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Repository of Historical Gun Laws



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Historical Gun Laws

Welcome to the Repository of Historical Gun Laws, a searchable database of gun laws from the medieval age to 1776 in England and from the colonial era to the middle of the twentieth century in the United States.

This Repository is intended as a resource for scholars and practitioners interested in historical laws concerning firearms and other similar weapons. Although the Repository seeks to be substantial, it is not comprehensive. **The absence of a certain type of law in the Repository does not necessarily mean that such a law did not exist.** Conscientious users of this Repository should supplement their results with further legal and historical research.

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Historical Gun Laws

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1864-1865 N.M. Laws 406-08, An Act Prohibiting the Carrying of Weapons Concealed or Otherwise, ch. 61, § 25.

YEAR: 1864

TAGS: TERRITORIAL LAWS

CATEGORY: Carrying Weapons

JURISDICTION: State

"That from and after the passage of this act, it shall be unlawful for any person to carry concealed weapons on their persons, or any class of pistols whatever, bowie knife (cuchillo de cinto), Arkansas toothpick, Spanish dagger, slungshot, or any other deadly weapon, of whatever class or description that may be, no matter by what name they may be known or called, under the penalties and punishment which shall hereinafter be described."

Overview

- Foundations of Modern Second Amendment Law
 - *Miller & Heller*
- The Two-Part Framework after *Heller*
- *Bruen*'s Historical-Analogical Method
 - Establishing the historical record
 - Reasoning by analogy
- *Rahimi*'s Turn to "Principles"
- *Hemani* and Categorical Prohibitions
- *Wolford* and "Plain Text"

Second Amendment

*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.*

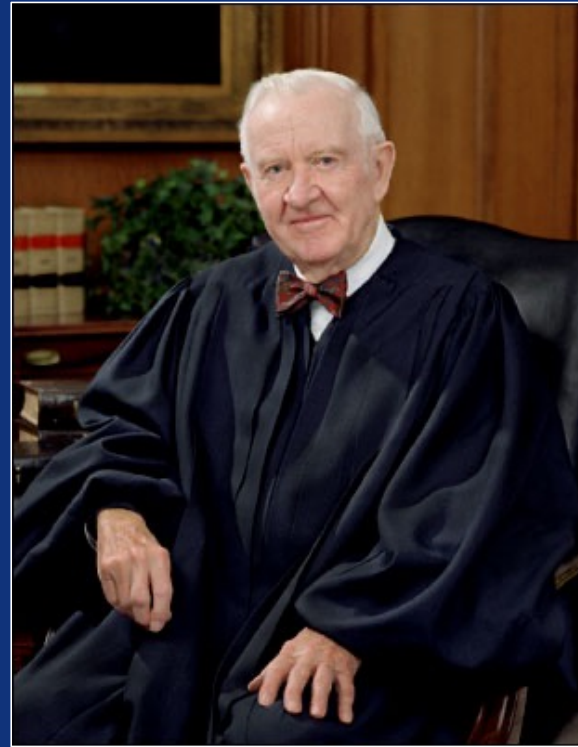


United States v. Miller (1939)



Sawed-off shotgun had no “reasonable relationship to the preservation or efficiency of a well-regulated militia, and the weapon was not “any part of the ordinary military equipment”

District of Columbia v. Heller (2008)



Limits on the Right

“[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, or laws imposing conditions and qualifications on the commercial sale of arms.”

District of Columbia v. Heller, 554 U.S. 570, 626–27 (2008)

“... a variety of tools ...”

“We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.”

The Court recognized that “gun violence is a serious problem” and that the Constitution preserves “a variety of tools for combatting that problem.” *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008).



But *which* tools? And *why*?

Limits on the Right

“We . . . recognize another important limitation on the right to keep and carry arms. *Miller* said, as we have explained, that the sorts of weapons protected were those ‘in common use at the time.’ We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’”

District of Columbia v. Heller, 554 U.S. 570, 626–27 (2008)

N.Y. State Rifle & Pistol Ass'n v. Bruen (2022)

Substantive holding:

- N.Y. concealed carry permitting law requiring applicants to “demonstrate a special need for self-protection distinguishable from that of the general community” violated the Second Amendment.
- The Second Amendment right to keep and bear arms in self-defense extends beyond the home and into public spaces.

Bruen: The Methodology

“[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.”

