No. 23-879

In The Supreme Court of the United States

CALEB BARNETT, et al.,
Petitioners,
v.
KWAME RAOUL, Attorney General of Illinois, et al.,
Respondents.

On Petition For A Writ of Certiorari To The United States Courts Of Appeals For The Seventh Circuit

BRIEF OF IDAHO, INDIANA, ALABAMA, ALASKA, ARKANSAS, FLORIDA, GEORGIA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEW HAMPSHIRE, NORTH DAKOTA, OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, UTAH, VIRGINIA, WEST VIRGINIA, WYOMING, AND THE ARIZONA AND WISCONSIN LEGISLATURES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether Illinois' sweeping ban on common and long-lawful arms violates the Second Amendment.

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INTERESTS OF *AMICI CURIAE*

The States of Idaho, Indiana, Alabama, Alaska, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Wyoming, and the Arizona and Wisconsin Legislatures respectfully submit this brief as *amici curiae* in support of petitioners.[1] *Amici* respect the people's right to keep and bear arms, which is "necessary to the security of a free State." U.S. CONST. amend. II. Particularly today, when crime too often goes unchecked, law-abiding citizens need the ability to arm and defend themselves. They should not be deprived of commonly used firearms for that purpose.

Although this Court has repeatedly made clear that the Second Amendment's protections must be enforced according to their terms, the Seventh Circuit's approach defies the Second Amendment's "'unqualified command.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 32 (2022). Its decision injects confusion into the law by saying that firearms and magazines used by many Americans are not really "Arms" and so may be banned without the government having to provide any further justification. Its decision permits Illinois to infringe the rights of countless law-abiding citizens. And its decision impacts businesses in other States that can no longer sell the hundreds of types of firearms Illinois bans.

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[1] Pursuant to Rule 37.2, *amici* provided timely notice of their intent to file this brief to all parties.

The Court should reject this latest attempt to give a critical constitutional right "second-class" status. *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010). Without swift correction, the Seventh Circuit's decision will muddle the clear Second Amendment standards that this Court has adopted. And its decision will encourage other governments to erode Americans' essential right to keep and bear arms.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Firearm bans in Illinois are not new. In 1981, Morton Grove, Illinois passed America's first handgun ban. *See* Morton Grove, Ill., Ordinance 81-11 (June 8, 1981). In 1982, Chicago and Evanston followed suit. In 1984, Oak Park banned handguns too. And in 1992, Chicago banned "assault weapons."

In 2010, this Court stepped in and struck down handgun bans, vindicating Illinoisans' Second Amendment rights. *See McDonald v. City of Chicago*, 561 U.S. 742 (2010). Undeterred, Illinois recently passed the Protect Illinois Communities Act (PICA) to ban the mere ownership of hundreds of types of firearms that were lawful prior to its enactment and remain lawful in most of the country. This new ban is just as unlawful as the restrictions struck down in *McDonald*.

Illinois's sweeping gun ban is at odds with every aspect of the Second Amendment. Illinois has no prerogative to limit available firearms to whatever it deems "necessary" for self-defense. That is not how the Second Amendment works. The Amendment, rather, stands as a reminder to governments—state and federal alike—that "the people" have a "*pre-*

existing" right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). The right guarantees the people the very "Arms" Illinois has banned. Illinois's job is to recognize and respect that right, not empty it. *See id.* at 585; *see also* James Wilson, Of Crimes Against the Right of Individuals to Personal Safety, *in* 2 Collected Works of James Wilson 1137, 1142, n.x (K. Hall & M. Hall eds., 2007), https://tinyurl.com/2p8244t4 (the right to bear arms "cannot be repealed, or superseded, or suspended by any human institution").

Confronted with Illinois's sweeping firearms ban, the Seventh Circuit should have made short work of it. This Court's precedents establish a straightforward test that requires asking whether the "plain text of the Second Amendment" covers the conduct at issue and, if so, whether history justifies the restriction. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 32 (2022). And this Court's precedents emphatically reject the notion that the phrase "to keep and bear Arms" carries a cramped, idiosyncratic meaning, explaining that it covers all bearable arms, including weapons "used by militiamen and in defense of person and home." *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008); *see Bruen*, 597 U.S. at 21. The plain meaning of "Arms" includes the hundreds of types of firearms Illinois has banned through the PICA.

