.D. 1660 TO 1700, at 337 (1894).

during the next two or three decades"[27] and "a host of others" produced related firearms "throughout the 18th century."[28]

No pre-1776 English law singled out repeating firearms.[29]

B. Repeating arms in colonial and Founding-era America.

Repeating arms were present in colonial America, although their cost limited their prevalence. Some mid-seventeenth-century American repeaters employed a hand-rotated revolving cylinder.[30] An English Cookson repeater with a ten-round magazine is "believed to have found its way into Maryland with one of the early English colonists."[31]

In 1722 Boston gunsmith John Pim demonstrated a gun he built that, being "loaded but once," "was discharged eleven times following, with bullets, in the space of two minutes."[32] In 1730, Boston gunsmith

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[27] Peterson, TREASURY, at 232.

[28] Peterson, ARMS AND ARMOR, at 215.

[29] *See* David Kopel & Joseph Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. LEGIS. 223, 236 & n.65 (2024).

[30] *See, e.g.*, 2 Charles Sawyer, FIREARMS IN AMERICAN HISTORY 5 (1910) (six-shot flintlock); Charles Chapel, GUNS OF THE OLD WEST 202–03 (1961) (revolving snaphance).

[31] Sniper, *The Cookson Gun and the Mortimer Pistols,* 63 ARMS & THE MAN, Sept. 1917, at 4. It later became "the capstone of the collection of arms in the National Museum at Washington, D.C." *Id.* at 3.

[32] Samuel Niles, *A Summary Historical Narrative of the Wars in New England*, *in* 5 COLLECTIONS OF THE MASSACHUSETTS HISTORICAL SOCIETY 347 (1861).

Samuel Miller advertised and demonstrated a twenty-shot repeater.[33] A 1736 estate sale listed "a six times repeating Gun."[34]

John Cookson advertised another repeater in the *Boston Gazette* in 1756: "MADE by JOHN COOKSON, and to be Sold by him at his House in Boston: A handy Gun" that "will fire 9 Times distinctly, as quick, or slow as you please."[35]

The Founding generation encountered still more advanced repeating arms. In 1777, Philadelphia inventor Joseph Belton demonstrated his musket that shot sixteen rounds for military experts, including Generals Horatio Gates and Benedict Arnold, and for scientists, including David Rittenhouse.[36] At their recommendation, the Second Continental Congress ordered 100 Belton guns, asking that they be manufactured for eight shots rather than sixteen, due to the ongoing gunpowder shortage.[37] The deal failed when Belton demanded "an extraordinary allowance" that the Congress could not afford.[38]

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[33] NEW ENG. WKLY. J., Mar. 2, 1730, at C4.

[34] THE S.C. GAZETTE, June 12–19, 1736, at 3.

[35] THE BOS. GAZETTE & COUNTRY J., Apr. 12, 1756.

[36] Letter from Joseph Belton to the Continental Congress (July 10, 1777), *in* 1 PAPERS OF THE CONTINENTAL CONGRESS, COMPILED 1774–1789, at 137, 139 (Butler ed., 1978).

[37] Report of the Continental Congress (May 3, 1777), *in* 7 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789, at 323, 324 (Ford ed., 1907).

[38] Report of the Continental Congress (May 15, 1777), *in* 7 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789, at 361.

The First Congress under the Constitution, which proposed the Second Amendment to the States for ratification, included men who were delegates to the Second Continental Congress when it considered Belton's proposal, among them Roger Sherman, Elbridge Gerry, Robert Morris, Charles Carroll, George Clymer, George Read, and Richard Henry Lee.[39]

After the war, Belton moved to England, where he produced various repeating arms for the British East India Company.[40] Meanwhile, repeaters continued to be advertised in American newspapers. South Carolinian James Ransier advertised four-shot repeaters in 1785.[41]

When the Second Amendment was ratified, the state-of-the-art repeater was the Girardoni air rifle.[42] It could fire twenty-one or twenty-two rounds in .46 or

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[39] Other delegates who served in the Second Continental Congress in 1777 include John Adams, Samuel Adams, Benjamin Harrison, John Hancock, and future Supreme Court Justices Samuel Chase and James Wilson. H.R. Doc. No. 108-222, at 34–38 (2005).

[40] *See* Kopel & Greenlee, *History of Bans*, at 256.

[41] James Lambert Ransier, Advertisement, *At No. 165.5 King Street*, COLUMBIAN HERALD, OR THE PATRIOTIC COURIER OF NORTH-AMERICA (Charleston, S.C.), Oct. 26, 1785.

[42] The Girardoni was invented for the Austrian army around 1779. Gerald Prenderghast, REPEATING AND MULTI-FIRE WEAPONS 100–01 (2018). As a testament to the rifle's effectiveness, "[t]here are stories that Napoleon had captured air riflemen shot as terrorists, making it hard to recruit men for the air rifle companies." James Garry, WEAPONS OF THE LEWIS AND CLARK EXPEDITION 91–94 (2012).

.49 caliber, using a tubular spring-loaded magazine.[43] The Girardoni was ballistically comparable to a conventional powder firearm,[44] and could reportedly take an elk with one shot.[45] Its tubular magazine could be quickly reloaded by speed-loading tubes, and the rifle could fire forty times before its air bladder required replenishing.

