

THE SECOND AMENDMENT AND THE SUPREME COURT AGAIN

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Road Map

- [Heller to Bruen](#)
- Second Amendment litigation after [Bruen](#) and the impact of [Rahimi](#)
- Future directions

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PART I: HELLER TO BRUEN

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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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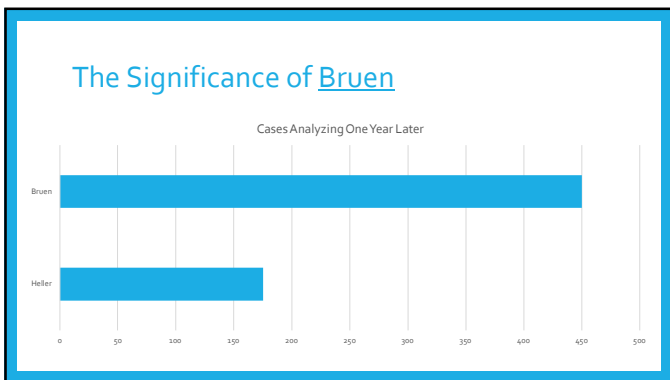
New York State Rifle & Pistol Association Inc. v. Bruen, 597 U.S. 1 (2021)

- "[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 straitjacket 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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PART II: LITIGATION AFTER BRUEN AND THE ROAD TO RAHIMI

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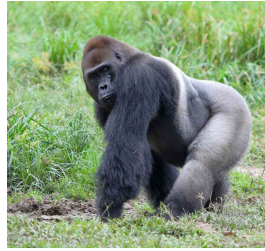
Parts of the Tidal Wave

- United States v. Daniels, 77 F.4th 337 (5th Cir. 2023) (federal law prohibiting drug users from possessing guns was 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 (5th Cir. 2023) (federal law prohibiting people subject to DVPOs from possessing guns was facially unconstitutional)
- United States v. Price, 635 F.Supp.3d 455 (S.D. W.V. 2022) (federal law prohibiting possession of guns with obliterated serial numbers was facially unconstitutional)
- United States v. Quiroz, 629 F.Supp.3d 511 (W.D. Tex. 2022) (federal law prohibiting people indicted for felonies from possessing a gun facially unconstitutional)

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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 (3d Cir. 2023) (en banc) (holding 922(g)(1) unconstitutional as applied)



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Framework and Burdens under Bruen

1. Does "the Second Amendment's plain text cover[] an individual's conduct"?
2. Is the law consistent with our historical tradition of gun regulation?
 - Covered conduct is "presumptively protect[ed]"; the burden is on the State to justify the law
 - If the law is directed at a "social problem" that existed in the 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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State v. Radomski, __ N.C. App. __, 901 S.E.2d 908 (May 21, 2024)


- Holds G.S. 14-269.2 (no guns on educational property) unconstitutional as applied to guns kept in a homeless defendant's vehicle in a parking garage associated with a university hospital
- Based on "the non-sensitive nature of the parking lot," rendering historical comparison to bans on guns in schools inapplicable



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United States v. Rahimi, 602 U.S. ___, 144 S. Ct. 1889 (June 21, 2024)

- Rejects a facial challenge to 18 U.S.C. § 922(g)(8) (prohibiting gun possession while subject to a DVPO)
- Says lower courts have "misunderstood" the methodology required by Bruen
- Cites surety laws and GATP laws as sufficiently similar historical precedents



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PART III: FUTURE DIRECTIONS

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Challenges to Place-Based Restrictions



- G.S. 14-277.2 (no weapons at parades or demonstrations)
- 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")
- Wolford v. Lopez, __ F.4th ___, 2024 WL 4097462 (9th Cir. Sept. 6, 2024) (Second Amendment challenges to bans on guns in churches, at public gatherings, in banks, and in medical facilities are likely to succeed)

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Drug Users

- 18 U.S.C. § 922(g)(3) (no guns for users of unlawful controlled substances)
- G.S. 14-415.12 (no concealed carry permits for same)
- United States v. Connelly, __ F.4th __, 2024 WL 3963874 (5th Cir. Aug. 28, 2024). Federal law is unconstitutional under the Second Amendment as applied to a non-violent marijuana users.



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Felons

- Federal circuits split after Bruen and SCOTUS GVRd all the cases after Rahimi
- They'll be back, but the impact may be less in NC because of Britt v. State, 363 N.C. 546 (2009) and G.S. 14-415.4



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Limits on Types of Weapons

- Federal law generally prohibits private possession of machine guns, short-barreled rifles and shotguns, and silencers
- Various states prohibit private possession of assault weapons and high-capacity magazines
- Bianchi v. Brown, 113 F.4th 438 (Aug. 6, 2024) (en banc) (upholding the constitutionality of Maryland's assault weapons ban is constitutional)
- United States v. Morgan, 2024 WL 3936767 (D. Kan. Aug. 26, 2024) (ruling that the federal machine gun ban is unconstitutional)
- Hanson v. District of Columbia, __ F. 4th __, 2024 WL 459678 (D.C. Cir. Oct. 29, 2024) (denying PI in challenge to DC ban on magazines with capacity > 10 rounds)

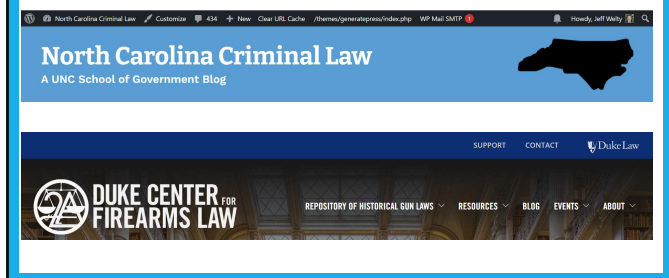
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Pending before the Supreme Court

- [Garland v. VanDerStok](#): Is "a weapon parts kit that . . . may readily be completed . . . [or] converted to expel a projectile by the action of an explosive . . . a 'firearm' regulated by the Gun Control Act of 1968"?
- [Smith and Wesson v. Mexico](#): Is Mexico's suit against American gun manufacturers foreclosed by the Protection of Lawful Commerce in Arms Act, or may it proceed on the theory that the manufacturers are aiding and abetting illegal firearms trafficking that facilitates drug cartel violence?

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Resources



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Historical Analogical Reasoning: Going beyond the Second Amendment?

- "[O]ur focus on history also comports with how we assess many other constitutional claims," such as those involving free speech, the Confrontation Clause claims, and the Establishment Clause. [Bruen](#), 597 U.S. at 25.

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