

Gun Law, NM Legislation, and Recent Developments

Presentation to the Courts, Corrections & Justice Committee

Wednesday, July 30, 2025

Gun Law Update

- Overview:
 - *Heller*
 - Application of *Heller* to the states
 - *Bruen* and the “historical analogue” test
 - *Rahimi*
- Other Litigation
 - Assault Weapons Bans
 - 18-20 year olds
- New Mexico Legislation

Gun Law Update

- Firearms Law is largely driven by “judge-made law.”
 - Supreme Court and lower court interpretations of Second Amendment.
 - *Because the cases rely on interpreting the Second Amendment, they set “boundaries” on legislation.*
 - Legislation cannot exceed the boundaries set out by the Courts.
- Federal Court structure is District Court (all or part of a state) → Circuit Court (overseeing multiple district courts) → Supreme Court.
- Circuit Court opinions are binding on all of the District Courts in that circuit.
- The Supreme Court chooses which appeals it will hear.

DC vs. Heller

- *District of Columbia v. Heller*, 554 U.S. 570 (2008) was a watershed moment in Second Amendment jurisprudence
 - Struck down DC handgun ban
 - First Supreme Court case dealing with the 2nd Amendment since 1939.
 - Supreme Court, for the first time, held that the Second Amendment confers “an individual right to keep and bear arms.”
 - The Court also held that this right was “not unlimited”
 - Did not include prohibitions on “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.”
 - Regulation of “dangerous *and* unusual” weapons permitted.

Overview: Post *Heller*-Second Amendment and the states

- DC is not a state so there was an open question, following *Heller*, as to whether the Second Amendment applied to the states.
- This question was resolved in *McDonald v. City of Chicago*, 561 U.S. 742 (2010):
 - Seventh Circuit refused to strike down Chicago laws banning handgun possession, concluding that while *Heller* applied to the federal government (and therefore DC) it was not clear that the Second Amendment applied to the states.
 - Supreme Court was unequivocal: “[W]e hold that the Second Amendment right is fully applicable to the States.”

Bruen and the “historical analogue” test

- *New York State Rifle & Pistol Association Inc. v. Bruen*, 597 U.S. 1 (2021)
 - 13 years after *Heller*. Many conflicting decisions across circuits and districts.
 - “[W]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.
 - Keep and Bear Arms.
 - Does not prevent, for example: safety regulations on the manufacturing of firearms.
 - To justify a regulation, the government may not simply claim 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.**”
 - Termed the Historical Analogue test, requires statute find analogous historical regulations.

Bruen and the “historical analogue” test

(continued)

Framework under *Bruen*

- Does “the Second Amendment’s plain text cover[] an individual’s conduct?”
- If yes, then the individual’s conduct is “presumptively protect[ed]” and the burden is on the State to justify the law.
- In considering the State’s attempt to justify a law, courts must consider at whether the law is consistent with our historical tradition of gun regulation.

Post-*Bruen* litigation and *Rahimi*

- 18 USC §922(g) prohibits specific categories of people from possessing firearms, including people who are subject to domestic violence restraining orders.
- Before *Rahimi*, every federal court that had been asked to consider the constitutionality of 922(g) since *Bruen* had upheld it.
- *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), the Circuit Court held that prohibiting people subject to Domestic Violence Restraining Orders was unconstitutional under the *Bruen* test.

Rahimi and the clarification of *Bruen*

- In *United States v. Rahimi*, 602 U.S. ___, 144 S. Ct. 1889 (June 21, 2024), the Supreme Court decided to hear the appeal of the 5th Circuit opinion.
- Supreme Court overturned the 5th Circuit.
- Cited “surety laws” and “Going Armed” restrictions in early America as the historical analogue.

After *Rahimi - Snope v. Brown* and Assault Weapons Bans

- In 2013, Maryland passed a law banning many semiautomatic rifles, including the AR-15.
- The Maryland legislature enacted the law in the wake of the 2012 Sandy Hook Elementary School shooting in Connecticut, where 26 people, including 20 first graders, were killed.
- The AR-15 is one of the most popular firearms in the United States. “Tens of millions” of Americans own one. They are legal in 41 states, but currently banned in nine states and D.C.
- Challengers argued Maryland law violated the Second Amendment.

Snipe v. Brown and Assault Weapons Bans

- Fourth Circuit upheld the ban, holding that AR-15s and other similar rifles are not “arms” under the Second Amendment.
- Supreme Court did not hear the appeal from the Fourth Circuit.
- In order for the Supreme Court to hear a case four justices must vote to do so.
- 6 justices did not vote to hear the appeal, but one wrote an unusual explanation. Justice Thomas also wrote a dissent.
 - Justice Kavanaugh wrote “[a]dditional petitions for certiorari will likely be before this Court shortly and, in my view, this Court should and presumably will address the AR–15 issue soon, in the next Term or two.”
- Justices Thomas, Alito, and Gorsuch wanted to hear the case.

