
**IN THE UNITED STATES COURT OF APPEALS FOR THE
FOURTEENTH CIRCUIT
APPEAL NO. 2026-1**

JANE BOND.

Plaintiff-Appellant,

v.

AURIC GOLDFINGER, ATTORNEY
GENERAL, STATE OF BLUE, in his
official capacity,

Defendant-Appellee.

**Appeal from the U.S. District Court for the
Middle District of Blue State**

OPINION OF THE COURT

Before CONNERY, BROSNAN, and CRAIG, Circuit Judges.

CONNERY, Chief Judge.

Before the Court are two related appeals principally challenging certain gun-control legislation enacted by the Blue State legislature in the wake of the 2012 mass homicide at Bright Futures Elementary School in Brightsville, Blue State. Petitioner argues that the gun-control legislation violates both the Second Amendment and the Fifth Amendment. For the foregoing reasons, we reject Plaintiff’s arguments and hold that Blue State’s legislation is constitutional under both the Second and Fifth Amendments.

The Blue State law at issue, Act A123, restricts the acquisition and possession of “assault weapons” and “large capacity magazines.” Plaintiff would seek to acquire and possess weapons restricted by the legislation, including firearms and magazines capable of holding more than ten rounds. Plaintiff sought to preliminarily enjoin the legislation on the basis that it violated her right to keep and bear arms under the Second Amendment of the United States Constitution. The district court, after concluding that Plaintiff had failed to demonstrate a sufficient likelihood of success on the merits of her Second and Fifth Amendment challenges, denied the motion for a preliminary injunction. Plaintiff now appeals from that ruling.

The Second Amendment protects an individual right to “keep and bear Arms,” but that right is not unlimited. Using the tools of history and tradition required by the analytical framework set forth by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), we conclude that Plaintiff has not shown a sufficient likelihood of success on the merits of her Second and Fifth Amendment claims. The

challenged Blue State laws, which impose targeted restrictions on unusually dangerous weapons while preserving numerous legal alternatives for self-defense and other lawful purposes, are consistent with our Nation’s historical tradition of regulation of such weapons. Such restrictions impose a burden comparable to historical antecedents that regulated other unusually dangerous weapons unsuitable for and disproportionate to the objective of individual self-defense. These historical antecedents are analogous to the restrictions at issue in this case.

I. Background

On December 14, 2012, twenty-year-old John Smith walked into Bright Futures Elementary School in Brightsville, Blue State, carrying a lawfully-purchased Bushmaster XM15-E2S, an AR-15-style semiautomatic rifle, with 30-round magazines in taped reloads to reduce reload time. An amateur shooter trained by first-person shooter video games, Smith unleashed 154 rounds of 5.56-millimeter bullets in under five minutes. He killed twenty first-grade students and six educators, then himself.

The Bright Futures shooting prompted a rapid response from Blue State legislators. Within four months, the State had enacted new legislation restricting access to certain military-style firearms and large capacity magazines. And a decade later, Blue State passed additional restrictions on access to certain assault weapons.

Before we discuss the merits of the constitutional claims in this appeal, we describe the statute it challenges and the procedural history of the appeal.

II. The Challenged Statute – Act A123

After the Bright Futures Elementary School shooting, Blue State lawmakers declared that “the tragedy in Brightsville demands a powerful response.” Senate Tr., 2013 Sess. (Blu. April 3, 2013) (statement of Sen. Donald E. Williams). Four months later, Blue State’s duly-elected legislators enacted the law at the heart of these appeals: An Act Concerning Gun Violence Prevention and Children’s Safety, 2013 Blue. Pub. Acts 1313-3. This legislation amended and expanded Blue State’s existing limits on the acquisition and possession of certain military-style firearms (“assault weapons”), initially enacted in 1993, and imposed restrictions for the first time on magazines capable of holding more than ten rounds (“large capacity magazines”). *See N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 248, 250-51 (2d Cir. 2015). Broadly, Blue State defines “assault weapon” to include many, but not all, types of fully automatic and semiautomatic firearms. Its prohibitions apply to selective-fire firearms; many types of semiautomatic rifles, pistols, and shotguns with military-style features; and various examples of semiautomatic firearms specified by name with military-style features (and their commercially available or do-it-yourself copies and duplicates).

Ten years later, Blue State again expanded the types of restricted assault weapons to include additional firearms (“2023 assault weapons”) in An Act Addressing Gun Violence, (“Act A123”). Act A123 prohibits the possession of “any firearms that come with or can accommodate large capacity magazines that permit a shooter to fire more than eleven rounds without pausing to reload, enabling the firing of a barrage of bullets.” The cumulative effect of Act A123 is that Blue State now prohibits most people in the state from acquiring or possessing “assault weapons,” “2023

assault weapons,” and “large capacity magazines,” as defined below. At the same time, Blue State allows firearms that, while dangerous, as all firearms are to varying degrees, are not so uniquely designed to create mayhem. Most notably, Act A123 prohibits the possession of any AR-15 styled rifle.

Act A123 further restricts the acquisition and possession of “large capacity magazines,” which the statute defines as “any firearm magazine, belt, drum, feed strip or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition.” Consistent with Blue State law, we refer to these devices as “large capacity magazines.”

III. Procedural History

At the trial level of this case, the district court held that (1) Plaintiff bears the burden of demonstrating that her conduct is protected by the Second Amendment’s plain text, and (2) she must do so by producing evidence that the specific firearms she seeks to use and possess are in common use for self-defense, that the people possessing them are typically law-abiding citizens, and that the purposes for which the firearms are typically possessed are lawful ones. The court further noted the Defendant may then attempt to demonstrate that the regulated firearms are instead unprotected dangerous and unusual weapons by showing either that the weapons are unusually dangerous or that they are not commonly used or possessed for self-defense.

If Plaintiff successfully showed that the Second Amendment’s plain text covers her conduct, the burden then shifts to Defendant to justify its regulation based on *Bruen*’s requirements for establishing relevant similarity to history and tradition.

Applying that framework, the district court concluded that Plaintiff did not carry her burden of demonstrating that her conduct was protected by the Second Amendment—that is, that the regulated weapons and accessories are commonly sought out, purchased, and used for self-defense. The district court accepted Defendant’s argument that assault weapons and large capacity magazines are typically acquired for their military characteristics, not self-defense; are disproportionately dangerous because of their increased capacity for lethality; and are more often used in committing crimes and mass shootings than in self-defense.

Because the challenged statute restricts only a subset of each category of firearms that possess new and dangerous characteristics that make them susceptible to abuse by non-law-abiding citizens wielding them for unlawful purposes, the district court found the challenged statute analogous to regulations in their day of Bowie knives and other dangerous or concealed weapons.

IV. Second Amendment Analysis

A. The Meaning of the Second Amendment

The Second Amendment to the United States Constitution provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. Over the course of the last two decades, the Supreme Court has issued three opinions that principally inform our understanding of that command. We summarize them here.

In *District of Columbia v. Heller*, the Court announced for the first time that the Second Amendment “confer[s] an individual right to keep and bear arms.” 554 U.S. 570, 595 (2008). To reach that conclusion, the Court found determinative the operative clause of the Amendment: “the right of the people to keep and bear Arms, shall not be infringed.” *Id.* at 577-95. Notably, it found that “Arms” encompasses “all instruments that constitute bearable arms, even those that were not in existence at the time of the founding,” *id.* at 582, and that the textual elements of the operative clause “guarantee the individual right to possess and carry weapons in case of confrontation,” *id.* at 592. The Court also concluded that the prefatory clause of the Amendment (“A well regulated Militia, being necessary to the security of a free State”) supported its reading of the operative clause. *Id.* at 598-600. Applying its interpretation of the Second Amendment, the Court ruled that the regulation at issue in *Heller*, an absolute ban of handgun possession in the home, was unconstitutional. *Id.* at 635.

But even as it announced the Second Amendment right to keep and bear arms, the Court in *Heller* made clear that this right was “not unlimited.” *Id.* at 595. The Court did “not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation.” *Id.* at 595. Instead, *Heller* recognized that the Second Amendment “codified a pre-existing right” to keep and bear arms, *id.* at 592, which was understood at the founding to be a “right of self-preservation,” *id.* at 595 (quoting 1 Blackstone’s Commentaries 145-46, n.42 (St. George Tucker ed., 1803)); *see also id.* at 594 (“[Americans] understood the right to enable individuals to defend themselves.”). The Court emphasized that self-defense was “the central component of the right.” *Id.* at 599.

In cautioning that the right was not unlimited, the Court noted that nothing in *Heller* “should be taken to cast doubt on” certain “longstanding prohibitions on the possession of firearms.” *Id.* at 626. The Court indicated “that the sorts of weapons protected were those ‘in common use at the time,’” *id.* at 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)), and limitations on Second Amendment protections for certain types of arms were “fairly supported by the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons,’” *id.* (citing, *inter alia*, 4 William Blackstone, Commentaries *148-49 (1769)). The Court acknowledged that some weapons “most useful in military service,” such as M-16 rifles and machineguns, “may be banned,” observing that a typical militia was “formed from a pool of men bringing arms in common use at the time for lawful purposes like self-defense.” *Id.* at 624 (quotation marks omitted), 627. The Court did not elaborate further on the types of arms that are, or are not, protected by the Second Amendment.

Eventually, the Supreme Court provided an analytical framework for lower courts to use, in *New York State Rifle & Pistol Association v. Bruen*. 597 U.S. 1, 17 (2022). The Court established a two-step framework “rooted in the Second Amendment’s text, as informed by history.” *Id.* at 19, 22. Under this framework, courts are to consider first whether “the Second Amendment’s plain text covers an individual’s conduct.” *Id.* at 17. If not, our inquiry ends and there is no Second Amendment protection. But if it does, “the Constitution presumptively protects that conduct,” and we must determine if the regulator—whether the federal government, a state, or a municipality—has carried its burden to show “that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.*; *see also id.* at 33-34 (discussing burden). “Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.” *Id.* at 17 (quotation marks and citation omitted).

In terms of analytical methodology, *Bruen* acknowledged that, while some cases would present straightforward comparisons between historical and modern firearms regulation, courts might have to use a “more nuanced approach” in “cases implicating unprecedented societal concerns or dramatic technological changes.” *Id.* at 27. In such cases, a court may compare the regulations at issue to “relevantly similar” historical regulations. *Id.* at 28-29. The Court noted two important metrics of similarity: “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Id.* at 29 (emphasis added).

