

FEATURE STORY

Bowie Knives May Be Dangerous and Unusual— Are Machineguns?

By Andrea L. McDonald – January 28, 2026

A recent U.S. court of appeals' decision upheld the federal ban on machineguns as constitutional. Divergent majority and concurring opinions demonstrate inconsistent interpretations of the recently clarified "text and history" framework for Second Amendment challenges. Highlighting open questions as to historical regulation of "dangerous and unusual" weapons, the opinions provide fodder for trending gun rights litigation. [ABA Litigation Section](#) leaders predict future lawsuits focusing on as-applied challenges to machinegun regulation and historical analogues, potentially with varying results.

No Protection for Dangerous and Unusual Weapons

In [United States v. Bridges](#), the U.S. Court of Appeals for the Sixth Circuit addressed Second Amendment challenges to the federal machinegun possession ban in the wake of the U.S. Supreme Court's decision in [New York State Rifle & Pistol Association, Inc. v. Bruen](#). After firing at police from a moving vehicle, a driver was arrested with a Glock 23 handgun equipped with a "switch" converting it to a fully automatic weapon. A grand jury indicted the driver under 18 U.S.C. § 922(o), which bans possession of machineguns. Losing his bid to dismiss the charges on constitutional grounds, the driver pled guilty. On appeal, the Sixth Circuit affirmed the conviction, rejecting facial and as-applied challenges under its surviving precedent and *Bruen's* two-step framework.

In *Bruen*, the Supreme Court rejected the commonly applied means-end scrutiny, abrogating all case law relying on that analysis. *Bruen* clarified a two-step framework applied to regulations challenged under the Second Amendment. First, courts are to consider whether the "Second Amendment's plain text covers an individual's conduct." If so, the government must demonstrate the "regulation is consistent with this Nation's historical tradition of firearm regulation." If so, the regulation is constitutional under Second Amendment analysis.

The *Bridges* majority held section 922(o) to be constitutional on two independent grounds. First, Sixth Circuit precedent in [Hamblen v. United States](#) upheld the machinegun possession ban as constitutional. According to the majority, *Hamblen* survived *Bruen* because it followed the reasoning in [District of Columbia v. Heller](#) rather than a means-end analysis. Second, the ban withstands *Bruen's* test. The government demonstrated that the ban on machineguns was

consistent with the nation’s tradition, recognized in *Heller*, of regulating “dangerous and unusual” weapons.

The majority concluded that machineguns, as weapons capable of inflicting mass harm in a matter of seconds, are plainly dangerous. As to unusualness, the majority considered the roughly 175,977 legally owned machineguns—those registered before 1986 and grandfathered under section 922(o)—as a small fraction of the 300 to 500 million privately owned firearms. The majority also discussed the history of privately owned machineguns after World War I among criminals and bootleggers. The majority explained that law-abiding citizens do not typically possess unregistered machineguns for lawful purposes.

From Bowie Knives to Machineguns

The concurring opinion agreed that the conviction should be affirmed on the facial challenge. Because the as-applied challenge was not fully developed in the district court, the concurrence advocated for plain error review on that issue. Additionally, it disagreed with several aspects of the majority’s analysis under *Bruen*.

The concurrence urged a more thorough historical inquiry under *Bruen*’s second step. Although *Heller* recognized a tradition of regulating dangerous and unusual weapons, it did not supply a framework for application. Surveying regulation of arms throughout the nineteenth century, the concurrence noted that regulation often focused on the “manner of carry” rather than possession. Early regulations targeted Bowie knives, sword canes, daggers, brass knuckles, and small pistols: items easily concealed and used for unlawful purposes. Over the centuries, courts consistently upheld restrictions on Bowie knives and similarly concealable weapons unless evidence showed the category of weapon was also commonly used for lawful purposes. Dual-use items were generally deemed lawful.

The distinction between possession and means of carry was not addressed by the majority. While tradition supports restriction (and potentially bans) of weapons used for criminal activity, whether criminal use of machineguns trumped lawful use was not explored, according to the concurring opinion. Finally, the concurrence questioned whether the test is “dangerous *or* unusual,” and identified the risk that possession bans, by making lawful possession impossible, could manufacture “unusualness” and insulate statutes from challenge.

The concurrence also disagreed that *Hamblen* remains good law after *Bruen*. While *Hamblen* relied on *Heller*, *Heller*’s reference to machineguns related to the National Firearms Act of 1934, which imposed registration and taxation requirements, not bans, on privately owned machineguns. Additionally, the concurrence argued that reliance on *Heller*’s

“dangerous and unusual” exception without ensuring its scope aligns with tradition is insufficient under *Bruen*.

