FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Court, Corrections & Justice
NM Highlands University
October 26, 2023

DANIEL A. IVEY-SOTO

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

MAINE:

Senseless shooting in Lewiston, Maine yesterday, leaving 18 dead and another 13 wounded.

As Rep. John Block said yesterday, a single dead child is a failure.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

DISCLAIMER:

THE VIEWS EXPRESSED IN THIS PRESENTATION ARE NOT MY OWN BUT ARE AN ANALYSIS OF THE COLLECTIVE VIEWS OF NINE PEOPLE WHO LIVE AND WORK IN WASHINGTON DC.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

BUT FIRST, A REMINDER…

Constitution of the State of New Mexico

Article II: Bill of Rights

Section 6: Right To Bear Arms.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

AND NOW TO FEDERAL CASES, BEGINNING WITH THE US CONSTITUTION:

The Constitution of the United States of America

Amendments To The Constitution

Amendment II: Right to Keep and Bear Arms

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

US Constitution, Amendment II: Right to Keep and Bear Arms

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

US Constitution, Amendment II: Right to Keep and Bear Arms

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

This is known as the prefatory clause

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

US Constitution, Amendment II: Right to Keep and Bear Arms

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

This is known as the operative clause

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The Amendment could be rephrased, "Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

The most natural reading of "keep Arms" in the Second Amendment is to "have weapons."

At the time of the founding, as now, to "bear" meant to "carry." And "bear arms" was not limited to the carrying of arms in a militia.

The Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed."

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

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

The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

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

The Due Process Clause of the 14th Amendment incorporates the 2nd Amendment right recognized in Heller.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

NY State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. ___ (2022)

"We hold, consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home."

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

In keeping with *Heller*, we hold that when 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.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

We reiterate that the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

If the last decade of Second Amendment litigation has taught this Court anything, it is that federal courts tasked with making such difficult empirical judgments regarding firearm regulations under the banner of "intermediate scrutiny" often defer to the determinations of legislatures. But while that judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate—it is not deference that the Constitution demands here.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Confining the right to "bear" arms to the home would make little sense given that self-defense is "the central component of the [Second Amendment] right itself." *Heller*, 554 U. S., at 599; see also *McDonald*, 561 U. S., at 767. After all, the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation," *Heller*, 554 U. S., at 592, and confrontation can surely take place outside the home.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

We the Patriots & Smith v. Gov. Michelle Lujan Grisham, et al.

Docket Number: 1:23-cv-00773-DHU-LF

Consolidated with:

No. 1:23-cv-00772-DHU-LF

No. 1:23-cv-00778-DHU-LF

No. 1:23-cv-00771-DHU-LF

No. 1:23-cv-00774-DHU-LF

No. 1:23-cv-00839-DHU-LF

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

QUESTION PRESENTED:

Whether Governor Lujan Grisham's Administration can issue a health order to restrict the carrying of any guns in Albuquerque and Bernalillo County in response to the killing of several children on the streets of Albuquerque.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

The Order:

1) Used a formula to define the area, based on census bureau and hospitalization rates,
2) Restricted all firearms, except at a firing range,
3) When driving to a firing range, all guns must be locked or disabled.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Judge David Urias issued a Temporary Restraining Order (TRO) against the Initial Public Health Order, and then scheduled a hearing to determine if a Preliminary Injunction (PI) should issue, as well.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Following the issuance of the TRO, a Revised Public Health Order was issued. The Revised Public Health Order:

1) Maintained the formula to describe ABQ and BernCo,
2) Restricted firearms of any kind only from playgrounds, parks, and places intended for children to play.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

At the PI Hearing, issues centered around:

1) Whether the formula used to describe ABQ & BernCo is vague,
2) Whether City of Albuquerque's Shooting Range Park is a park,
3) Whether "public areas provided for children to play in" is vague,
4) Whether a sensitive place is sensitive due to:
    a) The sensitivity of the people affected, OR
    b) The sensitivity of the governmental function taking place.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Following the PI Hearing, a Second Revised Public Health Order was issued and the Executive Order was extended to November 3. The Second Revised Public Health Order:

1) Dispensed with the formula to describe ABQ and BernCo,
2) Removed "public areas provided for children to play in."
3) I.E.: Restricted all guns in ABQ and BernCo at Playgrounds and Parks only, but not City of Albuquerque's Shooting Range Park.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Judge Urias denied the Preliminary Injunction based on the Second Amended Public Health Order. In his decision, Judge Urias established that the Bruen Court rejected the means-end inquiry that had previously been used by the Courts of Appeals in evaluating the constitutionality of gun restrictions, see id. at 2126-27, and instead adopted a new two-part test to determine whether a restriction passed constitutional scrutiny under the Second Amendment.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

In the first step, a court reviewing a restriction must determine whether the Second Amendment's plain text covers an individuals' conduct" – if it does, the Constitution presumptively protects that conduct. In the second step, the government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only if the government makes such a showing may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Miller v. Bonta, No. 19-cv-01537 BEN (JLB)

California Federal Court (San Diego)

October 19, 2023

Overturned California Assault Weapon Ban.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Bruen allows restrictions on firearms that are dangerous and unusual.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

ASSAULT WEAPONS

Per *Miller v. Bonta*, Americans today own 24.4 million modern rifles (i.e., AR-15 platform and AK-47 platform rifles), according to the State's expert. Of the AR-15 rifle owners surveyed, 61% said one reason they acquired their gun is for home defense. Consequently, while criminals already have these modern semiautomatics, the State prohibits its citizens from buying and possessing the same guns for self-defense. At the same time these firearms are commonly possessed by law-abiding gun owners elsewhere across the country.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

A recent large-scale survey estimates that guns are needed defensively approximately 1,670,000 times a year. That is a lot of situations where Jane Doe needs a firearm to defend herself and her family. That is where an AR-15 style semiautomatic rifle can come to the rescue. And although this Court focuses its analysis on rifles, California's ban also includes such common weapons as semiautomatic shotguns with removable magazines and semiautomatic handguns with threaded barrels.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

California's "assault weapon" ban takes away from its residents the choice of using an AR-15 type rifle for self-defense. Is it because modern rifles are used so frequently for crime? No. The United States Department of Justice reports that in the year 2021, in the entire country 447 people were killed with rifles (of all types). From this one can say that, based on a national population of 320 million people in the United States, rifles of any kind (including AR-15s) were used in homicides only 0.0000014% of the time.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Put differently, if 447 rifles were used to commit 447 homicides and every rifle-related homicide involved an AR-15, it would mean that of the approximately 24,400,000 AR-15s in the national stock, less than .00001832% were used in homicides. It begs the question: what were the other AR-15 type rifles used for? The only logical answer is that 24,399,553 (or 99.999985%) of AR-15s were used for lawful purposes.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

The State's ban on modern semi-automatics has no historical pedigree. Prior to the 1990's, there was no national history of banning weapons because they were equipped with furniture like pistol grips, collapsible stocks, flash hiders, flare launchers, or threaded barrels. In fact, prior to California's 1989 ban, so-called "assault weapons" were lawfully manufactured, acquired, and possessed throughout the United States.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Before the *Bruen* decision, the State had unpersuasively argued that its laws are analogous to a handful of state machinegun firing-capacity regulations from the 1920s and 1930s and one District of Columbia law from 1932—a law that the Supreme Court ignored while dismantling the District of Columbia's handgun ban in Heller. While that argument remains unpersuasive today, Bruen invites a look farther back into the Nation's history.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