Two years after *Bruen*, the Supreme Court decided *United States v. Rahimi*, which held a gun control statute was constitutional where it criminalized the possession of firearms by certain individuals subject to domestic violence restraining orders. 602 U.S. 680, 700 (2024). Although the regulation at issue in *Rahimi*, restricting who may possess firearms, is notably distinct from the regulation at issue here, restricting what firearms may be possessed, *Rahimi* remains instructive. For one thing, *Rahimi* rejected the contention that the Second Amendment permits only “those regulations identical to ones that could be found in 1791.” *Id.* at 692 (emphasis added); see also *id.* at 691-92 (observing that the Court’s Second Amendment “precedents were not meant to suggest a law trapped in amber”). Thus, *Rahimi* applied *Bruen*’s “relevantly similar” analysis to the regulation without first determining that the statute implicated unprecedented societal concerns or dramatic technological changes. *Id.* at 692 (quotation marks omitted). And *Rahimi* demonstrated that we may look to different historical traditions “[t]aken together” in assessing the constitutionality of challenged statutes. *Id.* at 698. Applying those principles, *Rahimi* identified an historical tradition of disarming individuals that pose a clear threat of physical violence to another person and identified relevantly similar historical regulations from the founding era, such as surety and going armed laws. See *id.* at 693-98.¹⁷ *Rahimi* thus serves as a useful methodological guide for the use of historical analogues.

With the background from these cases in mind, we consider the constitutionality of the challenged Blue State statute, Act A123.

B. Preliminary Considerations

We begin our analysis by discussing three concepts, as to each of which the parties have offered competing interpretations, that guide our analysis.

1. “In Common Use”

Plaintiff insists that the challenged restrictions on the desired firearms and magazines violate the Second Amendment because they constitute a categorical ban on “widely popular” weapons in common use today for lawful purposes. This, Plaintiff contends, is “sufficient” for finding that possessing the regulated weapons is protected by the Second Amendment. Even assuming for the sake of argument that the desired firearms and magazines are “typically possessed” and “in common use” for lawful purposes, we disagree.

Plaintiff distorts the precedents on which her argument relies. *Heller* and *Bruen* provide that the Second Amendment “protects only the carrying of weapons that are those ‘in common use’ at the time, as opposed to those that ‘are highly unusual in society at large.’” *Bruen*, 597 U.S. at 47 (quoting *Heller*, 554 U.S. at 627) (emphasis added). The cases do not hold that the Second

Amendment necessarily protects all weapons in common use. They do not shield popular weapons from review of their potentially unusually dangerous character. And further, Plaintiff’s proposed “common use” standard would strain both logic and administrability, as it would hinge the right on what the Fourth Circuit aptly called a “trivial counting exercise” that would “lead to absurd consequences” where unusually dangerous arms like the M-16 or “the W54 nuclear warhead” can “gain constitutional protection merely because they become popular before the government can sufficiently regulate them.” *Bianchi v. Brown*, 111 F.4th 438, 460 (4th Cir. 2024).

2. “Unusually Dangerous”

The Supreme Court has recognized an “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *Bruen*, 597 U.S. at 21. Defendant argues that the challenged statute falls within this tradition. Plaintiff counters that this limitation on the Second Amendment right applies only to those weapons that, unlike AR-15s and large-capacity magazines, are both dangerous and unusual. We conclude, however, that this historical tradition encompasses those arms that legislators determined were unusually dangerous because of their characteristics.

Our understanding of the Second Amendment is informed by history. *Bruen*, 597 U.S. at 26. Historical prohibitions on affray used both the formulations “dangerous and unusual” and “dangerous or unusual.” Notwithstanding the variations, both the conjunctive and disjunctive formulations were traditionally understood as meaning “unusually dangerous.” Educated readers in the Founding era would have interpreted both phrases to mean the same thing, a ban on weapons that were ‘unusually dangerous.’

Plaintiff’s argument strips coherence from the historical limitation to the Second Amendment right applicable to dangerous and unusual weapons. It is axiomatic that to some degree all firearms are “dangerous,” *see Caetano*, 577 U.S. at 417-18 (Alito, J., concurring), so that word does no work by itself. And the phrase “and unusual” or the phrase “or unusual” standing alone raises more questions than it answers. What is meant by “unusual” standing alone? “Dangerous” needs a modifier, and its companion “unusual” needs something to modify. Unusually dangerous is the obvious fit to describe weapons that are so lethal that legislators have presumed that they are not used or intended to be used for lawful purposes, principally individual self-defense.

3. “Interest Balancing by the People”

The Supreme Court has made clear that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Heller*, 554 U.S. at 626. Historically, the right “was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* These historical limitations make apparent that the Second Amendment “is the very product of an interest balancing by the people.” *Id.* at 635. We endeavor to faithfully apply “the terms of the [people’s] balance enshrined in the Constitution’s text” based on history and tradition rather than our personal intuitions or preferences about how to balance individual rights with societal prerogatives. *Bianchi*, 111 F.4th at 472. We thus engage in analogical reasoning that invokes historical practice without resorting to judicial interest balancing.

C. Presumptive Constitutional Protection

Bruen requires a two-part analysis. Under *Bruen*'s step one, we would first ask whether the Second Amendment presumptively protects Plaintiff's individual right to acquire and possess the desired firearms and magazines because the "plain text of the Second Amendment protects [Plaintiff's] proposed course of conduct." *Bruen*, 597 U.S. at 32.

However, because of the outcome we reach on other grounds, we will simply assume without deciding that the desired firearms and magazines are bearable arms within the meaning of the Second Amendment and that their acquisition and possession is presumptively entitled to constitutional protection. We thus proceed to *Bruen* step two, which provides a resolution to our quest.

D. Historical Tradition of Firearm Regulation

We thus turn to whether Defendant, at this preliminary stage, has provided sufficient evidence that the challenged statute is "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. For the reasons that follow, we conclude that it has done so.

Because the challenged statute is a state law, "the prevailing understanding of the right to bear arms" in both 1791 (the year in which the states ratified the Second Amendment) and in 1868 (the year that the Fourteenth Amendment, which incorporated the Second Amendment against the states through the Due Process Clause, was ratified) are relevant to our analysis. *Antonyuk v. James*, 120 F.4th 941, 972 (2d Cir. 2024). We therefore consider limitations imposed on the Second Amendment right during these time periods and whether these historical traditions of regulation are analogous to the challenged statute. We also note that while the Court has not "provide[d] an exhaustive survey of the features that render regulations relevantly similar," it has provided "two metrics: how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Bruen*, 597 U.S. at 29.

We therefore attend to the Supreme Court's instruction to consider "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified" as "central considerations" in our "analogical inquiry." *Id.* (quotation marks omitted). If we determine that Act A123's restrictions on acquiring and possessing the desired firearms and magazines are relevantly similar to the Nation's historical tradition of firearms regulation, we may conclude that Plaintiff is unlikely to succeed on the merits of their challenge and thus the preliminary relief Plaintiff seeks should be denied.

Plaintiff is unlikely to succeed on the merits. Blue State's restrictions on AR-15s and large capacity magazines are one more chapter in the historical tradition of limiting the ability to "keep and carry" dangerous and unusual weapons. *Heller*, 554 U.S. at 627. The challenged statute is "relevantly similar," *Bruen*, 597 U.S. at 29, to historical antecedents that imposed targeted restrictions on unusually dangerous weapons of an offensive character—dirk and Bowie knives, as well as machine guns and submachine guns—after they were used by a single perpetrator to kill multiple people at one time or to inflict terror in communities. At the same time, the historical antecedents, like the challenged statute, preserved alternative avenues for the legal possession of less inherently dangerous arms for self-defense and other lawful purposes. The challenged statute thus imposes a

“comparable burden” and are “comparably justified” as those historical comparators offered by Defendant. *Id.*

1. The Need for Nuanced Analogical Reasoning

Defendant has not identified, and we have not independently found in the record before us, any exact historical analogues to the challenged statute. The apparent absence of an exact historical analogue, however, is not necessarily determinative. See *Rahimi*, 602 U.S. at 692. To be sure, *Bruen* instructs that “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.” 597 U.S. at 26-27. But the Court also instructs that in cases that are not so “straightforward,” the lack of a distinctly similar historical analogue may be excused in favor of “nuanced” analogical reasoning. *Bruen*, 597 U.S. at 27-28. Here, we conclude that because the challenged legislation addresses novel societal problems stemming from newly developed technology, a nuanced analysis is warranted.

As we discuss below, there is no evidence before the twentieth century that any firearms could be used to carry out mass shootings. Indeed, commonly used firearms “did not have the capacity to occasion a societal concern with mass shootings . . . until dramatic technological changes vastly increased their capacity and the rapidity of firing.” *Hanson v. District of Columbia*, 120 F.4th 223, 240 (D.C. Cir. 2024). Therefore, there “simply is no relevantly similar historical analogue to a modern, semiautomatic [firearm] equipped with [a large capacity magazine].” *Id.*

As technology has facilitated an increase in mass shootings, mass shootings have become the object of widespread fear and societal concern. Together they have provoked a spate of state legislation to address a problem that is without direct historical precedent. *Bruen* had this type of situation in mind when it counseled that where direct analogues are absent and the analysis is not “straightforward,” we may employ a “more nuanced approach” to evaluate relevant historical antecedents. *Bruen*, 597 U.S. at 26-27. Given the unprecedented societal concerns giving rise to this particular statute, a brief review of the history of mass shootings is warranted.

Early firearms by themselves did not facilitate mass killings. In the founding era, firearms were common but rarely used to perpetuate homicides. Mass murders have occurred throughout history, but the “limits of existing technologies” meant that they generally involved the use of multiple people and multiple weapons. *Nat’l Ass’n for Gun Rts. v. Lamont*, 153 F.4th 213, 239 (2d Cir. 2025). Until the late nineteenth and early twentieth century, mass homicides could only be carried out by groups using primitive firearms and melee weapons—clubs, knives, and nooses—that, though lethal, “did not provide individuals or small groups of people the means to inflict mass casualties on their own.” *Id.*

The Founders faced no problem comparable to a single gunman carrying out a mass murder in seconds. How could they, when there was “no known occurrence of a mass shooting resulting in double-digit fatalities at any point in time during the 173-year period between the nation’s founding in 1776 and 1948”? *Id.* The first single-gunman shooting resulting in ten or more deaths did not occur until 1949. *Id.* From 1949 to 2004, there were ten mass shootings with double-digit fatalities. *Id.*

The proliferation of unusually dangerous weapons, however, has led to a frequent, growing, and extremely lethal threat to public safety, actual and widely perceived. An assault weapon was first used to perpetuate a mass shooting resulting in ten or more fatalities in 1982. *Id.* After there were five such mass shootings within five years, Congress enacted three significant federal firearms restrictions. *Id.* In the eighteen years after the most significant of those restrictions expired in 2004, there were twenty mass shootings each resulting in ten or more deaths. *Id.* Mass shootings continue to be a growing threat unlike anything that the Framers could have imagined.

