

No. 24-203

In The
Supreme Court of the United States

DAVID SNOPE, AN INDIVIDUAL AND RESIDENT OF
BALTIMORE COUNTY, ET AL.,

Petitioners,

-v-

ANTHONY G. BROWN, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF MARYLAND, ET AL.,

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit**

**BRIEF OF ASSOCIATION OF NEW JERSEY
RIFLE & PISTOL CLUBS, INC. AS AMICUS
CURIAE IN SUPPORT OF PETITIONERS**

DANIEL L. SCHMUTTER
Counsel of Record
HARTMAN & WINNICKI, P.C.
74 Passaic Street
Ridgewood, NJ 07450
(201) 967-8040
dschmutter@hartmanwinnicki.com
Counsel for Amicus Curiae

September 23, 2024

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT	5
I. The Petition Should be Granted Because Unconstitutional Prohibitions on These Commonly Possessed Arms Exist in Multiple States, Including One of the Oldest of its Kind in New Jersey.....	5
II. The Petition Should be Granted Because the Record in the New Jersey Semi-Automatic Arms Ban Litigation Further Supports Petitioners' Showing that Arms Like the AR-15 Rifle are Widely Chosen by Americans for Lawful Purposes Such as Self-Defense.	8
CONCLUSION.....	13

TABLE OF AUTHORITIES

	PAGE
Cases	
<i>Association of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin</i> , ___ F. Supp. 3d ___, 2024 WL 3585580 (D.N.J. July 30, 2024)	4,9,11,12
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	2,6,8
<i>Harrel v. Raoul</i> , 144 S. Ct. 2491 (2024)	3,7
<i>McDonald v. Chicago</i> , 561 U.S. 742 (2010).....	6
<i>New York State Rifle & Pistol Ass'n v. Bruen</i> , 597 U.S. 1 (2022)	2,6
 Statutes	
CAL. PEN. CODE § 30515(a)	5
CONN. GEN. STAT. ANN. §§ 53-202A	5
CONN. GEN. STAT. ANN. §§ 53-202B	5
CONN. GEN. STAT. ANN. §§ 53-202c	5
DEL. CODE TIT. 11 § 1466	7

D.C. CODE §§ 7-2501.01(3A).....	6
D.C. CODE §§ 7-2502.02(a)(6).....	6
720 ILL. COMP. STAT. § 5/24-1.9	7
MASS. GEN. LAWS CH. 140 § 131M	5
N.J. STAT. ANN. 2C:39-5(f)	5
2000 N.Y. LAWS, CH. 189, § 10	5
WASH. REV. CODE § 9.41.390.....	7

INTEREST OF AMICUS CURIAE¹

Association of New Jersey Rifle & Pistol Clubs, Inc. (“ANJRPC”) is a not-for-profit membership corporation, incorporated in the State of New Jersey in 1936 and represents its members, including tens of thousands of members who reside in New Jersey. ANJRPC represents the interests of target shooters, hunters, competitors, outdoors people, and other law abiding firearms owners. Among ANJRPC’s purposes is aiding such persons in every way within its power and supporting and defending the people’s right to keep and bear arms, including the right of its members and the public to purchase, possess, and carry firearms. New Jersey imposes restrictions on the purchase and possession of semi-automatic firearms at least as restrictive and unconstitutional as the ones at issue in this case. Such unconstitutional restrictions are a direct affront to ANJRPC’s central mission.

ANJRPC is not publicly traded and has no parent corporation.

¹ All parties have provided a written waiver of the 10-day notice requirement of Rule 37, and ANJRPC respectfully requests that the Court accept the provision of such written waivers in satisfaction of the notice requirement of Rule 37. No counsel for a party authored this brief in whole or in part. Other than the NRA Civil Rights Defense Fund, no person or entity, other than amici or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

The Petition should be granted because unconstitutional prohibitions on these commonly possessed arms exist in multiple states, including one of the oldest of its kind in New Jersey. Granting the Petition could broadly vindicate the fundamental right to keep and bear arms throughout the Nation. This is particularly so for New Jerseyans who have lived under one of the oldest such rights violating regimes for the past 34 years.

