

## Fourth Circuit Joins Sixth Circuit In Applying Strict Scrutiny To Gun Restriction

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We've previously reported on the [Tyler](#) case, in which the Sixth Circuit became the first circuit to apply strict scrutiny to a firearms restriction (and to hold it unconstitutional as applied to the plaintiff). *Tyler* was then vacated for rehearing en banc, and has [already](#) been [argued before the Sixth Circuit en banc](#). With the Sixth Circuit still deliberating, a split panel of the Fourth Circuit decided last week in [Kolbe v. Hogan](#) to apply strict scrutiny to another firearms restriction.

While *Kolbe* can be viewed as supporting the original panel decision in *Tyler*, there were differences in the two cases. For example, the restriction in *Tyler* was federal and limited to a class of people (banning gun possession by anyone who had ever been "committed to a mental institution"), while *Kolbe* dealt with generally applicable state restrictions on specific weaponry (the Maryland Firearm Safety Act's prohibition of "assault long guns" and limits on the acquisition of detachable magazines). Also, the Fourth Circuit remanded to the district court for application of strict scrutiny, and thus did not pronounce on the ultimate question of the constitutionality of the restriction itself.

It will be interesting to see how the Sixth Circuit en banc opinion in *Tyler* deals with the standard-of-review question and whether it finds the *Kolbe* majority (or dissent) persuasive.

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