NYSRPA v. Bruen, 597 U.S. 1, 17 (2022)

Relevant Similarity Under *Bruen*

“While we do not now provide an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment, we do think that *Heller* and *McDonald* point toward at least two metrics: how and why the regulations burden a law-abiding citizen's right to armed self-defense.”

NYSRPA v. Bruen, 597 U.S. 1, 29 (2022)



Are These
Relevantly Similar?

How Similar?

“[E]ven if a modern-day regulation is **not a dead ringer** for historical precursors, it still may be analogous enough to pass constitutional muster. For example, courts can use analogies to ‘longstanding’ ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings’ to determine whether modern regulations are constitutionally permissible.”

NYSRPA v. Bruen, 597 U.S. 1, 30 (2022)

Cautionary Concurrences

“Properly interpreted, the Second Amendment allows a ‘variety’ of gun regulations.”

NYSRPA v. Bruen, 597 U.S. 1, 80 (2022) (Kavanaugh, J., concurring)



Justice Kavanaugh also reiterated *Heller*’s “presumptively lawful” language.

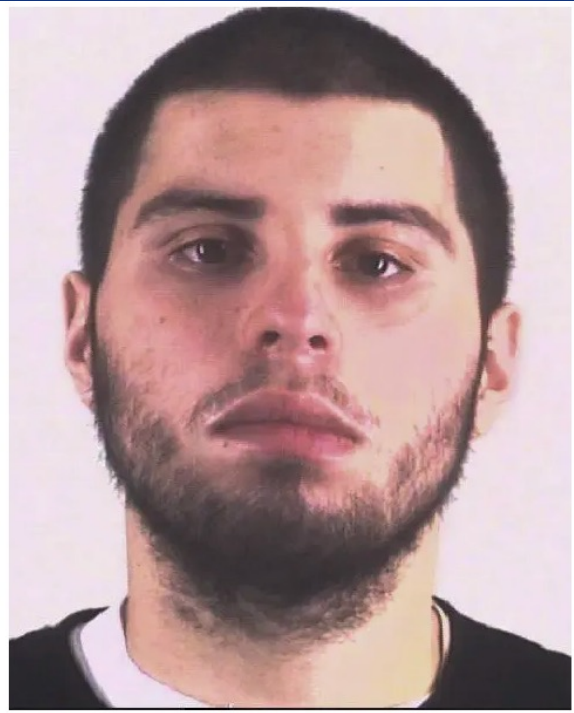
Cautionary Concurrences

“Our holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun. Nor does it decide anything about the kinds of weapons that people may possess. Nor have we disturbed anything that we said in *Heller* or *McDonald v. Chicago* about restrictions that may be imposed on the possession or carrying of guns.”

Bruen, 597 U.S. at 72 (Alito, J., concurring)



United States v. Rahimi (2024)



Prosecuted under 18 U.S.C. § 922(g)(8), which prohibits persons subject to domestic violence restraining orders from possessing a firearm.

Rahimi: The Law

What does § 922(g)(8) require?

