

# THE SECOND AMENDMENT AFTER BRUEN

Jeff Welty  
UNC School of Government  
October 2023

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## Overview

- [Heller to Bruen](#)
- Impact of [Bruen](#) so far
- Future directions



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## District of Columbia v. Heller, 554 U.S. 570 (2008)

- Struck down DC handgun ban
- 2Am confers "an individual right to keep and bear arms"
- Right is "not unlimited"
  - "[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings."
- "[T]he sorts of weapons protected [by the 2Am are] those 'in common use at the time' [of ratification]."

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### McDonald v. City of Chicago, 561 U.S. 742 (2010)

- Seventh Circuit refused to strike down Chicago laws banning handgun possession, concluding that it was not clear that the Second Amendment applied to the states
- "[W]e hold that the Second Amendment right is fully applicable to the States."

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### New York State Rifle & Pistol Association Inc. v. Bruen, 597 U.S. \_\_\_\_ (2021)

- "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation."
- "[A]nalogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check." The historical analogue need not be a "dead ringer" for the challenged law, but must be relevantly similar and should not be a historical outlier.

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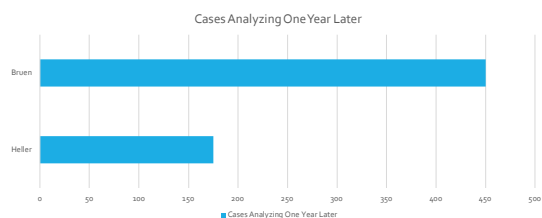
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### The Significance of Bruen



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### Parts of the Tidal Wave

- United States v. Daniels, \_\_\_ F.4th \_\_\_, 2023 WL 5091317 (5<sup>th</sup> Cir. Aug. 9, 2023) (holding 18 U.S.C. § 922(g)(3) [unlawful for drug users to possess guns] unconstitutional as applied to habitual marijuana user not intoxicated at the time he was found in possession of a gun)
- United States v. Rahimi, 61 F.4th 443 (5<sup>th</sup> Cir. 2023) (holding facially unconstitutional 18 U.S.C. § 922(g)(8) [unlawful to possess a gun while subject to a DVPO]) [SCOTUS has granted certiorari in Rahimi]
- United States v. Price, 635 F.Supp.3d 455 (S.D. W.V. 2022) (holding facially unconstitutional 18 U.S.C. § 922(k) [unlawful to possess a gun with an obliterated serial number])
- United States v. Quiroz, 629 F.Supp.3d 511 (W.D. Tex. 2022) (holding unconstitutional 18 U.S.C. § 922(n) [unlawful to possess a gun while under felony indictment])

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### The 800 Pound Gorilla

- 18 USC § 922(g)(1) prohibits felons from possessing firearms
- Every federal court to consider its constitutionality since Bruen had upheld it . . .
- Until Range v. Attorney General, 69 F.4th 96 (2023) (en banc) (holding 922(g)(1) unconstitutional as applied)

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### Future Directions/Implications for State Law

- Bruen may be pertinent to at least the following:
  - G.S. 14-269.2 (no guns at school)
  - G.S. 14-277.2 (no weapons at parades or demonstrations)
  - G.S. 14-315.1 (safe storage law)
  - G.S. 14-415.1 (no guns for people with felony convictions)
  - G.S. 50B-3.1 (people subject to DVPOs must relinquish guns to sheriff)
  - G.S. 14-269.8 (felony to possess guns while subject to DVPO)
  - G.S. 14-415.12 (no concealed carry permits for, inter alia, people with recent DWIs, people under felony indictment, and people who use drugs)
  - G.S. 14-415.23(b)-(c) (local governments may ban concealed carry on athletic fields and other recreational facilities)
  - G.S. 14-409.40 (local governments may ban guns in "public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas")

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## Framework and Burdens under Bruen

1. Is the defendant part of the "people" covered by the Second Amendment?
  - Plaintiffs in Bruen were "ordinary, law-abiding, adult citizens" and undoubtedly "part of 'the people' whom the Second Amendment protects"
2. Does the law at issue implicate the Second Amendment?
3. Is the law consistent with our historical tradition of gun regulation?
  - Burden is on the State to justify the law
  - If the law is directed at a "social problem" that existed in 1700s, probably need to be able to point to historical gun laws addressing it
  - If the law is directed at an "unprecedented societal concerns or technological changes," there is more room to identify laws that are analogous, or have "relevant similarity"

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## Resources

- NC Criminal Law Blog
- Duke Center for Firearms Law

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## Do We Have a Minute to Talk Search and Seizure?



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## QUESTIONS?

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### State v. Kerner, 181 N.C. 574 (1921)

- Struck down law prohibiting open carry off one's own premises
- "The maintenance of the right to bear arms is a most essential one to every free people, and should not be whittled down by technical constructions." Indeed it is a "sacred right, based upon the experience of the ages in order that the people may be accustomed to bear arms and ready to use them for the protection of their liberties or their country when occasion serves."
- Firearms are subject to "reasonable regulations"

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### Britt v. State, 363 N.C. 546 (2009)

- State felon-in-possession statute was unconstitutional as applied to person with a single PWISD conviction decades earlier
- Under the state constitution, "it is unreasonable to assert that a nonviolent citizen who has responsibly, safely, and legally owned and used firearms for seventeen years is in reality so dangerous that any possession at all of a firearm would pose a significant threat to public safety."

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### Legislative Changes and Proposals

- G.S. 14-415.4 (allows restoration of gun rights for a person with a single nonviolent felony >20 years ago)
- S.L. 2023-8 (repeals pistol purchase permit requirement)
- H18g (pending, would make concealed carry permits optional)

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