

Supreme Court Declines Review of Decision Upholding Constitutionality of Maryland’s “Assault Weapons” Ban

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In 2017, the en banc U.S. Court of Appeals for the Fourth Circuit [held](#) that a Maryland ban on certain firearms defined as “assault weapons” was consistent with the Second Amendment. In 2022, the Supreme Court in *New York State Rifle & Pistol Association v. Bruen* [announced](#) a history-based test for assessing whether a firearm law complies with the Second Amendment. On August 6, 2024, in *Bianchi v. Brown*, the en banc Fourth Circuit applied *Bruen*’s methodology to [reaffirm](#), by a 10-to-5 vote, that Maryland’s assault weapon ban aligns with the Second Amendment. The court [determined](#) that (1) the Second Amendment’s protections do not reach assault weapons because “they are military-style weapons designed for sustained combat operations that are ill-suited and disproportionate to the need for self-defense,” and (2) the nation’s historical tradition supports the regulation of exceptionally dangerous weapons. The challengers [filed](#) a petition for a writ of certiorari with the Supreme Court.

On June 2, 2025, the Supreme Court [declined](#) to hear the case. Justices Alito, Gorsuch, and Thomas would have [granted](#) the petition. Justice Thomas wrote a dissent to argue that review and reversal were appropriate. Justice Kavanaugh issued a statement explaining his reasoning in voting to deny review.

This Sidebar begins by outlining the Maryland law at issue. It then sketches the applicable Second Amendment doctrine. It next gives an overview of the Fourth Circuit’s decision. It also addresses Justice Thomas’s dissent and Justice Kavanaugh’s statement respecting denial. It concludes by offering considerations for Congress.

Maryland’s Assault Weapon Ban

Maryland [enacted](#) the Firearm Safety Act in 2013. As relevant here, the law generally [prohibits](#) any person in the state from selling, purchasing, receiving, transporting, transferring, or possessing an “assault weapon.” Maryland [defines](#) an “assault weapon” as “(1) an assault long gun; (2) an assault pistol; or (3) a copycat weapon.” AK-47s and certain AR-15s are among the firearms that [qualify](#) as assault weapons for purposes of the Maryland statute. Maryland’s assault weapon ban was [built on](#) a now-expired federal counterpart and [grounded](#) in concerns about mass shootings.

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Second Amendment Jurisprudence

The Second Amendment [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.” In 2008, the Supreme Court in *District of Columbia v. Heller* [held](#) that the Second Amendment protects an individual right for “law-abiding, responsible citizens” to possess arms for a “lawful purpose,” especially self-defense in the home. The Court indicated that the right is not unlimited, [writing](#) that “dangerous and unusual weapons” and those that are not “in common use” may be prohibited. Two years later, in *McDonald v. City of Chicago*, the Court [recognized](#) that the Second Amendment right is “fundamental,” meaning that federal as well as state and local governments are bound by this constitutional provision.

In 2022, the Supreme Court in *Bruen* [clarified](#) that the Second Amendment right is not restricted to the home and instead extends to at least some public places where confrontation may occur and thus where self-defense may be needed. The Court instructed lower courts to view Second Amendment challenges through the dual lenses of text and history. The Court [described](#) the operative test as follows: “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, . . . the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.”

In 2024, the Supreme Court in *United States v. Rahimi* [emphasized](#) that the scope of the Second Amendment is not limited to those laws that “precisely match its historical precursors” or that are “identical” to laws from 1791, as if the Second Amendment were “trapped in amber.” The Court [explained](#) that under *Bruen* a reviewing court must assess whether a challenged law is “relevantly similar” to laws from the country’s regulatory tradition, with the “central” consideration of this inquiry being “why and how” the challenged law burdens the Second Amendment right.

Fourth Circuit Ruling: *Bianchi v. Brown*

Background

In 2013, a group of plaintiffs [filed suit](#) in federal court, alleging that the Maryland assault weapons ban violated the Second Amendment (*Kolbe v. O’Malley*). In assessing the constitutionality of the provision, the federal district court [applied](#) a standard known as intermediate scrutiny, requiring the law to be “reasonably adapted to a substantial government interest.” The court [determined](#) that the ban was constitutional under this standard, as it reasonably advanced the government’s substantial interest in ensuring public safety “by removing weapons that cause greater harm when used.”