Remarkably, however, the Seventh Circuit held that the firearms that the PICA bans are not actually "Arms." In defiance of the Second Amendment's text and this Court's precedents, the Seventh Circuit carved out "militaristic" weapons from the ordinary definition of "Arms." It adopted a view that requires citizens—not the government—to show that widely

used weapons are appropriate for them to use based on an amorphous set of measures such as "firing capacity" and "rate." App.39–40. And the Seventh Circuit compounded its error by excusing Illinois of its obligation to identify a "well-established and representative historical analogue" justifying the PICA's severe restrictions. *See Bruen*, 597 U.S. at 30. The court instead held that Illinois could ban the mere possession of hundreds of firearms based on examples that *Bruen* held were insufficient to justify bans on the public carry of handguns. These examples certainly cannot justify the far more restrictive bans at issue here.

Amici recognize that gun violence kills many thousands of Americans annually, including some of their own citizens. But at ratification, the people acted to ensure that they would always remain able to arm themselves with effective and useful weapons to defend themselves against such violence. This does not deprive Illinois of the ability to act: it can and should respond to gun violence by investigating crime and holding criminals fully responsible for their unlawful conduct. Illinois, however, cannot act by stripping law-abiding citizens of proven ways to defend themselves. The Court should reverse the Seventh Circuit's anti-textual, presumption-defying analysis and strike down the PICA to provide clarity and vindicate the people's Second Amendment rights.

ARGUMENT

I. The Second Amendment and This Court's Decisions Supply a Clear, Principled Method for Determining What Conduct Is Protected.

The Second Amendment contains a clear, concise command: It provides that "the right of the people to

keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. As this Court recently reiterated in *Bruen*, this command does not invite or authorize "any judge-empowering interest-balancing inquiry." *Bruen,* 597 U.S. at 24 (cleaned up). Rather, the Second Amendment simply requires courts to ask whether its "plain text covers an individual's conduct." *Id.* at 17. If it does, then the individual's conduct is "presumptively protect[ed]," and "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation" for the regulation to be upheld as constitutional. *Id.* at 17; *see id.* at 26–27.

As this Court's precedents illustrate, only a few questions must be answered to determine whether the Second Amendment's plain text covers the conduct at issue. These include whether the regulation implicates "the people," *see Bruen*, 597 U.S. 31–32 ("two ordinary, law-abiding, adult citizens . . . are part of 'the people' whom the Second Amendment protects"), and whether it regulates "keep[ing]" or "bear[ing]" "Arms," *see Heller*, 554 U.S. at 582–92. This Court has already done much of the work in explaining what those terms mean. "[T]he people" presumptively includes "all Americans." *Id.* at 580–81. "[T]o keep and to bear" refers to possessing and carrying arms. *Id.* at 581–82. And "Arms" includes, "prima facia," "all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller*, 554 U.S. at 582. In short, the term "Arms" presumptively includes "any thing that a man . . . takes into his hands, or useth in wrath to cast at or strike another." *Id.* at 581; *see Bruen*, 597 U.S. at 28 ("covers modern instruments that facilitate armed self-defense").

Many courts around the country have had no difficulty applying the Second Amendment's text, as unpacked by this Court. "Taking [a] cue from the Supreme Court," they have recognized that the Second Amendment speaks in "broad," "unambiguous[]" terms. *Lara v. Comm'r Pa. State Police*, 91 F.4th 122, 130 (3d Cir. 2024) (quoting *Heller*, 554 U.S. at 581); *see Teter v. Lopez*, 76 F.4th 938, 949 (9th Cir. 2023). These courts have found it "clear" that "the plain text of the Second Amendment covers" a wide variety of conduct engaged in by law-abiding citizens—from "carrying a firearm" in particular locations, *Wolford v. Lopez*, 2023 WL 5043805, at *14–15 (D. Haw. Aug. 8, 2023), to owning various kinds of "firearm[s] [and] ammunition," *United States v. Jackson*, 2023 WL 6881818, at *4 (N.D. Miss. Oct. 18, 2023); *see Rhode v. Bonta*, 2024 WL 374901, at *4–5 (S.D. Cal. Jan. 30, 2024) (stating it is "clear that acquiring ammunition is conduct covered by the plain text of the Second Amendment"); *Renna v. Bonta*, 667 F. Supp. 3d 1048, 1062 (S.D. Cal. 2023) ("reject[ing]" argument that "fail[ed] to address the plain text of the Amendment"). As these courts have recognized, determining whether the Second Amendment's plain text presumptively covers conduct is "not complicated." *Md. Shall Issue, Inc. v. Moore*, 86 F.4th 1038, 1043 (D. Md. 2023).