Enacted in 1990, New Jersey's version of this arms ban (along with California's similar arms ban of 1989) set the stage for a flurry of such infringing laws over the last several decades in states such as Connecticut (1993), Massachusetts (1998), and New York (2000), to name a few.

The infringing arms bans continued to spread, including in the District of Columbia in 2008 in the immediate aftermath of *District of Columbia v. Heller* and the passage in 2013 of the very Maryland laws which are the subject of this Petition.

As if raising its fist in defiance, a mere seven days after *New York State Rifle & Pistol Association v. Bruen* was decided, the State of Delaware, on June 30, 2022, enacted its own ban on these commonly possessed semi-automatic arms. This was followed

in rapid succession in 2023 by Illinois and Washington.

The states are simply not getting the message, and until this Court squarely takes up this issue the defiance will continue.

Just as it paved the way for these infringing laws, New Jersey continues to coordinate this broad defiance of the requirements of the Second Amendment. *See, e.g.*, 20 state amicus curiae brief spearheaded by the New Jersey Attorney General in *Miller v. Bonta*, No. 23-2979 (9th Cir).

This issue has already captured the attention of at least one member of this Court. In a separate Statement last term in connection with the denial of a petition for certiorari in *Harrel v. Raoul*, Justice Thomas urged the Court to take up the issue and when it return on final judgment. That time is now before the Court.

The Petition should also be granted because the record in the New Jersey semi-automatic arms ban litigation further supports Petitioners' showing that arms like the AR-15 rifle are widely chosen by Americans for lawful purposes such as self-defense.

The ubiquity of the AR-15 in the modern American household arises from its inherent and profound utility for law-abiding citizens for lawful purposes. The Petition illustrates this extensively.

However, there is further support for this understanding to be found in the record in *Association of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin* (“*ANJRPC v. Platkin*”).

One notable feature of *ANJRPC v. Platkin* is that the district court held part of this challenged arms ban unconstitutional, departing materially from the “increasingly widespread misunderstanding of *Heller*” correctly identified in the Petition. This is a material analytical split in the courts that independently provides additional support for granting the Petition.

ANJRPC v. Platkin is also notable, however, for the court’s findings as to the AR-15 rifle. In that case, the plaintiffs introduced the expert testimony of Emanuel Kapelsohn – an expert witness with 45 years of teaching about, writing about, studying, using, and testing with the AR-15 platform – and concluded that the AR-15 rifle is overwhelmingly chosen by American society for a lawful purpose, are well-adapted for self-defense because it is light weight, has very mild recoil, and has good ergonomics and is well suited to younger shooters, female shooters, and other shooters of smaller stature. The AR-15 has also been used recently in several, relatively high-profile self-defense events in Florida, Illinois, Texas, Pennsylvania, and Oklahoma.

For these reasons the Petition should be granted.

ARGUMENT

I. The Petition Should be Granted Because Unconstitutional Prohibitions on These Commonly Possessed Arms Exist in Multiple States, Including One of the Oldest of its Kind in New Jersey.

Granting the Petition could broadly vindicate the fundamental right to keep and bear arms throughout the Nation. This is particularly so for New Jerseyans who have lived under one of the oldest such rights violating regimes for the past 34 years. *See* N.J. STAT. ANN. 2C:39-5(f); 2C-39-1(w).²

Enacted in 1990, New Jersey's version of this arms ban (along with California's similar arms ban of 1989; *see* CAL. PEN. CODE § 30515(a)) set the stage for a flurry of such infringing laws over the last several decades in states such as Connecticut (1993), Massachusetts (1998), and New York (2000), to name a few.³

Notably, these initial arms bans were enacted at a time before this Court made clear in *District of*

² The feature based portion of New Jersey's semi-automatic firearm ban is contained in August 19, 1996 Attorney General Guidelines. These Guidelines can be found at <https://www.nj.gov/lps/dcj/agguide/assltf.htm> (last accessed September 22, 2024).

³ *See* CONN. GEN. STAT. ANN. §§ 53-202a, 202b, 202c; MASS. GEN. LAWS CH. 140 § 131M; 2000 N.Y. LAWS, CH. 189, § 10.