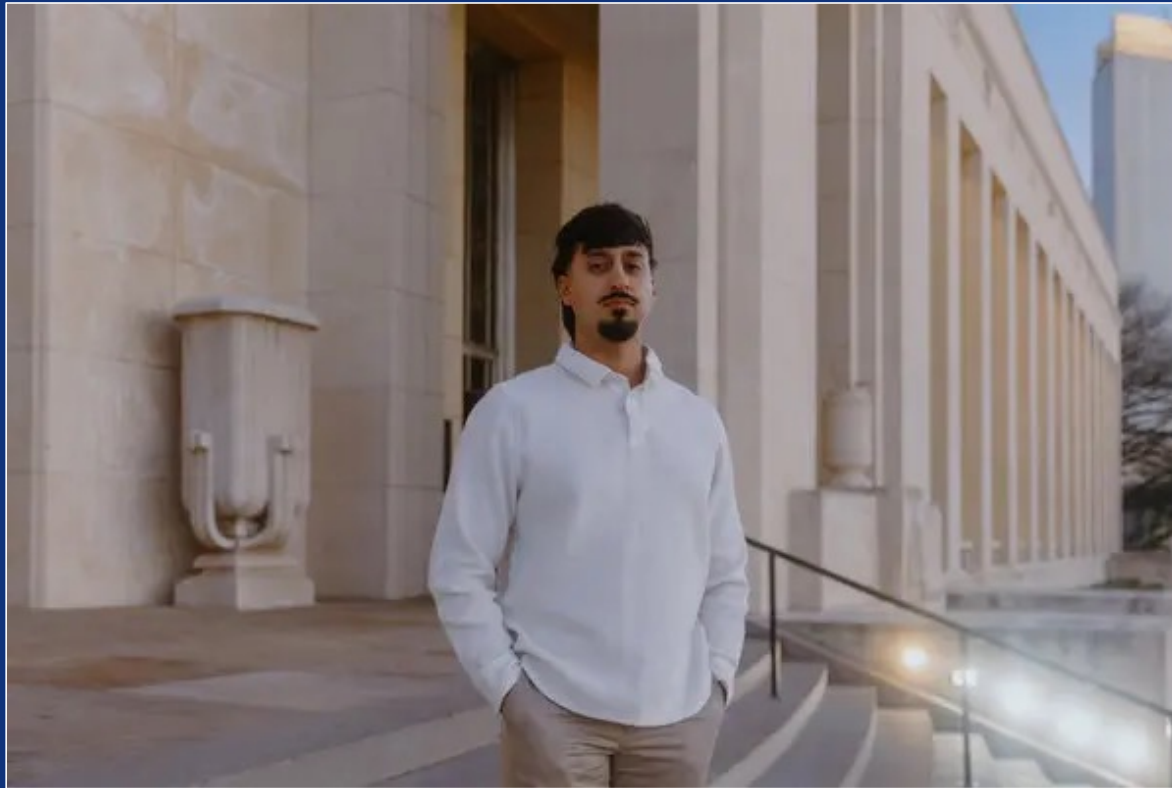
1. Protective order was issued following a court hearing,
2. Subject of order had notice of the hearing and had the opportunity to participate, and
3. The presiding court issues a finding that such person represents a credible threat to the physical safety of such intimate partner or child

Rahimi's Turn to “Principles”



- Modern gun laws must be “consistent with *the principles that underpin* our regulatory tradition”
- “[O]ur tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others.”

United States v. Hemani (2026)



Wolford v. Lopez (2026)



STEP ONE: “Subsidiary Questions” *for* Plain Text

- (1) Does the law apply to “the people,” which means “all members of the political community”?
- (2) Does it concern an “Arm,” meaning “any weapon customarily used for offensive or defensive purposes”?
- (3) Does the law place “any restriction” on the ability to “keep” (i.e., possess) or “bear” (i.e., carry) arms



These questions are apparently to be answered without reference to history.

STEP TWO:

“Three Important Inquiries” *for* Historical Analysis

- (1) “the number of jurisdictions in which they were adopted”
- (2) “the extent to which they were well-accepted”
- (3) whether the analogues are “relevantly similar”

Summary: SCOTUS Decisions

Law	Constitutional?	Case / Notes
Total ban on handguns	No	<i>Heller</i> (2008) <i>McDonald</i> (2010)
Ban on stun guns	No	<i>Caetano</i> (2016)
“May issue” licensing regime	No	<i>Bruen</i> (2022)
Ban on possession by persons who are subject to domestic violence restraining order	Yes	<i>Rahimi</i> (2024)
Ban on possession by “unlawful drug users”	No, but only as-applied to Hemani	<i>Hemani</i> (2026)
Swapping the default presumption from presumptive permission to carry, to presumptive denial of permission to carry onto private property of another, absent owner’s consent	No	<i>Wolford</i> (2026)

Presumptively Lawful Regulations

- Bans on possession by felons and the mentally ill
- Bans on carrying in “sensitive places” like schools and government buildings
- Conditions on the commercial sale of arms, like licensing requirements and background checks

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Ban on AR-15s and other assault rifles	??	<i>Viramontes</i> (2027)



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Appendix

What is PLCAA?

- Protecting Lawful Commerce in Arms Act (2005)
- Federal law that insulates arms manufacturers, dealers, distributors etc. from liability in federal or state court when a third party acquires a firearm from that distribution chain and uses it for criminal ends.

PLCAA: Predicate Exception

Predicate Exception: entities subject to civil liability if

1. they knowingly violated a federal or state statute regulating the sale or marketing of firearms, and
2. the defendant's violation was a proximate cause of the plaintiff's injuries.

See 15 U.S.C. § 7901

PLCAA: Predicate Exception

How have other states been using the predicate exception?

New Jersey: Statewide Affirmative Firearms Enforcement (SAFE) Office brings civil enforcement actions against dealers under state public nuisance laws.

