Essay

Machine Gun Funk[1]: The Unusual Analysis of "Dangerous and Unusual"

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INTRODUCTION

On January 29, 2025, U.S. District Court Judge Carlton W. Reeves dismissed charges against Defendant Justin Bryce Brown for knowingly possessing a machine gun in violation of 18 U.S.C. §§ 922(o) and 924(a)(2).[2] In *Brown*, Judge Reeves ruled that while machine guns are dangerous, the government failed to show that they are unusual.[3] This opinion has received a great deal of press coverage. News articles questioned how this decision might "create significant doubt" about the constitutionality of a ban on machine gun possession[4] and "give [firearms advocates]

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1. THE NOTORIOUS B.I.G., *Machine Gun Funk*, *on* READY TO DIE (Bad Boy Records 1994).

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2. United States v. Brown, 764 F. Supp. 3d 456, 465–66 (S.D. Miss. 2025). 18 U.S.C. § 922(o) reads:

> (1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.
>
> (2) This subsection does not apply with respect to—
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> (A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or
>
> (B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

18 U.S.C. § 924(a)(2) reads: "Whoever knowingly violates subsection (a)(6), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both."

3. *Brown*, 764 F. Supp. 3d at 462–64.

4. Stephen Gutowski, *Federal Judge Rules Machinegun Charges Against Mississippi Man Violate Second Amendment*, THE RELOAD (Feb. 6, 2025, 8:54

more ammo" to challenge one in the future.[5] One news outlet cautioned its readers: "[D]on't expect to run out and buy a full-auto M4 after the *Brown* decision."[6] News coverage also focused on Judge Reeves's application of the Supreme Court's recent Second Amendment jurisprudence,[7] with one prominent legal podcast calling Judge Reeves's decision "pretty close to . . . malicious compliance" with the history and tradition test.[8] The news coverage discussed in this Essay's Introduction centers on the text, history, and tradition test established for laws implicating the Second Amendment three years ago in *New York State Rifle & Pistol Ass'n v. Bruen*.[9] Under this test, "when a challenged law implicates the Second Amendment, 'the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation.'"[10]

The newness of this test in Second Amendment litigation underscores how mainstream perspectives in firearms law have changed rapidly, and the coverage of this case emphasizes its status as an outlier in Second Amendment jurisprudence that could lay the foundation for future challenges to the ban on

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PM), https://thereload.com/federal-judge-rules-machinegun-charges-against-mississippi-man-violate-second-amendment [https://perma.cc/PRA4-NRCR].

5. Chris Eger, *Another Federal Court Tosses Machine Gun Possession Charge*, GUNS.COM (Feb. 5, 2025, 1:49 AM) (quoting Firearms Policy Coalition (@gunpolicy), X (Feb. 4, 2025, 9:29 AM), https://x.com/gunpolicy/status/1886799229701525779 [https://perma.cc/FC9K-GX64] (internal quotation marks omitted)), https://www.guns.com/news/2025/02/05/another-federal-court-tosses-machine-gun-possession-charge [https://perma.cc/Y5ME-YSQz].

6. Todd Woodard, *2nd Federal Court Declares Machine Gun Ban Unconstitutional*, GUN TESTS (Feb. 20, 2025), https://www.gun-tests.com/news/2nd-federal-court-declares-machine-gun-ban-unconstitutional [https://perma.cc/DYB7-UEZX].

7. Darwin Nercesian, *Federal Judge Dismisses Illegal Machine Gun Possession Case*, FIREARMS NEWS (Feb. 6, 2025), https://www.firearmsnews.com/editorial/-judge-dismisses-illegal-machine-gun-case/516480 [https://perma.cc/7E9Y-VWUX].

8. Sarah Isgur & David French, *Can Churches Commit Fraud?*, ADVISORY OPS., at 52:47 (Feb. 6, 2025), https://thedispatch.com/podcast/advisoryopinions/can-churches-commit-fraud [https://perma.cc/34BJ-PWRR]. Malicious compliance can be defined as "a kind of opposition through aggressive and sometimes overly literal implementation of a command or policy." Tom Nichols, *"Malicious Compliance" Is Not the Issue with Trump's Executive Orders*, THE ATLANTIC (Jan. 28, 2025), https://www.theatlantic.com/newsletters/archive/2025/01/malicious-compliance-is-not-the-issue-with-trumps-executive-orders/681498 [https://perma.cc/T9B2-QMCA].