Other courts confronted with weapons restrictions similar to Illinois's have thus rejected out of hand the argument that certain weapons are "not 'arms.'" *Duncan v. Bonta*, 2023 WL 6180472, at *8, *17, *32 (S.D. Cal. Sept. 22, 2023) (concluding that "the best reading of 'arms' include magazines" because "whether thought of as a firearm able to fire a certain number of rounds because of its inserted magazine, or

as a separate ammunition feeding component, magazines are usable 'arms' within the meaning of the Second Amendment"); *see, e.g.*, *Miller v. Bonta*, 2023 WL 6929336, at *8–9 (S.D. Cal. Oct. 19, 2023) (concluding that "possess[ing] and carry[ing] firearms deemed 'assault weapons,'" including "the AR-15 rifle" "is covered by the plain text of the Second Amendment"); *Del. State Sportsmen's Ass'n, Inc. v. Del. Dep't of Safety*, 664 F. Supp. 3d 584, 591 (D. Del. 2023) (concluding that "the 'textual elements' of the Second Amendment's operative clause apply to the conduct being restricted," namely possessing "assault weapons" and "LCMs"). Even courts that have ultimately upheld the restrictions on historical grounds have conceded that the weapons covered are, indeed, "Arms." *See, e.g.*¸ *Nat'l Ass'n for Gun Rights v. Lamont*, 2023 WL 4975979, at *19 (D. Conn. Aug. 3, 2023) ("magazines as a general category constitute bearable arms").

II. The Seventh Circuit's Pronouncement That Arms Owned by Millions of Law-Abiding Americans Are Not "Arms" Defies Logic.

The analysis in this case should have been simple. The PICA bans firearms and magazines owned by millions of law-abiding Americans. It plainly prohibits the "the people" from "keep[ing]" "Arms," so it is presumptively unconstitutional. *Bruen*, 597 U.S. at 17. At *Bruen*'s second step, where Illinois bears the burden, there is no "historical tradition of firearm regulation" even close to the PICA's prohibitions. *Id.* at 34. The statute therefore does not pass constitutional muster.

Rather than enforce the Second Amendment and hold the PICA unconstitutional, the Seventh Circuit

sought to reimagine the Second Amendment. *Id.* at 17. It created an atextual carveout from the term "Arms" for weapons that judges deem too "militaristic." App.44. Then it doubled down on its mistake at step two by concluding that history supports a distinction between militaristic and nonmilitaristic weapons, relying on an eclectic set of firearm regulations that look nothing like Illinois's all-out ban on weapons widely used by Americans. Its decision cannot possibly be correct.

A. The Firearms at Issue Are "Arms" Under the Second Amendment's Plain Text.

At step one of the *Bruen* analysis, the firearms at issue here are obviously "Arms" within the plain text of the Second Amendment. *Heller* explained that the Second Amendment "extends, prima facie, to all instruments that constitute bearable arms," and explains that "bearable arms" include all weapons possessed or carried "for offensive or defensive action in a case of conflict." 554 U.S. at 582, 584. For support, the Court cited a founding-era "source [that] stated that *all* firearms constituted 'arms.'" *Id.* at 581 (cleaned up) (emphasis added). *Heller* did not exclude any bearable weapons from its definition of the term "Arms." *Bruen* reaffirmed *Heller*'s understanding of the term "Arms," making clear that the term broadly "covers modern instruments that facilitate armed self-defense." 597 U.S. at 28. It did not limit the term to arms supposedly considered non-militaristic. And *Nunn v. State*—which the *Bruen* Court found "particularly instructive," *id.* at 54—explained the right to keep and bear arms to include "arms of every description, and not such merely as are used by the militia." 1 Ga. 243, 251 (1846) (emphases omitted).