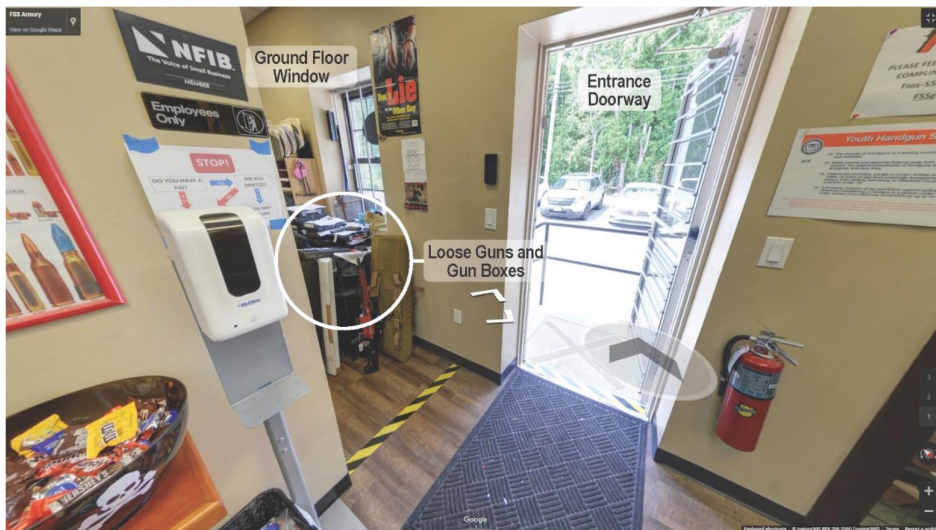
New Jersey can sue gun companies under public nuisance law, federal appeals panel rules

Judge Zahid N. Quraishi had temporarily blocked the law from taking effect earlier this year.

New Jersey Enforcement Actions

1. FSS Armory, a state-licensed gun dealer, stored stacks of guns within easy reach of a ground-floor window adjacent to its sales floor and glass-doored entrance. It did not secure either the window or the guns. FSS Armory showcased these unlawful and reckless practices, posting images of the unsecured weapons and window to the homepage of its website and to the store's Google Maps business listing. *See Screenshots A and B below.*

Screenshot A: Entrance doorway, ground floor window, loose guns, and gun boxes



Screenshot B: Close-up view of window, guns, and gun boxes



New Jersey Enforcement Actions

9. Effective July 5, 2022, the New Jersey Legislature empowered the Attorney General to bring a civil case against any gun industry member whose misconduct creates, maintains, or contributes to a public nuisance within the state. See N.J.S.A. 2C:58-35(a)(1). The Attorney General may also sue gun industry members who fail to implement and enforce reasonable safeguards and business practices to, in particular, prevent loss or theft of products and ensure compliance with New Jersey law. See N.J.S.A. 2C:58-35(a)(2).

11. By failing to safeguard its guns as required by law, and by advertising that failure on the internet, FSS Armory facilitated criminals' theft of twenty of those guns. FSS Armory thereby contributed to and perpetuated the public nuisance of illegal guns plaguing the State of New Jersey. Until all of those guns are recovered, the State must bear the cost of fielding multi-agency police responses and large-scale investigations—sometimes in collaboration with other jurisdictions—to identify perpetrators and locate missing gun inventory.

How have other states been using the predicate exception?

Illinois

Prohibits any firearm industry member from:

- Knowingly creating or contributing to a condition that endangers public safety
- Otherwise engaging in unfair methods of competition or unfair or deceptive acts or practices

