No. 24-203

In The
Supreme Court of the United States

DAVID SNOPE, *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 IN OPPOSITION

ANTHONY G. BROWN
Attorney General of Maryland

RYAN R. DIETRICH*
Assistant Attorney General
200 Saint Paul Place
20th Floor
Baltimore, Maryland 21202
(410) 576-7648
rdietrich@oag.state.md.us

Attorneys for Respondents

**Counsel of Record*

NOVEMBER 2024

QUESTION PRESENTED

Should this Court decline to grant certiorari to consider the constitutionality of Maryland's assault weapons ban where (1) that ban is consistent with this Court's recognition in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that jurisdictions may ban "weapons that are most useful in military service—M-16 rifles and the like"; (2) the Fourth Circuit faithfully applied *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), to conclude that Maryland's law is consistent with this Nation's historical tradition of "regulating those weapons that were invented for offensive purposes and were ultimately proven to pose exceptional dangers to innocent civilians," Pet. App. 69a; and (3) there is no need to resolve a conflict among the lower courts?

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

BRIEF IN OPPOSITION

INTRODUCTION

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court left no doubt that "weapons that are most useful in military service—M-16 rifles and the like—may be banned." *Id.* at 627. Consistent with that pronouncement, the State of Maryland, like nine other states and the District of Columbia, has prohibited possession of certain highly dangerous, military-style assault weapons, of the sort used in a series of highly publicized mass shootings.

This Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), left intact its pronouncement in *Heller* that "M-16 rifles and the like" are weapons that "may be banned." Nonetheless, this Court vacated an earlier appellate decision in this case and remanded for consideration in light of *Bruen*. The en banc Fourth Circuit, in turn, reaffirmed the principles set forth in *Heller* and held that the assault weapons covered by Maryland's law fell outside of the Second Amendment's protection because, like the M-16, they are militaristic weapons that are ill-suited for self-defense. Pet. App. 42a-43a. And, in accordance with *Bruen*'s command, the court of appeals examined the relevant historical traditions and concluded that, even if the weapons are protected under the text of the Second Amendment, Maryland's law is constitutional because it falls squarely within the "strong tradition of regulating excessively dangerous weapons once it becomes clear that they are exacting an inordinate toll on public safety and societal wellbeing." Pet. App. 15a.

The petition identifies no persuasive reason why this Court should grant review. Petitioners point to no split among the circuits regarding the constitutionality of assault-weapons prohibitions. Moreover, they cannot show either that the Fourth Circuit's decision conflicts with this Court's unambiguous statement in *Heller* regarding "weapons that are most useful in military service—M-16 rifles and the like," or that the Fourth Circuit's historical analysis departed from this Court's pronouncements in *Bruen* and, more recently, in *United States v. Rahimi*, 144 S. Ct. 1889 (2024). To the contrary, the Fourth Circuit's decision is faithful to *Heller*, *Bruen*, and *Rahimi*.

Still, even if this Court were otherwise inclined to revisit *Heller*'s statement regarding militaristic weapons, or to consider *Bruen*'s application to assault weapons bans, doing so in this case would be premature. Whether assault weapons are covered by the text of the Second Amendment following *Bruen*, and whether a ban on such weapons is supported by this Nation's historical tradition, are questions that have only begun to percolate in the courts of appeals. Jurisdictions in at least eight circuits have some form of ban on the possession of assault weapons. Yet to date, only two courts of appeals—the Fourth Circuit and the Seventh Circuit—have considered *Bruen*'s application to assault weapons bans. And the Seventh Circuit has done so only in reviewing decisions whether to grant preliminary injunctive relief. There is no reason why this Court should stray from its usual practice of allowing questions to percolate in multiple courts of appeals, with arguments tested and refined in cases litigated through final judgment on the merits, before granting certiorari.

———— ♦ ————

STATEMENT

Maryland's Assault Weapons Ban

In response to heightened concerns about the use of assault weapons in mass shootings, and acting shortly after the 2012 shooting at Sandy Hook Elementary School, Maryland enacted a ban on assault rifles.[1] *See* Md. Code Ann., Crim. Law § 4-303(a) (LexisNexis 2021). That ban encompasses the possession, sale, offer for sale, transfer, purchase, or receipt of an "assault long gun" or a "copycat weapon."[2] *Id.* § 4-301(d). "Assault long gun" is defined to include 45 specific weapons "or their copies." *Id.* § 4-301(b) (incorporating Md. Code Ann., Pub. Safety § 5-101(r)(2) (LexisNexis 2018)). "Copycat weapons," in turn, are firearms with specific features, including "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"; "a semiautomatic centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds"; and "a semiautomatic centerfire rifle that has an overall length of less than 29 inches." Crim. Law § 4-301(h)(1)(i)-(iii). The ban leaves available to Maryland residents a broad range of firearms, including a wide variety of semiautomatic

---

1. From 1981 through 2017, "[a]ssault rifles accounted for 430 or 85% of the total 501 mass-shooting fatalities reported . . . in 44 mass-shooting incidents." Charles DiMaggio et al., *Changes in US Mass Shooting Deaths Associated with the 1994-2004 Federal Assault Weapons Ban: Analysis of Open-Source Data*, 86 J. Trauma Acute Care Surg. No. 1, at 12 (2019).

2. Maryland also bans large-capacity magazines, *see* Crim. Law § 4-305(b), but petitioners have not challenged that ban here.

handguns and rifles.[3] As noted above, nine other States, the District of Columbia, and various municipalities have similarly enacted a variety of prohibitions on assault weapons.[4]

Proceedings Below

In *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc), the Fourth Circuit rejected a constitutional challenge to Maryland's ban on assault weapons. *Id.* at 135-37. Relying *on Heller*, the court concluded that "[b]ecause the banned assault weapons . . . are 'like' 'M-16 rifles'—'weapons that

3. The Maryland Department of State Police maintains a website that lists banned and allowed firearms. *See* https://mdsp.maryland.gov/Organization/Pages/CriminalInvestigationBureau/LicensingDivision/Firearms/FirearmSearch.aspx.