Under *Heller* and *Bruen*, the so-called "assault weapons" that Illinois bans—along with the magazines necessary to operate them—are "Arms." They are "bearable arms"; they are possessed or carried for "offensive or defensive action"; and they are "modern instruments that facilitate armed self-defense." *Heller*, 554 U.S. at 582, 584; *Bruen*, 597 U.S. at 28.

Bruen's analysis underscores the point. There, the Court had "little difficulty concluding" that the Second Amendment protected the right to carry all types of handguns publicly for self-defense. *Bruen*, 597 U.S. at 32. The Court did not even question whether the firearms at issue were "Arms." *Id.* It did not pause and count round capacity. Nor did it consider whether or how the military used them. It simply noted that the "textual elements" of the Second Amendment "guarantee the individual right to possess and carry weapons in case of confrontation." *Id.* Beyond establishing that an arm is "bearable," the class, type, capacity, and military use of a weapon play no part in the textual analysis of "Arms."

The Seventh Circuit's analysis bears no resemblance to the analysis prescribed by this Court. The majority quoted *Heller*'s instructions that "Arms" includes "all firearms" and "all . . . bearable arms"—but immediately disregarded them. App.29–32. Instead, seizing on dicta from *Heller* regarding machine-gun ownership, the Seventh Circuit surmised that the "correct meaning of 'Arms'" categorically excludes "weapons that are exclusively or predominantly useful in military service, or weapons that are not possessed for lawful purposes."

App.32–33. It did not purport to derive that understanding from any definition of "Arms."

That understanding of "Arms" contravenes any plausible meaning of the word. The Second Amendment's text nowhere suggests that firearms somehow are not "Arms." Every definition this Court has recited comports with the commonsense conclusion that a *firearm* is an "*Arm*[]." *Heller*, 554 U.S. at 582, 584; *Bruen*, 597 U.S. at 28.

Nor did *Heller* purport to introduce some tortured reading of "Arms" through its machine-gun remark, which appears in a paragraph that never once mentions the constitutional text. *Heller*, 554 U.S. at 624–65. Instead, in distinguishing between machine guns and widely used weapons, *Heller* was focused on the extent to which our Nation's historical traditions define "the scope of the right." *Id.*; *Teter*, 76 F.4th at 950 (*Heller* "did not say that dangerous and unusual weapons are not *arms*"); *compare Bruen*, 597 U.S. at 47 (observing at step two that the Second Amendment protects carrying arms that are "in common use" but not those that are "dangerous and unusual"). The dissenting opinion in the Seventh Circuit correctly identified this analysis as relating to *Bruen*'s second step. App.63 & n.3 (citing Brief for *Amici Curiae* Idaho, *et al.*, at 6); App.73.

The only other ground the Seventh Circuit cited for its gerrymandered definition of "Arms" fares no better. It cited *Heller*'s observation that the "term [Arms] was applied, [historically] as now, to weapons that were not specifically designed for military use and were not employed in a military capacity." 554 U.S. at 581. Of course, *Heller* did *not* say that "Arms" covers *only* these weapons. That's because the parties

in *Heller* agreed that the Second Amendment reached "the right to possess and carry a firearm in connection with militia service," and the question was whether it *also* covered the "right to possess a firearm unconnected with service in a militia." *Id.* at 577. The statement from *Heller* that the Seventh Circuit plucked from context was meant to *expand*, not limit, the Second Amendment's scope—a point made even clearer by the surrounding discussion. *Id.* at 581 (explaining that "Arms" includes "all firearms" and "any thing a man wears for his defense").

By embedding limitations beyond the text into step one, the Seventh Circuit has relieved government entities of the burden to justify their gun restrictions. Under *Bruen*, a plaintiff challenging a firearms regulation need only show that "the Second Amendment's plain text covers [his] conduct." 597 U.S. at 24. At that point, "the Constitution presumptively protects that conduct." *Id.* at 17. The government then bears the burden to demonstrate that its "firearm regulation is consistent with this Nation's historical tradition," which it may do, for example, by showing that the regulated firearms are "dangerous and unusual." *Id.* at 17, 47. Under the Seventh Circuit's approach, however, the presumption is inverted. The *challenger* must show that the arms are not "reserved for military use"—apparently a proxy for the "dangerous and unusual" inquiry. App.32–35. Through its convoluted approach, the Seventh Circuit denies citizens the presumption to which they are entitled.

