Written by **Bob Adelmann** on November 17, 2023

Judge Foiled by Bruen, Forced to Allow Convicted Felon to Keep Second Amendment Rights

A Clinton-appointed judge couldn't find a way to "work around" the *Bruen* decision from last summer and was forced to allow a convicted felon to keep his firearm.

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In *USA v. Prince,* U.S. District Court Judge Robert Gettleman ruled earlier this month that, much as he would have liked to support the federal law banning convicted felons from ever again owning a firearm — 18 U.S.C. 922(g)(1) — he couldn't:

> This court concludes that the [federal] government has not met its burden under Bruen to prove this nation's history and tradition of firearm regulation with historical evidence of laws that authorized capital punishment and estate forfeiture for felonies.
>
> Because this court determines that defendant is a member of "the people" protected by the Second Amendment, and because neither type of historical regulation offered by the government satisfies its burden to show a history and tradition of "relevantly similar" analogues to § 922(g)(1)'s permanent, categorical firearm dispossession of all felons, the court is forced to grant defendant's motion to dismiss the indictment against him under Bruen….

But he didn't want to:

> This court acknowledges that this is a close question. The court also recognizes that gun violence plagues our communities and that allowing those who potentially pose a threat to the orderly functioning of society to be armed is a dangerous precedent. See 18 U.S.C. § 922(q)(1).
>
> However, this court is unable to uphold § 922(g)(1) as constitutional *due to Bruen's instruction* that the government must provide evidence of a historical analogue that is both

> comparably justified and comparably burdensome of the right to keep and bear arms. [Emphasis added.]
>
> Although there are strong policy reasons for doing everything possible to keep guns off our streets and out of our communities—policies that could be addressed by legislation rather than judicial edict—this court can find no such historical analog.

One couldn't fault attorneys representing the federal government for not trying to find such a "historical analog." They dug deeply into America's history of gun regulation; they tried their best to find "distinctly similar historical regulations" to shore up their position; they tried to uncover "historical analogies" that would allow the law — called "felon disentitlement statutes" — to rule. They failed.

It wasn't that the defendant, Glen Prince, wasn't a thug. The court reviewed his history, reporting that he had "approached three individuals on a Brown Line Chicago Transit Authority (CTA) train, brandished a firearm, and robbed them." When he was finally caught, police found in his possession not only the firearm that he brandished during the robbery but also a stolen cellphone, some cocaine, and a stolen credit card. They further learned that he "had at least three previous convictions for [other] offenses."

And, for the record, Prince is facing 15 years in prison for his crimes.

But under *Bruen* the federal government can infringe the Second Amendment only if it can "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." Otherwise, lamented Gettleman, "the court must conclude that the individual's firearm-related conduct is protected because it falls within the Second Amendment's 'unqualified command.'"

Attorneys for the government tried to find "distinctly similar historical regulations" and, failing that, to find "historical analogues" to bolster their defense. Under *Bruen*, they were required to find a "well-established and representative historical analogue" to defend the federal law.

What they found, after extensive historical digging, was that "the first federal statute disqualifying certain violent felons from firearm possession was not enacted until the Federal Firearms Act in 1938, which was 147 years after the ratification of the Second Amendment and 70 years after the ratification of the Fourteenth Amendment." Wrote Gettleman, "There is no evidence of any law categorically restricting individuals with felony convictions from possessing firearms at the time of the Founding or ratification of the Second or Fourteenth Amendments."

Gettleman referred to *Range v. Garland* (reviewed by *The New American* here), noting that, in that ruling, "lifetime disarmament – is [not] rooted in our Nation's history and tradition."

Another ruling — *Williams v. Garland* — was issued earlier this week, which also used the *Range* decision to support the same outcome.

The reason these decisions, piling up one upon another, are, according to Amy Swearer, a senior legal fellow at the Meese Center at the Heritage Foundation, "the most significant Second Amendment victor[ies] since [*Bruen*]," is because they protect the rights of other citizens being deprived of their Second Amendment rights for life for minor infringements and offenses.

The issue is far from settled. U.S. attorneys have already moved to appeal Gettleman's ruling.

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