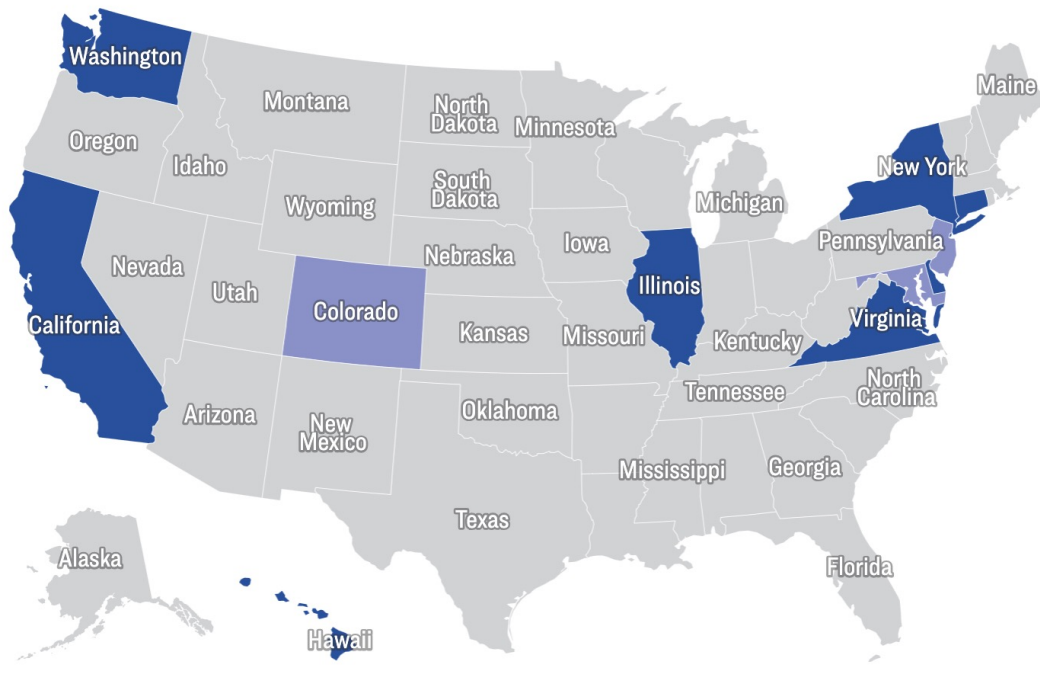
Requires industry actors to impose reasonable controls include practices that are designed to:

- Prevent the sale or distribution of a firearm-related product to a straw purchaser, a person prohibited by law from possessing a firearm, or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm themselves or another individual or of possessing or using a firearm-related product unlawfully;
- Prevent the loss or theft of a firearm-related product from the firearm industry member

State Industry Accountability Laws

Eight states have strong gun industry accountability laws, three have partial laws, and 39 have no industry accountability laws at all.

■ Strong Law ■ Partial Law ■ No Law



Source: GIFFORDS Law Center • [Get the data](#) • [Download image](#)

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TO PREVENT GUN VIOLENCE

PLCAA: Other Exceptions

Suits against / for:

1. Someone convicted of “knowingly transfer[ing] a firearm, knowing that such firearm will be used to commit a crime of violence” by someone directly harmed by such unlawful conduct;
2. Seller (or importer) for negligent entrustment or negligence per se;
3. Breach of contract or warranty;
4. Death, physical injuries, or property damage resulting directly from a defect in design or manufacture of the product; and
5. Enforcement actions under the NFA or GCA brought by the AG.

Post-*Heller* Challenges

Success Rate and Challenges by Year

	Opinion year									Total
	2008	2009	2010	2011	2012	2013	2014	2015	2016	
Successful Challenges	0	4	7	12	14	13	36	22	0	108
	0%	4%	5%	7%	9%	9%	19%	15%	0%	9%
Total Challenges	70	114	143	178	161	144	193	145	5	1153

The Two-Part Framework

“A two-step inquiry has emerged as the prevailing approach: the [first step](#) is to determine . . . whether the law regulates conduct that falls within the scope of the Second Amendment’s guarantee; the [second step](#) is to determine whether to apply intermediate or strict scrutiny to the law, and then to determine whether the law survives the proper level of scrutiny.”

NRA v. ATF, 700 F.3d 185, 194 (5th Cir. 2012)

Does the law burden conduct covered by the
Second Amendment?

NO

Examples: felons, concealed carrying

Challenge Fails

*Possible exception for as-
applied challenges

YES (or Uncertain)

Examples: public carry

Does the law survive the applicable level of scrutiny?

YES

Challenge Fails

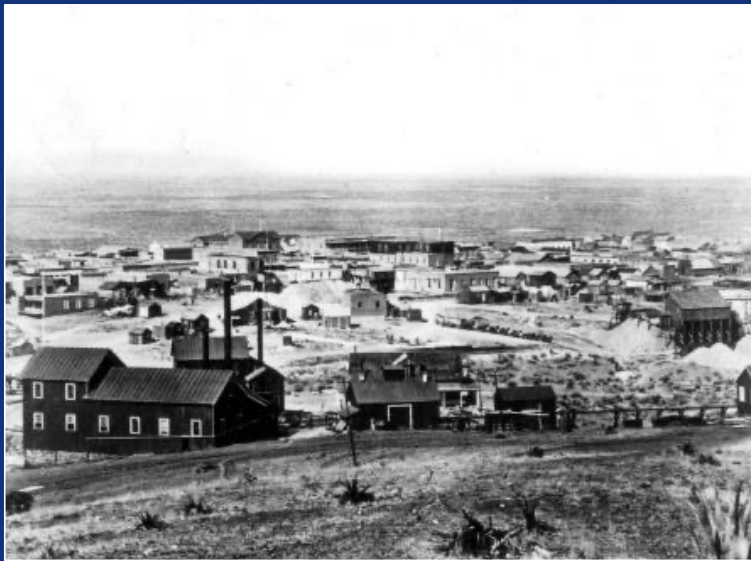
Example: “good cause” public
carry requirements (pre-*Bruen*)