Meriwether Lewis famously carried a Girardoni rifle on the Lewis and Clark Expedition, mentioning it in his journal thirty-nine times and often demonstrating it to American Indian tribes to show that the expedition could defend itself when outnumbered.[46]

Less than one year after the Second Amendment's ratification, Joseph Chambers informed Secretary of State Thomas Jefferson about his invention "[t]o charge a Gun barrel full from one end to the other" and "fire these off successively at any desired intervals from one to seven or eight seconds."[47]

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[43] *Id.* at 100–01.

[44] John Plaster, THE HISTORY OF SNIPING AND SHARPSHOOTING 69–70 (2008).

[45] Jim Supica et al., TREASURES OF THE NRA NATIONAL FIREARMS MUSEUM 31 (2013); *see also* Garry, WEAPONS, at 92 (By 1800, "there were many gunsmiths in Europe producing compressed air weapons powerful enough to use for big game hunting or as military weapons.").

[46] 2–8 Meriwether Lewis & William Clark, THE JOURNALS OF THE LEWIS & CLARK EXPEDITION (Moulton & Dunlay eds., Neb. ed. 1986–1993) (2002).

[47] Letter from Joseph Chambers to Thomas Jefferson (Aug. 13, 1792), *in* 24 THE PAPERS OF THOMAS JEFFERSON, JUNE 1 – DEC. 31, 1792, at 290–93 (Catanzariti ed., 1990).

Chambers asserted that, using his invention, "a common Musquet" and "Carabine" could each "bear … ten Charges," "a Pistol will receive five Charges," and a fifty-barreled swivel gun could fire "Fourteen Thousand Shots in the space of from two to ten Minutes."[48] Jefferson responded that, "if found effectual … your discovery … will not want patronage any where."[49]

Chambers proceeded in 1793 to demonstrate a seven-shot firearm for Jefferson[50] and separately before the public, as reported in at least fifteen newspapers across the Nation.[51] He also informed President Washington of his invention.[52] Chambers would find success in the early nineteenth century, while repeating arms would become the most popular American firearms as the century progressed.

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[48] *Id.*

[49] Letter from Thomas Jefferson to Joseph Chambers (Nov. 5, 1792), *in* 24 THE PAPERS OF THOMAS JEFFERSON, at 580.

[50] *See* Letter from Joseph Chambers to Thomas Jefferson (May 20, 1801), *in* 34 THE PAPERS OF THOMAS JEFFERSON, at 147–48 (Oberg ed., 2007); *see also* Letter from Joseph G. Chambers to Thomas Jefferson (Aug. 13, 1792), *in* 24 THE PAPERS OF THOMAS JEFFERSON (editorial note mentioning "a personal demonstration of this weapon for TJ in the spring of 1793").

[51] *See* Keren Karmiel, Jonathan Goldstein & Joseph Greenlee, *Nothing New Under the Gun* 53 (Firearms Rsch. Ctr., Working Paper No. 2026-9), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7390899.

[52] Letter from Joseph Chambers to George Washington (Aug. 5, 1793), *in* 13 THE PAPERS OF GEORGE WASHINGTON, PRESIDENTIAL SERIES, June 1 – Aug. 31, 1793, at 352–53 (Patrick ed., 2007).

C. Nineteenth-century repeating arms.

Chambers continued refining and producing repeating firearms into the nineteenth century and secured the first American military contract for repeaters, when the U.S. Navy purchased his firearms in 1813.[53] He also sold firearms to the Pennsylvania militia.[54] Chambers made pistols, muskets, and swivel guns, employing "in various combinations … most of the systems of repeating gunnery known at that time: *i.e.*, multiple barrels, multiple lock plates, and Roman Candle ignition."[55] His muskets fired eight, ten, or twelve shots.[56] His pistols fired four or six.[57] His swivel guns typically were "composed of seven musket barrels … containing twenty-five shots in each and discharging one hundred-seventy-five bullets, by quick succession, in less than one minute."[58] Some models were made with eight barrels,[59] while the swivel guns he made for the Pennsylvania militia had 224-shot capacities.[60] Between 1812 and 1816, about 1,200 Chambers repeating guns were produced for the Navy and Pennsylvania militia.[61]

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[53] William Gilkerson, BOARDERS AWAY II WITH FIRE 124–25, 140 (1993).

[54] *Id.* at 143.

[55] *Id.* at 123–24.

[56] *Id.* at 124, 125, 149–50.

[57] *Id.* at 125, 150.

[58] *Id.* at 129.

[59] *Id.* at 140.

[60] *Id.* at 143.

[61] *Id.* at 139.

More developments soon followed. Artemas Wheeler sold the Navy muskets with seven-chamber cylinders and carbines with seven barrels in 1821, followed by six- and seven-barreled revolving guns in 1822.[62]

The *New York Evening Post* in 1822 lauded New Yorker Isaiah Jennings for inventing a repeater, "importan[t], both for public and private use," whose "number of charges may be extended to fifteen or even twenty"[63] and whose "principle can be added to any musket, rifle, fowling piece, or pistol" to make it capable of firing "from two to twelve times."[64] Jennings's firearm was repeatedly advertised across the country.[65] Within a few years, Reuben Ellis secured contracts to produce military rifles incorporating the Jennings principle.[66]

Pepperbox handguns, with multiple barrels fired sequentially, "were made before 1600,"[67] and enjoyed "wide popularity and commercial success" in America beginning in the 1830s.[68] Four- to six-barrel

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[62] *Id.* at 155.

