

***New York Rifle & Pistol Association vs. Bruen* and its Implications for Gun Regulations**

By: Michelle Tucker

In a landmark decision, the Supreme Court of the United States struck down New York's restriction on publicly carrying weapons, ruling 6-3 in the case of *New York Rifle & Pistol Association vs. Bruen* (2022) that New York's open carry regulation violated the Second and Fourteenth Amendments.¹ Under New York law, individuals originally had to prove "proper cause" to obtain a firearm permit, demonstrating that they faced extreme danger. Otherwise, they could only obtain a restricted permit allowing firearm possession within an individual's personal home or business.² When Robert Nash and Brandon Koch tried to purchase an unlimited firearm permit in New York, they were denied because they could not prove they were in enough danger to warrant such a license.³ Nash and Koch sued the superintendent of the New York State Police, alleging that New York's proper cause requirement violated the Fourteenth Amendment right of law-abiding citizens to exercise their Second Amendment rights. The New York Supreme Court dismissed the case in 2018, and the 2nd Circuit Court dismissed the case in 2020 as well. The Supreme Court of the United States accepted the case in 2021⁴.

In 2022, the Supreme Court ruled that the New York law violated the Second and Fourteenth Amendments, concluding that the Second Amendment does not restrict any law-abiding adult citizen from obtaining a weapon for self-defense. Justice Clarence Thomas wrote in his opinion that any gun restriction policy must be "consistent with the Nation's historical tradition of firearm regulation."⁵ This is the new test for which the Supreme Court will assess gun regulations going forward; thus, the bulk of the court's opinion derives from an analysis of firearm restrictions of the past. This historical analysis focused on precedents dating back to the 18th century, as modern gun regulations must be aligned with regulations from this nation's founding. Ultimately, the court determined that there is no historical precedent for

¹ *New York State Rifle & Pistol Association, Inc., et al. v. Bruen, Superintendent of New York State Police, et al.* (Supreme Court of the United States, 23 June 2022)

² "New York State Rifle & Pistol Association Inc. v. Bruen." Oyez, www.oyez.org/cases/2021/20-843. Accessed 6 Feb. 2024.

³ Vogue, Ariane de, and Tierney Sneed. "Supreme Court Says Constitution Protects Right to Carry a Gun Outside the Home | CNN Politics." *CNN*, Cable News Network, 23 June 2022, www.cnn.com/2022/06/23/politics/supreme-court-guns-second-amendment-new-york-bruen/index.html.

⁴ Stuart, C. (2018, February 2). *New Yorkers Sue Police for Right to Carry Guns in Public*. Courthouse News Service. <https://www.courthousenews.com/new-yorkers-sue-police-for-right-to-carry-guns-in-public>

⁵ Sneed, T. (2022, June 23). *What the Supreme Court's new gun rights ruling means*. CNN. <https://www.cnn.com/2022/06/23/politics/second-amendment-gun-rights-supreme-court-new-york-test/index.html>

which New York's law concurs and that the Second Amendment does not limit the right to bear arms to one's home. Furthermore, the court found no historical precedent for "proper cause" as a barrier to obtaining a firearm.

This ruling has many implications for the future of firearm restrictions. Not only does it open the door for more cases challenging state gun regulations, it also complicates how these regulations are able to be applied in the future.⁶ The new standard set forth by Justice Thomas, which states, "to justify a firearm regulation the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation," sets a high barrier for state legislators to clear in order to restrict gun ownership. This standard requires states to prove their legislation is consistent with 18th-century criteria. However, gun safety concerns today are not the same as they were when this nation was founded. With more technologically advanced weapons on the market and school shootings on the rise, the problems of today do not reflect the problems of 18th-century Americans. Nevertheless, gun safety protocols must meet the Supreme Court's new antiquated standards.

