

WAITING PERIODS IN THE COURTS

REVIEWING ONGOING LITIGATION AND FINDING A VERY MURKY RESULT.

--BRANDON CUMMINGS, 8/25/2025

STATES WITH WAITING PERIODS FOR FIREARMS PURCHASES

- California – 10 days
- Colorado – 3 days
- District of Columbia – 10 days
- Florida – 3 days or the time it takes to complete required background checks, whichever occurs later
- Hawaii – 14 days
- Illinois – 72 hours
- Maine – 72 hours
- New Mexico – 7 days
- Rhode Island – 7 days
- Vermont – 72 hours
- Washington – 10 business days

RICHARDS, ET AL. V. BONTA, ET AL. – CHALLENGING CALIFORNIA’S WAITING PERIOD LAW.

- Case is **pending** in **U.S. District Court for the Southern District of California.**
- Challenging California’s ten day waiting period.
- Cross Motions for Summary Judgment filed.
 - What is Summary Judgment?
- Stayed pending Ninth Circuit *en banc* review in *Yukutake v. Lopez*.
- Original opinion in *Yukutake* appeared to support arguments by challengers to the California statute.

WHAT IS *EN BANC* REHEARING?

- *En banc* rehearing is a procedure in which all the judges of a Circuit Court hear a case together, rather than a smaller panel of judges, typically three.
 - The Ninth Circuit is simply too big to convene *all* of its judges on any one case so *en banc* is a large number instead.
- Generally reserved for cases of exceptional public importance, where there is a conflict with a prior decision of the court, or when the court seeks to maintain uniformity of decisions within its circuit.
- Considered an extraordinary measure and is not favored.
- Hears the case anew. The prior three judge decision has no precedential power over the *en banc* decision.

YUKUTAKE V. LOPEZ – CHALLENGING HAWAII’S “EXPIRATION OF ACQUISITION PERIOD”

- **Ninth Circuit reviewing a decision from the U.S. District Court for the District of Hawaii**
- “Acquisition Period” limitation.
- California district court likely looking at this case as guidance for whether Ninth Circuit believes waiting period must be analyzed under Bruen’s historical analogue test.
 - 3 judge panel held that 30 day purchase limitation violated Second Amendment.
 - “permitting system must be guided by narrow, objective and definite standards and not employ abusive features, such as lengthy wait times[...].”
 - 30 day window in which to buy was “abusive.”
- En banc rehearing granted and pending.

McROREY V. GARLAND – BACKGROUND CHECKS UNDER FEDERAL LAW FOR 18-20 Y/OS INCLUDING A WAITING PERIOD.

- **Fifth Circuit reviewing a case from the U.S. District Court for the Northern District of Texas.**
- Bipartisan Safer Communities Act of 2022 expanded background checks for gun buyers over 18 but under 21, which included a minimum 10-day waiting period.
- Both district and circuit courts held that the right to “keep and bear” *only* implicated when delay amounts to *de facto* prohibition.
- 10 day waiting period did not amount to *de facto* limitation. Issue did not need to be analyzed under Bruen’s historical analogue test.
- Decision April 26, 2024. *En banc* denied, no petition to U.S. Supreme Court filed.

***BECKWITH V. FREY* – CHALLENGING MAINE’S WAITING PERIOD**

- February 13, 2025, the federal district court for the District of Maine, granted a preliminary injunction of the law after finding that it could not pass muster under Bruen’s historical test.
 - Historical analogue necessary because purchase *always* implicates “keep and bear.”
 - Contrary to Fifth Circuit.
 - In line with Tenth Circuit.
- District court refused to pause injunction (waiting period remains unenforceable).
- Request to reverse preliminary injunction argued in First Circuit Court on July 28, 2025 – no decision yet.

TOUCHING ON COLORADO

- Tenth circuit includes both New Mexico and Colorado.
- Colorado's 3 day waiting period is presently being challenged.
- Tenth Circuit limited its holding to New Mexico.
- Likely that 3 judge panel would find the same way as decision on NM law, but not guaranteed.
- Could be basis for the grant of *en banc* rehearing (no guarantee).

SUMMARY

California, Ninth Circuit, Fifth Circuit, Maine, Tenth Circuit and Colorado...

TAKE-AWAY?

Strong historical analogue is a clear(er) path. Everything else very murky.