4. The states in question are California, Connecticut, Delaware, Hawaii, Illinois, Massachusetts, New Jersey, New York, and Washington. *See* Cal. Penal Code §§ 16350, 16790, 16890, 30500-31115; Conn. Gen. Stat. §§ 53-202a–53-202o; Del. Code tit. 11 §§ 1465, 1466; Haw. Rev. Stat. § 134-8; 720 Ill. Comp. Stat. 5/24-1.9; Mass. Gen. Laws ch. 140, §§ 121, 122, 123, 131M; N.J. Stat. Ann. §§ 2C:39-1w, 2C:39-5, 2C:58-5, 2C:58-12, 2C:58-13; N.Y. Penal Law §§ 265.00(22), 265.02(7), 265.10, 400.00(16-a); Wash. Rev. Code § 9.41.390; *see also* D.C. Code Ann. §§ 72501.01(3A), 7-2502.02(a)(6), 7-2505.01, 7-2505.02(a), (c).

Local jurisdictions in Illinois have enacted assault weapons bans, *see*, *e.g.*, Cook County Ordinances Nos. 54-210–54-215, as have some jurisdictions in Colorado, *see*, *e.g.*, Town of Superior, Colorado, Code Ch. 10, art. IX.

Although Congress enacted a ban on certain semiautomatic assault weapons in 1994, that ban expired in 2004. *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. Law No. 103-322, § 110102, 108 Stat. 1796 (Sept. 13, 1994).

are most useful in military service'—they are among those arms that the Second Amendment does not shield." *Id.* at 135 (quoting *Heller*, 554 U.S. at 627).

Three years later, the petitioners in this case filed a complaint seeking declaratory and injunctive relief on the theory that Maryland's assault weapons ban violates the Second Amendment. Pet. App. 233a-263a. Petitioners acknowledged that "the result they seek is contrary to" *Kolbe*. Pet. App. 236a. The district court therefore ordered petitioners to "show cause . . . why this case should not be dismissed *sua sponte* for plain failure to state a claim upon which relief may be granted," even though the State had filed an answer. Pet. App. 216a-217a. Petitioners responded by again conceding that *Kolbe* foreclosed the relief they sought, and the district court dismissed the complaint. Pet. App. 217a.

Noting that it too was bound by *Kolbe*, the Fourth Circuit affirmed in an unpublished per curiam decision. Pet. App. 214a-215a. Petitioners sought certiorari and, while their petition was pending, this Court decided *Bruen*. The Court granted the petition, vacated the Fourth Circuit's decision, and remanded the case for further consideration in light of *Bruen*. Pet. App. 213a.

The Fourth Circuit, in turn, ordered supplemental briefing, and a three-judge panel of that court heard oral argument on December 6, 2022. On January 12, 2024, while a decision remained pending, the Fourth Circuit sua sponte ordered rehearing en banc. *Bianchi v. Brown*, No. 21-1255, 2024 WL 163085 (4th Cir. Jan. 12, 2024). Petitioners responded by seeking a writ of certiorari before judgment in this Court. Pet. App. 212a. The en

banc Fourth Circuit then heard oral argument and, on May 20, 2024, this Court denied the petition.

The Fourth Circuit's En Banc Decision

On August 6, 2024, the en banc Fourth Circuit affirmed, by a 10-5 vote, the district court's conclusion that Maryland's assault weapons ban is constitutional.

The Governing Legal Framework

The lead opinion, written by Judge Wilkinson, began by setting forth this Court's framework for Second Amendment challenges. It started with *Heller*, which explained that the Second Amendment "codified a *pre-existing* right" to keep and bear arms. Pet. App. 10a (quoting *Heller*, 554 U.S. at 592) (emphasis in *Heller*). The court of appeals highlighted this Court's observation that, "at the time of the nation's founding, [this right] was understood by Americans to be a 'right of self-preservation,'" and that "'self-defense' is 'the *central component* of the right.'" Pet. App. 10a (quoting *Heller*, 554 U.S. at 599) (emphasis in *Heller*). The court stated that although this Court had explained that "'the Second Amendment extends, prima facie, to all instruments that constitute bearable arms,'" it "does not guarantee 'a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.'" Pet. App. 11a (quoting *Heller*, 554 U.S. at 582, 626). This Court, the court of appeals noted, "acknowledged that it was not in serious dispute that 'weapons that are most useful in military service—M-16 rifles and the like—may be banned.'" Pet. App. 11a (quoting *Heller*, 554 U.S. at 627). The court also identified "an additional limitation" that *Heller* had

placed "on the types of arms that the Second Amendment protects," namely, that "'dangerous and unusual weapons' that are not 'in common use' can be prohibited." Pet. App. 11a (quoting *Heller*, 554 U.S. at 627).

"Then," the Fourth Circuit continued, "came *Bruen*." Pet. App. 13a. The court of appeals explained how *Bruen* had "[r]eject[ed] the means-end approach" that had developed in the circuit courts since *Heller*, and instead "set out a two-step methodology oriented towards text, history, and tradition." Pet. App. 13a. Under *Bruen*'s first step, "a court first looks to the text of the Second Amendment to see if it encompasses the desired conduct at issue" and, if it does not, "that conduct falls outside the ambit of the Second Amendment, and the government may regulate it." Pet. App. 13a. "But if a court finds that the text *does* encapsulate the desired conduct, the analysis moves to the second step, where the burden shifts to the government to 'justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.'" Pet. App. 13a (quoting *Bruen*, 527 U.S. at 24). The Fourth Circuit observed that, despite rejecting the courts of appeals' then-prevailing approach, the *Bruen* Court "was clear that it was 'apply[ing]' the 'test that [it] set forth in *Heller*.'" Pet. App. 14a (citing *Bruen*, 597 U.S. at 26).

The Fourth Circuit's Step-One Analysis

1. Having articulated the governing standards, the Fourth Circuit examined Maryland's assault weapons prohibitions. It first looked to whether the "plain text" of the Second Amendment encompassed the right to possess the type of weapons covered by Maryland's law.

Citing *Heller*, the Fourth Circuit noted that, by codifying the "pre-existing" "right to keep and bear arms," the Second Amendment had memorialized "a specific entitlement with a particular meaning in the ratifying public's consciousness, with baked-in prerogatives and qualifications alike." Pet. App. 16a. And because "the text of the Second Amendment, like the text of other constitutional provisions, must be interpreted against its historical and legal backdrop," the court recognized that its role under *Bruen*'s first step was to "assess the historical scope of the right to keep and bear arms to determine whether the text of the Second Amendment encompasses the right to possess the assault weapons at issue." Pet. App. 17a.