After a three-judge panel of the Fourth Circuit initially [reversed the district court](#), the en banc Fourth Circuit [upheld](#) the ban in 2017 (*Kolbe v. Hogan*). The full court pointed to language in *Heller*—that weapons “most useful in military service,” such as M-16s, “may be banned”—to [hold](#) that the Maryland ban covers a class of weapons that lie outside of Second Amendment protection. The court [added](#) that, even if these weapons fell within the ambit of the Second Amendment, intermediate scrutiny would apply and the ban would pass muster under that standard. The Supreme Court [denied](#) the plaintiffs’ request for review.

In 2020, in *Bianchi v. Brown*, a group of plaintiffs again [challenged](#) Maryland’s ban as violative of the Second Amendment. In 2021, the district court [ruled](#) for Maryland, and the same year a panel of the Fourth Circuit [affirmed](#). While the *Brown* plaintiffs’ [petition](#) for a writ of certiorari to the Supreme Court was pending, the Court in 2022 decided *Bruen*. The Supreme Court subsequently [remanded](#) *Brown* to the Fourth Circuit to allow the court to consider the challenge in light of *Bruen*. The Fourth Circuit [voted](#) to hear *Brown* en banc.

Majority Opinion in *Bianchi v. Brown*

The majority opinion in *Bianchi v. Brown*, authored by Judge Wilkinson, [framed](#) the question before the court as whether Maryland’s “general prohibition on the sale and possession of certain military-style ‘assault weapons,’ including the AR-15, the AK-47, and the Barrett .50 caliber sniper rifle, is unconstitutional under the Second Amendment.” The majority recognized that “[t]his was the question we earlier faced as an en banc court” in 2017, and [analyzed](#) whether the Supreme Court’s subsequent *Bruen* decision “disturb[ed] our principal holding that the covered assault weapons were outside the ambit of the individual right to keep and bear arms.”

With respect to the standard of review that would apply to the challenge to Maryland’s ban, the majority [acknowledged](#) that *Bruen* had rejected the use of intermediate scrutiny in Second Amendment cases—which had been used by the Fourth Circuit and other courts in the aftermath of *Heller*—in favor of a history-based test. Applying that test, the majority largely [adopted](#) the reasoning of its 2017 decision, [reaffirming](#) that the weapons covered by Maryland’s law are military-style weapons that are not within the scope of the Second Amendment. The majority [referenced](#) language in *Heller* that weapons most useful for military service and weapons that are “dangerous and unusual” may be prohibited. Here, the majority [determined](#) that the banned weapons are not protected by the Second Amendment because they are “excessively dangerous” military-grade firearms that can “inflict damage on a scale or in a manner disproportionate to” the Second Amendment’s central focus of personal protection, making them “most suitable” in this respect to criminal, military, or offensive uses. AR-15s are properly among the prohibited weapons, the court [said](#), because they are akin to the M-16 in terms of their shared military origins, combat-functional features, and lethality, characteristics that the court [concluded](#) are a “far cry from any notion of civilian self-defense.”

The majority went on to [indicate](#) that, even if the banned weapons fell within the Second Amendment, there is a “strong” historical tradition of restricting the use and possession of weapons that are exceptionally dangerous to civilians. The Court [observed](#) that legislatures in the 18th and 19th centuries regulated pistols, bowie knives, brass knuckles, and sand clubs, among other weapons, [thus](#) “ridding the public sphere of excessively dangerous and easily concealable weapons that were primarily to blame for an increase in violent deaths.” The majority [concluded](#) that “[t]he Maryland statute at issue is yet another chapter in this chronicle.”

Concurring and Dissenting Opinions in *Bianchi v. Brown*

Six of the judges in *Bianchi v. Brown* joined the majority opinion in full but wrote separately to [highlight](#) the “confusion” that lower courts are experiencing in applying *Bruen*. The judges [characterized](#) *Bruen* as a “labyrinth,” admitting that “questions abound” about *Bruen* such that courts “‘are struggling at [each] stage of the *Bruen* inquiry.’” More broadly, the six judges [cautioned](#) that overemphasizing the importance of historical analogues may “fossilize[]” modern legislative attempts and “paralyze” democratic efforts.

Another judge concurred in the judgment and wrote separately for himself. While he agreed with the majority that sufficient historical support existed for Maryland’s ban, he [contended](#) that the majority was wrong to focus solely on whether the regulated firearms were in common use for self-defense and that the dissent was similarly misguided in probing whether the relevant firearms were in common use for any lawful purpose.