Bruen thus had in mind the very situation we face here when it counseled that where direct analogues are absent because of unprecedented societal concerns and dramatic technological changes, our analysis may adopt a “more nuanced” approach. It is that approach we undertake here. In employing this “nuanced approach,” we examine how the challenged statutes work and the reasons behind them.

2. Blue State’s Ban Against AR-15s and Large Capacity Magazines

The challenged statute—as applied to AR-15s and large capacity magazines—consists of, as Defendant contends, targeted restrictions on unusually dangerous weapons that leave open many lawful alternatives to Blue State residents for armed self-defense.

Act A123 focuses on unusually dangerous firearms, in substantial part those more powerful semiautomatic centerfire rifles that can accept a large capacity magazine and have an additional military-style feature that increases the firearm’s lethality. In so doing, the statute restricts unusually dangerous weapons that have grave capacity for inflicting harm disproportionate to the Second Amendment’s “core lawful purpose of self-defense.” *Heller*, 554 U.S. at 630. Consider, as a paradigmatic example, the AR-15s and large capacity magazines that Plaintiff seeks to purchase.

The AR-15 was initially developed for modern military combat. It has the same basic structure and operation, as well as near-equivalent muzzle velocity, as its military counterpart, the M-16. The AR-15 is more lethal to victims, bystanders, and law enforcement than ordinary handguns typically used for self-defense. Its powerful centerfire ammunition can penetrate standard construction walls, car doors, and law enforcement officers’ body armor. *Kolbe v. Hogan*, 849 F.3d 114, 127 (4th Cir. 2017). Its standard configuration comes equipped with .223 caliber rounds “designed to fragment and mushroom” in a victim’s body. Whereas an ordinary handgun causes injuries equivalent to a “stabbing with a bullet,” an AR-15 exacts serious injuries tantamount to being shot “with a Coke can.” It has combat-functional features—like the ability to accept large capacity magazines as well as grips and barrel shrouds that facilitate spray firing—that dramatically increase its utility for lethality and its appeal to mass shooters.

The primary difference between the M-16 and AR-15 is that the AR-15 does not have fully automatic firing capability. Plaintiff points to this distinction as the critical difference between weapons that can be permissibly regulated and those that cannot. But Plaintiff has not offered evidence that this distinguishing factor fundamentally transforms the AR15 into a weapon that is substantially less dangerous than its military counterpart. Rather, Defendant has offered evidence that “[a]t ranges over 25 meters, rapid semiautomatic fire is superior to automatic fire in all measures: shots per target, trigger pulls per hit, and time to hit.” Dep’t of the U.S. Army, *FM 3-22.9: Rifle Marksmanship M16-/M4-Series Weapons*, § 7-15 (2008)); see also *Capen v. Campbell*,

708 F. Supp. 3d 65, 85 (D. Mass. 2023) (noting that the “U.S. Marine Corps discarded” the M-16’s fully automatic function “in favor of a maximum setting of a three-round burst” to “enhance lethality by. . . improving accuracy”).

In addition, the AR-15, unlike an ordinary handgun, has features that actually limit its usefulness for self-defense. *Cf. Heller*, 554 U.S. at 629 (discussing characteristics of handguns that make them “the quintessential self-defense weapon”). It is “significantly heavier and longer,” “less concealable, more difficult to use, and less readily accessible, particularly for an inexperienced user” than a typical pistol. *Capen*, 708 F. Supp. 3d at 86. And with their high muzzle velocity, AR-15-style weapons are more likely to penetrate a house or apartment wall when fired in a self-defense scenario, threatening family members or the building’s other occupants.

Moreover, assault rifles with large capacity magazines, like the AR-15, are especially dangerous in mass shootings. An assault weapon, large capacity magazine, or both, has been used in each of the ten deadliest mass shooting events in American history. Criminals, terrorists, and the mentally ill armed with such weapons may easily fire more than eleven rounds before pausing to reload, thereby eliminating breaks that afford victims time to escape and law enforcement time to intervene.

At the same time that Blue State’s statute restricts access to unusually dangerous weapons, Defendant shows, the statute still allows the lawful possession of many popular weapons, including semiautomatic weapons deemed to be less dangerous by the legislature for self-defense and other lawful purposes. And while Plaintiff seems to characterize Blue State’s law as a categorical ban on the possession of semi-automatic firearms, Blue State residents remain able to purchase and possess more than 1,000 firearms for self-defense, hunting, and sport shooting. Among others, Act A123 permits Blue State residents to own and possess popular semiautomatic handguns like the Glock 17 and M9 Barretta, and popular semiautomatic hunting rifles like the Ruger Mini-14 and the Ruger 10/22 Target.

3. The Comparators

Having considered “how and why” the challenged statute “burdens a law-abiding citizen’s right to armed self-defense,” *Bruen*, 597 U.S. at 29, we next look to whether Defendant is likely to succeed in establishing there are “relevantly similar” historical analogues that “work in the same way” and “for the same reasons,” as required by our nuanced approach. *Rahimi*, 602 U.S. at 711 (Gorsuch, J., concurring). On the record at this stage, we find that Defendant has provided sufficient evidence of analogous historical regulations and that Plaintiff is therefore unlikely to succeed on the merits.

While Act A123 lacks an “historical twin,” *id.* at 701 (quotation marks omitted), Defendant has provided evidence of a longstanding tradition of restricting novel weapons that are particularly suited for criminal violence—a tradition that was “liquidate[d] and settle[d]” by “a regular course of practice” of regulating such weapons throughout our history. *Bruen*, 597 U.S. at 35-36.

This tradition can be traced back to pre-colonial England, with the enactment of laws prohibiting “riding or going armed, with dangerous or unusual weapons to terrify the good people of the land.” *Rahimi*, 602 U.S. at 697 (quoting 4 William Blackstone, Commentaries *148-49). The Statute of Northampton prohibited the carrying of launceegays, which were shorter and lighter than a full

knights' lance and designed for thrusting, and were "generally worn or carried only when one intended to . . . breach the peace." *Bruen*, 597 U.S. at 41; *see also* 7 Rich. 2, ch. 13 (1383) (prohibiting riding with launcegays in pre-colonial England).

The tradition of regulating weapons used for criminal violence continued in the 19th century, with state legislatures targeting unusually dangerous, novel, and concealable weapons, including uniquely configured dirk and Bowie knives. *Hanson*, 120 F.4th at 237. These ubiquitous historical restrictions on dirk and Bowie knives exemplify a relevantly similar historical tradition. *See Capen*, 708 F. Supp. 3d at 83 (observing that Bowie knives were subject to regulation by 49 states). The relevance of this history is supported by the text of the Second Amendment, which speaks to the right to keep and bear "arms," not just firearms. *See* U.S. Const. amend. II; *State v. DeCiccio*, 315 Conn. 79, 117, 128 (2014) (concluding that dirks are "Arms" within the meaning of the Second Amendment).

Like the weapons regulated by the challenged statute, dirk and Bowie knives were technological advancements over ordinary defensive arms because they were designed "expressly for fighting," with longer blades, crossguards to protect fighters' hands, and clip points to facilitate cutting or stabbing adversaries. In certain respects, these knives were superior even to contemporary firearms, which had limited effectiveness in close quarters. As with the regulated weapons before us, legislators singled out fighting knives after they were first used in a widely-publicized act of violence resulting in multiple fatalities: Colonel Jim Bowie's "Sandbar Fight" at the Mississippi River on September 19, 1827, that led to two deaths and multiple non-fatal casualties. Ultimately, these knives were used, among other concealable weapons liable to criminal misuse, in an alarming proportion of the era's murders and serious assaults. And like the regulated weapons here, the large blades of Bowie knives wreaked particularly "bloody" and "gruesome" injuries.

Restrictions on dirk and Bowie knives could be severe, whereas restrictions on other types of household and utility knives were nonexistent. Most states and territories restricted their concealed carry. *Kachalsky*, 701 F.3d at 95. These prohibitions at times restricted the concealed carry of all, or nearly all, weapons, failing to provide support for the existence of an historical tradition of heightened regulations on unusually dangerous weapons. But many laws specifically targeted the concealed carry of only those "unlawful weapons usually used for the infliction of personal injury," such as Bowie and dirk knives.

These laws imposing the most severe restrictions on unusually dangerous weapons were enacted largely by those southern states facing the most severe increases in violence in the pre-Civil War period. Contemporaneous state court decisions indicate that such regulations were considered permissible exercises of state police power—with different states permitted to make different decisions on how best to protect their citizens. There is limited historical evidence that courts viewed constitutional rights to self-defense as impaired by regulations that restricted unusually dangerous weapons of an offensive character (including dirk and Bowie knives) while preserving the availability of alternative weapons for self-defense. To the contrary, state courts repeatedly upheld the constitutionality of such restrictions, affirming that these state legislatures acted "within the scope of their police powers in responding to the demands of [their] own citizens." *Bianchi*, 111 F.4th at 447; *see also Heller*, 554 U.S. at 626 ("[T]he majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues."); *Bruen*, 597 U.S. at 50-55.

Twentieth-century regulation of automatic and semiautomatic weapons continued the relevantly similar tradition of imposing targeted restrictions on unusually dangerous weapons after their use in multiple-fatality homicides and terror. The development of the Thompson submachine gun in 1918, and its subsequent use by gangsters in mass shootings, led to the National Firearms Act of 1934, which prohibited ownership of machine guns, submachine guns, and short-barreled shotguns, as well as numerous state analogues. See *Ocean State Tactical*, 95 F.4th at 47 (observing that Congress began regulating sawed-off shotguns after they were used by the “mass shooters of their day” (quotation marks omitted)). But even the National Firearms Act’s severe restrictions on these unusually dangerous weapons did not unlawfully burden the Second Amendment right. See *United States v. Miller*, 307 U.S. 174, 178 (1939) (upholding the constitutionality of the Act’s prohibition on possession of sawed-off shotguns).

We acknowledge that statutes that restricted the concealed or open carry of particular arms in public are distinguishable from restrictions on the acquisition and possession of certain weapons. But that does not diminish the constitutionality of appropriate restrictions that, like the Blue State statute, do not impair the core constitutional right under the Second Amendment. We conclude that historical prohibitions on unusually dangerous weapons used in affray and restrictions on the concealed or open carry of unusually dangerous weapons, when accompanied by statutes that imposed taxes on the sale and possession of such weapons, provide an historical tradition of restricting unusual weapons that is relevantly similar to the challenged statutes. Historical legislators regulated these unusually dangerous arms, like here, after observing the regulated weapons’ unprecedented lethality. They did so, like here, to prevent the use of these especially dangerous variants of otherwise lawful types of weapons in further acts of mass homicide and terror. And they did so, in a relevantly similar fashion, by singling out unusually dangerous weapons.

