The Myth of the Military Style Assault Weapon

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- Are AR-15s the super lethal weapon it’s often described as?
- Does the Second Amendment mean what it says?
- Can a court simply state that certain arms aren’t covered by the Second Amendment without any evidence?

There are plenty of myths that revolve around the Second Amendment. It’s only meant for the militia, or for hunting, or some weapons are just too dangerous, are only a few. When we read the Constitution, along with just a tiny bit of research into the Bill of Rights, these myths should evaporate like the morning mist. In the case Bianchi v. Brown, it appears the Fourth Circuit believes the myths. However, some unorthodox procedures may show the court manipulated the process to get the outcome they desired.

Assault Weapons Ban

Maryland, like some other states, have laws known as “Assault Weapons Bans.” First, we have to define what Maryland calls an “assault weapon.”

The statute defines “assault weapon” as “(1) an assault long gun; (2) an assault pistol; or (3) a copycat weapon.” … The term “assault long gun,” in turn, encompasses more than forty-five enumerated long guns “or their copies, regardless of which company produced and manufactured” the firearm. …. These

proscribed guns include an assortment of military-style rifles and shotguns capable of semiautomatic fire, such as the AK-47, almost all models of the AR-15, the SPAS-12, and the Barrett .50 caliber sniper rifle. … The term "assault pistol" encompasses more than fifteen enumerated firearms and their copies. These include the TEC-9 and semiautomatic variants of the MAC-10, MP5K, UZI, and other military-style submachine guns.

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Maryland defines many different rifles, shotguns, and pistols as "assault weapons." Many of these weapons are actually semi-automatic weapons as opposed to the full-automatic many people think of as "assault" or "military style" weapons. Maryland also defines a "copycat" weapon.

"Copycat weapon" is defined as a firearm that is not an assault long gun or assault pistol yet is covered by at least one of the following six categories:
(i) a semiautomatic centerfire rifle that can accept a detachable magazine and has any two of the following:

1. a folding stock;
2. a grenade launcher or flare launcher; or
3. a flash suppressor;

(ii) a semiautomatic centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds;
(iii) a semiautomatic centerfire rifle that has an overall length of less than 29 inches;
(iv) a semiautomatic pistol with a fixed magazine that can accept more than 10 rounds;
(v) a semiautomatic shotgun that has a folding stock; or
(vi) a shotgun with a revolving cylinder.

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What I find interesting are the banned features that have

nothing to do with the lethality of the weapon. For example, how does a folding stock or flash suppressor make the weapon more lethal? The answer is, it doesn't.

Maryland law prohibits any person in the state from selling, purchasing, receiving, transporting, transferring, or possessing an "assault weapon, " subject to limited exceptions. Md. Code, Crim. Law § 4-303. A violator of this statute faces up to three years' imprisonment. … Maryland law enforcement officers are authorized to seize and dispose of weapons sold, purchased, received, transported, transferred, or possessed in violation of the law.

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There are several constitutional issues with this Maryland law, not just the Second Amendment. Chief among them is the confiscation of so-called "assault weapons." For example, is it reasonable for law enforcement to seize property that was legally purchased? It's one thing to seize an item that was purchased, or even transported, in violation of the law, but what about the weapons that were purchased, received, or transported before this law went into effect? This law potentially violates the Fourth Amendment, which reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,

U.S. Constitution, Amendment IV

It also violates the Fourteenth Amendment:

nor shall any State deprive any person of life, liberty, or property, without due process of law;

U.S. Constitution, Amendment XIV

Those who challenged the law did not claim it was a violation of the Fourth or Fourteenth Amendments, but of the Second.

Appellants are three Maryland residents who allege that they are legally eligible to possess and acquire firearms, three nonprofit gun rights organizations to which the residents belong, and a licensed firearms dealer based in Maryland. On November 13, 2020, appellants filed a complaint under 42 U.S.C. § 1983 in the U.S. District Court for the District of Maryland against the then-Attorney General of Maryland and other state law enforcement officials. Appellants contended that these officials' enforcement of Maryland's assault weapons regulations was unconstitutional under the Second Amendment's right to keep and bear arms as applied to the states through the Fourteenth Amendment. They sought a declaratory judgment that the regulations prevented them from exercising their right to keep and bear arms, as well as an injunction to prohibit appellees from enforcing the statute.

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Again we have the lie that the Bill of Rights did not apply to the states until the Fourteenth Amendment, which is all based on a claim written by Chief Justice Marshall without any evidence at all. I go into more detail in the article The Bill of Rights and the States. The question remains though: Does this Maryland law violate the Second Amendment?