On that score, the Fourth Circuit looked to *Heller*'s statement that "'the *central component*' of the individual right codified by the Second Amendment was 'self-defense.'" Pet. App. 19a (quoting *Heller*, 554 U.S. at 599) (emphasis in *Heller*). "The common-law right to self-defense," the court observed, "was understood by the founding generation to mean the right of 'a citizen to repel force by force when the intervention of society in his behalf, may be too late to prevent an injury.'" Pet. App. 19a (quoting *Heller*, 554 U.S. at 595) (internal quotation marks omitted). "The pre-existing right codified by the Second Amendment," the court continued, "is thus about amplifying the power of individual citizens to project force greater than they can muster with their own bodies so that they may protect themselves when government cannot." Pet. App. 19a.

The Fourth Circuit then identified four limitations on the common law self-defense right: (1) "the necessity of imminence," such that one "cannot launch a preemptive

assault against another"; (2) that "force may only be used in self-defense when reasonably necessary"; (3) that a "citizen generally cannot use force against an innocent bystander to protect himself from an assailant"; and (4) that the amount of force used must be proportional, such that deadly force may only be used "against a person who poses an impending threat of death or serious bodily harm." Pet. App. 19a-20a. These limitations, the court explained, "inform the historical backdrop of the right ultimately enshrined in" the Second Amendment. Pet. App. 21a. Thus, the Fourth Circuit continued, "[j]ust as the right to self-defense had limitations at the time of the founding, so too did the right to keep and bear arms that enabled it." Pet. App. 21a.

The Fourth Circuit then explained how these principles apply to the question of "*what* arms may be kept and carried." Pet. App. 23a. The court noted that "[a]rms typically used by average citizens for self-defense are generally within the ambit of the Second Amendment, presumably because these arms had proven over time to effectively amplify an individual's power to protect himself without empowering him to singlehandedly reign terror upon a community." Pet. App. 23a (citing *Heller*, 554 U.S. at 624-25). But, recalling *Heller*'s reference to the common law restriction on "dangerous and unusual weapons," the court observed that "excessively dangerous arms were not reasonably related or proportional to the end of self-defense—but rather were better suited for offensive criminal or military purposes—and were thus understood to fall outside the reach of the right." Pet. App. 23a.

2. Having addressed the relevant background principles, the Fourth Circuit turned to the weapons

prohibited by Maryland's law. It started by noting that the plaintiffs had raised a facial challenge to the law. As a result, they would have to show "that no set of circumstances exists" under which Maryland's law would be valid, or that Maryland's law has no "plainly legitimate sweep." Pet. App. 27a-28a (quoting *United States v. Stevens*, 559 U.S. 460, 472 (2010)). In the court's view, the plaintiffs had failed to meet this "high bar." Pet. App. 28a. To illustrate, the Fourth Circuit pointed to one of the weapons banned by Maryland law: the Barrett .50 caliber semiautomatic sniper rifle. The Fourth Circuit explained that "[t]his rifle fires bullets powerful enough . . . 'to disable or destroy military targets such as armored personnel carriers, radar dishes, communications vehicles, missiles, aircraft, bulk fuel and ammunition storage sites,'" and "'is capable of long range destruction of military targets at distances exceeding a mile . . . with the power of a rocket or mortar but with the precision of a sniper's rifle.'" Pet. App. 28a (citation omitted). The court observed, however, that the plaintiffs had "made no effort to present evidence that this sniper rifle is 'in common use today for self-defense' and not a 'dangerous and unusual' weapon outside of the Second Amendment's ambit." Pet. App. 29a (quoting *Bruen*, 597 U.S. at 21, 32). And in concluding that this weapon "is exactly the type of firearm that is 'most useful in military service' and 'may be banned' consistent with the Second Amendment," the Fourth Circuit noted that several other weapons regulated by the statute also fell squarely within this description. Pet. App. 29a (quoting *Heller*, 554 U.S. at 627). Facial relief, the Court concluded, was off the table.

3. Nonetheless, the Fourth Circuit recognized that the parties' arguments had focused mainly on the AR-15,

and therefore addressed that weapon in particular. In doing so, the court recounted most of what it had explained in *Kolbe*, including the AR-15's development as a powerful combat-tested military rifle and its transition into the civilian market in the 1970s. Pet. App. 31a-32a. The court then explained how "[t]he civilian versions of the AR-15 have not strayed far from the rifle's military origin," including with regard to its powerful muzzle velocity, its long range and accuracy, and the amount of kinetic energy it can deliver upon impact. Pet. App. 32a-33a. The court also noted that, despite being marketed to civilians, the AR-15 retained, or was compatible with, many combat-functional features. Pet. App. 33a. As in *Kolbe*, the Fourth Circuit explained that the "primary difference" between the M-16 and AR-15—i.e., the M-16's capacity for automatic fire—was not significant, because (1) experts agreed that semiautomatic firing was the most effective mode of firing; and (2) "the AR-15's rate of fire can 'be easily converted to . . . mimic military-grade machine guns' with devices like bump stocks, trigger cranks, and binary triggers." Pet. App. 35a (quoting *Bevis v. City of Naperville*, 657 F. Supp. 3d 1052, 1074 (N.D. Ill. 2023)).

The Fourth Circuit also described how AR-15s were the weapon of choice for mass shootings and other criminal acts. "AR-15s are disproportionately used in mass shootings," the court observed, and "[f]our of every five 'mass shootings that resulted in more than 24 deaths involved the use of assault rifles,' . . . as did every single mass shooting involving more than 40 deaths." Pet. App. 36a-37a. And AR-15s are "uniquely dangerous to law enforcement," because "their high firepower causes their bullets to readily penetrate police body armor," and their ability to "allow criminals to effectively engage law

enforcement officers from great distances[ ] giv[es] them a military-style advantage." Pet. App. 38a-39a (citations and internal quotation marks omitted). "In short," the court concluded, "the AR-15 and other assault rifles are the preferred weapons for those bent on wreaking death and destruction." Pet. App. 37a.