[63] *Newly Invented Muskets*, N.Y. EVENING POST, Apr. 10, 1822.

[64] *Id.*

[65] *See* Karmiel, *Nothing New*, at 61.

[66] *Id.* at 61–62; Winant, FIREARMS CURIOSA, at 174.

[67] Lewis Winant, PEPPERBOX FIREARMS 7 (1952).

[68] Norm Flayderman, FLAYDERMAN'S GUIDE TO ANTIQUE AMERICAN FIREARMS AND THEIR VALUES 55 (9th ed. 2007).

pepperboxes were most common, and one inventor produced one with 24 barrels.[69]

The first American patent for a revolver was issued to Samuel Colt in 1836.[70] Revolvers gained so much popularity that combatants during the Civil War used 20 models from Colt, plus 73 models from 36 other manufacturers.[71]

Smith & Wesson revolvers were especially popular. The Smith & Wesson "factory … couldn't keep up with the demand" for its Model 1—"the new revolver and its unique [metallic] cartridge were such a hit with the American public that they flew off store shelves nationwide."[72]

Some revolvers were produced with a second barrel for greater firepower.[73] The Le Mat two-barreled revolver was popular in the Confederacy.[74] The most common configuration was a nine-shot revolving cylinder that fired through a rifled upper barrel plus a smooth lower barrel for a shot pellet.[75]

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[69] Winant, FIREARMS CURIOSA, at 246, 249–250.

[70] *See* Kopel & Greenlee, *History of Bans*, at 270–72 (discussing early Colt models).

[71] John Graf, STANDARD CATALOGUE OF CIVIL WAR FIREARMS 187–233 (2008).

[72] Paul Lockhart, FIREPOWER: HOW WEAPONS SHAPED WARFARE 257 (2021). Metallic cartridges are the ones in use today.

[73] Kopel & Greenlee, *History of Bans*, at 274–77.

[74] *Id.* at 274–75.

[75] Berkeley Lewis, SMALL ARMS AND AMMUNITION IN THE UNITED STATES SERVICE 66 (Smithsonian Institution Press 1968) (1956).

Meanwhile, other manufacturers, such as Remington, focused on making revolver cylinders easy to exchange. A user could replace a spent cylinder with a preloaded one almost as easily as users of semiautomatics can replace a spent magazine with a fresh one.[76]

Revolvers acquired double-action mechanisms, allowing the user to fire as quickly as the trigger could be pulled, similar to a semiautomatic. Swing-out cylinders allowed for use of speedloaders to reload all chambers at once.[77]

Not every repeating-arm invention achieved broad commercial success. But even unsuccessful designs contributed to later development. Notable nineteenth-century handgun innovations include pinfire revolvers with up to 21-round capacities;[78] Henry Josselyn's 1866 twenty-shot chain pistol;[79] the Guycot "forty shot belt pistol";[80] Joseph Enouy's 42-shot "Ferris Wheel" pistol;[81] and various combination

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[76] Charles Schif, REMINGTON'S FIRST REVOLVERS: THE REMINGTON BEALS .31 CALIBER REVOLVERS 48, 106 (2007). Likewise, Starr Arms made 23,000 revolvers whose cylinders could be swapped rapidly. *U.S. Starr Arms Co 1858 Double Action*, NRA MUSEUMS, https://www.nramuseum.org/guns/the-galleries/a-nation-asunder-1861-to-1865/case-16-union-pistols-and-revolvers/us-starr-arms-co-1858-double-action.aspx.

[77] Kopel & Greenlee, *History of Bans*, at 281–82. In a single-action revolver, the hammer must be cocked before each trigger pull.

[78] *Id.* at 273.

[79] *Id.*

[80] *Id.*

[81] *Id.*

repeating arms—such as knife-revolvers, saber-revolvers, squeezer-revolvers, knuckleduster-revolvers, and pocket-book-revolvers,[82] among others.[83]

Repeating handguns became a staple of the American consumer market in the 1830s; repeating long guns achieved significant consumer sales later, partly because of problems with reliability. Early efforts include John Cochran's 1837 9-shot rifle with a manually turned cylinder;[84] the 1838 Bennett and Haviland Rifle whose chain drive fired twelve rounds;[85] the 1851 Porter Rifle, which could use a 30-round magazine and, according to an 1853 newspaper, could "make sixty discharges a minute";[86] Alexander Hall's 15-round rotating cylinder rifle;[87] and the 1856 Roman-candle-style Kesling rifle,[88] whose magazine was described as capable of containing "any suitable number of charges."[89]

The decisive commercial breakthrough came with lever-action rifles using the new metallic cartridges. The 30-shot Volcanic Rifle was advertised in 1859 as

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[82] *Id.* at 274.

[83] *Id.* at 273–77.

[84] *Id.* at 272.

[85] *Id.* at 277.

[86] *Id.* at 272–73 (quoting *A New Gun Patent*, THE ATHENS POST (Tenn.), Feb. 25, 1853, at 1 (reprinted from N.Y. Post)).

[87] *Id.* at 277.