The impact is to resurrect the "judge-empowering" approach to the Second Amendment that *Buren* rejected. *Bruen*, 597 U.S. at 22 (cleaned up). Courts

have the institutional tools to analyze text and history, but are decidedly less well-suited to evaluate what makes weapons better adapted "for military use" than "for private use." The Seventh Circuit's approach invites arbitrary distinctions based on subjective assessments of what constitutes a "militaristic" weapon. And it leaves citizens, businesses, and regulators guessing as to what supposedly makes an arm too "militaristic"—after all the Seventh Circuit said that even weapons with "only semiautomatic capabil[ites]" may be considered best suited for the military. App.36. The Court should not permit impressionistic judgments about weapons to overrule the "Second Amendment's 'unqualified command.'" *Bruen*, 597 U.S. at 17.

B. The Seventh Circuit's Conclusion That "Militaristic" Weapons Are Not Protected Is Wrong and Illogical.

Even apart from having no basis in the text of the Second Amendment, the Seventh Circuit's artificial divide between "militaristic" firearms and firearms used for self-defense is indefensible.

While this Court has emphasized that the right to keep and bear arms goes beyond the militia to include an individual right to self-defense, *see Bruen*, 597 U.S. at 19–20; *Heller*, 554 U.S. at 599, it has never limited the right to individual self-defense. "[P]reserving the militia" and "hunting" are additional legitimate reasons "Americans valued the ancient right." *Heller*, 554 U.S. at 599; *id.* at 581 (noting that definition of "arms" included "instruments of offence *generally* made use of in war" (cleaned up)). Indeed, it was not long ago that Illinois itself argued to this Court that the Second Amendment protected *only* militaristic

firearms. *See District of Columbia v. Heller*, No. 07-290, 2007 WL 2962910, at *6 (U.S. Oct. 5, 2007) (arguing as an amicus party that the Second Amendment only protected firearms that are "ordinary military equipment").

There's good reason why the Second Amendment protects many so-called "militaristic" arms. The Framers included the right as "a strong moral check against the usurpation and arbitrary power of rulers" that would "enable the people to resist and triumph over them." 3 J. Story, *Commentaries on the Constitution of the United States: Amendments to the Constitution* § 1890, at 746 (1833), https://tinyurl.com/4j2rdcbt. That is why they referred to the right as "the true palladium of liberty" and warned that government narrowing the right would place liberty "on the brink of destruction." Tucker, *supra*, at 238–39; *see also McDonald v. City of Chicago*, 561 U.S. 742, 769 (2010). And the militia—a citizen military force armed with personal weapons—was seen as necessary to secure liberty and repel tyranny.

The distinction between "militaristic" firearms and firearms used for self-defense does not make sense on its own terms, either. For one, it appears any firearm can be classified as "militaristic." Consider the 1911. It is arguably the most popular handgun in the world—protected by the Second Amendment per the express holdings of *Bruen* and *Heller*—and yet Colt designed it at the request of, and for, the U.S. military. The 1911 is far more "militaristic" than the AR-15 banned by Illinois, which the U.S. military has not adopted. The Seventh Circuit's rationale would therefore justify banning the 1911, even though the

Court has already said it cannot be banned. If "virtually every covered arm would qualify as [militaristic]," then that cannot be the touchstone of Second Amendment protection. *Caetano v. Massachusetts*, 577 U.S. 411, 417–18 (2016) (Alito, J., concurring) (rejecting a "dangerous" test for the same reason); App.89–99 (Brennan, J., dissenting).

The Seventh Circuit's analysis underscores the lack of any real limits to its "militaristic" analysis. It recognized that the AR-15 is a semiautomatic firearm while an M-16 (which is used by the military) is automatic. It also listed the AR-15's firing rate at 5 times per second—perhaps if its user has a bionic finger, *see* App.92 (Brennan, J., dissenting)—as opposed to the M-16's firing rate close to 12 times per second. Yet the Seventh Circuit concluded that two were "almost the same gun." App.36. At first, it half-heartedly relied on insignificant characteristics like the type of ammunition the guns use or the kinetic energy upon firing. But its main move was to imagine that the AR-15 had been physically modified so that it acted more like the M-16—even though the PICA bans unmodified AR-15s all the same. If the Seventh Circuit's test can be satisfied whenever the firearm in question bears abstract similarities to a gun used by the military, or can be altered to more closely resemble a gun used by the military, then it permits practically any weapon to be banned as a non-Arm.