9. 597 U.S. 1 (2022).

10. Andrew Willinger, *History and Tradition as Heightened Scrutiny*, 60 WAKE FOREST L. REV. 415, 417 (2025) (quoting *Bruen*, 597 U.S. at 8).

machine guns. After all, "one of the most important features of American constitutional law" is the ability for legal arguments to move from being widely viewed as incorrect to plausibly becoming law.[11]

Furthermore, Judge Reeves is not the typical Second Amendment advocate, and this Essay explores why Judge Reeves ruled as he did in *Brown*. Judge Reeves was a student in the first integrated public school class in Mississippi.[12] He is a historically Black college and university (Jackson State University) alumnus[13] and was a Ritter Scholar at the University of Virginia School of Law.[14] After law school, Judge Reeves clerked for Justice Reuben V. Anderson, the first Black judge to serve on the Mississippi Supreme Court.[15] Then President Barack Obama appointed him to the federal bench[16]—the very President that many Second Amendment advocates on the political

11. *See* Jack M. Balkin, *From Off the Wall to On the Wall: How the Mandate Challenge Went Mainstream*, THE ATLANTIC (June 4, 2012), https://www.theatlantic.com/national/archive/2012/06/from-off-the-wall-to-on-the-wall-how-the-mandate-challenge-went-mainstream/258040 [https://perma.cc/2Z4F-VZTH]. Balkin's article describes the changing mainstream legal viewpoint on the Affordable Care Act in the past three years, and its perspective on how rapidly legal principles can enter the mainstream can also be applied to firearms law. *See id.*

12. The Honorable Carlton W. Reeves, Defending the Judiciary: A Call for Justice, Truth, and Diversity on the Bench, Prepared Remarks Upon Receiving the Thomas Jefferson Foundation Medal in Law 8 (Apr. 11, 2019) (transcript available in Mark Joseph Stern, *Federal Judge: Donald Trump Is Leading an "Assault on Our Judiciary,"* SLATE (Apr. 12, 2019, 12:45 PM) [hereinafter *Assault on Our Judiciary*], https://slate.com/news-and-politics/2019/04/judge-carlton-reeves-donald-trump-assault-judiciary-scotus.html [https://perma.cc/M3LK-V38U]).

13. Kenya Downs, *The Man Behind The Speech: Judge Carlton Reeves Takes On Mississippi's Past*, NPR (Mar. 2, 2015, 10:31 AM), https://www.npr.org/sections/codeswitch/2015/03/02/387477815/the-man-behind-the-speech-judge-carlton-reeves-takes-on-mississippis-past [https://perma.cc/K6SQ-U6PK].

14. Eric Williamson, *Judge Carlton Reeves, Thomas Jefferson Foundation Medalist in Law*, UVA TODAY (Mar. 6, 2019), https://news.virginia.edu/content/judge-carlton-reeves-thomas-jefferson-foundation-medalist-law [https://perma.cc/E463-SCSF].

15. *Id.*; Marisa C. Atkinson, *Law School Welcomes Justice Reuben Anderson for Constitution Day*, UNIV. OF MISS. (Sept. 11, 2025), https://olemiss.edu/news/2025/09/law-school-welcomes-justice-reuben-anderson-for-constitution-day/index.html [https://perma.cc/E6H5-JZRT].

16. Downs, *supra* note 13.

Right feared would diminish their gun rights.[17] With such a background, why would Judge Reeves rule as he did in *Brown*?

As a liberal judge and an outspoken advocate for racial justice, he contravened precedent in his ruling in *Brown*, protecting the defendant's ability to access his Second Amendment rights to keep and bear arms. Judge Reeves appears to be influenced by his desire for impartial justice, which was likely influenced by his own life experiences and the racial barriers that he faced as he grew up and began his legal career. Yet, Justice Clarence Thomas also experienced similar racial barriers and developed a markedly different judicial philosophy from Judge Reeves.