[88] *Id.*

[89] *Id.*

being capable of firing thirty times within a minute.[90] A much-improved version, the Henry Rifle, was introduced in 1861. Tested at the Washington Navy Yard in 1862, "187 shots were fired in three minutes and thirty-six seconds (not counting reloading time), and one full fifteen-shot magazine was fired in only 10.8 seconds … hits were made from as far away as 348 feet, at an 18-inch-square target." The testers concluded that the rifle could be fired "with great rapidity."[91] "Advertisements claimed … power to kill at a thousand yards."[92] About 14,000 were produced; most of them privately purchased by Union soldiers for personal use or for their units.[93] Henrys are still made today.

The seven-shot Spencer repeating rifle was deployed in even larger numbers during the War, with over 150,000 manufactured. With speedloaders, it could fire 20 shots per minute. After the war, the government sold the Spencers to soldiers who wanted to take theirs home.[94]

After the Civil War, repeating rifles gained even greater popularity. The Henry evolved into the eighteen-shot Winchester Model 1866, advertised as

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[90] Harold Williamson, WINCHESTER: THE GUN THAT WON THE WEST 25–27 (1952).

[91] R.L. Wilson, WINCHESTER: AN AMERICAN LEGEND 11–12 (1991).

[92] Peterson, TREASURY, at 240.

[93] Graf, STANDARD CATALOGUE, at 101; Andrew Bresnan, *The Henry Repeating Rifle: Victory thru rapid fire*, RAREWINCHESTERS.COM (2021), https://www.rarewinchesters.com/articles/art_hen_02.shtml.

[94] Kopel & Greenlee, *History of Bans*, at 278–79.

having a capacity of "eighteen charges, which can be fired in nine seconds"[95]—or, elsewhere, "Two shots a second."[96] "[T]he Model 1866 was widely used in opening the West and, in company with the Model 1873, is the most deserving of Winchesters to claim the legend 'The Gun That Won the West.'"[97] The Model 1873's magazines held from six to twenty-five rounds;[98] more than 500,000 were produced by 1900.[99]

Another lever-action rifle, the 1873 Evans Repeating Rifle, used a rotary helical magazine and held thirty-four rounds.[100] The Evans was mass-produced and enjoyed moderate success, but never approached the remarkable popularity of Winchester rifles.[101]

The final quarter of the nineteenth century produced more iconic Winchesters, including Models 1886, 1892, and 1894. The Model 1892—made legendary by Annie Oakley and later by John

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[95] Louis Garavaglia & Charles Worman, FIREARMS OF THE AMERICAN WEST 1866-1894, at 128 (1985).

[96] Peterson, TREASURY, at 234–35.

[97] Wilson, WINCHESTER, at 22.

[98] Arthur Pirkle, WINCHESTER LEVER ACTION REPEATING RIFLES: THE MODELS OF 1866, 1873 & 1876, at 107 (2010).

[99] Elmar du Plessis, *The Gun That Won the West–The Story of the Winchester Rifle,* NAT'L MUSEUM PUBL'NS (Nov. 30, 2016), https://perma.cc/B4RK-EYHB.

[100] Flayderman, FLAYDERMAN'S GUIDE, at 694.

[101] *See id.*

Wayne[102]—had a 15-round capacity;[103] over a million were produced by 1941.[104] Roughly 150,000 Model 1894s were sold within its first four years, and more than 3,000,000 were sold by 1975.[105]

The progression was not limited to lever actions. Pump-action rifles and shotguns emerged in the nineteenth century; the famous Colt Lightning rifle, introduced in 1884, could hold fifteen rounds.[106]

Other inventions advanced firearms design without broad commercial success. These included horizontal turret guns;[107] endless chain guns, such as the Guycot 80- and 100-shot rifles;[108] and multi-barreled firearms, including William Billinghurst's two-barrel combination weapon consisting of a shotgun and seven-shot rifle.[109] Whether from icons such as Winchester, or from lesser names, the continuing effort was to increase ammunition capacity, shorten the interval between shots, reduce the physical operations required to fire, and speed and simplify reloading.

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[102] *Model 1892 Lever-Action Rifles*, WINCHESTER REPEATING ARMS, https://perma.cc/N9KK-FW8Q.

[103] *Winchester Model 1892,* MIL. FACTORY, https://perma.cc/KSS2-S2XW.

[104] Flayderman, FLAYDERMAN'S GUIDE, at 311.

[105] *Id.* at 313.

[106] *Id.* at 122.

[107] Kopel & Greenlee, *History of Bans*, at 257.

[108] Winant, FIREARMS CURIOSA, at 206–07.

[109] *Id.* at 54–56.

Against the constantly advancing technological background, the emergence of semiautomatic firearms was an incremental development rather than a sudden transformation. The first functional semiautomatic firearm was the Mannlicher Model 85 rifle, invented in 1885.[110] Mannlicher introduced new models in 1891, 1893, and 1895.[111] Semiautomatic handguns before the turn of the century included the Mauser C96,[112] Bergmann Simplex,[113] Borchardt M1894,[114] Borchardt C-93,[115] Fabrique Nationale M1899,[116] Mannlicher M1896 and M1897,[117] Luger M1898 and M1899,[118] Roth-Theodorovic M1895, M1897, and M1898,[119] and the Schwarzlose M1898.[120] The Mauser and the Luger would each sell millions in the following decades to militaries and civilians. The Luger used a detachable magazine; the original Mauser's internal magazine was reloaded with stripper clips.[121] American-made semiautomatic

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[110] John Walter, RIFLES OF THE WORLD 568 (3d ed. 2006).

[111] *Id.* at 568–69.

[112] Dougherty, SMALL ARMS, at 84.