By contrast, the court reasoned, the plaintiffs had not shown that the AR-15 was suitable for self-defense. The AR-15's heightened firepower "pose[s] a serious risk of 'overpenetration'—that is, [bullets] passing through their intended target and impacting a point beyond it." Pet. App. 41a (citation and internal quotation marks omitted). This risk, the court observed, was greatest in the home, because "firing an AR-15 in close quarters will often put the safety of cohabitants and neighbors in jeopardy." Pet. App. 41a. Further, "[t]he AR-15 . . . does not have any of the advantages that [this Court] identified in *Heller* as establishing the handgun as the 'quintessential self-defense weapon . . . for home defense.'" Pet. App. 42a. "Compared to a handgun, the AR-15 is heavier, longer, harder to maneuver in tight quarters, less readily accessible in an emergency, and more difficult to operate with one hand." Pet. App. 42a. And because the AR-15 cannot be easily concealed and is "much more difficult to carry while conducting daily activities," it is even less useful for self-defense "[o]utside the home." Pet. App. 42a. The court therefore concluded that, "just like the M16, the AR-15 is 'most useful in military service' and 'may be banned' consistent with the Second Amendment." Pet. App. 43a (quoting *Heller*, 554 U.S. at 627).

4. The Fourth Circuit then addressed the plaintiffs' contention that, because the covered weapons are "in

common use today," they are constitutionally protected. Pet. App. 43a. The court deemed this argument—that "so long as enough law-abiding citizens own a type of firearm, that type of firearm cannot be prohibited"—a misreading of both *Heller* and *Bruen*. Pet. App. 43a. It noted that, although this Court had instructed that "weapons that are *not* in common use can safely be said to be *outside* the ambit of the Second Amendment," "the logic does not work in reverse." Pet. App. 44a. In other words, "[j]ust because a weapon happens to be in common use does not guarantee that it falls within the scope of the right to keep and bear arms." Pet. App. 44a.

The Fourth Circuit identified a series of flaws in this "ill-conceived popularity test." Pet. App. 44a. For example, the plaintiffs' argument was inconsistent with *Bruen*'s suggestion that, to fall within the Second Amendment, a weapon must be "in common use today *for self-defense*." Pet. App. 44a (quoting *Bruen*, 597 U.S. at 32) (emphasis added). The court also noted that the plaintiffs' attempt to aggregate all semiautomatic rifles into one category of firearm "disregard[ed] the exponential differences in firepower between a small-bore rimfire rifle and a .50 caliber sniper rifle." Pet. App. 44a. In addition, there was no clear threshold for the number of firearms that would allow a court to proclaim that a certain weapon was "in common use." Pet. App. 44a-45a.

"Most importantly," the court emphasized, "appellants' proposed common use inquiry leads to absurd consequences because it totally detaches the Second Amendment's right to keep and bear arms from its purpose of individual self-defense." Pet. App. 45a. Noting that it previously had excluded certain weapons (such as the M-16, the short-

barreled shotgun, and the W54 nuclear warhead) from the scope of Second Amendment protection, the court observed that, under the plaintiffs' test, "any one of these or similarly dangerous weapons could gain constitutional protection merely because it becomes popular before the government can sufficiently regulate it." Pet. App. 45a. Thus, under a strict "common use" test, constitutional protection would depend on whether arms manufacturers could distribute their products in sufficient quantities "before legislatures can react." Pet. App. 46a. Rejecting the notion of a constitutional right that "expand[ed] or contract[ed] based on nothing more than contemporary market trends," the Fourth Circuit instead concluded that *Bruen*'s reference to "common use" "reflects the fact that the Second Amendment protects only those weapons that are typically possessed by average Americans for the purpose of self-preservation and are not ill-suited and disproportionate to achieving that end." Pet. App. 46a.

The Fourth Circuit's Step-Two Analysis

1. Although the court concluded that the covered weapons fell outside of the Second Amendment, it nonetheless assessed Maryland's law under *Bruen*'s second step and determined that it "is readily 'consistent with this Nation's historical tradition of firearm regulation.'" Pet. App. 48a (quoting *Bruen*, 597 U.S. at 34). In particular, Maryland's law "is one of many in a storied tradition of legislatures perceiving threats posed by excessively dangerous weapons and regulating commensurately." Pet. App. 48a.

In so holding, the Fourth Circuit noted *Bruen*'s command to engage in "reasoning by analogy" and consider

"whether . . . modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparatively justified." Pet. App. 48a (echoing this Court's pronouncement that "[t]he analogue need not be 'a historical *twin*,' but must be 'a well-established and representative historical *analogue*'" (quoting *Bruen*, 597 U.S. at 30 (emphasis in *Bruen*)). In addition, the court of appeals observed that this Court's recent decision in *United States v. Rahimi*, 144 S. Ct. 1889 (2024), had reiterated that a challenged law "'must comport with the principles underlying the Second Amendment, but it need not be a "dead ringer" or a "historical twin."'" Pet. App. 49a (quoting *Rahimi*, 144 S. Ct. at 1898 (quoting *Bruen*, 597 U.S. at 30)).

The Fourth Circuit also recalled *Bruen*'s instruction that "if a case 'implicat[es] unprecedented societal concerns or dramatic technological changes,' courts may need to take 'a more nuanced approach.'" Pet. App. 50a (quoting *Bruen*, 597 U.S. at 26-27). And it concluded that such an approach was appropriate here. Citing to numerous mass shootings that have plagued the country in the 21st century alone, the court commented that these tragedies "stem from a crisis unheard of and likely unimaginable at the founding." Pet. App. 50a. Indeed, the court noted, although "'[t]here is no known occurrence of a mass shooting resulting in double-digit fatalities from the Nation's founding in 1776 until . . . 1949,'" "in modern mass shootings involving assault weapons, the death toll is often in the dozens." Pet. App. 51a (citation omitted). "Rapid advancements in gun technology," the court observed, "are a central cause of this mass carnage." Pet. App. 51a. Although mass murder used to be a "group activity," these weapons now "empower an individual

soldier to kill as many people in as little time as possible." Pet. App. 51a-52a.

2. Applying that "more nuanced approach," the Fourth Circuit observed that "legislatures, since the time of our founding, have responded to the most urgent and visible threats posed by excessively harmful arms with responsive and proportional legislation." Pet. App. 53a. The court noted that "[w]hen a weapon's potential for widespread criminal abuse or unreasonable capacity to inflict casualties became apparent to lawmakers, they did not hesitate to regulate in response." Pet. App. 53a. The court concluded that Maryland's law "fits comfortably within this venerable tradition." Pet. App. 53a.