Looking Through the Scope of History

This case demonstrates that “courts are still wrestling with how *Bruen* impacts their prior law on Second Amendment issues,” states [Ethan W. Weber](#), Cleveland, OH, Subcommittee Chair of the Litigation Section’s [Appellate Practice Committee](#). “I don’t think the majority comes to the wrong decision, but I think that the heavier reliance on *Hamblen* and *Heller* may have given *Bruen*’s step-two analysis a shorter shrift than it deserves,” he says.

“In my view, the source of the disagreement between the majority and the concurring opinion stems from the difficulty of conducting a historical analysis in the first place,” comments [Kenneth R. Berman](#), Boston, MA, Co-Chair of the Section’s Committee on the [American Judicial System](#). Berman explains that the majority and concurring opinions “agree on a great deal” including “that the relevant historical tradition is the regulation of dangerous and unusual arms. They parted company over how that tradition should have been analyzed.”

“The majority opinion tries to engage with the historical analysis, but it does so from potentially the wrong place in time from what *Bruen* seems to require,” says Weber. “I read the concurrence as the more persuasive starting point. Beginning with the founding era’s purpose for restrictions highlights the question of whether it was the possession or carrying that was restricted. This is an important distinction that the majority doesn’t necessarily grapple with.”

Berman finds it understandable that the “majority believed that its inquiry was sufficient, for the majority was able to find historical justification for the statute without having to go further.” On the other hand, Berman explains, “*Bruen* itself conducted a more searching historical inquiry.”

However, “history is not the judges’ lane,” says Berman. “History is also cloudy, confusing, and ambiguous. It changes when new historical evidence is found, and it often fails to address modern problems. Most significantly,” he cautions, “it allows judges to identify their preferred outcome and then select historical references to justify it, while discarding seemingly relevant historical evidence that goes the other way.”

Future As-Applied Assault on Machinegun Regulation

Numerous post-*Bruen* challenges to section 922(o) have been brought across the country. Two trial courts have found the statute unconstitutional as applied. One of those rulings was reversed by the Tenth Circuit in [United States v. Morgan](#) while the other, *United States v. Brown*, remains pending in the Fifth Circuit. Litigation leaders agree these challenges will continue to arise.

Weber notes that the concurrence raises several issues not presented in *Bridges*, creating “fertile ground for percolation among the lower courts, particularly in as-applied challenges.” At the same time, “the concurring opinion throws down the gauntlet to the government—you have to substantiate regulation under *Bruen*’s step two.” Practitioners, particularly on the defense, “should keep these questions related to historical analogues in mind and ensure that the arguments are preserved for appeal,” advises Weber.

Nonetheless, Berman warns, “if we’re talking about how history has regulated weapons that are dangerous and unusual, we can expect to see courts gravitating to the historical sources that support their preferred outcomes and rejecting the historical sources that go in the other direction.” “This is the weakness of using history and tradition as the litmus test for whether a weapons statute violates the Second Amendment,” Berman says.

[Andrea L. McDonald](#) is an associate editor for Litigation News.

Related Resources

- [United States v. Bridges](#), 150 F.4th 517 (6th Cir. 2025).
- [United States v. Rahimi](#), 602 U.S. 680 (2024).
- [Garland v. Cargill](#), 602 U.S. 406 (2024).
- [N.Y. Rifle & Pistol Ass’n, Inc. v. Bruen](#), 597 U.S. 1 (2022).
- [District of Columbia v. Heller](#), 554 U.S. 570 (2008).

- [United States v. Morgan](#), 150 F.4th 1339 (10th Cir. 2025).
- [United States v. Hamblen](#), 591 F.3d 471 (6th Cir. 2009).
- *United States v. Brown*, 764 F. Supp. 3d 456 (S.D. Miss. 2025).
- James M. Miller, "[Differing Opinions on Originalism](#)," *Litigation News* (Aug. 27, 2025).
- Kenneth R. Berman, "[No Place for Junk Science or Junk History](#)," *Litig. J.* (Sept. 20, 2024).
- John McNichols, "[Technology and the Second Amendment: Bump Stocks, Stun Guns, or Billy Clubs?](#)," *Litigation News* (Aug. 28, 2024).
- John Pierce, "[Caetano v. Massachusetts: Does the Second Amendment Protect Bearable Arms That Did Not Exist at the Time of Enactment?](#)," *Civil Rights Litig.* (May 15, 2017).