In sum, we conclude that Defendant has, at this preliminary stage, satisfied its burden to demonstrate that permissible historical arms regulations that singled out the unusually dangerous weapons of their day are “relevantly similar” to the challenged statute. At the same time, both the historical and the contemporary legislatures did not impair the Second Amendment right to self-defense by allowing many weapons to go unchecked.

The less-than-absolute right codified by the Second Amendment permits Blue State legislators to honor the constitutional balance captured by its text, as interpreted by the Supreme Court in light of history. The Second Amendment thus allows these legislators to do what they did here: implement targeted regulations designed to protect residents and their children from experiencing tragedies like the one at Bright Futures Elementary School that Blue State and the nation experienced on December 14, 2012, without sacrificing the self-defense core of the “right of the people to keep and bear Arms.” U.S. Const. amend. II.

V. Fifth Amendment Analysis

The Fifth Amendment provides, in part, “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. Plaintiff asserts that, on its face, Blue State’s statute effects a taking because it requires Plaintiff either to (1) modify any large-capacity magazines so that they accept ten or fewer rounds, (2) sell them, (3) move them out of the state, or (4) turn them over to state officials for destruction.

A. Plaintiff's Theories Fail

Plaintiff's theory, along with the dissenting opinion in this case, appears to be that the government effects a taking for purposes of the Fifth Amendment any time that it requires owners of personal property to dispose of, transfer, or modify their property. In their view, the regulatory justification for the challenged law is completely irrelevant.

A few concrete illustrations suffice to show why that theory is untenable. For example, when a state "add[s] a drug to its schedule of controlled substances" and bans sale or possession of the substance because of newly discovered health risks, it need not "pay all owners for the newly proscribed item." Indeed, the Supreme Court considered and "consistently rejected" similar takings claims arising from "Prohibition-era regulations of previously acquired stock." *Holliday Amusement Co. of Charleston Inc. v. South Carolina*, 493 F.3d 404, 410 (4th Cir. 2007) (citing e.g., *James Everard's Breweries v. Day*, 265 U.S. 545, 563 (1924)) (noting that regulations on the sale of alcoholic beverages did not violate the Fifth Amendment). The Court also rejected a takings claim brought by the owners of trees infected with a pest when the government ordered the trees destroyed to prevent the spread of disease. *See Miller v. Schoene*, 276 U.S. 272, 279-280 (1928). "To require compensation in all such circumstances would effectively compel the government to regulate by purchase." *Holliday*, 493 F.3d at 410 (Wilkinson, J.); see *id.* at 409-411 (rejecting takings claim by owner of video-poker machines after South Carolina banned them).

The dissent's theory of takings liability is not materially stronger than the challenges rejected in those cases. If anything, it is materially weaker. Act A123 is not "confiscatory." Blue State has not ordered owners of large-capacity magazines to destroy the magazines or give them to the government. *Cf. Horne v. Dep't of Agric.*, 576 U.S. 350 (2015). Owners may instead "sell the magazine to a firearms dealer," "remove the magazine to another state (where, depending on that state's laws, the owner may lawfully possess it or sell it to a third party)," or "modify the magazine so that it accommodates ten rounds or fewer." It is not difficult to modify a magazine to bring it into compliance. And as the Supreme Court has long recognized, owners of personal property should "expect its uses . . . to be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1027 (1992).

Unsurprisingly, then, every court to have considered a challenge to a similar regulation has rejected it. See, e.g., *Ass'n of N.J. Rifle and Pistol Clubs*, 910 F.3d at 124-125 (upholding large-capacity magazine ban); *Ocean State Tactical*, 95 F.4th at 52-53 (same); see also *Md. Shall Issue, Inc. v. Hogan*, 963 F.3d 356, 364-367 (4th Cir. 2020) (rejecting takings challenge to bump stock possession ban).

And the handful of cases invoked by the dissent do not support its far-reaching theory. In *Loretto v. Teleprompter CATV Corp.*, 458 U.S. 419, 426 (1982), the Court addressed a "permanent physical occupation" of real property. In *Horne*, 576 U.S. at 361, the Court considered a "clear physical taking" requiring the transfer of "[t]itle to . . . raisins" "from growers to the Government." Perhaps most significantly, *Loretto* and *Horne* concerned regulations of non-dangerous, ordinary items, making this a paradigmatic example of 'apples and oranges.' Lastly, *Kelo v. City of New London* has nothing to do with this dispute; that case involved the government forcibly taking title and possession of someone's private home and subsequently selling it; those facts are a far cry

from Blue State’s regulatory restrictions against possession of dangerous firearms, which merely allow an option for affected gun owners to sell their interests (and receive compensation for those sales). None of these cases comes remotely close to suggesting that the government effects a taking “whenever it concludes that certain items are too dangerous to society for persons to possess without a modest modification that leaves intact the basic functionality of the item.” *Duncan v. Bonta*, 19 F.4th 1087, 1113 (9th Cir. 2021).

B. Police Powers and Dangerous Property

The Takings Clause has never been understood to require compensation whenever a State prohibits possession of property found to threaten public health, safety, or welfare. From the earliest days of the Republic, States have exercised their police powers to prohibit or destroy property deemed harmful to the public without incurring compensation obligations.

The Supreme Court has repeatedly recognized this principle. In *Mugler v. Kansas*, the Court upheld restrictions on property used for the manufacture of alcohol, explaining that exercises of the police power designed to protect public health and safety do not become takings merely because they diminish private property value. 123 U.S. 623, 664 (1887). Likewise, in *Miller v. Schoene*, the Court upheld Virginia’s destruction of disease-carrying cedar trees without compensation to landowners, because the State was required to choose between conflicting property interests and acted to prevent widespread public harm. 276 U.S. 272, 280 (1928).

Defendant argues that Act A123 falls comfortably within this tradition. The legislature determined that AR-15-style rifles and large-capacity magazines uniquely facilitate mass-casualty events, thereby threatening public safety. Plaintiff counters that these items are ordinary, lawfully owned consumer products rather than inherently dangerous instrumentalities, and therefore are unlike diseased trees, contraband, or other property historically regulated without compensation. Whether the police power extends this far remains the central dispute in this case.

The legislative record contained conflicting evidence on this point. Blue State officials testified that large-capacity magazines were disproportionately used in mass shootings and increased casualties. Plaintiff’s experts testified that such magazines are possessed by millions of law-abiding Americans and are rarely used in violent crime. The legislature expressly found that AR-15s and the restricted magazines presented “a substantial danger to public safety.” Plaintiff disputes those findings and argues that the items are ordinary consumer goods commonly possessed for lawful purposes.

C. Physical and Regulatory Takings

As previously noted, the Fifth Amendment provides that “private property” shall not “be taken for public use, without just compensation.” U.S. Const. amend. V. “The paradigmatic taking requiring just compensation is a direct government appropriation or physical invasion of private property.” *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005). In addition to these “physical” takings, the Court has recognized “regulatory takings” when a regulation “denies all economically beneficial or productive use” of the property. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015–16 (1992).

Act A123 requires all owners of AR-15s and large capacity magazines to choose one of four options within 180 days of the law's passage: They could (a) permanently modify their AR-15s and large capacity magazines to accept ten rounds or fewer of ammunition; (b) sell them to a federally licensed firearms dealer or out-of-state resident; (c) transfer them out-of-state; or (d) turn them in to law enforcement. The statute does not provide for payment in the event of forfeiture, and it offers no exceptions for any firearms or magazines that cannot be converted to lower capacity.

Plaintiff argues that, by dispossessing owners of their firearms and magazines (whether through transfer, forfeiture, sale, or alteration), Act A123 effects a physical taking. Consequently, to Plaintiff, the State has an obligation to pay just compensation, no matter the justification for the law. Plaintiff points to *Horne v. Department of Agriculture*, 576 U.S. 350 (2015), in which the Court held that a requirement that raisin growers grant the government possession and title to a certain percentage of raisins constituted a physical taking, and *Loretto v. Teleprompter Manhattan CATV Corp.*, where the Court held that a mandated physical invasion of a landlord's real property for the permanent installation of cable-television devices constituted a physical taking. 458 U.S. 419, 436-37, (1982). Plaintiff argues that Act A123 effects a similar taking. We disagree. Both *Horne* and *Loretto* involved the government necessarily occupying, taking title to, or physically possessing the relevant item. Here, by contrast, AR-15 and large capacity magazine owners have the option to sell, transfer, or modify their firearms and magazines. Act A123 does not effect a physical taking just because Blue State offered to assist gunowners with the safe disposal of their soon-to-be-proscribed weapons.

Notably, the ban does not require that owners turn over their AR-15s or magazines to law enforcement—they may alternatively sell the arms to licensed gun dealers, remove them from the state, or permanently modify the arms so that they no longer accept more than 10 rounds. The impracticality of any particular option, such as the alleged lack of a market for these firearms and magazines, the burden in removing these magazines from the state, or the lack of guidance on what constitutes a permissible permanent modification does not transform the regulation into a physical taking. Because of these alternatives to turning the magazines over to law enforcement, Plaintiff does not plausibly allege that the ban operates as government appropriation of private property for government or public use.

The Act also does not result in a regulatory taking, because it does not deprive the gun owners of all economically beneficial or productive uses of their firearms and magazines. *See Murr v. Wisconsin*, 137 S.Ct. 1933, 1942 (2017) (stating that “a regulation which denies all economically beneficial or productive use of land will require compensation under the Takings Clause”); *see also Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1030 (1992) (describing a “total taking” where a regulation “declares ‘off-limits’ all economically productive or beneficial uses of land”). Simply modifying the magazine to hold fewer rounds of ammunition than before does not “destroy the functionality of the magazine.” *Wiese*, 306 F.Supp.3d at 1198 (internal quotation marks omitted). Indeed, there is no assertion that a gun owner cannot use a modified firearm or magazine for its intended purpose. These magazines may be used in the same way expected: to hold multiple rounds of ammunition in a single magazine. The only thing they may not do is continue to possess them without modification in Blue State. We find this regulation to be the very type of use restriction that property owners must “necessarily expect ... from time to time” as states legitimately exercise their police powers. *Id.* at 1027.

In short, Act A123 effects neither a physical taking nor a regulatory taking. As such, we affirm the district court's holding that Plaintiff has failed to show a likelihood of success on their Fifth Amendment claims.

D. Alternative Regulatory-Takings Theory Under *Penn Central*/Murr

Even assuming that Act A123 does not effect a physical appropriation of property, Plaintiff alternatively argues that the statute constitutes a compensable regulatory taking under *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978) and *Murr v. Wisconsin*, 137 S. Ct. 1933, 1943 (2017).