It began by accounting for the relative paucity of regulation of firearms at the time of the Founding. The court noted that, although "firearms were a common fixture in the American home" at the time of the Founding, "they were not used often in homicides." Pet. App. 53a. Firearms "had limited utility for such a purpose" because, for instance, "these weapons were prone to misfiring and needed to be reloaded after each shot, a time-consuming process that required acumen and experience." Pet. App. 53a-54a.

Gunpowder, however, was restricted from early on. Because a large amount of gunpowder could kill many people at once if ignited, "a handful of American cities and states restricted the quantity of gunpowder that an individual could possess." Pet. App. 54a.

Similarly, the court explained, legislatures had responded in the 19th century after "the nation saw a surge in interpersonal violence" caused by "[i]mprovements

in weapons technology." Pet. App. 55a. New types of firearms could fire multiple rounds effectively without reloading, were more accurate, and could be kept loaded with minimal risk of corrosion. Pet. App. 55a. Knives, too, had "advanced in lethality," and these knives—especially Bowie knives—"were widely used in fights and duels, especially at a time when single-shot pistols were often unreliable and inaccurate." Pet. App. 56a (citation omitted).

In response, legislatures in the 19th century "passed restrictions on carry, and, in some cases, outright bans on the possession of certain more dangerous weapons," such as particular firearms, Bowie knives, dirks, sword canes, metal knuckles, slungshots, and sand clubs. Pet. App. 57a-60a. And these laws were upheld against constitutional challenge. Pet. App. 61a-62a (compiling cases). The Fourth Circuit observed that "[t]hese legislatures—in balancing individual rights and public peacekeeping—permitted individuals to defend themselves with firearms, while ridding the public sphere of excessively dangerous and easily concealable weapons that were primarily to blame for an increase in violent deaths." Pet. App. 62a-63a.

The court moved through history to the end of the 19th century, when dynamite—invented in 1866—began to be commercially available. Pet. App. 63a. Capitalizing on the newfound availability of this cheap yet destructive substance, criminals used it in "infamous bombings." Pet. App. 63a. And once the destructive criminal use of dynamite became apparent to lawmakers, Congress passed the Federal Explosives Act of 1917, which regulated dynamite and a wide array of other explosives. Pet. App. 65a.

"Another weapon that surfaced during the turn of the [20th century] was the semiautomatic firearm, which became available to consumers in the 1890s." Pet. App. 63a. Soon thereafter, fully automatic weapons also became commercially available. Pet. App. 63a. While the weapons were still unregulated, they became widely used by criminals. And "[o]nce again, legislatures responded." Pet. App. 65a. From 1925 to 1934, at least 39 states (and the District of Columbia) enacted anti-machine-gun laws. Then, in 1934, "Congress enacted the National Firearms Act of 1934, which severely curtailed the civilian possession and general circulation of automatic weapons, as well as sawed-off shotguns, short-barreled rifles, and silencers." Pet. App. 67a.

Finally, the court reached the mid-to-late 20th century, when the AR-15 and other similar weapons that Maryland now bans began to be commercially available. Around that time, "a profound uptick in crime occurred," yet the police found themselves "no match against a criminal armed with a semiautomatic assault weapon." Pet. App. 67a-68a (citation omitted). "Simultaneously, the nation's mass shooting crisis was beginning to emerge, with a 1989 killing of five schoolchildren in Stockton, California prompting public outcry about assault rifles." Pet. App. 68a. That same year, the federal government responded by banning the importation of assault rifles, and California enacted a first-in-the-nation restriction on the possession of assault weapons. Pet. App. 68a. Five years later, the federal government enacted its own ban on assault weapons and high-capacity magazines, although that ban expired after ten years. Pet. App. 68a.

3. Looking back over this history, the Fourth Circuit explained that "a definable arc of technological innovation

and corresponding arms regulation begins to emerge." Pet. App. 68a. "Throughout this history," the court continued, "lies a strong tradition of regulating those weapons that were invented for offensive purposes and were ultimately proven to pose exceptional dangers to innocent civilians." Pet. App. 69a. This tradition would manifest when, "as some modern firearms became capable of inflicting mass horrors, government did not hesitate to circumscribe their possession while leaving intact the right to own weapons more suitable to the Second Amendment's purpose of personal protection." Pet. App. 69a.

The Fourth Circuit then concluded that Maryland's assault weapons ban "is yet another chapter in this chronicle." Pet. App. 70a. Like those other historical laws, Maryland's law is constitutional because it "only regulates weapons that are ill-suited for and disproportionate to the objective of self-defense, while honoring the right of Americans to possess arms more compatible with the Second Amendment's purpose." Pet. App. 70a.

The Remaining Opinions

Chief Judge Diaz concurred, joined by Judges King, Wynn, Thacker, Benjamin, and Berner. Although he lauded Judge Wilkinson's opinion as "masterful and eloquent," Pet. App. 74a, he commented that *Bruen* "ha[d] proven to be a labyrinth for lower courts" in practice, "with only the one-dimensional history-and-tradition test as a compass." Pet. App. 75a. Chief Judge Diaz observed that, although both the majority and dissent had "engaged in an exhaustive sweep of history," they had "reach[ed] diametrically opposed conclusions about what that history means." Pet. App. 75a-76a. Although he believed that the majority opinion had "the far better of the argument," he

pondered whether *Bruen*'s framework would allow lower courts to "apply and replicate precedent consistently." Pet. App. 76a.

Judge Gregory concurred in the judgment. In his view, the majority had improperly engaged in interest balancing in concluding that the banned weapons fell outside of the Second Amendment at *Bruen*'s first step. Pet. App. 81a. Still, Judge Gregory concluded that, at *Bruen*'s second step, Maryland's law was consistent with the "nation's historical tradition of prohibiting dangerous and unusual weapons." Pet. App. 95a.