Snope v. Brown and Assault Weapons Bans

- If Kavanaugh had voted to hear the case, the Court would have been required to consider it (because there were three additional votes to hear the matter).
- Because of that fact, Kavanaugh's claim that the Court will hear the issue in the next "Term or two" is likely true. Kavanaugh cited many cases in several circuits that may be heard.
- Four votes is enough to hear a case, but not enough to win.
- As it stands now, the Fourth Circuit decision is good law. Maryland's assault weapons ban stands—at least until the Supreme Court grants cert in one of the other cases listed in Kavanaugh's statement.

Snope v. Brown and Assault Weapons Bans

- Thomas's dissent makes it abundantly clear that he will vote to strike down assault weapons bans.
- Justices Kagan, Sotomayer, and Brown Jackson have made their belief that *Bruen* was wrongly decided abundantly clear.
- Chief Justice Roberts and Barrett (and Kavanaugh) voted to support Thomas's opinion in *Bruen*, but voted against hearing *Snope*.

Assault Weapons Bans – DOJ switches sides

- On June 13, 2025 the DOJ filed an amicus brief in *Barnett v. Raoul* (7th Cir.), arguing that Illinois’ ban on assault weapons and magazines holding more than 10 rounds violates the Second Amendment.
 - Argues that AR15s are “arms” under the Second Amendment – contrary to Fourth Cir. decision in *Worth*.
 - Argues AR15s are in common use for defense.
 - Argues that 2nd Amend. includes “militaristic arms.”
 - Amicus or “friend of the Court” brief: means the DOJ presented itself to the Court as an ideological friend to the side seeking to strike the Illinois ban.
- Additional ruling that Kavanaugh sought?
 - Likely a more friendly record for appeal by plaintiffs. DOJ did not support the plaintiffs in *Worth*.

Other Issues

Worth v. Jacobson and 18-20 year olds

- Minnesota only granted concealed carry permits to 21+
- Three 18+ (under 21) Minnesotans and two nonprofit organizations filed suit.
- District Court found restriction of legal adults (under 21) was unconstitutional under *Bruen* analysis.
- Eighth Circuit upheld decision.
- Supreme Court denied cert (will not hear) – no written dissents (April 21, 2025).
- Other cases indicate limitations on 18-20 year olds in question.
 - *Reese v. ATF*, Fifth Circuit held federal law prohibiting sales of handguns to 18-to-20-year-olds—violate the Second Amendment. DOJ has withdrawn appeal. The Fourth, Tenth, and Eleventh Circuits have upheld restrictions for adults under 21, while the Third, Fifth, and now Eighth Circuits have held similar restrictions unconstitutional.

NM Gun Legislation

- Orders of Protection and Firearms. (SB328 – 2019) *chaptered*
 - Rahimi is directly applicable. Law is Constitutional.
- Firearm [Private] Sales Background Checks (SB8 – 2019) *chaptered*
- Extreme Risk Firearm Protection Orders (SB5 – 2020) *chaptered*
 - Rahimi is likely applicable.
 - Updated in 2025 Session to explicitly allow law enforcement to file for Orders.
- Firearms Sales Waiting Period (SB427 – 2023) *chaptered*
 - *Challenged in District Court. District Court upheld.*
- Firearms Near Polling Places (SB5 – 2024)
- Firearms in Unfair Practices Act (SB428 – 2025, filed previously)
- Gas Operated Semiautomatic Rifle Ban (SB279 – 2025, filed previously)

NM Gun Legislation

- Gas Operated Semiautomatic Firearms Ban (SB279 – 2025, filed previously)
 - After amendment includes all firearms over 8.5 inches in length with detachable magazines that utilize semiautomatic firing mechanism. Does not include pistols that are smaller than 8.5”
 - Differs from other states’ assault weapons bans. Other bans rely on description.
 - Patterned after Sen. Heinrich’s proposed federal legislation.
 - Passed SJC, API in SFC.
 - *Snopes* offers mixed/unclear legal landscape.

NM Gun Legislation

- Firearms in Unfair Practices Act (SB428 – 2025, filed previously)
- Permits lawsuits against sellers and third-party facilitators of illegal guns, illegal parts.
- PLCAA (Protect Lawful Commerce in Arms Act) – passed in 2005 by Congress to immediately end lawsuits filed by cities and states against gun manufacturers.
 - Allows suits only under specific exceptions, one of which is the sale and advertising of illegal weapons/parts.
 - Fed. Statute requires that any law must be specific. General statutes not sufficient.
 - Only sales that violates state or federal law—sellers cannot be liable for bad acts of gun buyers.
 - Cannot “bootstrap” common law standards into a valid state law.
- SB428 tracked decisions that allowed and that limited suits under other states’ statutes.

Final Thoughts

- State statutes may not regulate “weapons in common use,” but they may regulate “dangerous and unusual weapons.” All legislation is judged by the “historical analogue” test. Assault weapons ban in Maryland stands, but Supreme Court seems likely to hear similar ban in the next year or two.
- NM law presently limits the possession of handgun to people 19+ and concealed carry permits to people 21+.