[113] *Id.* at 85.

[114] *Springfield Armory Museum – Collection Record*, REDISCOV.COM, https://perma.cc/8YYZ-XXNE.

[115] Leonardo Antaris, *In the Beginning: Semi-Automatic Pistols of the 19th Century*, AM. RIFLEMAN (Jan. 4, 2018), https://perma.cc/EE73-5NJ2.

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *Id.*

[121] *Id.*

handguns, rifles, and shotguns were just around the corner, to be introduced in the early years of the twentieth century.

II. The Founders embraced technological improvements in firearms.

Advances in firearms have always been part of the American experience. Early settlers mostly used matchlock muskets, whose military lethality was "nearly double" that "of the arquebus from the previous century" due to greater range and stopping power.[122]

The wheel lock was the first firearm that could be kept loaded and ready for sudden use. But wheel locks were complex, delicate, and expensive, so they were succeeded by the simpler, sturdier, and more affordable flintlock.[123]

Unlike matchlocks, flintlocks could be kept always ready; they did not need a smoldering cord that revealed the user's location. Flintlocks were more reliable, with fewer misfires from failure to ignite.[124] Whereas a matchlock could take more than a minute to reload, experienced users could fire and reload a flintlock up to five times a minute, while three per

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[122] David Kopel, *Guns are Lethal: The History of Five Centuries of Continuing Improvements in Firearms Efficacy*, 68 WM. & MARY L. REV. (forthcoming 2026), at 14 (citing Dupuy, THE EVOLUTION OF WEAPONS AND WARFARE 92 (1984)), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6278038.

[123] Kopel & Greenlee, *History of Bans*, at 283.

[124] Kopel, *Guns are Lethal*, at 15.

minute was more typical during the stress of battle.[125] "The flintlock gave infantry the ability to generate an overwhelmingly higher level of firepower."[126] According to one measure of a weapon's effectiveness in military combat—military historian Trevor Dupuy's Theoretical Lethality Index—the eighteenth-century flintlock more than doubled the lethality of seventeenth-century matchlock muskets.[127]

Flintlocks themselves continually improved. In the third quarter of the eighteenth century, English gunsmiths developed the frictionless lock, allowing flintlocks to fire faster and with fewer misfires; the "waterproof" flash pan to protect the priming powder from moisture; and the patent breech, making "the gun shoot so hard and so fast that the very possibility of such performance had not hitherto been imaginable."[128]

The Pennsylvania-Kentucky rifle was among the most popular firearms in the Founding era. Invented around 1735, its accuracy would not be surpassed for a century. Although slower to reload than a flintlock musket and poorly suited for use as a club in hand-to-hand combat, it was ideal for lengthy hunting expeditions in America's dense forests and for the irregular tactics of Indian fighting. "What Americans demanded of their gunsmiths seemed impossible": a rifle that weighed ten pounds or less, for which a

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[125] Lockhart, FIREPOWER, at 107–08.

[126] *Id.* at 107.

[127] Dupuy, EVOLUTION, at 92.

[128] Robert Held, THE AGE OF FIREARMS: A PICTORIAL HISTORY 137 (1956).

month of ammunition would weigh one to three pounds, "with proportionately small quantities of powder, be easy to load," and "with such velocity and flat trajectories that one fixed rear sight would serve as well at fifty yards as at three hundred, the necessary but slight difference in elevation being supplied by the shooter's experience."[129] Yet in the Pennsylvania-Kentucky rifle, "the impossible had taken shape."[130]

The Founders therefore had extensive direct experience with technological improvement in firearms. In addition to the firearms of their day being substantially more capable than those used by earlier generations of Americans, the men who served in the Continental Congress sought to purchase Belton's sixteen-shot firearm; Washington, Jefferson, and the general public witnessed or read about Chambers's firearms; and Americans across the country knew about Lewis's twenty-two-shot Girardoni rifle.

The Founders never attempted to halt advances in firearms technology. Rather, they made use of them. Thomas Jefferson, for example, purchased a "double barrel gun-lock" in 1776 and a "two shot-double barrel" gun in the 1780s.[131] He also replaced the "wheel-locks, which not being convenient," on his

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[129] *Id.* at 143 (emphasis omitted).

[130] *Id.*

[131] *Firearms*, MONTICELLO, https://www.monticello.org/encyclopedia/firearms.

pistols with "locks of the modern form."[132] The Founders therefore did not regard improvements in firearms as constitutionally suspect because improvements increased accuracy, ammunition capacity, or rate of fire. They inherited an American tradition of continuing technological improvement, embraced the advances that occurred during their lifetimes, and understood that advances would continue in the future.

III. This Court has repeatedly held that modern arms are protected.

This Court has stated that the Second Amendment "covers modern instruments that facilitate armed self-defense."[133] Twice this Court has highlighted the protection of "modern" arms to illustrate how the "Amendment's historically fixed meaning applies to new circumstances."[134] Four times this Court has asserted that "the Second Amendment extends … to … arms … that were not in existence at the time of the founding"[135]—and it deemed any

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[132] Letter from Thomas Jefferson to John Payne Todd (Aug. 15, 1816), *in* 10 THE PAPERS OF THOMAS JEFFERSON, RETIREMENT SERIES, MAY 1816 TO JANUARY 18, 1817, at 320–21 (Looney ed., 2013).

[133] *Bruen*, 597 U.S. at 28.