Judge Richardson dissented, joined by Judges Niemeyer, Agee, Quattlebaum, and Rushing. Rejecting the majority's first-step analysis, Judge Richardson concluded that the banned weapons, as "weapons of offence," fell within the meaning of "arms" as expressed in the Second Amendment. Pet. App. 135a. And at *Bruen*'s second step, Judge Richardson concluded that Maryland's law did not fall within the tradition of regulating dangerous and unusual weapons. Pet. App. 140a. In doing so, Judge Richardson found dispositive his conclusion that the banned weapons are "in common use for lawful purposes." Pet. App. 140a.

REASONS FOR DENYING REVIEW

Even though there is no circuit split regarding the constitutionality of assault weapons bans, petitioners seek certiorari because courts supposedly are misapplying *Heller* and *Bruen*. Pet. 24-33. That argument provides no basis for granting the petition. The Fourth Circuit's

decision is consistent with both of those decisions, as well as the Court's decision last Term in *Rahimi*. And even if there were some need for clarification from this Court, the courts of appeals have barely begun to consider how *Bruen* applies to challenges to assault weapons bans. The petition should be denied.

I. The Fourth Circuit's Decision Is Consistent with *Heller*, *Bruen*, and *Rahimi*.

Notably absent from the petition for certiorari is any claim of a circuit split. Instead, petitioners argue that certiorari is necessary largely because, in their view, the Fourth Circuit misapplied *Heller* and *Bruen*, and lower courts need further guidance. As explained above, however, the Fourth Circuit straightforwardly determined that the assault weapons that Maryland bans fall outside the protections of the Second Amendment. Alternatively, the court concluded that, even if the prohibited weapons fall within the scope of the Second Amendment, Maryland's ban is constitutional because it is consistent with the Nation's historical tradition of firearm regulation. These holdings reflect no confusion and do not conflict with any decision of this Court.

A. Under This Court's Precedents, Certain Types of Weapons Are Not Protected by the Second Amendment.

When this Court struck down the District of Columbia's prohibition on handgun possession in *Heller*, it explained that the Second Amendment right was not "unlimited" and that the historical tradition established that the amendment does not embody "a right to keep and carry

any weapon whatsoever in any manner whatsoever for whatever purpose." 554 U.S. at 626. The Court explained that the source of this "historical understanding" regarding "the sorts of weapons protected" was the common-law "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons'" that Blackstone had set forth in his Commentaries on the Laws of England, and that Founding-era legal commentators on this side of the Atlantic had then repeated. *Id.* at 627 (citations omitted).

Heller also made clear how this principle would apply to circumstances like these. Consistent with its observation regarding "dangerous and unusual" weapons, this Court acknowledged that the weapons of today "that are most useful in military service—M-16 rifles and the like—may be banned." *Id.*

Bruen cast no doubt upon that precept. Rather, *Bruen* reaffirmed that the scope of the Second Amendment is not "unlimited." As to the types of weapons the amendment protects, the Court echoed its assertion in *Heller* that the Second Amendment "right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Bruen*, 597 U.S. at 21 (quoting *Heller*, 554 U.S. at 626). And as Justice Alito recognized in his *Bruen* concurring opinion, the decision left *Heller*'s principles intact in this area: "Our holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun. *Nor does it decide anything about the kinds of weapons that people may possess*." *Bruen*, 597 U.S. at 72 (Alito, J., concurring) (emphasis added).

The Fourth Circuit, in turn, faithfully followed *Heller* and *Bruen* in upholding Maryland's assault weapons ban at step one: "[J]ust like the M16," the court reasoned, "the AR-15 [and other covered weapons are] 'most useful in military service' and 'may be banned' consistent with the Second Amendment." Pet. App. 43a. Although petitioners claim that this is a "major misinterpretation[ ] of *Heller*," Pet. 25, there could scarcely be a clearer application of *Heller*'s pronouncement, left intact by *Bruen*, regarding "M-16 rifles and the like."

The Fourth Circuit's step-one decision accords with *Rahimi*, too. *Rahimi*, like *Bruen*, did not address the question of what types of weapons fall within the protections of the Second Amendment. Instead, like *Bruen*, *Rahimi* reaffirmed that "the right secured by the Second Amendment is not unlimited." 144 S. Ct. at 1897. If anything, *Rahimi* expressed concern that lower courts had been applying *Bruen* too strictly, clarifying that (at step two) a modern law need only "comport with the principles underlying the Second Amendment," rather than "be a 'dead ringer' or a 'historical twin.'" *Id*. at 1898.

B. Petitioners' Reliance on a Purported "Common Use" Test Is Misplaced.

Citing language from *Heller* and *Bruen*, petitioners assert that "this case should have been very straightforward" because the banned assault weapons are "commonly possessed by law-abiding citizens for lawful purposes." Pet. 24 (citation omitted). *Heller* and *Bruen* do not support that position. And elevating a "common use" determination to dispositive status, as petitioners and their amici ask this Court to do, *see*, *e.g.*, Nat'l Rifle Ass'n Br. 7, would defy common sense by tethering individual constitutional

rights to whether a manufacturer's commercial efforts can outpace regulation.

To begin, petitioners overread *Bruen* and *Heller* on those decisions' own terms. This Court stated in *Bruen* 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,'" 597 U.S. at 47 (quoting *Heller*, 554 U.S. at 627). Thus, a weapon that is "highly unusual" and not in "common use" is not protected. *See Heller*, 554 U.S. at 627 (characterizing "common use" as an "important limitation on the right to keep and carry arms"). But this Court has not stated the inverse, i.e., that a weapon automatically is protected so long as it is "in common use." Instead, as the Fourth Circuit observed, to the extent a "common use" inquiry might be relevant, it is to determine which weapons fall "*outside* the ambit of the Second Amendment." Pet. App. 44a. Petitioners' contrary reading cannot be squared with this Court's observation, in the very next paragraph of *Heller*, that "weapons that are most useful in miliary service—M-16 rifles and the like—may be banned." 554 U.S. at 627.

Moreover, as the Fourth Circuit observed, petitioners' proposed "common use" test would lead to "absurd consequences" and would undermine democratic self-governance. Pet. App. 44a-46a. The Second Amendment's scope would, in effect, depend on the aggregate commercial choices of the American people and how those choices happen to intersect with the speed of regulation. If legislatures acted quickly enough to ban a new weapon (or weapon technology), the right to own that weapon could be forever frozen out, no matter what its utility for self-defense. On the other hand, if Congress (or some

number of state legislatures) failed to act quickly enough, an extraordinarily dangerous weapon—such as a bazooka or the otherwise "bearable" W54 nuclear warhead—could gain constitutional protection simply by becoming popular. Not only is that framework facially nonsensical, but it would create incentives for legislatures to ban any new weapons technology immediately, lest it come into "common use" and become protected.