Under *Penn Central* and *Murr v. Wisconsin*, courts evaluate several factors, including "(1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation interferes with distinct investment-backed expectations; and (3) the character of the governmental action." *Murr v. Wisconsin*, 137 S. Ct. 1933, 1943 (2017).

Plaintiff has not demonstrated a likelihood of success under that framework. Although Act A123 undoubtedly reduces the value of some affected firearms and magazines, diminution in value alone rarely establishes a compensable taking. Owners remain free to sell the firearms where lawful, transfer them outside Blue State, retain ownership through out-of-state storage, or modify certain firearms and magazines to comply with state law.

Nor has Plaintiff shown substantial interference with reasonable investment-backed expectations. Owners of personal property have long been subject to regulations enacted pursuant to the States' police powers, particularly where legislatures identify significant health and safety concerns. Individuals who acquire potentially dangerous instrumentalities cannot reasonably assume that existing regulatory conditions will remain unchanged indefinitely.

Finally, the character of the governmental action favors the State. Act A123 does not appropriate property for governmental use or seek to confer a direct economic benefit upon the State. Rather, it represents a broad public-safety measure designed to reduce risks associated with particular firearms and magazines that the legislature determined pose heightened dangers to the public.

Considering these factors together, Plaintiff has failed to establish that Act A123 effects a compensable regulatory taking under *Penn Central* and *Murr*.

V. CONCLUSION

For the foregoing reasons, we AFFIRM the district court's denial of the preliminary injunction in this case.

**IN THE UNITED STATES COURT OF APPEALS FOR THE
FOURTEENTH CIRCUIT
APPEAL NO. 2026-1**

JANE BOND,

Plaintiff-Appellant,

v.

AURIC GOLDFINGER, ATTORNEY
GENERAL, STATE OF BLUE, in his
official capacity,

Defendant-Appellee.

**Appeal from the U.S. District Court for the
Middle District of Blue State**

DISSENT

CRAIG, Circuit Judge, dissenting:

The majority’s opinion marks a vast overreach of the judiciary over the Second Amendment, and runs directly contrary to the Supreme Court’s precedent on this point. I respectfully dissent.

Justice Kavanaugh has observed that there is a “strong argument that AR-15s are in ‘common use’ by law-abiding citizens and therefore are protected by the Second Amendment.” *Snope v. Brown*, 145 S. Ct. 1534 (2025) (Kavanaugh, J., statement respecting denial). He further explained that it is “analytically difficult to distinguish the AR-15[] ... from the handguns at issue in *Heller*.” Following that observation, the Second Circuit joined the many circuits that have applied the Supreme Court’s decision in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), to refuse to enjoin a ban on so-called “assault weapons,” including the AR-15 rifle, which the Supreme Court recently called “the most popular rifle in the country.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025).

Under the Supreme Court’s precedents, a firearm cannot be banned if it is in common use for lawful purposes. See *Heller v. District of Columbia*, 554 U.S. 570, 627– 29 (2008). If the most popular rifle in the country is not in common use, it is hard to see what that phrase could possibly mean. The Fourteenth Circuit nonetheless holds that a ban on that rifle does not violate the Second Amendment. And it is not alone; lower courts have uniformly upheld bans on AR-15s and large capacity magazines.

The question whether AR-15s may be banned “is of critical importance to tens of millions of law-abiding AR-15 owners throughout the country.” *Snope*, 145 S. Ct. at 1538 (Thomas, J., dissenting from denial). Since the Founding, the rifle has been the paradigmatic American arm. It facilitated

the struggle for independence from the British and was “the companion” and “tutelary protector” of the pioneers. *Heller*, 554 U.S. at 609 (citation omitted). The AR-15 is the modern descendant of our forefathers’ rifles. If the Second Amendment does not protect it, then it is unclear what that Amendment does protect.

I. Blue State’s Arms Ban

Blue State makes it a crime to sell, transfer, or possess so-called “assault weapons.” Act A123 defines the term “assault weapon” to encompass many distinct types of firearms. To begin, the term encompasses “[a]ny selective-fire firearm capable of fully automatic, semiautomatic or burst fire at the option of the user,” including specific firearms capable of firing automatically or in burst. Plaintiff does not challenge the ban on the sale, transfer, or possession of firearms with automatic or burst-fire capability.

But Act A123 also provides that many semiautomatic firearms are “assault weapons.” It specifically enumerates more than 70 semiautomatic firearm models, including the AR-15 platform (and “copies or duplicates thereof”). See *id.* It also states that all semiautomatic firearms are “assault weapons” if they meet certain criteria. The sale or transfer of a banned “assault weapon” is a Class C felony punishable by a mandatory term of imprisonment of two years and a maximum term of ten years. The possession of a banned “assault weapon” is a Class D felony punishable by a mandatory term of imprisonment of at least one year and a maximum term of five years.

II. The Second Amendment

A. Blue State’s ban extends to commonly used firearms, including the most popular rifle in America.

Blue State’s law is styled as a ban on “assault weapons.” But the term “assault weapon” is not a meaningful designation; it is rather a slogan designed to exploit the public’s confusion over fully automatic machine guns versus semi-automatic firearms.

In reality, Blue State’s ban on “assault weapons” extends to many ordinary and common semiautomatic firearms—including the AR-15 rifle. These covered firearms are mechanically and functionally identical to every other semiautomatic firearm in the way that they fire. Unlike an automatic firearm, which fires continuously while its trigger is depressed, a semiautomatic firearm fires only one shot with each pull of the trigger. See *Staples v. United States*, 511 U.S. 600, 602 n.1 (1994).

Semiautomatic firearms are exceedingly common and fully protected by the Second Amendment. See *Friedman v. City of Highland Park*, 136 S. Ct. 447, 449 (2015) (mem.) (Thomas, J., dissenting from denial of certiorari). Indeed, the Supreme Court has said, in a case specifically involving an AR-15 rifle, that semiautomatic firearms “traditionally have been widely accepted as lawful possessions.” *Staples*, 511 U.S. at 612. And for good reason—arms capable of firing multiple shots without manual reloading have been around since the Founding. For example, in 1777, Joseph Belton demonstrated a repeating rifle that could hold 16 rounds of ammunition to members of the Continental Congress. A few decades later, Meriwether Lewis set out on his expedition with

William Clark carrying a Girandoni air rifle with a 22-round tubular magazine, which functioned like a semiautomatic firearm.

“Modern” semiautomatic firearm technology has been around for 140 years, dating to 1885. It is as old as gasoline-powered automobiles. Since 1885, semiautomatic firearms have been accepted as lawful possessions virtually everywhere in America. While a few laws restricted certain semiautomatic firearms in the 1920s and 1930s, see, e.g., 1927 Mich. Pub. Acts 887, 888–89 (restricting semiautomatic firearms capable of firing 16 rounds without reloading), these were short-lived aberrations.

The AR-15 rifle, specifically, has been available to civilians since the 1960s. AR-15 rifles are

popular with civilians ... around the world because they’re accurate, light, portable, and modular. ... The AR-15 is also easy to shoot and has little recoil, making it popular with women. The AR-15 is so user-friendly that a group called “Disabled Americans for Firearms Rights” ... says the AR-15 makes it possible for people who can’t handle a bolt-action or other rifle type to shoot and protect themselves.

FRANK MINITER, *THE FUTURE OF THE GUN* 46–47 (2014). While the federal government once restricted these rifles, see Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322, § 110102, 108 Stat. 1796 (1994), that restriction was in place for just ten years, and it expired over twenty years ago. Today, AR-15 and similar rifles are legal in the vast majority of states. Indeed, the Supreme Court recently observed that the AR-15 is “the most popular rifle in the country.” *Smith & Wesson*, 605 U.S. at 297. And it emphasized that AR-15s and comparable semiautomatic rifles are “widely legal and purchased by ordinary consumers.” *Id.* at 283.

The Supreme Court’s observations are confirmed by a variety of sources.

1. Consumer Surveys

In 2022, the Washington Post surveyed a random sample of 2,104 gun owners. *Poll of current gun owners* at 1, WASH. POST-IPSOS (2022) (“WashPost Poll”). The survey asked respondents whether they owned AR-15-style rifles. Twenty percent answered yes. *Id.* Extrapolating these results to all gun owners indicates that “about 16 million Americans own an AR-15.” Emily Guskin et al., *Why do Americans own AR-15s?*, WASH. POST (Mar. 27, 2023). The survey also asked respondents why they owned AR-15s. Respondents answered that they did so, among other reasons, to protect self, family, and property (91%); for target shooting (90%); to hedge against a breakdown in law and order (74%); and for hunting (48%). WashPost Poll at 1–2. Sixty-two percent of respondents who said that they owned an AR-15 rifle reported firing it at least a few times each year. *Id.* at 2.

In 2021, Georgetown Professor William English surveyed 16,708 gun owners. William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned* at 1, GEO. UNIV. RSCH. PAPER NO. 4109494 (May 13, 2022). This survey asked respondents whether they had “ever owned an AR-15 or similarly styled rifle[.]” *Id.* at 33. Approximately thirty percent said yes, with many stating that they had owned more than one. *Id.* Extrapolating those results to all gun owners indicates that approximately 24.6 million Americans have owned AR-15s or similar rifles. *Id.* The survey also asked respondents why they owned these rifles. Respondents indicated

that they did so for, among other reasons, recreational target shooting (66%), home defense (61.9%), hunting (50.5%), and defense outside the home (34.6%). *Id.* Many respondents indicated that they had in fact used their rifles defensively. The survey estimated that of the approximately 1.67 million defensive gun uses each year, 13.1% involve rifles. *Id.* at 14–15. That amounts to over 200,000 defensive rifle uses annually. *Id.* Professor English’s defensive gun use findings are in line with other surveys, “with estimates of annual uses ranging from about 500,000 to more than 3 million.”

2. Firearm Dealer Surveys

The National Shooting Sports Foundation (“NSSF”) regularly surveys retailers about the types of firearms they sell. *See, e.g., 2021 Firearms Retailer: Survey Report*, NSSF (2021). In 2020, respondents indicated that the category of AR/modern sporting rifles (which includes AR-15 platform rifles) was the second highest-selling category, comprising 20.3% of sales. *Id.* at 9. And 2020 was no outlier. These rifles comprised between 17.7% and 20.3% of total firearm sales each year from 2011 to 2018 (with the exception of 2017, for which no survey results were reported).