[134] *Id.* (citing *Caetano v. Massachusetts*, 577 U.S. 411, 411–12 (2016)); *see also United States v. Rahimi*, 602 U.S. 680, 692 (2024).

[135] *Heller*, 554 U.S. at 582; *see also Caetano*, 577 U.S. at 412; *Bruen*, 597 U.S. at 28; *Rahimi*, 602 U.S. at 691.

argument to the contrary "bordering on the frivolous."[136]

Despite these holdings, some lower courts call modern arms "dramatic technological changes" from the Founding era. The Second Circuit below asserted that "there simply is no relevantly similar historical analogue to a modern, semiautomatic firearm equipped with a large capacity magazine."[137] Said the Seventh Circuit, "AR-15s equipped with large-capacity magazines are a far cry from" the "single-shot, muzzle-loaded firearm" of the Founding era.[138] These assertions are precisely what this Court rejected in *Caetano*. There, "after examining 'whether a stun gun is the type of weapon contemplated by Congress in 1789 as being protected by the Second Amendment,'"[139] the lower court upheld a ban on stun guns because "they are 'a thoroughly modern invention.'"[140]

Moreover, semiautomatic rifles *do* have relevantly similar historical analogues. The Second Circuit below concluded that early American repeating arms—including Belton's, Jennings's, and Winchester's—were disanalogous because they were

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[136] *Heller*, 554 U.S. at 582.

[137] *Lamont*, 153 F.4th at 236 (quotation marks and brackets omitted).

[138] *Barnett*, 180 F.4th at 1055.

[139] *Caetano*, 577 U.S. at 411 (quoting *Com. v. Caetano*, 470 Mass. 774, 777 (2015)).

[140] *Id.* at 412 (quoting *Com.*, 470 Mass. at 781).

"more difficult to operate and prone to technological failings than contemporary firearms like AR-15s."[141]

That distinction is constitutionally irrelevant. Writing with a ballpoint pen on machine-made paper is faster and more reliable (*e.g.*, blot-free) than writing with a quill on rag paper. Modern bookbinding is faster to perform and holds together more reliably than eighteenth-century bindings. Modern cameras are faster and more reliable than their predecessors. That an instrument used to exercise a constitutional right improves over time does not remove it from constitutional protection. That principle applies with even greater force to "Arms," which the Constitution expressly protects.

For as long as there have been Americans, Americans have been improving their arms, including by improving reliability. For instance, some early repeaters were vulnerable to "chain fire" in which the charge for one bullet might accidentally set off the charge for another bullet. Jennings addressed the problem with a sliding lock that kept each charge "under the distinct and separate control of the gunner."[142] As with many other inventions, such as automobiles, ongoing improvements in reliability demonstrate technological continuity, not discontinuity. Semiautomatics are the product of that same tradition of incremental improvement; through mechanical refinements, they more effectively achieve the same longstanding objectives as their historical antecedents. To deny them constitutional protection

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[141] *Lamont*, 153 F.4th at 237.

[142] ARK. GAZ. (Ark. Post), Nov. 18, 1823, at 2.

because they accomplish these objectives more effectively would treat the Second Amendment as "a law trapped in amber" and "be as mistaken as applying the protections of the right only to muskets and sabers."[143]

IV. There is no legitimate precedent for prohibiting common repeating arms.

Heller and *Bruen* focused on historical handgun restrictions. Handguns predate the Founding, so there was no need to consider restrictions on other types of arms. Repeating arms also predate the Founding. The most apt historical analogues are therefore restrictions on repeating arms.

Before 1900, there is only one. It was enacted in Florida in 1893,[144] as if in response to Ida B. Wells's admonition of the previous year:

> Of the many inhuman outrages of this present year, the only case where the proposed lynching did not occur, was where the men armed themselves in Jacksonville, Fla., and Paducah, Ky., and prevented it. The only times an Afro-American who was assaulted got away has been when he had a gun and used it in self-defense.
>
> The lesson this teaches and which every Afro-American should ponder well, is that a Winchester rifle should have a place of honor

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[143] *Rahimi*, 602 U.S. at 692.

[144] 1893 Fla. Laws 71.

> in every black home, and it should be used for that protection which the law refuses to give. When the white man who is always the aggressor knows he runs as great risk of biting the dust every time his Afro-American victim does, he will have greater respect for Afro-American life. The more the Afro-American yields and cringes and begs, the more he has to do so, the more he is insulted, outraged and lynched.[145]

The Florida law required a discretionary license and $100 bond (equivalent to over $3,700 today) "to carry or own a Winchester or other repeating rifle."[146] The statute was extended in 1901 to handguns. In 1941, the Florida Supreme Court narrowly construed the statute not to cover possession in automobiles, which had not been invented when the statute passed, and noted the defendant's defensive purpose and that the statute implicated "the full rights of free and independent American citizens."[147]

Concurring Justice Rivers Buford, who served as a State Representative in the 1901 legislature, and later as Attorney General,[148] wrote:

> I know something of the history of this legislation. The original Act of 1893 was passed when there was a great influx of negro

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[145] Ida B. Wells, *Southern Horrors*, N.Y. AGE, June 25, 1892, *reprinted in* Ida B. Wells, THE LIGHT OF TRUTH: WRITINGS OF AN ANTI-LYNCHING CRUSADER 84 (Bay ed., 2014).

[146] 1893 Fla. Laws 71.