In their complaint, however, appellants "acknowledge[d] that the result they seek is contrary to Kolbe v. Hogan, …" In Kolbe, we upheld against a constitutional challenge the very same Maryland statute at issue here insofar as it applied to "assault long guns and those copycat weapons that are rifles and shotguns." … Our en banc opinion rested on two distinct grounds. We first concluded that the assault weapons at issue were "not constitutionally protected arms." … We then found that, even assuming the Second Amendment reached such weapons, the Maryland regulations survived intermediate scrutiny.

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Bianchi and company agreed that what they were asking the court to do was contrary to their previous opinion in Kolbe v. Hogan. Between the court's decision in Kolbe and this case, however, the Supreme Court had decided New York State Rifle & Pistol Association v. Bruen.

On June 23, 2022, before ruling on the cert petition, the Supreme Court decided New York State Rifle & Pistol Ass' n v. Bruen, … In Bruen, the Court disavowed as "one step too many" the two-step framework that our court used in Kolbe and that other federal circuit courts had nearly universally employed to assess Second Amendment claims in the wake of District of Columbia v. Heller, … Although "[s]tep one of the predominant framework" –which was "rooted in the Second Amendment's text, as informed by history"–was "broadly consistent with Heller," the Court emphasized that the "means-end scrutiny" at the second step was improper. … Because "the Second Amendment . . . codified a pre-existing right," courts were not to engage in interest balancing to determine whether a challenged regulation was constitutionally permissible. … Instead, we were tasked with discerning the historical scope of the right and parsing whether the challenged regulation was consistent with it.

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The Supreme Court said the Fourth Circuit got it wrong in how they analyzed this case. Now the court had to look at whether the law fits within "constitutional text and history" (NYSRPA v. Bruen).

A week after Bruen was decided, the Supreme Court granted appellants' petition for writ of certiorari, vacated the judgment, and remanded the case for further consideration in light of Bruen. … We ordered the parties to provide supplemental briefing, and a panel of this court heard oral argument on December 6, 2022. Before an opinion issued, however, our court voted to rehear the case en banc. We

received additional supplemental briefing from the parties, and heard oral argument as a full court on March 20, 2024. Now, with the benefit of Bruen, we can proceed to decide this case.

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The Supreme Court "GVRed", or granted certiorari, vacated the judgment, and remanded it back to the Fourth Circuit to consider based on the Supreme Court's opinion. This is where some "shenanigans" came in.

Shenanigans

Let's start with the explanation of what happened from a footnote on page 87 of the decision.

This unorthodox procedural posture bears some explanation. After hearing the case in December 2022, the initial panel majority reached a decision and promptly circulated a draft opinion. Yet for more than a year, no dissent was circulated. The panel thus held the proposed opinion in accordance with our custom that majority and dissenting opinions be published together. A year later—as the proposed opinion sat idle—a different panel heard arguments in United States v. Price (No. 22-4609), which also involved interpreting and applying Bruen. The Price panel quickly circulated a unanimous opinion that reached a conclusion at odds with the Bianchi majority's year-old proposed opinion. Facing two competing proposed published opinions, the Court declined to let the earlier circulated opinion control. Rather, in January 2024, we "invoked the once-extraordinary mechanism of initial-en-banc review." … I hope that we will not find ourselves in this posture again soon. Cf. United States v. Gibbs, 905 F.3d 768, 770 (4th Cir. 2018) (Wynn, J., voting separately) (suggesting that majority opinions may be issued without awaiting dissenting opinions to prohibit those dissenting opinions from exercising a "pocket veto" to "deny or delay fairness and justice").

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So after hearing the case in December, the court sat on it for more than a year. Why was no dissent circulated? Was one written, but not distributed? Did one of the panel vote against the decision, but never write a dissent? I don't know. However, it's apparent that another panel had a unanimous decision different than the one the Bianchi panel had come to. To make things worse, the full court decided to review the case even though the reviewing panel had not published its decision. Why did the court make this extraordinary move? Could it be that, as the court in United States v. Gibbs warned, that the dissent exercised a "pocket veto"? Did the dissent in Bianchi delay justice to get the outcome they wanted?

Second Amendment

With that question in mind, let's go back to the facts of the case.

The Second Amendment instructs, "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. This single sentence provides us with a lofty command, but little concrete guidance. In the past two decades, the Supreme Court has stepped in to provide this guidance, offering a methodological framework by which to structure our inquiry.

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Here I completely disagree with the court. The Second Amendment gives concrete guidance: The right of the people to keep and bear arms shall not be infringed. It doesn't get much more concrete than that. Of course, I'm pretty sure the court wants some wiggle room to get the outcome they want. Yes, the Supreme Court has provided guidance, but that guidance seems to contradict what the Constitution actually says.