3. Firearm Production Data

NSSF also analyzed production data to determine how many AR-style and comparable rifles have been produced for the American market. *Firearm Production in the United States With Firearm Import and Export Data* at 7, NSSF (2023). It determined that AR-15s and similar rifles accounted for approximately 20% of all domestic firearms produced for the American market from 2012 to 2021. *See id.* at 2–7. NSSF estimated that, from 1990 to 2022, more than thirty million of these rifles were produced for the American market. *See NSSF Releases Most Recent Firearm Production Figures*, NSSF (Jan. 15, 2025).

4. Average Use of AR-15s

The firearms that Blue State’s law bans, including AR-15s, are owned by tens of millions of Americans for many lawful purposes, including self-defense, target shooting, and hunting.

These rifles are also rarely used for unlawful purposes. Consider homicide data. From 2014 to 2023, rifles of any kind were used in an average of 380 homicides per year. *Crime Data Explorer: Expanded Homicide Offenses Characteristics in the United States*, U.S. DEP’T OF JUSTICE, FBI. Even granting the unlikely assumption that each of these homicides was carried out using a different AR-15 or a similar rifle, that would mean just .001% of these rifles are used in a homicide in a typical year. Handguns are used in homicides nearly eighteen times more frequently than rifles. *See id.* (average of 7,043 handgun-based homicides annually from 2014 through 2023). Homicides are also more likely to be carried out using knives or body parts. *See id.* (average of 1,592 knife-based and 691 body-part-based homicides over the same period).

B. The ban’s effect on Plaintiff.

Plaintiff Jane Bond is a law-abiding adult citizen of the United States and Blue State. She is legally eligible under federal and state law to acquire and possess firearms, ammunition, and magazines. She desires, for defensive purposes, to purchase a firearm covered by Blue State’s ban. For example, Bond has been the victim of domestic violence, so she now carries a Glock 30 handgun

to protect herself and her family from further attack. Following the death of her father in 2020, Bond inherited and now possesses two AR-15 rifles, as well as six 30-round magazines for the rifles. Similarly, she currently possesses a 15-round magazine and a 17-round magazine for use with her Glock 30 handgun, which she uses at gun ranges to minimize her reload times while practicing her shooting. In total, Bond’s challenged arms are valued at approximately \$4,500.

Additionally, one of Bond’s AR-15 rifles is incapable of modification. Because she cannot lawfully sell her rifle within Blue State, she has looked to selling it in a neighboring state or to a licensed dealer. However, all of the adjacent states to Blue State have enacted similar restrictions to those imposed by Act A123, so she is unable to sell it to a private owner in a neighboring state. Further complicating things for Ms. Bond, the licensed dealers in Blue State are offering only 20-30% of the market value for AR-15s and large-capacity magazines due to market flooding caused by Act A123.

C. The majority opinion blesses a ban on the most popular rifle in America.

Blue State’s “assault weapons” ban applies to many semiautomatic rifles (and large capacity magazines), but the majority focused on the AR-15. The majority holds that this rifle may be banned because it is “unusually dangerous.” *Id.* at 46a. As discussed below, this interpretation of the Second Amendment is wrong. Indeed, it is directly contrary to the Supreme Court’s precedents. But this interpretation also has staggering practical implications.

The AR-15 is the most popular rifle in the country, and among the most popular firearms of any type. The Supreme Court and its Justices have recognized as much. *See Smith & Wesson*, 605 U.S. at 297 (“The AR-15 is the most popular rifle in the country.”); *Snope*, 145 S. Ct. at 1534 (Kavanaugh, J., statement respecting denial) (“Americans today possess an estimated 20 to 30 million AR-15s.”); *id.* at 1535 (Thomas, J., dissenting from denial) (stating the AR-15 is “the most popular civilian rifle in America”); *Harrel v. Raoul*, 144 S. Ct. 2491, 2493 (2024) (mem.) (Thomas, J.) (calling the AR15 “America’s most common civilian rifle”); *Garland v. Cargill*, 602 U.S. 406, 430 (2024) (Sotomayor, J., dissenting) (referring to AR-15 style rifles as “commonly available, semiautomatic rifles”). So has the federal agency charged with regulating the commercial firearms industry, which recently described the AR-15 as “one of the most popular firearms in the United States” for “civilian use.” *See ATF, Definition of ‘Frame or Receiver’ and Identification of Firearms* (2022).

The popularity of the AR-15 is well-documented and frequently discussed. *See, e.g., How the AR-15 became America’s gun* (Washington Post Podcasts, Mar. 28, 2023). By almost all estimates, there are more AR15s and similar rifles in the United States than Ford F-150s (America’s most popular automobile). *Compare NSSF Releases Most Recent Firearm Production Figures, supra* (over 30 million AR-15s and similar rifles), with Brett Foote, *There Are Currently 16.1 Million Ford F-Series Pickups on U.S. Roads*, Ford Auth. (Apr. 9, 2021). That is true even though tens of millions of Americans are prohibited from acquiring and possessing these rifles by laws like the one at issue here.

Several outlier states have passed bans similar to Act A123. *See, e.g., Protect Illinois Communities Act*, (Ill. 2023). The majority opinion seems to hold that all these bans are constitutional so long as the legislature makes the subjective judgment that AR-style rifles are too dangerous for civilians

to possess and that less effective firearms are good enough. That logic turns a firearm possessed for lawful purposes by tens of millions of Americans into an item without constitutional protection, which is contrary to the Second Amendment.

D. Under the rationale of the majority opinion, the Second Amendment permits anything short of a complete ban on all firearms.

That Blue State's ban reaches the most popular rifle in the country suggests, if the majority opinion is correct, that no firearm in the country is protected except the handguns that the Supreme Court considered in *Heller*. Indeed, the majority comes close to saying as much.

The panel held that the Second Amendment permits governments to ban "unusually dangerous weapons," but it did not say what makes a firearm unusually dangerous. It said only that this category "encompasses those arms that legislators determined were unusually dangerous because of their characteristics."

The panel assured Plaintiff that she can still acquire and possess many semiautomatic weapons that have been "deemed to be less dangerous by the legislature," including "popular semiautomatic hunting rifles like the Ruger Mini-14." But it did not explain why Blue State could not ban all these firearms, too. It is especially difficult to see why, under the panel's rationale, Blue State could not ban other semiautomatic hunting rifles, which are not meaningfully different from AR-15s in functionality. In fact, the panel's reasoning suggests that the only limit on Blue State's power to ban any weapon at all is the judgment of its legislature. Yet the Supreme Court has held three times that the Second Amendment does not countenance "judicial deference to legislative interest balancing." *Bruen*, 597 U.S. at 26; *see Heller*, 554 U.S. at 634–35; *McDonald v. City of Chicago*, 561 U.S. 742, 790–91 (2010) (plurality op.). That is because "[t]he Second Amendment 'is the very product of an interest balancing by the people' and it 'surely elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense." *Bruen*, 597 U.S. at 26 (*quoting Heller*, 554 U.S. at 635).

If *Heller* had applied the rationale of the majority, that case likely would have been decided in favor of the District of Columbia. After all, the District Council in *Heller* determined that handguns had "a particularly strong link to undesirable activities in the District's exclusively urban environment." *Heller*, 554 U.S. at 696 (Breyer, J., dissenting) (discussing the committee report of the challenged law). And the Council "did not seek to prohibit possession of other sorts of weapons deemed more suitable for an 'urban area,'" such as shotguns. *Id.* (citation omitted). It is hard to see how applying the majority's rationale to *Heller* could have led to any conclusion other than that lawmakers were entitled to "presume" that handguns were "not used or intended to be used for lawful purposes."

The majority placed special weight on the dangers posed by AR-15s in violent crime, even suggesting that AR-15s are "particularly suited for criminal violence." But rifles—likely due in large part to the fact that they are difficult to conceal—are only very rarely used in crime; handguns are overwhelmingly the weapons of choice of criminals. "[I]f we are constrained to use [Blue State's] rhetoric, we would have to say that handguns are the quintessential 'assault weapons' in today's society." *Heller v. District of Columbia*, (*Heller II*) 670 F.3d 1244, 1290 (2011) (Kavanaugh, J., dissenting). And if we are constrained to use the majority's reasoning, a ban on

handguns like the one struck down in *Heller* would be nothing other than a permissible legislative judgment that a firearm should be banned because it is too effective.

If the Second Amendment is not to be relegated to second-class status—if it truly is intended to “elevate above all other interests the right of law-abiding, responsible citizens to use arms’ for self-defense”—then the majority’s decision must be overturned. *Bruen*, 597 U.S. at 26 (quoting *Heller*, 554 U.S. at 635).

E. The majority’s decision irreconcilably conflicts with *Heller* and *Bruen*.

This case should have been very straightforward. AR-15s and large capacity magazines are arms within the plain text of the Second Amendment, and they are in common use because they are owned by many millions of Americans for lawful purposes. *Heller* held, and *Bruen* reiterated, that a ban on a firearm that is in common use is incompatible with this Nation’s historical tradition. That means Blue State’s ban on AR-style rifles and magazines violates the Second Amendment. In holding otherwise, the panel severely distorted the Supreme Court’s precedents.

1. History demonstrates that arms “in common use” cannot be banned.

The majority held that a ban on AR-style rifles is consistent with this Nation’s historical tradition of firearms regulation. That holding was directly contrary to the decisions of the Supreme Court.

a. “Common Use”

In *Heller*, the Supreme Court held that this Nation’s historical tradition does not support the ban of a weapon in common use for a lawful purpose. See 554 U.S. at 628–29 (holding that handguns cannot be banned because they are in common use for the lawful purpose of self-defense). AR-15s (and large capacity magazines) are in common use. They are semiautomatic firearms, which “traditionally have been widely accepted as lawful possessions.” *Staples*, 511 U.S. at 612. These firearms have been available for over a century. They are legal in more than 40 states, and millions of Americans own them for lawful purposes. A firearm that is broadly legal and owned by millions of Americans is in common use under any conceivable understanding of that phrase. See *Heller*, 554 U.S. at 628–29 (holding that handguns are in common use because they are popular).

b. “Unusually Dangerous”

The majority’s holding that AR-15s are nevertheless “unusually dangerous” is untenable under *Heller*. While the Supreme Court has recognized a tradition of restricting “dangerous and unusual” weapons, “this is a conjunctive test: A weapon may not be banned unless it is both dangerous and unusual.” *Caetano*, 577 U.S. at 420 (Alito, J., concurring) (emphasis in original). Unusual is the flipside of common: If a firearm is in common use, it is not unusual, and vice versa. See *Heller*, 554 U.S. at 625; see also *Bruen*, 597 U.S. at 47 (“[T]he Second Amendment protects only the carrying of weapons that are those in common use at the time, as opposed to those that are highly unusual in society at large.” As explained, AR-15s and similar rifles are possessed by millions of Americans for overwhelmingly lawful purposes. That means they are in common use and, in turn, are neither unusual nor unusually dangerous.