Columbia v. Heller, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010) that states may *not* simply disregard the fundamental right to keep and bear arms. Yet, even after this Court decided *Heller* and *McDonald*, sending the clear message that legislatures could not freely deprive individuals of the fundamental right to keep and bear arms, the infringing arms bans continued to spread, including in the District of Columbia in 2008 in the immediate aftermath of *Heller*, see D.C. CODE §§ 7-2501.01(3A) and 7-2502.02(a)(6), and the passage in 2013 of the very Maryland laws which are the subject of this Petition.

In 2022, this Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). This Court sent a clear message:

If the last decade of Second Amendment litigation has taught this Court anything, it is that federal courts tasked with making such difficult empirical judgments regarding firearm regulations under the banner of “intermediate scrutiny” often defer to the determinations of legislatures.

Id. at 26. In the 12 years between *McDonald* and *Bruen*, lower courts had allowed the states to run roughshod over the Second Amendment. In *Bruen* this Court sought to correct that disturbing trend.

Yet, as if raising its fist in defiance, a mere seven days after *Bruen* was decided, the State of Delaware, on June 30, 2022, enacted its own ban on these commonly possessed semi-automatic arms. *See* DEL. CODE TIT. 11 § 1466. This was followed in rapid succession in 2023 by Illinois, *see* 720 ILL. COMP. STAT. § 5/24-1.9, and Washington, *see* WASH. REV. CODE § 9.41.390.

This continuing cascade of infringing laws that ban constitutionally protected, commonly possessed arms demonstrates that the states are simply not getting the message, and until this Court squarely takes up this issue the defiance will continue.

Just as it paved the way for these infringing laws, New Jersey continues to coordinate this broad defiance of the requirements of the Second Amendment. *See, e.g.*, 20 state amicus curiae brief spearheaded by the New Jersey Attorney General in *Miller v. Bonta*, No. 23-2979 (9th Cir), Dkt. No. 28.

The egregiousness of this issue has already captured the attention of at least one member of this Court. In a separate Statement last term in connection with the denial of a petition for certiorari in *Harrel v. Raoul*, 144 S. Ct. 2491 (2024), Justice Thomas wrote:

But, if the Seventh Circuit ultimately allows Illinois to ban America's most common civilian rifle, we can—and should—review

that decision once the cases reach a final judgment. The Court must not permit “the Seventh Circuit [to] relegat[e] the Second Amendment to a second-class right.”⁴

Id. at 2492. *Harrel* and the other Illinois cases have not yet made it back to this Court, but this case is here before the Court. In light of the pervasive disregard of the fundamental right to keep and bear arms demonstrated by state after state, the Court should, as Justice Thomas urged, grant the within Petition so that the Second Amendment is not relegated to a second-class right.

II. The Petition Should be Granted Because the Record in the New Jersey Semi-Automatic Arms Ban Litigation Further Supports Petitioners’ Showing that Arms Like the AR-15 Rifle are Widely Chosen by Americans for Lawful Purposes Such as Self-Defense.

There is a reason Justice Thomas called the AR-15 “America’s most common civilian rifle.” *Id.* The ubiquity of the AR-15 in the modern American household arises from its inherent and profound utility for “law-abiding citizens for lawful purposes.” *Heller*, 554 U.S. at 625. The Petition illustrates this extensively. However, there is further support for this understanding to be found in the record in

⁴ *Harrel* came to the Court in an interlocutory posture arising from the denial of preliminary injunctive relief.

Association of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin, ___ F. Supp. 3d ___, 2024 WL 3585580 (D.N.J. July 30, 2024) (“*ANJRPC v. Platkin*”).

The decision of the district court in *ANJRPC v. Platkin* resolves several claims, including claims that New Jersey’s ban on common semi-automatic arms violates the Second Amendment – claims that mirror the claims asserted against Maryland in the Petition. However, one notable feature of *ANJRPC v. Platkin* is that the district court held part of this challenged arms ban unconstitutional, departing materially from the “increasingly widespread misunderstanding of *Heller*” correctly identified in the Petition. This is a material analytical split in the courts that independently provides additional support for granting the Petition.