C. Maryland's Assault Weapons Ban Is Consistent with the Nation's Historical Tradition of Banning Exceptionally Dangerous Weapons That Pose Heightened Risks.

As noted above, the Fourth Circuit upheld Maryland's assault weapons ban under the first step of *Bruen*'s framework, i.e., whether the regulated conduct comes within the Second Amendment's scope. But the court also upheld the ban under *Bruen*'s second step, which looks to whether a particular law is consistent with our Nation's historical tradition of firearms regulation. In concluding that Maryland's assault weapons ban is supported by "a strong tradition of regulating those weapons that were invented for offensive purposes and were ultimately proven to pose exceptional dangers to innocent civilians," Pet. App. 69a, the court faithfully applied the principles of *Bruen* and *Rahimi*.

As the Fourth Circuit's opinion demonstrates, American history includes a long tradition of legislatures responding to the threats posed by excessively dangerous weapons once those threats become apparent.[5] As

5. Pointing to the Fourth Circuit's *Bruen* step-two analysis, the petition claims that, under the court of appeals' rationale, "the

chronicled by the Fourth Circuit, that tradition includes early American restrictions on gunpowder, Pet. App. 54a; mid-19th century restrictions on carrying and possessing firearms and other dangerous weapons such as Bowie knives, dirks, sword canes, and slungshots, Pet. App. 55a-61a; late 19th century restrictions on explosives, Pet. App. 63a, 65a; early 20th century restrictions on semiautomatic rifles and machine guns, Pet. App. 63a-67a; and turn-of-this-century restrictions on the assault weapons at issue in this case, Pet. App. 67a-68a. In each instance, legislatures identified new and unprecedented threats to public safety, determined that those threats required abatement, and legislated accordingly. And in each of these circumstances, the restrictions imposed "comparable burden[s]" and were "comparably justified" to Maryland's assault weapons ban, which responded to the recent advent of mass public shootings committed with a particular type of highly dangerous arm. *Bruen*, 597 U.S. at 29. That analysis is just what *Bruen* prescribes.

II. Certiorari Would Be Premature Because the Courts of Appeals Have Just Begun to Consider *Bruen*'s Application to Assault Weapons Bans.

As described above, the Fourth Circuit's decision is fully consistent with *Bruen* and *Heller*. But even if further clarification of those decisions might someday be desirable,

---

Second Amendment permits anything short of a complete ban on all firearms." Pet. 18. That is far from true: the court upheld Maryland's assault weapons ban at step two of *Bruen* because it was "fully consistent with our nation's long and dynamic tradition of regulating *excessively dangerous weapons* whose demonstrable threat to public safety led legislatures to heed their constituents' calls for help." Pet. App. 70a (emphasis added).

it is not warranted today. This Court decided *Bruen* less than two and a half years ago, and the courts of appeals have just begun to consider how its framework applies to bans on assault weapons.

1. As this case reflects, *Bruen*'s application to assault weapons bans encompasses numerous subsidiary questions that this Court might have to answer. For instance, the State's position here is that *Bruen* left undisturbed *Heller*'s statement regarding "M-16 rifles and the like." Petitioners, by contrast—besides taking a different view of that statement's meaning, *see* Pet. 25-26—might well take a different view of its continued viability. Further questions include the legal significance of whether assault weapons are in common use and whether they are "dangerous and unusual." Are those inquiries relevant to determining whether such weapons fall within the Second Amendment's compass? Are they relevant to *Bruen*'s "historical tradition" inquiry? And if the Court were to reach step two of *Bruen*'s framework, it would have to consider whether bans on assault weapons are in fact "consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17.

The courts of appeals, however, have scarcely begun to consider these questions.[6] This Court decided *Bruen*

6. Although the petition claims that "the circuit courts appear to be coalescing around the rationale offered by the Fourth Circuit," Pet. 2, and that "the Fourth Circuit's cramped reading of the [Second] Amendment . . . is the error of choice for courts seeking to approve bans on common semiautomatic arms," Pet. 20, it cites only two post-*Bruen* cases to support these statements. One is the Seventh Circuit's decision in *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023), *cert. denied sub nom. Harrell v. Raoul*,

just two Terms ago. Since then, only one other court of appeals—the Seventh Circuit—has addressed the decision's application to assault weapons bans. *See Bevis*, 85 F.4th 1175. And it did so only in reviewing decisions whether to grant preliminary injunctive relief, not any final judgment on the merits. *See id.* at 1187 (stressing that "we are not here today to rule definitively on the constitutionality of the Act or any of the municipal ordinances" because "[t]he only issue before us concerns preliminary injunctive relief"). The appellate decision in this case thus is the only one to address the panoply of legal issues potentially implicated by the question whether assault weapons bans are constitutional after *Bruen*.

Nor has any appellate decision addressed the factual showings that would have to underlie any successful Second Amendment challenge to an assault weapons ban. Even if the Court were to grant certiorari and reverse the Fourth Circuit's decision in this case, for instance, a further remand would still be necessary so that the district court may consider such fact-intensive issues as the suitability of assault weapons for self-defense and whether those weapons are in common use for that purpose. In fact, that is what occurred in some of the consolidated challenges that comprised the Seventh Circuit matter, where a judge in the Southern District of Illinois recently issued a decision striking down Illinois's assault weapons ban after a four-day bench trial.[7] *Barnett v. Raoul*, No.

144 S. Ct. 2491 (2024). The other, *Ocean State Tactical LLC v. Rhode Island*, addressed a ban on large-capacity magazines, not assault weapons. 95 F.4th 38, 48-49 (1st Cir. 2024).

7. One of the other consolidated matters, pending in the Northern District of Illinois, is in a pre-trial posture. *Bevis v. City of Naperville*, No. 22-cv-4775 (N.D. Ill.)

23-cv-209-SPM (lead case) (S.D. Ill. Nov. 8, 2024). As part of such a process, the State would be entitled to test and rebut the mass of reports and secondary sources that petitioners have cited in this Court, *see* Pet. 7-9, but that the district court has never considered.