[147] *Watson v. Stone*, 148 Fla. 516, 522–23 (1941).

[148] Kopel & Greenlee, *History of Bans*, at 291.

> laborers in this State drawn here for the purpose of working in turpentine and lumber camps. The same condition existed when the Act was amended in 1901 and the Act was passed for the purpose of disarming the negro laborers … The statute was never intended to be applied to the white population and in practice has never been so applied.… [I]t is a safe guess to assume that more than 80% of the white men living in the rural sections of Florida have violated this statute … not more than 5% of the men in Florida who own pistols and repeating rifles have ever applied … for a permit.… [T]here has never been, within my knowledge, any effort to enforce the provisions of this statute as to white people, because it has been generally conceded to be in contravention of the Constitution and nonenforceable if contested.[149]

A racist law, known even then to be unconstitutional, "cannot be taken seriously."[150]

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[149] *Id.* at 524 (Buford, J., concurring). As the Justice's "5%" remark indicates, some legally scrupulous Whites did obtain permits. Blacks were not the only ones disarmed. In a case of a man with an Italian-sounding name, the Florida Supreme Court held mandamus to issue a permit to be improper whether or not the law was constitutional. *State ex rel. Russo v. Parker*, 49 So. 124 (Fla. 1909) (if the law is constitutional, then mandamus would be improper; if unconstitutional, mandamus cannot issue to carry out an unconstitutional law).

[150] *Wolford v. Lopez*, 146 S. Ct. 2032, 2053 (2026).

V. Nineteenth-century Bowie-knife laws do not support banning the Nation's most common rifles.

Some lower courts treat nineteenth-century Bowie-knife laws as the "leading example" for rifle bans.[151] As a threshold matter, that approach proceeds at the wrong level of generality. *Bruen* requires courts to begin with closely matching analogues and to abstract away only when necessary. Here, the record includes a law regulating repeating rifles and many laws regulating handguns. That firearm-specific history—not more distant knife laws—should frame the analysis.[152]

The Bowie-knife analogy also fails on its own terms. Starting about 1835, the appellation "Bowie knife" became widespread without acquiring a fixed technical meaning. The term was used by manufacturers and others for knives that were straight or curved, single-edged or double-edged, with or without clip points or crossguards, folding or not.[153] Knife historian Norm Flayderman wrote, "there is no one specific knife that can be exactingly described as

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[151] *Barnett*, 180 F.4th at 1047; *see also Capen v. Campbell*, 134 F.4th 660, 672 (1st Cir. 2025); *Lamont*, 153 F.4th at 240–47; *Bianchi*, 111 F.4th at 464–72.

[152] *See Bruen*, 597 U.S. at 26–30; George Mocsary, *The Wrong Level of Generality: Misapplying* Bruen *to Young-Adult Firearm Rights*, 103 WASH. U. L. REV. ONLINE 100, 101–03, 106–07 (2025).

[153] Kopel & Greenlee, *History of Bans*, at 295–97 (quoting knife historian Mark Zalesky); OXFORD ENGLISH DICTIONARY (2026) ("*bowie knife*": first usage is 1830 advertisement for "Lock spring Bowie Knives," *i.e.*, folders).

a Bowie knife."[154] The first "Bowie knife" was made from an old file by Rezin Bowie, the brother of renowned adventurer Jim Bowie, who used it in a famous fight on a Mississippi River sandbar in 1827; there was nothing new about it: straight, single-edged, and 9¼ inches.[155]

"Bowie knife" generally meant any large fighting knife. Previously, "butcher knife" had been a common appellation for such knives, and that is what the witnesses to the sandbar fight called Bowie's knife.[156] Statutes often paired "Bowie knife" with "dirk" and/or "dagger," thus covering almost any knife larger than a pocketknife.[157] In the Northeast, the statutes rarely used the words "Bowie knife."[158] The nineteenth-century norm was statutes that combined large knives and handguns for identical treatment: restrictions on concealed carry, extra punishment for use in a crime, and (especially towards the end of the century) limits on sales to minors.[159] Except in a few outlier

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[154] Norm Flayderman, THE BOWIE KNIFE: UNSHEATHING AN AMERICAN LEGEND 490 (2004).

[155] *See* Letter from R.P. Bowie to the Editor of PLANTER'S ADVOCATE (Aug. 24, 1838), *in* 1 CAPT. MARRYAT, A DIARY IN AMERICA: WITH REMARKS IN ITS INSTITUTIONS 290, 291 (1839).

[156] Dale Larson, *James Bowie's Knife? The True Story of James Bowie, Edwin Forrest and the Blade that Binds Them*, 128 AM. SOC. OF ARMS COLLECTORS BULLETIN 57 (Fall 2023) (expanded ed. 2024) ("a '*knife like Bowie's*' could be whatever someone imagined it to be"), https://americansocietyofarmscollectors.org/wp-content/uploads/2024/05/The-Edwin-Forrest-Bowie-Knife-Larson-expanded-version.pdf.

[157] Kopel & Greenlee, *History of Bans*, at 293–94, 298–335.

[158] *Id.* at 312, 334–35.