This was the question we earlier faced as an en banc court in Kolbe. Our primary holding in that case was that the assault weapons regulated by the statute were not within the scope of the Second Amendment. … Specifically, we resolved the case by finding that the covered weapons were "'like' 'M-16 rifles', i.e., 'weapons that are most useful in military service,' and thus outside the ambit of the Second Amendment." … It was only after "we affirm[ed] the district court's award of summary judgment in favor of the State" on those grounds that we turned to finding, "[i]n the alternative," that the assault weapons regulations survived intermediate scrutiny. Id. at 137–38.

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This is where the court goes completely off the rails. First of all, only one of the covered weapons are anything like an M-16. Second, how does the fact that a weapon is "like" another remove it from Second Amendment coverage? Of course, we still have this "scope" of the Second Amendment question.

Having elucidated our understanding of the Second Amendment's text in its historical context, we turn to the Maryland regulations under challenge in the present case. Our analysis confirms that the covered weapons are not within the ambit of the "right to keep and bear arms" as codified within the plain text of the Second Amendment.

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While the court may have "elucidated" their understanding of the Second Amendment, their understanding is not based in the law. The court provides no evidence that when the drafters or ratifiers of the Second Amendment said "arms," they actually meant "arms that are not too scary or dangerous." In short, their analysis is not based on the language of the Second Amendment, but on their desire to get to a specific outcome.

The AR-15

We do recognize, however, that the parties thoroughly briefed the issue of whether the Second Amendment protects a citizen's ability to purchase and possess an AR-15, which appellants refer to as the "paradigmatic semiautomatic rifle targeted by 'assault weapons' laws." … This is also the question we primarily considered at our en banc oral argument. Because it has been fully briefed and considered after a remand from the Supreme Court, we find the question of whether the AR-15 is within the ambit of the Second Amendment appropriate to address here. Not to address it would be to bypass the very heart of the dispute in this proceeding.

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Since the AR-15 is so often the target of these "assault weapons bans," the court takes the time to look specifically at that weapon. Sadly, the court again gets their facts wrong.

The civilian versions of the AR-15 have not strayed far from the rifle's military origin.

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The AR-15 is not derived from military weapons; it's actually the other way around.

First developed in the 1950s for civilian use, the AR-15 rifle was named after its manufacturer, Armalite. The letters "AR" do not stand for "assault rifle" or "automatic rifle."

Armalite sold the rifle's design to another firearms manufacturer, Colt, in 1959. Four years later, the U.S. military selected Colt to manufacture a standard-issue model of the AR-15 – dubbed the M-16 – for soldiers in the Vietnam War.

The history of the AR-15 and how it became a symbol of American gun culture

The AR-15 was originally designed for civilian use. Years

later, after purchasing the design from Armalite, the Colt company developed a military version known as the M-16. Colt later built the civilian semi-automatic version with M-16 stocks. The court goes on to show its ignorance regarding firearms and ammunition.

The AR-15 continues to use the same internal piston firing system and the same ammunition as the M16. … Its bullets leave the muzzle at a similar velocity of around 3000 feet per second, have a similar effective area target range of up to 875 yards, and deliver a similar amount of kinetic energy upon impact. …

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The court starts with pointing out that the AR-15 and M-16 use the same "firing system." That merely means that both weapons fire, extract the spent casing, load a new round, and return to battery the same way. Specifically, there is a spring inside a tube (known as the buffer tube), that stops the bolt when it's pushed back by the fired round, and pushes the bolt back into "battery," or ready to fire. By the way, while the specifics may be different, this is how pretty much every semi-automatic weapon works. Either the recoil or gas from the fired round pushes a bolt or slide back into a spring, which then push it back into battery.

The court also makes the scary point that both the AR-15 and the M-16 have similar muzzle velocities. Of course the court fails to mention that more than three dozen rifle calibers have a muzzle velocity of 3,000 ft/min or more. In fact, of those three dozen calibers with at least 3,000 ft/min muzzle velocity, 2/3rds are faster than the .223 or 5.56mm used in the AR-15. In fact, the average "deer rifle" cartridge like a .308 or .30-06 has up to 50% more kinetic energy than the .223, and they're not considered "assault weapons".

Contemporary versions of the AR-15 and M16 have both

incorporated additional combat-functional features. These include a flash suppressor that conceals the shooter's position and facilitates night combat operations, and a pistol grip that enables fast reloading and accuracy during sustained firing. …

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While I am not an expert on "combat-functional features," I can tell you that a flash suppressor comes in very handy if you happen to need to use your AR-15 for home defense at night or in a darkened room. Personally, I cannot see why fast reloading or accuracy would be a bad thing, whether it's for a shooting competition or defending yourself and your family.