Those sources are highly contestable, to say the least. Take, for example, the 2021 survey conducted by Georgetown professor William English. Pet. 7-8. As a forthcoming law review article explains, although this survey has featured prominently in litigation surrounding assault weapons, it suffers from significant flaws that make its findings unreliable, including (1) a lack of any peer review; (2) suggestive wording of questions; (3) broad definitions of key terms, such as "defensive gun use"; (4) conflation of key concepts, such as personal ownership and household ownership of firearms; (5) failure to use a respondent sample representative of the population at large; (6) selective reporting of weighted results; and (7) failure to disclose funding sources. *See* Deborah Azrael et al., *A Critique of Findings on Gun Ownership, Use, and Imagined Use from the 2021 National Firearms Survey: Response to William English*, 78 S.M.U. L. Rev. (forthcoming 2025), https://tinyurl.com/38pzt7t8.

The National Shooting Sports Foundation survey on which petitioners rely, Pet. 8-9, is likewise problematic. Indeed, litigants challenging Colorado's restrictions on high-capacity magazines were forced to abandon their lawsuit because the Foundation refused to defend its survey in court. *See* National Ass'n for Gun Rights, *Press Release: NSSF Refuses to Defend Study, Killing Colorado Magazine Ban Lawsuit* (Aug. 12, 2024), https://tinyurl.com/5xfjjb3h.

2. It is likely that the courts of appeals *will* address the relevant legal and factual issues in the coming years, though. As noted above, at least ten states, the District of Columbia, and various local jurisdictions ban assault weapons in some respect. And assault weapons bans currently are being challenged in eight circuits:

> First Circuit: *Capen v. Campbell*, No. 24-1061 (1st Cir.) (argued Oct. 7, 2024).
>
> Second Circuit: *Grant v. Lamont*, No. 23-1344 (2d Cir.) (argued Oct. 16, 2024); *National Ass'n for Gun Rights v. Lamont*, No. 23-1162 (2d Cir.) (argued Oct. 16, 2024).
>
> Third Circuit: *Association of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin*, Nos. 24-2415, 24-2450, 24-2506 (3d Cir.) (consolidated appeals docketed Aug. 6, 2024, Aug. 9, 2024, and Aug. 22, 2024).
>
> Seventh Circuit: *Viramontes v. Cook County*, No. 24-1437 (7th Cir.) (to be argued Nov. 12, 2024); *Barnett v. Raoul*, No. 23-cv-209-SPM (lead case) (S.D. Ill. Nov. 8, 2024) (decision striking down Illinois's assault weapons ban after bench trial; notice of appeal filed); *Bevis v. City of Naperville*, No. 22-cv-4775 (N.D. Ill.) (in pre-trial posture).
>
> Ninth Circuit: *Miller v. Bonta*, No. 23-2979 (9th Cir.) (argued Jan. 24, 2024) (held in abeyance pending resolution of *Duncan v. Bonta*, No. 23-55805 (argued Mar. 19, 2024), in

which an en banc panel of the Ninth Circuit is considering the constitutionality of California's prohibitions on high-capacity magazines); *Banta v. Ferguson*, No. 24-6537 (9th Cir.) (appeal docketed Oct. 24, 2024).

Tenth Circuit: *Rocky Mountain Gun Owners v. Town of Superior, Colorado*, No. 22-cv-2680-NYW-JPO (D. Colo.) (complaint filed Oct. 12, 2022).

D.C. Circuit: *Clemendor v. District of Columbia*, No. 24-cv-1955 (D.D.C.) (complaint filed July 3, 2024); *Yzaguirre v. District of Columbia*, No. 24-cv-1828 (D.D.C.) (complaint filed June 25, 2024).

As these cases are litigated, the parties and the courts will develop the legal arguments associated with *Bruen*'s application to assault weapons bans. And, to the extent that courts conclude that challenges to such bans are not legally foreclosed, they will develop factual records regarding, for instance, the extent to which assault weapons are in common use for self-defense; the suitability of these weapons for effective self-defense; and the distinctive dangers that assault weapons pose. A circuit split may well develop, and it is not clear why petitioners believe this is "unlikely." Pet. 33. Thus, should this Court wish to address how *Bruen* applies to assault weapons bans, it will be best positioned to do so after litigants and courts in other cases flesh out the relevant legal and factual arguments. Allowing the broad question of the constitutionality of assault weapons bans (and all of the issues that question might encompass) to percolate in

this manner will ensure that, if the Court does consider the question, it does so with the benefit of arguments that have been well-developed and repeatedly tested through the adversarial process.

That benefit is virtually nonexistent today. Even if some judges have expressed frustration at the difficulties of applying *Bruen*'s test to assault weapons bans or have expressed a desire for more guidance, *see* Pet. 22-24, the answer is not to rush a decision that may only create further confusion. Rather, if this Court wishes to provide additional guidance, it should do so in a manner informed by the views of the courts of appeals that will no doubt address *Bruen*'s application to assault wieapons bans in the coming years.

3. Although petitioners claim that they "want[ ] to acquire" the particular weapons banned by Maryland, Pet. 11, their bare desire to own these weapons does not compel this Court to address this issue now. With regard to self-defense in particular—"the *central component* of the [Second Amendment] right itself," *Heller*, 554 U.S. at 599—complying with Maryland's law does not compromise the ability of petitioners, or anyone else, to defend themselves with the many other firearms that remain legal. Indeed, petitioners never sought any form of interim relief from the ban challenged here—which belies any claim that the Court should depart from its usual prudent approach.

Finally, as for the petition's argument that the Court should consider now the constitutionality of assault weapons bans simply because of the AR-15's popularity, Pet. 16-18, the significance of the decision below is limited.

That decision is, of course, binding only within the Fourth Circuit. And of the five States in the Fourth Circuit, Maryland is the only one that bans assault weapons. Thus, regardless of whether the AR-15 is "the most popular rifle in America," Pet. 16, the court of appeals' decision leaves it unavailable in only one State.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ANTHONY G. BROWN
Attorney General of Maryland

RYAN R. DIETRICH*
Assistant Attorney General
200 Saint Paul Place
20th Floor
Baltimore, Maryland 21202
(410) 576-7648
rdietrich@oag.state.md.us

Attorneys for Respondents

**Counsel of Record*