In order to get to that analysis though, we first must unpack *Brown* and the firearms jurisprudence about machine guns. This Essay starts with defining what machine guns are and why, historically, they have been subject to more regulation than other types of firearms. Next, this Essay unpacks machine gun jurisprudence and how *Brown* fits into that jurisprudence. Part IV then compares and contrasts Judge Reeves with Justice Thomas, another prominent Black judge with ostensibly similar life experiences but an opposing judicial philosophy. Finally, Part V analyzes how *Brown* fits into Judge Reeves's broader jurisprudence and philosophy. In *Brown*, Judge Reeves reckoned with the current state of Second Amendment jurisprudence, leading to a result that surprised some but ultimately demonstrated his commitment to faithfully applying the law, even if it meant doing so in such a way that he was engaging in malicious compliance or uncivil obedience.

I. DEFINING MACHINE GUNS

The first step in analyzing Judge Reeves's firearms jurisprudence and *Brown* is to understand what firearms count as machine guns and the history of regulating machine guns in our country. Within the field of firearms law, machine guns are significantly more regulated than other types of firearms. Certainly, machine guns have the potential to harm others more swiftly than many other types of firearms, but all firearms are inherently dangerous. The Second Amendment protects the

17. Kevin Bohn, *Gun Sales Surge After Obama's Election*, CNN (Nov. 11, 2008), https://www.cnn.com/2008/CRIME/11/11/obama.gun.sales/ [https://perma.cc/Q5UB-LSCZ].

individual right to "keep and bear arms,"[18] and the core of this right revolves around the ability to defend one's home.[19] Thus, the classes of firearms that are commonly used for the defense of one's home are particularly essential to Second Amendment rights.[20] For these reasons, in *Heller*, the Supreme Court struck down D.C.'s ban on handgun possession.[21] Understanding why machine guns can be regulated so much more heavily than handguns hinges on the idea that machine guns are less essential to Second Amendment rights than other types of firearms.

A machine gun is "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger."[22] This definition encompasses a wide range of firearms, from the ever-popular magazine-fed AK-47 to the belt-fed M60E3 heavily featured in the *Rambo* movies.[23] When determining whether a firearm is a machine gun, courts consider whether the weapon can automatically fire multiple shots with a single trigger pull.[24] For instance, bump stocks do not count as machine guns because they cannot fire multiple shots "by a single function of the trigger" and even if they could, they could not fire those shots "automatically."[25]

This definition of machine guns first arose from the National Firearms Act (NFA), which was passed in 1934, after machine guns were first developed for use in combat during World War I.[26] The NFA marked the beginning of federal machine gun regulation and is still in effect today.[27] It requires firearm manufacturers to apply and receive approval from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to manufacture

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18. District of Columbia v. Heller, 554 U.S. 570, 595 (2008); McDonald v. City of Chicago, 561 U.S. 742, 750 (2010) (incorporating the individual right to bear arms to apply to the states).

19. *McDonald*, 561 U.S. at 780.

20. *Heller*, 554 U.S. at 571.

21. *Id.*

22. 26 U.S.C. § 5845(b).

23. Stephan Wilkinson, *How the AK-47 Became the 'Weapon of the Century,'* MILITARYTIMES (Dec. 12, 2017), https://www.militarytimes.com/off-duty/gearscout/2017/12/12/how-the-ak-47-became-the-weapon-of-the-century [https://perma.cc/Z9XR-S8AN]; RAMBO: FIRST BLOOD PART II (Anabasis N.V. 1985).

24. Garland v. Cargill, 602 U.S. 406, 407 (2024).

25. *Id.* (quoting 26 U.S.C. § 5845(b) (internal quotation marks omitted)).

26. 26 U.S.C. § 5845; David B. Kopel, *Machine Gun History and Bibliography*, 25 WYO. L. REV. 45, 48, 109 (2025).