This juxtaposition between modern issues and historical precedent has already been an issue with *United States vs. Rahimi* (2023). Zackey Rahimi was convicted of multiple violent offenses, including domestic violence. Rahimi was then convicted of possession of a firearm while subject to a protective order issued by his ex-girlfriend. Rahimi challenged this law, arguing that his Second Amendment right had been violated. The 5th Circuit Court ruled against the law in accordance with the new standard.⁷ The court argued that they could not find any law dating back to the 17th or 18th centuries that restricted gun ownership for those convicted of domestic violence.⁸ Therefore, the court could not enforce a law that does not resemble a similar law from the founding era. In the 17th and 18th centuries, it was normal for husbands to "chastise" their wives.⁹ There were no laws from this era that restricted gun ownership from domestic abusers, as domestic abuse was rarely seen as criminal.¹⁰ The ACLU argues that the 5th Circuit Court's ruling was a misinterpretation of *Bruen*. They assert that by requiring courts

⁶ Valentine, Matt. "Clarence Thomas Created a Confusing New Rule That's Gutting Gun Laws." *POLITICO*, 28 July 2023, www.politico.com/news/magazine/2023/07/28/bruen-supreme-court-rahimi-00108285#:~:text=As%20laid%20out%20by%20Justice,ways%2C%20with%20some%20determining%20historical.

⁷ 2024. *United States v. Rahimi* (Supreme Court of the United States, 7 November 2023)

⁸ "United States v. Rahimi." Oyez, www.oyez.org/cases/2023/22-915.

⁹ Valentine, M. (2023, July 28). Clarence Thomas Created a Confusing New Rule That's Gutting Gun Laws. *POLITICO*. <https://www.politico.com/news/magazine/2023/07/28/bruen-supreme-court-rahimi-00108285>

¹⁰ Swan, Betsy Woodruff. "Supreme Court Will Decide Whether Domestic Abusers Can Have Guns." *POLITICO*, 30 June 2023, www.politico.com/news/2023/06/30/supreme-court-guns-domestic-abusers-00104445.

to find a law that directly mirrors a founding-era law, they will be forced to disregard violence against women and minorities. Furthermore, the *Bruen* decision only protects the rights of “law-abiding, responsible citizens” for which Rahimi is not. However, historical precedent does not categorize domestic abusers as violent criminals. Therefore, the new standard by which judges must assess gun regulations does not dictate how to handle this case.¹¹

The Supreme Court heard *Rahimi* in November of 2023. During this hearing, Justice Kentanji Brown Jackson raised concerns about *Bruen*. By deferring to founding-era traditions, Justice Jackson is concerned that the Court must also overlook violence against Black or Native Americans because violence against these peoples was normalized in the founding era. Justice Jackson asked General Prelogar, who appeared representing the United States, how legislators should proceed if there is not any principle from the founding era that relates to a modern concern. General Prelogar replied:

“So I think, if there is no relevant principle that a law would slot into, like sensitive place regulation or dangerous person regulation, then you would conduct the *Bruen* analysis in order to help try to identify those principles of the Constitution that define the scope of the Second Amendment right. But it wouldn't just be a hunt for a particular, precise historical analogue. I -- I think that that's really a caricature of *Bruen*, and that would make the Second Amendment a true outlier because there's no constitutional right that's dictated exclusively by whether there happened to be a parallel law on the books in 1791.” (Prelogar 2023)

This answer does not necessarily ensure that marginalized people will be protected going forward. Neither does Justice Thomas's clarification of the standard. He said:

“Analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster”.

Although *Bruen* does not require legislators to find an exact twin law from the founding era, it requires them to be analogous to 18th-century principles. *Rahimi* will be among the first

¹¹ ACLU. “United States v. Rahimi.” *American Civil Liberties Union*, 19 Sept. 2023, www.aclu.org/cases/united-states-v-rahimi.

cases to put *Bruen* to the test. This decision will determine if domestic abusers have the Second Amendment right to bear arms. Future cases will decide to what extent legislators must ensure their gun regulations mirror those from the founding era, though it is evident that the tension between historical precedence and contemporary realities will remain a central aspect of debates surrounding gun regulations.