[159] *Id.* at 293–94, 382–86.

jurisdictions, adults were free to buy, possess at home, and openly carry large knives, including those marketed as "Bowie knives."[160]

Many of the most restrictive nineteenth-century arms regulations arose in slave States and, later, the "redeemed" former Confederate States.[161] Some of those States imposed unusually severe restrictions on both fighting knives and handguns. Three, for example, levied punitive annual possession taxes high enough to discourage ownership by poor people; those same taxes also applied to some or all handguns.[162]

A few slave or ex-slave States or Territories banned all carry (not just concealed carry) of Bowie knives, and likewise all carry of all or most handguns.[163] These laws did not create a national tradition that authorized discretionary licensing for the right to carry handguns.[164] *A fortiori*, these fighting-knife and handgun laws did not create a national tradition authorizing a handgun ban. *A fortiori*, those laws do not legitimate bans on the majority of rifles purchased today by law-abiding Americans.

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[160] *Id.* at 293–94, 370, 386.

[161] *See*, *e.g.*, Robert Cottrol & Raymond Diamond, "*Never Intended to be Applied to the White Population": Firearms Regulation and Racial Disparity—The Redeemed South's Legacy to a National Jurisprudence?*, 70 CHI.-KENT L. REV. 1307 (1995).

[162] Kopel & Greenlee, *History of Bans*, at 294, 298–303, 370, 386.

[163] *Id.* at 331, 386.

[164] *Bruen*, 597 U.S. at 70.

The Texas Supreme Court wrote that, unlike firearms or swords, the Bowie knife is "the instrument of almost certain death."[165] Applying the Texas Constitution and the Second Amendment, the court nevertheless declared, "The right to carry a bowie-knife for lawful defense is secured, and must be admitted."[166] But it permitted extra punishment for using a Bowie knife in a homicide.[167]

No State banned Bowie-knife possession in the nineteenth century. Three forbade sales. The Georgia Supreme Court held the 1837 sales ban to violate the Second Amendment in 1846 in *Nunn v. State*, just like the same statute's ban on most handguns.[168] *Heller* extolled *Nunn* because it "perfectly captured" the relationship between the Second Amendment's prefatory and operative clauses; *Heller*'s longest block quote is from *Nunn*.[169]

The Tennessee Supreme Court reached an opposite result in the 1840 *Aymette v. State*.[170] *Heller* rejected that interpretation: "This odd reading of the right is, to be sure, not the one we adopt[.]"[171] Arkansas in 1881 enacted a ban on selling or

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[165] *Cockrum v. State*, 24 Tex. 394, 402 (1859).

[166] *Id.*

[167] *Id.* at 403.

[168] *Nunn v. State*, 1 Ga. 243 (1846).

[169] *Heller*, 554 U.S. at 612–13.

[170] *Aymette v. State*, 21 Tenn. 154 (1840).

[171] *Heller*, 554 U.S. at 613.

disposing of Bowie knives, dirks, and most handguns.[172]

The Tennessee and Arkansas courts of the time labored under the belief that the right to arms protected only militia-type weapons.[173] Whatever might be said about those state constitutions, the Second Amendment is not so constrained.[174]

Besides, *Aymette*'s assertion that Bowie knives are not militia arms was incorrect. Such knives were used in the 1835–36 Texas War of Independence—including by Jim Bowie, who gave his life defending the Alamo.[175] They would be ubiquitous in the Civil War, carried by soldiers from every part of the Nation.[176]

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[172] 1881 Ark. Acts 191–92 (all handguns except Army or Navy models).

[173] *Aymette*, 21 Tenn. at 158; *Fife v. State*, 31 Ark. 455, 460 (1876).

[174] *Heller*, 554 U.S. at 627. Even if the Second Amendment were so limited, AR rifles are suitable and chosen by the American people for "the common defense." *See generally* Brief for the United States as *Amicus Curiae* Supporting Appellants/Cross-Appellees, *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Att'y Gen. New Jersey*, No. 24-2415 (3d Cir. Sept. 18, 2025).

[175] *See* Charles Edwards Lester, SAM HOUSTON AND HIS REPUBLIC 129 (1846) (Bowies were the final, decisive weapon in the Texan assault on the Mexican breastworks at San Jacinto, after the rifles had been broken by being used as clubs, and the pistols had been emptied); Edward Stiff, THE TEXAS EMIGRANT 324 (1840) (At San Jacinto, the Mexicans, "unused to this mode of combat with huge Bowie-knives and the but[t]s of guns, precipitately gave way[.]").

[176] Flayderman, THE BOWIE KNIFE, at 125–68.

Bowie knives were so necessary to the Tennessee militia in the Civil War that the legislature suspended the laws against knives and handguns for the duration.[177] Alabama's oppressive taxation had discouraged Bowie-knife possession. But when the Alabama militia needed Bowie knives during the Civil War, the state legislature attempted to remedy its prior policy by manufacturing them at the state armory.[178]

Nothing in the history of Bowie-knife regulation justifies banning Bowie knives, let alone common rifles. If those laws justified rifle bans, then handgun bans would be justified all the more, because they typically also regulated handguns but not long guns. Mainstream nineteenth-century American law regulated, but did not prohibit, the keeping and bearing of handguns and fighting knives, including Bowie knives. The notion that traditional knife regulations justify banning "the most popular rifle in the country" is, in nineteenth-century parlance, fiddle-faddle, flapdoodle, and bunkum.[179]

CONCLUSION

The judgments below should be reversed.

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[177] 1861–1862 Tenn. Pub. Acts 16–17.

[178] Kopel & Greenlee, *History of Bans*, at 300–02.

[179] *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025).

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