Most versions of the AR-15, like the M16, use detachable 20-round or 30-round magazines that increase the weapon's effective rate of fire and are most useful in prolonged firefights with enemy combatants. … Both weapons are also compatible with up to 100-round magazines. … Other combat-functional features that the AR-15 and M16 share include a threaded barrel for the affixing of a flash suppressor, recoil compensator, or silencer; a barrel shroud to protect the shooter's hands from excessive heat during sustained firing; and a rail integration system for the mounting of sights, scopes, slings, flashlights, lasers, foregrips, bipods, bayonets, and under-barrel grenade launchers or shotguns.

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In short, the court appears to not like the AR-15 because it's a very flexible and capable platform. Lost on the court is the fact that there are plenty of legitimate reasons to sustain fire. Shooting competitions or having to defend yourself against a gang of criminals attempting to enter your house are just a few.

The firepower of the AR-15 and M16 is a key component of their "phenomenal lethality." … Built to generate "maximum wound

effect” and to pierce helmets and body armor, … AR-15 bullets discharge at around “three times the velocity of a typical handgun, ” … These higher velocity rounds “hit fast and penetrate deep into the body, ” creating severe damage.

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The idea of the AR-15 having “phenomenal lethality” again shows the ignorance of the court. The WWII workhorse, the M-1, used a .30-06 round, with similar muzzle velocity and 50% more kinetic energy than the .223 used by the AR-15. Add to that the fact the most rifle rounds have three times or more the muzzle velocity of a typical handgun, and it becomes quite clear that the court knows very little about firearms or what makes them dangerous. All the language about the lethality of the AR-15 is nothing but scare tactics and displays the utter ignorance of those trying to justify their infringement of your rights.

The Decision

Based on all of this, how did the court find?

The Framers recognized they could not foresee all the dangers that novel weaponry would someday pose, or the circumstances that would invoke the basic power of government to protect the governed. Maryland is a testament to their prescience, though other states with other characteristics and other approaches to this problem may be as well. We have before us nothing more or less than a challenge to one state’s regulation of assault weapons. Following Heller and Bruen, we hold that the Maryland statute is plainly a constitutional enactment.

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The Second Amendment was not drafted to limit the powers of the people so government could protect them. The Second Amendment was drafted to insure the American people could defend themselves, including against a government that went

beyond its limited and enumerated powers. That's why the Second Amendment protects the right to keep and bear "arms":

Weapons of offense, or armor for defense and protection of the body.

Arms – Webster's 1828 Dictionary

Any arm, and weapon of offense or armor for defense, is protected by the Second Amendment. The members of this court violated their oaths of office, first by placing decisions of the Supreme Court above the Constitution, the supreme law of the land, and second, by substituting their own preferences to the actual language of the law.

Conclusion

Are there weapons too dangerous for the people to use? If there are, then they are too dangerous for people in government to use as well. In fact, the very aspects of the AR-15 and the other arms listed as "assault weapons" are exactly why our right to own and carry them are protected by the Second Amendment.

The very atmosphere of firearms anywhere and everywhere
restrains evil interference –
they deserve a place of honor with all that's good.

George Washington

The purpose of the Second Amendment is not to protect hunting or shooting sports, but to insure that the people have the tools necessary to restrain evil interference in their lives.

[T]he advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of.

Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms.

James Madison – Federalist #46

The very fact that the American people are armed and can form militias attached to their states is a barrier to the enterprises of an ambitious government, even if the states and the people haven't used them lately. These are a few of the quotes from our Founding Fathers about our right to keep and bear arms, but I think they are best summarized by Noah Webster:

Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom of Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any bands of regular troops that can be, on any pretense, raised in the United States. A military force, at the command of Congress, can execute no laws, but such as the people perceive to be just and constitutional; for they will possess the power, and jealousy will instantly inspire the inclination, to resist the execution of a law which appears to them unjust and oppressive. "

Noah Webster

This court got it wrong, for many reasons. They made outrageous and erroneous claims about the weapons in question, they attempted to scare people into agreeing with their decision, and apparently denied the appellants justice by delaying the publication of their decision until after another panel gave them the answer they wanted. Worst of all, this court completely ignored the law and made one up for themselves, which is definitely an act of bad behavior. Because of their malfeasance, people in Maryland will be

denied their rights protected by the Constitution. Some may even be arrested, jailed, and forever denied their rights as convicted felons, in large part because this court sought an outcome rather than applying the law. I only wish the members of this court could feel the shame they so richly deserve for this decision.

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