The majority complained that making an arm's Second Amendment protection turn on its popularity would turn Second Amendment adjudication into a "trivial counting exercise." So, it attempted to redefine the category of dangerous and unusual to "encompasses those arms that legislators determined [are] unusually dangerous because of their characteristics." But that is flatly contrary to *Heller*, which held that the Second Amendment protects handguns precisely because they are popular with the American people. See 554 U.S. at 629 ("Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid."). Moreover, there is nothing "trivial" about the counting here; the broad ownership and widespread legality of AR-15s is excellent evidence of the American people's judgment that these rifles are not dangerous and unusual. After all, if the people considered an arm to be dangerous and unusual, they would likely rush to regulate it rather than allowing it to be available in the same manner as any other common arm.

c. "Interest Balancing"

The majority's approach is also directly contrary to the Supreme Court's rejection of Second Amendment interest balancing. The whole point of the Second Amendment is to protect the right to keep and bear arms from legislators and other government officials. See *Bruen*, 597 U.S. at 26. Yet the majority's test would empower legislators to decide which arms are protected, which would turn the Second Amendment into a dead letter. In fact, the majority's test appears to be even more toothless than the old interest balancing regime. Before, courts would at least profess to apply something like intermediate scrutiny. The majority, however, appears to have held that an arm can be removed from the Second Amendment's protection on the basis of pure, unconstrained legislative whim. That is not even intermediate scrutiny but rather rational basis review.

d. Comparators.

The majority offered a few other justifications for its holding, but these, too, contradict the Supreme Court's precedents. First, the majority stated that a ban on AR-15s and large capacity magazines fits into "a longstanding tradition of restricting novel weapons that are particularly suited for criminal violence." But the panel did not explain why these rifles are "particularly" suited for criminal violence. In any event, in *Heller*, the Supreme Court held that handguns are protected while entirely ignoring the dissent's argument that they are popular with armed criminals. See 554 U.S. at 682 (Breyer, J., dissenting). While any weapon can be used for unlawful purposes, it is indisputably true that handguns are used that way disproportionately often. See *Heller II*, 670 F.3d at 1290 (Kavanaugh, J., dissenting) (noting that handguns are used in violent crimes far more often than rifles). What is more, the semiautomatic rifles and large capacity magazines banned by Blue State are hardly "novel;" they have been available for decades.

Second, the majority noted that Blue State's ban is not overly burdensome because it does not apply to arms "deemed to be less dangerous by the legislature for self-defense and other lawful purposes," including two "popular semiautomatic hunting rifles." But it does not matter that the legislature did not ban other firearms. In *Heller*, the petitioners argued that D.C. could ban handguns so long as it permitted other firearms, such as rifles. 554 U.S. at 629. The Supreme Court disagreed and called that "no answer" to the respondents' concern. *Id.* That makes sense because such a rule would allow the government to determine which arms its citizens need for lawful purposes. It could, for example, determine that its residents do not really need firearms for self-

defense because stun guns work just as well. But the Second Amendment reflects the People's choice to disable their governments from making those sorts of judgments. *See Bruen*, 597 U.S. at 26 (the Second Amendment “elevates above all other interests the right of law-abiding, responsible citizens to use arms’ for self-defense” (*quoting Heller*, 554 U.S. 635)). In any event, the majority did not explain why, under its test, Blue State *could not* ban those firearms that remain available.

In short, while the majority offered several reasons why it believed that “assault weapons” like the AR-15 platform rifle may be banned, all of them are directly contrary to the Supreme Court's precedents. Hopefully, the Supreme Court will intervene to stop lower courts from watering down the right to keep and bear arms, which is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *Bruen*, 597 U.S. at 70 (*quoting McDonald*, 561 U.S. at 780 (plurality op.)).

III. The Fifth Amendment

Blue State's decision not only to prospectively ban AR-15s and large capacity magazines, but to confiscate them from law-abiding citizens who lawfully acquired them long before the ban was enacted, is one of the rare government initiatives that violates not one, but two provisions of the Bill of Rights. The majority's contrary holding finding no Takings Clause violation is profoundly wrong. The majority does not and cannot dispute that AR-15s and standard-capacity magazines are private property under the Takings Clause. *See Horne v. Department of Agric.*, 135 S. Ct. 2419, 2425-26 (2015). Once that is accepted, it becomes clear that Act A123 effects an uncompensated taking.

A physical taking requiring just compensation occurs whenever the government “dispossess[es] the owner” of lawfully acquired property. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 324 n.19 (2002); *Loretto*, 458 U.S. at 435 & n.12. That is true of personal property no less than real property; the “categorical duty to pay just compensation” applies “when [the state] takes your car, just as when it takes your home.” *Horne*, 576 U.S. at 358. Blue State's confiscatory ban runs afoul of those settled principles, as it forces citizens to dispossess themselves of lawfully acquired property without any compensation from the state.

While not directly analogous, there are a few different cases which warrant discussion to aid our inquiry here. In *Kelo v. City of New London*, the City of New London, Connecticut used the power of eminent domain to take title to people's homes so that the City could sell the properties to another private owner, as part of a coordinated redevelopment project intended to produce public benefits, including increased jobs and tax revenue. 545 U.S. 469, 475 (2005). The homeowners challenged the City's efforts, arguing that a forced transfer to private parties was beyond the scope of the Takings Clause; the Supreme Court ultimately disagreed, finding the City had a sufficient public purpose in taking the homes of the citizenry. Crucially for our case, the Supreme Court noted that just like all takings under the Takings Clause, the City had to pay just compensation to take the properties, even if they were ultimately planning to sell the properties to separate owners. As applied to this case, *Kelo* stands for the proposition that the government must pay just compensation when it requires a party to sell property to someone else, which naturally includes firearms.

Two other cases in addition to *Kelo* merit further analysis for our questions. In *Loretto v. Teleprompter CATV Corp.*, 458 U.S. 419, 426 (1982), the City of New York required landlords to permit cable companies to install equipment on their buildings, with virtually no compensation to the property owners. The Supreme Court held that because the cable equipment amounted to a permanent physical occupation of the apartment buildings (even if such occupation was small or insignificant), that government-authorized permanent physical occupation was a taking which required just compensation to the landlords. In *Horne v. Dep't of Agric.*, 576 U.S. 350 (2015), the Supreme Court expanded *Loretto's* holding beyond real property (like buildings) to personal property – in that case, raisins. In *Horne*, the federal government set out to stabilize the market for raisins, and to accomplish that goal, it required farmers to set aside a percentage of their raisins to be given to the government; the government was then free either to sell or to dispose of the raisins as it saw fit. *Id.* The Supreme Court held that the regulation was a clear taking which required compensation, as it required farmers physically to transfer raisins from themselves to the government. *Id.* The government attempted to argue that the farmers chose to produce raisins but they were free to choose any other crop they wanted to produce which would be left unregulated; the Court held, however, that forcing raisin-growers to cease doing business as raisin-growers was not a real alternative to escape the government's obligations to pay just compensation. *Id.* As applied to this case, *Loretto* and *Horne* stand for the basic proposition that when the government forces a private citizen to surrender her ownership rights in her property, the Takings Clause requires the government to pay fair compensation for that taking.

Property can be “taken” within the meaning of the Fifth Amendment in one of two ways: A “physical taking” occurs when the government appropriates or otherwise physically dispossesses the owner of property. *Lingle v. Chevron USA, Inc.*, 544 U.S. 528, 537 (2005). A “regulatory taking” occurs when the government regulates the use of that property in a manner that “is tantamount to a direct appropriation or ouster.” *Id.*; see also *Horne*, 135 S. Ct. at 2427.

A. Physical Taking

Act A123 effects a physical taking because it dispossesses Blue State citizens of their property. See *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 324 n.19 (2002). If the confiscatory aspect of Blue State's law takes effect, then citizens who lawfully acquired either an AR-15 or what the State now deems a “large capacity magazine” will be able to avoid criminal liability only if they “remove it from the state,” “sell it to any person or firm lawfully entitled to own or possess that firearm or magazine,” “surrender it to a law enforcement agency for destruction,” or “permanently alter it so that it cannot accommodate more than 10 rounds.” Obviously, being forced to “surrender” lawfully-acquired property is a taking; even the majority opinion does not dispute that much. But because Blue State allows owners to “modify” their once-lawful property “to accept a smaller number of bullets,” to “move it out of state,” or to “sell it,” the majority holds that the law does not “effect a physical taking.”

Under the statute, citizens have three options - but none of those so-called “options” allows law-abiding citizens to keep their property as it was when they lawfully acquired it.

First, they may surrender their AR-15s and magazines to the government, which is a “direct government appropriation . . . of private property” and a “paradigmatic taking requiring just compensation.” *Lingle*, 544 U.S. at 537; see also *Horne*, 135 S. Ct. at 2428.

Second, they may transfer their AR-15s and magazines to “any person or firm lawfully entitled to own or possess that firearm or magazine.” A taking occurs when the government provides for a third party instead of itself to dispossess a property owner. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 432 n.9 (1982) (“A permanent physical occupation authorized by state law is a taking without regard to whether the State, or instead a party authorized by the State, is the occupant.”). A law mandating that private party A sell his property to private party B effects a physical taking. *See Kelo v. City of New London*, 545 U.S. 469, 473-75 (2005) (so holding); see also Taking, Black’s Law Dictionary (12th ed. 2024) (“taking” includes “transfer of possession”). This “option,” like the first, does not allow the gunowner to keep his property as it was when he lawfully acquired it. After all, a mandatory transfer out of state directly interferes with the owner’s right to possess the property, not just to use it as she pleases.

Third, Blue State citizens may “[r]ender the . . . magazine inoperable” or permanently alter their weapons to accept 10 rounds or fewer. This clearly does not change the equation either. That is obviously true with respect to firearms and magazines that cannot be modified; dispossession is the only option for that property. And even as to firearms and magazines that can be, the shrink-or-surrender “option” does not eliminate the taking. And the government cannot escape its obligations under the Fifth Amendment by affording owners the alternative of modifying their property. In *Horne*, for example, the raisin growers could have “plant[ed] different crops,” or “[sold] their raisin-variety grapes as table grapes or for use in juice or wine.” 135 S. Ct. at 2430 (quotation marks omitted). Likewise, in *Loretto*, the owner could have converted her building into something other than an apartment complex. *See* 458 U.S. at 439 n.17. The Supreme Court nonetheless held that these were takings. *See Horne*, 135 S. Ct. at 2430 (quoting *Loretto*, 458 U.S. at 439 n.17).