Finally, even if the Seventh Circuit's made-up "militaristic vs. self-defense" dichotomy were the standard, the banned "assault weapons" *are* used by "ordinary people . . . for purposes of self-defense." App.32–33. Millions of them are owned by millions of Americans. According to the Bureau of Alcohol,

Tobacco, Firearms and Explosives, the firearms Illinois targets are both suitable for "home and self-defense" and "popular" for "self-defense." *Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles*, Dep't of the Treasury: Bureau of Alcohol, Tobacco and Firearms (July 6, 1989), https://www.atf.gov/file/61761/download; *see also Heller v. District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011) ("We think it clear enough in the record that semi-automatic rifles and magazines holding more than ten rounds are indeed in 'common use.'"); *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 255 (2d Cir. 2015) (same).

A few harrowing reports make the point. In 2019, two masked and armed burglars invaded a family's home just outside of Tampa, Florida. *See* Amelia Wynne, *Heavily pregnant mother uses an AR-15 to kill a home intruder after two men burst into her Florida home, pistol whipped her husband and grabbed their 11-year-old daughter,* Daily Mail (Nov. 4, 2019, 4:08 PM), https://tinyurl.com/3m6yzs6c. They pointed their guns at the father and his 11-year-old daughter and pistol-whipped and kicked the father while demanding money. *Id.* The mother, who was pregnant at the time, was in another part of the house, got ahold of the family's AR-15, and opened fire on the armed invaders. *Id.* The father would later say, "the AR did its thing" and saved his family's life. *Id.*

In 2014, a Detroit mother protected her children from men who had kicked her door down. *See Detroit Mom Fires Assault Rifle To Protect Family From Home Invaders,* NewsOne (Feb. 20, 2014), https://tinyurl.com/yc659xtt. With an "assault rifle" in

hand, she warned the intruders that she had a gun. *Id.* They scoffed and she fired a warning shot, which sent them scrambling back out the door. *Id.* Detroit Police Chief James Craig said the mother "did the right thing," and her husband expressed relief that he had armed his wife and prepared her for that kind of situation. *Id.* Had he not, he recognized that he "could have came home to a family that was gone." *Id.*

In 2017, a civilian in Sutherland Springs, Texas used an AR-15 to stop an active shooter at a church. *See* Michael J. Mooney, *The Hero of the Sutherland Springs Shooting Is Still Reckoning With What Happened That Day,* Texas Monthly (Nov. 2018), https://tinyurl.com/yact97dt. When Stephen Willeford heroically went to the aid of his community, he had many types of guns he could have taken with him. *Id.* But he deliberately chose his AR-15. *Id.* And it's a good thing. The shooter had an AR-15, "but," as Willeford says, "so did I." *Sutherland Springs Hero Honored At NRA Convention: 'He Had An AR-15 And So Did I'*, CBS Texas (May 4, 2018, 4:45 PM), https://tinyurl.com/5n899j8z.

Numerous similar accounts could be retold. But the ones above are response enough to the Seventh Circuit's charge that the AR-15 is not the type used by "ordinary citizens" for self-defense. It served precisely that function for the pregnant mother in Tampa, the mom home alone with her kids in Detroit, and the Sutherland Springs hero. Each repelled force with force, and an assault weapon was their lawful and effective weapon of choice.

C. The Seventh Circuit's Historical Examples Do Not Justify Illinois's Total Ban on Common Arms.

At *Bruen*'s second step, the Seventh Circuit's analysis is equally unsound. Because the PICA is presumptively unconstitutional, the statute can be salvaged only upon proof that there is a "historical tradition of firearm regulation" showing that "the pre-existing right codified in the Second Amendment . . . does not protect [the] course of conduct" being restricted. *Bruen*, 597 U.S. at 34. That proof will often take the form of analogous historical regulations that are "relevantly similar" to the PICA based on "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 29–30. No such regulations appear in the Seventh Circuit's opinion—because no such regulations exist.