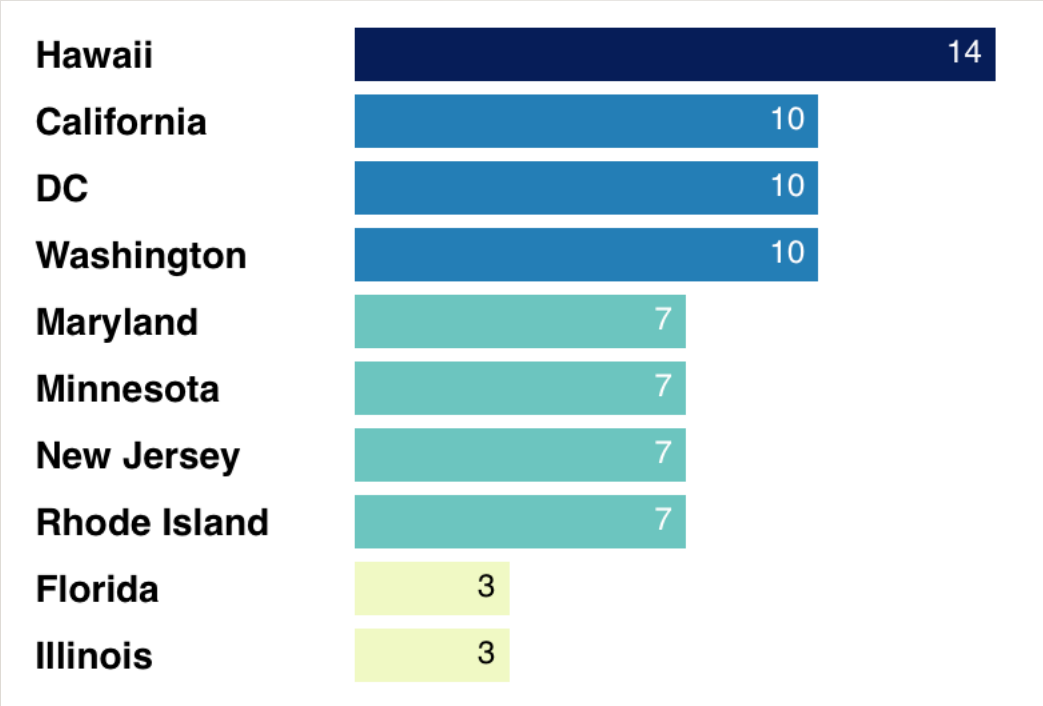
W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943).

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

The question remains, in an age where weapons run the gamut from fighter jets to tanks and anti-aircraft missiles down to AR-15s to handguns to pocketknives, which weapons are protected by the Second Amendment and which are not? We can't rely on governments to decide—that's who the Second Amendment was intended to protect against. But as Heller discusses, we can look to what weapons law-abiding citizens have chosen to defend themselves—that is, what weapons are currently 'in common use for lawful purposes.' It is the common firearms, in this case semiautomatic rifles, shotguns, and pistols, chosen for whatever the lawful reason, that are protected by the Second Amendment.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

WAITING PERIODS



FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

WAITING PERIODS

According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) from 2017, the time between when a firearm used in a crime was sold at retail, and used in the crime, is an average of 9.3 years.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

WAITING PERIODS

The average gun owning American has 5 firearms.

In the US there are 120 firearms per 100 citizens.

That equals 393 Million firearms in civilian hands.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

WAITING PERIODS

Important analyses on waiting periods is:

1) At what point is a regulation an effective prohibition?
2) What does a waiting period accomplish for a person who already owns at least one gun?

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

AGE RESTRICTIONS

After the shooting at Marjorie Stoneman Douglas High School, Florida imposed an age restriction for the purchase of all firearms of 21 years of age or older.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

NRA & Radford Fant v. Bondi, No. 21-12314

11th Circuit Court of Appeals

Three judge panel in March 2023 upheld the age requirement for purchases of any firearms, relying on Reconstruction Era statutes that restricted young adults from purchasing handguns but not long guns.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

NRA & Radford Fant v. Bondi, No. 21-12314

11th Circuit Court of Appeals

In July, 2023, the entire 11th Circuit vacated the three-judge decision and decided to rehear the case *en banc*.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

At issue is whether the panel held incorrectly that "historical sources from the Reconstruction Era [are] more probative of the Second Amendment's scope than those from the Founding Era." This holding is contrary to the Supreme Court's decisions in *Bruen*, *Heller*, *McDonald*, and *Caetano* as well as this Court's *GeorgiaCarry* precedent, each of which, as demonstrated below, make clear that sources from the Founding Era are more probative than those from the Reconstruction Era when determining whether a state law violates the Second Amendment.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

This is especially true when, like here, the Reconstruction Era sources are contradictory to the Founding Era sources, which do not reveal any restriction on firearm purchase by young adults.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

In Second Amendment claims, the scope of the right is the dispositive issue: defendants must "show that the pre-existing right codified in the Second Amendment, and made applicable to the States through the Fourteenth, does not protect petitioners' proposed course of conduct." In that regard, the Supreme Court has "generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791."