27. *Id.* at 89.

firearms, as well as their registration of any machine guns.[28] The NFA also imposes a $200 transfer tax on machine guns and mandates background checks of firearm buyers.[29]

The NFA's reach was expanded thirty years after its passage through the Gun Control Act of 1968 (GCA).[30] The GCA stopped the import of machine guns into the United States for civilian use and imposed further requirements on firearms sales, including requiring serial numbers on firearms and requiring that interstate sales involve a licensed dealer.[31] Approximately twenty years later, the Firearms Owners' Protection Act (FOPA) considerably limited machine gun ownership.[32] FOPA prohibits civilian possession of or sale of machine guns manufactured after May 19, 1986.[33] These regulations severely limit one's ability to possess a machine gun. For those in possession of a pre-1986 machine gun, they must register it in the National Firearms Registration and Transfer Record (NFRTR).[34]

In *Heller*, the Supreme Court expounded on why machine guns can be heavily regulated, recognizing that one of the limitations on the right to bear arms is the "historical tradition of prohibiting the carrying" of "dangerous and unusual weapons."[35] The Court even mentions M16 rifles, a type of machine gun, as an example of a weapon that is dangerous and unusual.[36] After

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28. *Id.* at 50.

29. National Firearms Act, ch. 757, 48 Stat. 1236 (1934) (codified as amended at 26 U.S.C. §§ 5801–72).

30. Gun Control Act of 1968, 26 U.S.C. §§ 5801–72.

31. *Id.*

32. Firearms Owners' Protection Act, Pub. L. No. 99-308, sec. 102, § 922(o), 100 Stat. 449, 453 (1986) (codified at 18 U.S.C. § 922(o)).

33. *Id.*

34. *National Firearms Act Division*, ATF, https://www.atf.gov/firearms/national-firearms-act-division [https://perma.cc/A5H2-92XA]. The ban on post-1986 machine guns means that there is only a set number of machine guns that can be transferred between individuals. This has led machine gun prices to skyrocket, and one could easily spend $20,000–30,000 on a machine gun. *See Transferable Machine Guns*, ONLY THE BEST, https://otbfirearms.com/nfa/transferable-machine-guns [https://perma.cc/7823-66TC] (last visited Oct. 21, 2025). Rarer machine guns can sell for as much as $470,000. Joel R. Kolander, *Top 10 Machine Guns Sold at Rock Island Auction Company*, ROCK ISLAND AUCTION CO. (May 5, 2025), https://www.rockislandauction.com/riac-blog/the-top-10-machine-guns-with-sale-prices [https://perma.cc/GDA4-JBHH]. Machine gun ownership is then limited to this narrow market, outside of which, machine gun ownership is illegal. The punishment for illegally possessing a machine gun is fines and up to ten years in prison. 18 U.S.C. § 924(a)(2).

35. District of Columbia v. Heller, 554 U.S. 570, 627 (2008).

36. *Id.*

Heller, machine guns were treated as outside the protection of the Second Amendment and as a category of firearm that could be more heavily regulated. This is discussed further in Part II of this Essay.

Importantly, *Heller* was decided before the Supreme Court decided *New York State Rifle & Pistol Ass'n v. Bruen*.[37] In *Bruen*, the Supreme Court issued a landmark decision establishing the text, history, and tradition test for firearms regulations.[38] Justice Thomas authored the majority opinion in the case, detailing that the text, history, and tradition test dictates that regulations falling within the Second Amendment must be "consistent with the Nation's historical tradition of firearm regulation."[39] Under this test, "the government [must] identify a well-established and representative historical analogue, not a historical twin."[40] After *Bruen*, the inquiry has shifted to determining whether a machine gun regulation is consistent with the history and tradition of our nation and whether there is a "relevantly similar" historical regulation.[41]

Considering this, although the defendant's possession of a machine gun in *Brown* was uncontested, the definition of machine guns and history of machine gun regulation in this country provides context for Judge Reeves's analysis. Machine guns are unique in the landscape of Second Amendment litigation because they are so heavily regulated and have been for almost a century. Before *Bruen*, there was no question that machine guns are "dangerous and unusual" and can be subject to regulations that would not be permissible on other types of firearms. *Brown* demonstrates, however, how machine guns occupy a unique space in Second Amendment litigation today and that upholding the post-1986 machine gun ban requires proving to the court that the ban aligns with Founding era firearm regulations.