ANJRPC v. Platkin is also notable, however, for the court’s findings as to the AR-15 rifle. In that case, the plaintiffs introduced the expert testimony of Emanuel Kapelsohn – an expert witness with 45 years of teaching about, writing about, studying, using, and testing with the AR-15 platform.⁵ Relying repeatedly on the Kapelsohn testimony, the district court found, among other things, as follows:

⁵ Kapelsohn’s curriculum vitae and two expert reports admitted into evidence in connection with summary judgment motions can be found on the docket at *ANJRPC v. Platkin*, No. 18-cv-10507 (D.N.J.), Dkt. Nos. 175-5, 184-3 (at pp. 89 and 248), and 197-1.

15. According to Plaintiffs' Expert Emanuel Kapelsohn (hereinafter, "Kapelsohn"), the AR-15 has many uses, including self-defense, target shooting, hunting, and pest control by ranchers and farmers. (ECF No. 184-3 at 101). According to Kapelsohn, the build of the weapon also makes it particularly well-suited to self-defense. According to Kapelsohn, because of the AR-15's "light weight, very mild recoil, and good ergonomics," it is a weapon which is "well suited to younger shooters, female shooters, and other shooters of smaller stature ..." (*Id.*).
16. Further, it is "an easy rifle for larger, stronger individuals to use." (*Id.*). Overall, according to Kapelsohn, all these design features—including the effectiveness of the AR-15's cartridge for self-defense use and its better continuity of fire when used with available magazines—make the AR-15 a good choice for self-defense. (*Id.*)
17. Evidence has also been presented that AR-15s are used for self-defense. Plaintiffs have shown that the AR-15 has been used recently in several, relatively high-profile self-defense events in Florida, Illinois, Texas, Pennsylvania,

and Oklahoma. (ECF No. 175-5 at 105–12, 120–26).

2024 WL 3585580 at *9. Also relying a great deal on Kapelsohn, the district court further found:

Plaintiffs have shown that the weapon is “overwhelmingly chosen by American society for [a] lawful purpose.” *Heller*, 554 U.S. at 628, 128 S.Ct. 2783. AR-15 firearms are produced by a multitude of manufacturers and are commonly owned throughout the United States—it is estimated that as of 2022, AR-15s and similar sporting rifles had around 24 million owners; this ownership number was exceeded only by the number of registered handgun owners within our Nation. As of 2022, it was estimated that there were around 24 million AR-15s and similar sports weapons in circulation; this number was exceeded only by the number of registered handgun owners within the United States. (ECF No. 174-1 at 37; ECF No. 175-5 at 14–15) (estimating that as of 2018, there are between five million and ten million AR-15 rifles in civilian hands within the United States); *see also* Nicholas J. Johnson, *Supply Restrictions at the Margins of Heller and the Abortion Analogue*, 60 *Hastings L.J.* 1285, 1296 (2009) (noting that in 2009, a year after *Heller*, that the AR-15 was the best-selling rifle type within the United States).

Further, Plaintiffs have shown that AR-15s are well-adapted for self-defense. Evidence has been presented to the Court that the build of the AR-15 makes it well-suited to self-defense because it is “light weight, [has] very mild recoil, and [has] good ergonomics[;]” it is a weapon which is “well suited to younger shooters, female shooters, and other shooters of smaller stature” (ECF No. 184-3 at 101). Further, the AR-15's design features—including the effectiveness of its cartridge for self-defense use and its better continuity of fire when used with available magazines—make the AR-15 a good choice for self-defense. (*Id.*) . . . Plaintiffs have shown that the AR-15 has been used recently in several, relatively high-profile self-defense events in Florida, Illinois, Texas, Pennsylvania, and Oklahoma. (ECF No. 175-5 at 105–12, 120–26).

2024 WL 3585580 at *18.

This record in the New Jersey litigation illustrates the constitutional consequences of allowing the majority of other courts hearing these cases to run off the rails with the same type of interest balancing approach that persisted for 12 years prior to *Bruen*. Accordingly, the Court has an excellent vehicle in this Petition to prevent such derailment now.

For this reason the Petition should be granted.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

DANIEL L. SCHMUTTER
Counsel of Record
HARTMAN & WINNICKI, P.C.
74 Passaic Street
Ridgewood, NJ 07450
(201) 967-8040
dschmutter@hartmanwinnicki.com
Counsel for Amicus Curiae

SEPTEMBER 23, 2024