The Seventh Circuit purported to discover a historical basis for the PICA only by climbing to the highest levels of abstraction. In comparing historical regulations based on "why" they burden the right to armed self-defense, the majority reasoned that (1) the PICA is meant to "[p]rotect Illinois [c]ommunities" and "protect public health, safety, and welfare," and (2) there is an "unbroken tradition of regulating weapons to advance similar purposes." App.46–47. At that level of generality, however, *every* firearm regulation would survive historical scrutiny under *Buren*'s second step—including the New York restriction on handguns that *Bruen* invalidated. The analysis must be more searching if the Second Amendment is to have any teeth.

The Seventh Circuit also determined that there was a historical tradition of banning "weapons and

accessories designed for military or law-enforcement use." App.51. Individually considered, all of those examples are deeply flawed—one was rejected by *Heller*; others are prohibitions on carrying concealed weapons, not owning weapons; and three are from the 20th century. App.99–103 (Brennan, J., dissenting). But more fundamentally, the Seventh Circuit's few examples simply do not reveal a tradition of banning firearms with supposed military characteristics. The Seventh Circuit did not identify a single example before 1986 of a regulation banning ownership of a weapon designed for the military. Instead, it cited prohibitions on discharging a weapon in public, limits on using or carrying concealable weapons, and taxes on certain weapons, each of which had exceptions for military and law enforcement. These exceptions provide no support for an *all-out ban* on owning supposedly militaristic weapons—the "course of conduct" prohibited by the PICA. *Bruen*, 597 U.S. at 32.

The lack of any similar regulation says it all. As this Court explained, "when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Bruen*, 597 U.S. at 27. The problem of gun violence targeted by the PICA has an unfortunately long pedigree. *See* App.99–103 (Brennan, J., dissenting). In 1876, a man shot and killed his "lover" out of jealousy. *Nat'l Rifle Ass'n v. Bondi*, 61 F.4th 1317, 1319 (11th Cir. 2023). In 1884, an 18-year-old in Philadelphia shot a 14-year-old girl and then turned the gun on himself "because she

would not love him." *Id.* And in 1949, Howard Unruh embarked upon his "walk of death" murdering 13 people. *See* Patrick Sauer, *The Story of the First Mass Shooting in U.S. History,* Smithsonian Magazine (Oct. 14, 2015), https://tinyurl.com/578szh6v. But governments did not respond to the depraved and criminal actions of these and other individuals by banning law-abiding citizens from owning firearms in the way that Illinois has here. In the absence of any "distinctly similar historical regulation" addressing the problem of gun violence, PICA is unconstitutional.

Finally, the Seventh Circuit tried to place the PICA within the historical tradition of banning "dangerous and unusual weapons"—but only considered half of the phrase. It summarily pronounced the AR-15 "dangerous," but declined to ask whether it was "unusual." That is a critical mistake. There is no American historical tradition that lets governments ban whatever firearms they deem "dangerous." "[F]irearms cannot be categorically prohibited just because they are dangerous" because "virtually every" firearm can be labeled dangerous. *Caetano*, 577 U.S. at 418 (Alito, J., concurring) (reversing application of "dangerousness" test to stun guns). More is needed to fit within the historical tradition.

III. This Court's Intervention Is Needed Now.

The States, their citizens, and businesses require clarity on what conduct the Second Amendment covers. In *Bruen*, the Court acknowledged the mess that lower courts had made of Second Amendment analysis, rejected the injection of interest balancing as "one step too many," and clarified that the presumption of protection applies when the conduct

falls within the Second Amendment's plain text. 597 U.S. at 19, 24. The Court could not have been clearer.

The Seventh Circuit's atextual and convoluted approach to *Bruen*'s first step disrupts that clarity for the States and citizens within its borders and threatens to do further damage beyond. At least one other circuit has signaled similar defiance. *See Duncan v. Bonta*, 83 F.4th 803 (9th Cir. 2023) (Bumatay, J., dissenting) (lodging serious concerns with the majority's "summary order" staying an injunction "even after the Supreme Court directly ordered [it] to apply *Bruen* to this very case"). Further percolation will only result in more instances of Second Amendment violations.

Amici need this Court to intervene. Not even two years ago, the Court cleaned up the confusion and waning respect for the Second Amendment that had been brewing among lower courts since *Heller* and *McDonald*. *See Bruen*, 597 U.S. at 18. It should act now to prevent a similar problem from escalating to that degree.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari and reverse the decision below.

Respectfully Submitted,

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