The conclusion to this analysis is simple: no matter how they frame it, Blue State cannot escape that Act A123 constitutes a physical taking of the Plaintiff’s property.

This makes sense: any other rule would permit the government to sidestep the Fifth Amendment by simply imposing a condition on continued ownership, no matter how infeasible or expensive that condition may be. *Cf. Duncan*, 265 F. Supp. 3d at 1138 (noting that the out-of-state storage option authorized by California’s magazine ban may be “more costly than the fair market value (if there is any) of the magazine itself”). “[P]roperty rights ‘cannot be so easily manipulated.’ ” *Horne*, 135 S. Ct. at 2430 (quoting *Loretto*, 458 U.S. at 439 n.17). As with other constitutional rights, the government cannot “coerc[e] people into giving them up” (here, by surrendering property without just compensation) by imposing conditions on their exercise (here, by requiring owners to modify or destroy their property). *Koontz v. St. Johns Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). Neither can the government do the reverse: threatening uncompensated confiscation to force property owners to alter their property. *See id.* at 606.

The majority tries to distinguish *Horne* and *Loretto* on the ground that they “concerned regulations of non-dangerous, ordinary items.” Setting aside that the magazines Blue State bans are ordinary and useful in averting danger, the Takings Clause does not vary in force based on unelected judges’ views of the relative merits of different categories of property. Even if it did, surely the Takings Clause would provide more protection to the one class of property that the Constitution specifically entitles the people to “keep.”

B. Regulatory Taking

Act A123 fares no better when analyzed as a regulatory taking. Blue State asserts that the statute does not deprive Plaintiff of all economically beneficial use of their property. But even if that were true, regulatory action may constitute a taking if it interferes with a property owner's reasonable, investment-backed expectations. Property owners “do not expect their property, real or personal, to be actually occupied or taken away.” *Horne*, 135 S. Ct. at 2427; *see also Duncan*, 265 F. Supp. 3d at 1138. Nor do they expect to be forced to sell, destroy, or alter property.

Because the AR-15 and magazine ban works a taking of property, Blue State “has a categorical duty to compensate the former owner.” *Tahoe-Sierra*, 535 U.S. at 322. The State's own expert conceded below that citizens will suffer economic loss from the taking of their property, and even if Plaintiff obtains *some* compensation, Act A123 does not secure *just* compensation. To the contrary, the statute virtually guarantees that any sale would return less than just compensation by providing for an influx of AR-15s and magazines into a limited market (and for a limited time) of those “entitled to own or possess” them. That is a narrow class, consisting primarily of retired and active police officers and active military personnel and dealers who sell to them.

The State may not escape its compensation obligation by acting pursuant to its police power. *See Duncan*, 2018 WL 3433828, at *3 (9th Cir. July 17, 2018). Supreme Court precedent forecloses that argument. In *Loretto*, the Court held that a law requiring physical occupation of private property was both “within the State's police power” *and* an unconstitutional taking. 458 U.S. at 425. The Court explained that whether a law effects a physical taking is “a separate question” from whether the state has the police power to enact the law. *Id.* (“It is a separate question, however, whether an otherwise valid regulation so frustrates property rights that compensation must be paid. We conclude that a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve.”).

The majority treats lawfully owned firearms as though they were diseased livestock, contaminated food, or contraband narcotics. But AR-15 rifles and standard-capacity magazines are not nuisances per se. They are constitutionally protected items possessed by millions of Americans for lawful purposes. The State may regulate them prospectively, but the police power does not permit the government to convert ordinary lawful property into uncompensated forfeitures merely by declaring that the property has become dangerous. Indeed, at trial, Plaintiff presented evidence that governments historically compensated owners when acquiring weapons, horses, ships, and other lawful property for public purposes, even during wartime emergencies.

And while the majority insists that Blue State's ban does not effect a taking because owners can transfer their property to another, it does not dispute that the Supreme Court rejected exactly that line of argument in *Kelo v. City of New London*, 545 U.S. 469 (2005).

Nor does the majority dispute that a mandate to transfer property out of state—where Blue State citizens do not reside—obviously strips owners of their essential right to possess that property. And while the majority claims that “[i]t is not difficult to modify a magazine to bring it into compliance,” it cites no authority for the proposition that states can avoid paying just compensation by letting people retain lawfully acquired property only on the condition that they convert it into something the state itself views as fundamentally different. That is because none exists.

The Supreme Court recently summarized some of the fundamental principles of takings law:

“The Takings Clause of the Fifth Amendment provides that private property shall not be taken for public use, without just compensation. The Clause is made applicable to the States through the Fourteenth Amendment. As this Court has recognized, the plain language of the Takings Clause requires the payment of compensation whenever the government acquires private property for a public purpose, but it does not address in specific terms the imposition of regulatory burdens on private property.” *Id.* at 1942 (quotations and citations omitted).

Murr v. Wisconsin, 137 S.Ct. 1933 (2017). *Murr* notes that almost a century ago, the Court held that “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” *Id.* (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)).

The majority’s attempt to analogize to regulatory takings cases misses the forest for the trees. The principal problem with the state’s confiscatory ban is not that it deprives market actors of the expected economic use of their property (although it does). It is that it deprives them of possession of their property. A complete deprivation of one’s ability to possess one’s property as it was when one acquired it is no mere “use” restriction that can be dismissed as a regulatory taking; it is the whole enchilada. See *Andrus v. Allard*, 444 U.S. 51, 65-66 (1979). After all, a person cannot use physical property at all unless she can possess it.

C. *Penn Central* and *Murr* Independently Support Compensation

Even if Act A123 were not properly characterized as a *per se* physical taking, it would still present a compelling case for compensation under *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978) and *Murr v. Wisconsin*, 137 S.Ct. 1933, 1942 (2017). Those cases provide two separate guides for detecting when government regulation is so burdensome that it constitutes a taking.

“First, with certain qualifications a regulation which denies all economically beneficial or productive use of land will require compensation under the Takings Clause. Second, when a regulation impedes the use of property without depriving the owner of all economically beneficial use, a taking still may be found based on a complex of factors, including (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action.”

Murr, 137 S.Ct. at 1938 (citations and quotation marks omitted). “[A] physical *appropriation* of property gives rise to a *per se* taking, without regard to other factors.” *Horne* at 2427.

The economic impact on affected owners is substantial. The record indicates that many covered firearms and magazines may only be sold to a limited class of buyers and that prices have dramatically declined following enactment of the statute. For certain owners, particularly those possessing firearms that cannot practically be modified, Act A123 eliminates most of the property’s economic value.

The statute also substantially interferes with reasonable investment-backed expectations. Plaintiff acquired her firearms and magazines lawfully, complied with all applicable regulations, and possessed them for years before Blue State suddenly criminalized continued possession. Nothing in the historical record suggests that ordinary citizens should anticipate being required to relinquish lawfully acquired firearms without compensation. Most importantly, the character of the governmental action resembles a forced transfer of specific, identifiable items of personal property rather than a generally applicable land-use restriction. Blue State is not merely regulating how Plaintiff may use her firearms; it is compelling her to surrender, sell, alter, or remove them. Such interference strikes at one of the most fundamental attributes of ownership: the right to possess property.

The dispossession requirement of Act A123 imposes a rare hybrid taking. One part of the statute is a type of physical appropriation of property in that it forces owners of AR-15s and large capacity magazines to “surrender” them to a law enforcement agency “for destruction.” Thus, part of the statute forces a *per se* taking requiring just compensation. But there are two other choices. The statute also permits the owner to sell his weapons and magazines to a firearms dealer. It is a reasonable guess that the fair market value of an AR-15 or large capacity magazine on or after July 1, 2027, in the State of Blue, will be near zero. Of course, the majority spends little time discussing the future fair market value for the to-be-relinquished magazines. The statute also permits the owner to “remove” their AR-15s and large capacity magazines “from the state,” without specifying a method or supplying a place. This choice obviously requires a place to which the firearms and magazines may be lawfully removed. In other words, the statute relies on other states, in contrast to Blue State, which permit importation and ownership of AR-15s and large capacity magazines. With the typical retail cost of a magazine running between \$20 and \$50, the associated costs of removal and storage and retrieval may render the process more costly than the fair market value (if there is any) of the magazine itself. Whatever metaphorical stick of ownership is left in the magazine-owner's “bundle of sticks,” it is the short stick.

Here, Blue State will deprive Plaintiff not just of the *use* of her property, but of *possession*, one of the most essential sticks in the bundle of property rights. Of course, a taking of one stick is not necessarily a taking of the whole bundle. *Murr*, 137 S.Ct. at 1952 (Roberts, C.J., dissenting) (“Where an owner possesses a full ‘bundle’ of property rights, the destruction of one strand of the bundle is not a taking, because the aggregate must be viewed in its entirety.”). Nevertheless, whatever expectations people may have regarding property regulations, they “do not expect their property, real or personal, to be actually occupied or taken away.” *Horne*, 135 S.Ct. at 2427. Thus, whatever might be the State's authority to ban the sale or use of AR-15s and magazines over 10 rounds, the Takings Clause prevents it from compelling the physical *dispossession* of such lawfully-acquired private property without just compensation.

Taken together, the *Penn Central* / *Murr* factors weigh strongly in favor of recognizing a compensable taking.

IV. Conclusion

It is bad enough for a court to allow a state to prohibit possessing what the Constitution protects. To hold that states may freely confiscate what the Constitution protects without even providing just compensation adds constitutional insult to constitutional injury. Even if Blue State's ban on

common arms could somehow be reconciled with the Second Amendment, there is no Second Amendment exception to the Takings Clause. For these reasons, I dissent.

IN THE SUPREME COURT OF THE UNITED STATES
APPEAL NO. 2026-2

JANE BOND.

Petitioner,

v.

AURIC GOLDFINGER, ATTORNEY
GENERAL, STATE OF BLUE, in his
official capacity,

Respondent.

**On Petition for Certiorari from the United
States Court of Appeals for the Fourteenth
Circuit**

ORDER GRANTING CERTIORARI

Jane Bond's petition for an order of certiorari to the U.S. Court of Appeals for the Fourteenth Circuit is GRANTED. Oral argument shall occur on October 28, 2026, in Crawfordsville, Indiana, and be limited to the following issues:

(A) Does Blue State's "Act Addressing Gun Violence," Act A123, violate the Second Amendment to the United States Constitution; and

(B) Even assuming the State may constitutionally prohibit continued possession of AR-15 rifles and large-capacity magazines, must it nonetheless provide compensation to owners who lawfully acquired those items before enactment under the Fifth Amendment to the United States Constitution?

Petitioner shall open and close the argument.

FOR THE COURT

M. Moneypenny, Clerk of Court