Five judges in dissent [would have held](#) that Maryland’s ban cannot stand under the Second Amendment. With respect to Second Amendment coverage of the arms at issue, the dissent charged that there was no basis for the majority to [anchor](#) the scope of protected arms to those that are best-suited for self-defense or to [assess](#) whether arms are “exceptionally dangerous,” as opposed to those that are “dangerous *and* unusual.” The dissent also disagreed that the nation’s historical tradition of firearm regulation supported

prohibiting the weapons at issue. The dissent canvassed British common law and early American practice to **assert** that “dangerous and unusual” weapons do not include weapons that were commonly used for lawful purposes.

The Supreme Court Declines Review of *Brown*

On August 21, 2024, the challengers in *Snope v. Brown* (renamed from *Bianchi v. Brown* due to a different lead plaintiff) **filed** a petition for a writ of certiorari before the Supreme Court. In the main, the challengers argued that the Fourth Circuit ruling bans one of the most **popular** firearms in the country and does so on a **misreading** of Supreme Court precedent. That is, the petitioners claimed that the court wrongly focused on whether the semiautomatic weapons have military application and discounted the use of these weapons for lawful purposes, including self-defense—a logic, the petitioners warned, that could extend to the ban of other firearms.

On June 2, 2025, the Supreme Court **declined** the petition. Justices Alito, Gorsuch, and Thomas indicated they would have **granted** the petition; however, these three votes fell short of the four required by Supreme Court practice for granting a petition for review (sometimes referred to as the “**rule of four**”).

In his dissent from the denial of certiorari, Justice Thomas **faulted** the Fourth Circuit for requiring the challengers to prove that AR-15s are “arms” “within ‘the historical scope of the right to keep and bear arms.’” A proper analysis, he **insisted**, asks the challengers to show only that the plain text of the Second Amendment covers these arms, and then demands that the government provide a historical analogue consistent with the restriction. Justice Thomas **asserted** that the challengers should have prevailed under this analysis: first, “arms” under the Second Amendment are weapons of offense (under *Heller*) and AR-15s “clearly” are weapons of offense, according to Justice Thomas; second, in his view, to support its ban, Maryland should have borne the burden of showing that these arms are both “dangerous and unusual.” AR-15s are not “unusual,” Justice Thomas **contended**, because they are in common use for self-defense, adding that “[t]ens of millions of Americans own AR-15s, and the ‘overwhelming majority’ of them ‘do so for lawful purposes, including self-defense . . .’” Justice Thomas **criticized** the Fourth Circuit for substituting its assessment, for the people’s, as to what may be useful for self-defense. Finally, Justice Thomas **called** the constitutionality of the ban a question of “critical importance” that warranted immediate review, as further development in the lower courts would be of “little value.”

In his statement regarding his vote to deny review, Justice Kavanaugh **conceded** that the challengers possessed a “strong argument that AR-15s are in ‘common use’” and are therefore “arms” covered by the Second Amendment. He **labeled** the Fourth Circuit’s ruling as “questionable,” but he **observed** that other federal courts of appeal are hearing similar bans, said that the eventual rulings could “assist” the Court’s ultimate disposition of the constitutionality of assault-weapons bans, and presumed that the Court will take up this question “in the next Term or two.”

Considerations for Congress

A federal ban on certain “semiautomatic assault weapons,” included as part of the Violent Crime Control and Law Enforcement Act of 1994, **Pub. L. No. 103-322** (1994), expired in 2004. Some Members of Congress have subsequently introduced bills, **including** the Assault Weapons Ban of 2025 (S. 1531), that would make it unlawful to import, sell, manufacture, transfer, or possess certain semiautomatic weapons such as the AR-15. Judicial evaluations of similar state bans, like Maryland’s, under the Second Amendment may provide an indication of how a federal ban could fare in the courts.

While the Supreme Court denied review in *Brown*, it is possible—if not likely, in view of Justice Kavanaugh’s statement—that a future case involving a similar law could be reviewed by the Court. The disparate views among the Fourth Circuit judges and the description of post-*Bruen* confusion from one of the concurring opinions could point to broader judicial uncertainty that the Supreme Court [may](#) ultimately [seek](#) to resolve. A decision by the Supreme Court on the constitutionality of a law like Maryland’s could further clarify the meaning of the Second Amendment and the extent to which lawmakers may regulate certain categories of firearms.

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