II. BROADER CIRCUIT MACHINE GUN JURISPRUDENCE

The Fifth Circuit has long been a source of meaningful jurisprudence on firearms law in our nation. Even before *Heller* recognized the individual right to keep and bear arms, the Fifth

37. 597 U.S. 1 (2022).

38. *Bruen*, 597 U.S. at 24.

39. *Id.*

40. *Id.* at 30.

41. *Id.* at 29 (quoting Cass R. Sunstein, *On Analogical Reasoning*, 106 HARV. L. REV. 741, 773 (1993) (internal quotation marks omitted)).

Circuit recognized such a right in *United States v. Emerson*[42] in 2001. The Fifth Circuit is also generally seen as pro-Second Amendment.[43] Indeed, before *United States v. Rahimi* reached the Supreme Court, the Fifth Circuit struck down 18 U.S.C. § 922(g)(8), a provision prohibiting individuals subject to domestic violence restraining orders from possessing firearms.[44] The Fifth Circuit found that this law lacked sufficient historical analogues;[45] the Supreme Court subsequently reversed this decision.[46] A few notable Fifth Circuit firearms law decisions are discussed in the analysis of *Brown*,[47] and those decisions demonstrate the breadth of firearms case law coming out of that court.

As discussed below, other circuits have also issued decisions about machine guns since *Heller* was decided. Some of these decisions pre-date *Bruen*, but they still demonstrate the existing jurisprudence on machine guns and applying the "dangerous and unusual" test. As Judge Reeves posits, the analysis might differ post-*Bruen*.[48] The context around *Brown*, as seen from other circuits' jurisprudence, is laid out below. As the cases below reveal, after *Heller*, machine guns were generally considered to not be protected under the Second Amendment.

Multiple circuits[49] have grappled with the question of when a firearm falls under the "historical tradition of prohibiting the carrying of dangerous and unusual weapons."[50] Last year, the First Circuit held that the Supreme Court has not "intimated that a weapon's prevalence in society (as opposed to, say, the degree of harm it causes) is the sole measure of whether it is

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42. 270 F.3d 203 (5th Cir. 2001), *cert. denied*, 536 U.S. 907 (2002), *and abrogated by* United States v. Diaz, 116 F.4th 458 (5th Cir. 2024).

43. Eger, *supra* note 5.

44. 61 F.4th 443 (5th Cir. 2023), *rev'd*, 602 U.S. 680 (2024).

45. *Id.* at 460–61.

46. *Rahimi*, 602 U.S. at 702.

47. *See generally* United States v. Morgan, No. 23-100047, 2024 WL 3936767 (D. Kan. Aug. 26, 2024), *rev'd*, 150 F.4th 1339 (10th Cir. 2025); Hollis v. Lynch, 827 F.3d 436 (5th Cir. 2016), *abrogated by* United States v. Diaz, 116 F.4th 458 (2024); United States v. Daniels, 124 F.4th 967 (5th Cir. 2025).

48. United States v. Brown, 764 F. Supp. 3d 456 (S.D. Miss. 2025).

49. *See* Ocean State Tactical, LLC v. Rhode Island, 95 F.4th 38, 50 (1st Cir. 2024) (quoting New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 21 (2022)); United States v. One Palmetto State Armory, 822 F.3d 136, 138 (3d Cir. 2016).

50. District of Columbia v. Heller, 554 U.S. 570, 626–27 (2008) (citation and internal quotation marks omitted).

'unusual.'"[51] The key inquiry, as in all firearms law cases post-*Bruen*, is whether the "why" behind the regulation is analogous to the "why" of a historical regulation.[52]

The Third Circuit contemplated what counts as a "dangerous and unusual" weapon in *One Palmetto State Armory*. In that case, the ATF mistakenly approved an application to make and register an M16-style machine gun, and the defendant had a machine gun manufactured before the ATF informed him that his application was "disapproved" because the GCA prohibited him from possessing a machine gun.[53] Upon this notice, the defendant surrendered his machine gun and filed suit, challenging 18 U.S.C. § 922(o) both facially and as-applied.[54] The district court dismissed his claim, and the Third Circuit affirmed this ruling.[55] The Third Circuit held that the Second Amendment does not protect the possession of machine guns because they are "dangerous and unusual weapons" not in common use for lawful purposes.[56] The Second Circuit has similarly ruled in a pre-*Bruen* decision that the Second Amendment "does not protect [the] personal possession of machine guns."[57]