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

AGE RESTRICTIONS:

Worth, et al v. Harrington, Case No. 21-cv-1348 (KMM/LIB)

Minnesota Federal Court

Challenge to Minnesota's ban on carry permits for those 18 through 20 years of age. The law was overturned. The opinion sets out four main reasons.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

First, "the people" includes "all Americans who are a part of the national community," which includes persons eighteen and older. That phraseology originated in the Supreme Court case of *U.S. v. Verdugo-Urquidez* (1990), which equated the meaning of "the people" in the First, Second and Fourth Amendments. *Worth* agreed with the textual analysis in *Firearms Pol'y Coal. v. McCraw* (N.D. Tex. 2022), which invalidated the Texas law requiring permit holders to be at least 21.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Second, neither the Second Amendment nor any other provision in the Bill of Rights sets an age limit. But the Founders knew how to set age limits when intended – the Constitution requires minimum ages for eligibility to be a Representative, Senator, or the President.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Third, "the people" as used elsewhere in the Bill of Rights includes persons eighteen and over. The First and Fourth Amendments are not interpreted to exclude 18-to-20-year-olds.

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

Fourth, Founding-era militia laws in every colony and early state, and in the federal Militia Act of 1792, required males 18 and over to provide their own arms and to enroll in the militia. "And the fact that the Second Amendment itself discusses the 'well regulated militia' means the age-range of militia laws is of particular relevance to the reach of its protections."

FIREARMS RULINGS ON MAGAZINES AND ASSAULT WEAPONS — WAITING PERIODS — AGE RESTRICTIONS

United States v. Rahimi

Docket Number: 22-915

On Certiorari from the 5th Circuit

FEDERAL COURTS' JURISPRUDENCE ON SECOND AMENDMENT IN 2023, PART 2

QUESTION PRESENTED:

Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violates the Second Amendment on its face.

FEDERAL COURTS' JURISPRUDENCE ON SECOND AMENDMENT IN 2023, PART 2

QUESTION PRESENTED:

Whether 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violates the Second Amendment on its face.

FEDERAL COURTS' JURISPRUDENCE ON SECOND AMENDMENT IN 2023, PART 2

FACTS IN BRIEF:

Zackey Rahimi was issued a civil restraining order by a Texas state court on February 5, 2020, after his ex-girlfriend accused him of assaulting her; the order barred him from engaging in certain harassment-related behaviors towards his ex-girlfriend or her child, as well as owning firearms. Suspecting Rahimi of an unrelated crime, officers executed a search warrant at his home, discovering a rifle and a pistol he admitted to possessing.

FEDERAL COURTS' JURISPRUDENCE ON SECOND AMENDMENT IN 2023, PART 2

FIFTH CIRCUIT REVISED OPINION:

The Fifth circuit rejected the government's argument that Second Amendment applies only to "law abiding, respectable citizens", citing to Justice Amy Coney when she served as a judge on the United States Court of Appeals for the Seventh Circuit. Justice Barrett then argued, "Founding era legislatures did not strip felons of the right to bear arms simply because of their status as felons", or impose any "virtue-based restrictions" on that right.

FEDERAL COURTS' JURISPRUDENCE ON SECOND AMENDMENT IN 2023, PART 2

FIFTH CIRCUIT CONCURRENCES:

Concurrence argued that "civil protective orders are too often misused as a tactical device in divorce proceedings – and issued without any actual threat of danger". Then went further and argued that Section 922(g)(8) could even put victims of domestic violence "in greater danger than before", because they would be unable to defend themselves against their abusers with guns, if a judge had issued a "mutual" protective order.

FEDERAL COURTS' JURISPRUDENCE ON SECOND AMENDMENT IN 2023, PART 2

DISCUSSION