NO

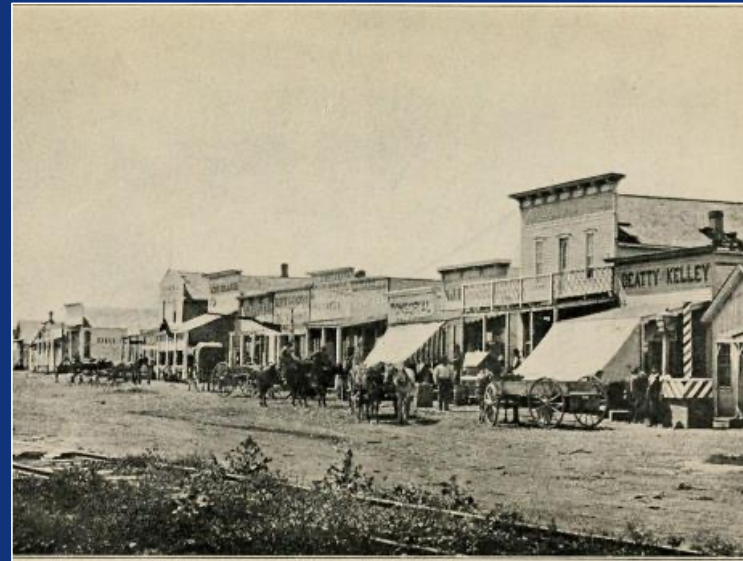
Challenge Succeeds

Example:
public carry bans

History: Guns in the Not-So-Wild West



Tombstone, Arizona, ca. 1881



Dodge City, KS, ca. 1878

History: Guns in the Not-So-Wild West



📍 Dodge City, KS

Assault Weapons

Chicago Tribune

Crime and Public Safety | Supreme Court to hear Cook County assault...



Supreme Court to hear Cook County assault weapons ban case, potentially setting up test for Illinois gun law



RECOMMENDED FOR YOU

- 1 Cardiologist and whistleblower Dr. Lisa Nee to run for Chicago mayor
- 2 Occupants of capsized boat in Lake Geneva that killed 3 children are from Batavia and Wheaton, police say
- 3 Column: Has Pete Crow-Armstrong's popularity slipped? Who will the White Sox draft? 8 baseball thoughts.
- 4 Rahm Emanuel will assail Netanyahu in Tel Aviv speech as American politics shift against Israel
- 5 Disappointing World Cup for US star Christian Pulisic, who was held scoreless and hobbled by injuries

The New York Times

OPINION
GUEST ESSAY

A Supreme Court Head-Scratcher: Is a Colonial Musket 'Analogous' to an AR-15?

July 1, 2022



Illustration by Sam Whitney/The New York Times; images by mikroman6 and UltraONES, via Getty Images

Analogous?

Typical Revolutionary-era musket



Magazine capacity	Effective rate of fire	Muzzle velocity	Max. accurate range
1 <i>round</i>	3 <i>rounds per minute</i>	1,000 <i>feet per second</i>	50 <i>meters</i>

Typical modern-day AR-15



Magazine capacity	Effective rate of fire	Muzzle velocity	Max. accurate range
30 <i>rounds</i>	45 <i>rounds per minute</i>	3,260 <i>feet per second</i>	550 <i>meters</i>

WAPO.ST/**WONKBLOG**

Sources: Bushmaster XM-15 manual, Journal of the American Revolution, David Lux/Bryant University
Charleville musket image via guns.wikia.com (CC). Rock River AR-15 image via Joe Raedle/Getty Images

The Common Use Test

THE TEST:

“Arms” covered by the Second Amendment are those that are “in common use” today—as distinct, generally, from those that are “dangerous and unusual.”

CHALLENGES

- Where is the textual and historical support?
- Major problems of workability. What is “common”? What is “use”?
- What connection to self-defense and public safety?