Furthermore, the Ninth Circuit has held that the Second Amendment does not protect the possession of machine guns. In *United States v. Henry*, the defendant converted a .308-caliber rifle into a machine gun and was charged with possession of a machine gun and conversion part.[58] The Ninth Circuit held that the Second Amendment does not protect possession of "dangerous and unusual weapons," which includes machine guns on the basis that such weapons are highly lethal and heavily regulated.[59] This reasoning matches the jurisprudence of other circuits.[60] In a more recent, post-*Bruen* case about large-capacity magazines, the Ninth Circuit signaled that it still believes a ban on machine guns is constitutional.[61] In that case, the Ninth

51. *Ocean State Tactical*, 95 F.4th at 50–51.
52. *Id.* at 46; Capen v. Campbell, 134 F.4th 660, 671 (1st Cir. 2025).
53. *One Palmetto State Armory*, 822 F.3d at 139.
54. *Id.* at 138.
55. *Id.* at 144.
56. *Id.* at 143.
57. United States v. Zaleski, 489 F. App'x 474, 475 (2d Cir. 2012).
58. 688 F.3d 637, 639–40 (9th Cir. 2012).
59. *Id.* at 640.
60. *See* Hollis v. Lynch, 827 F.3d 436 (5th Cir. 2016), *abrogated by* United States v. Diaz, 116 F.4th 458 (2024).
61. *See* Duncan v. Bonta, 133 F.4th 852, 883 (9th Cir. 2025).

Circuit highlighted the flaws in relying on firearm ownership statistics to determine the constitutionality of firearm regulations post-*Bruen*.[62]

Other circuits have not as directly addressed the "dangerous and unusual" inquiry but have addressed the limits of Second Amendment protections for machine gun ownership. The Fourth Circuit has issued a post-*Bruen* decision about assault weapons, reinforcing the lack of Second Amendment protections for machine gun ownership.[63] The court analyzed the common use of a firearm as a threshold inquiry for determining whether a firearm is subject to Second Amendment protections.[64] The Sixth Circuit, in a pre-*Bruen* case, affirmed the constitutionality of the general ban on machine gun possession.[65] Similarly, the Seventh Circuit has ruled that there are limits to Second Amendment protections and that machine guns do not fall under the protection of the Second Amendment.[66] The Eighth Circuit has also upheld the ban on machine gun possession.[67]

The Tenth Circuit has also affirmed a defendant's conviction for manufacturing and possessing machine guns under 18 U.S.C. § 922(o), upholding the statute's constitutionality.[68] The Eleventh Circuit has similarly upheld the ban on machine gun possession. In *Farmer v. Higgins*, the defendant applied to manufacture and register a machine gun for his personal collection.[69] When the ATF denied his application, the defendant sued.[70] Surprisingly, the district court ruled for the defendant, holding that the law allowed private individuals to manufacture and possess machine guns if registered.[71] However, the Eleventh Circuit

62. *Id.* This is discussed further later in the Essay, but firearm ownership statistics here refers to determining whether a type of firearm is in common use based on how many people own that kind of firearm. *Id.* For the most up-to-date statistics on firearm ownership by type of firearm, see ATF, FIREARMS COMMERCE IN THE UNITED STATES: STATISTICAL UPDATE 2024, at 11 (2024), https://www.atf.gov/resource-center/docs/report/2024firearmscommercereportpdf/download [https://perma.cc/8ZZS-XQEE].

63. *See* Bianchi v. Brown, 111 F.4th 438, 445, 451 (4th Cir. 2024).

64. *Id.*

65. *See* Hamblen v. United States, 591 F.3d 471, 474 (6th Cir. 2009).

66. *See* Bevis v. City of Naperville, 85 F.4th 1175 (7th Cir. 2023); United States v. Rush, 130 F.4th 633 (7th Cir. 2025); Friedman v. City of Highland Park, 784 F.3d 406 (7th Cir. 2015).

67. *See* United States v. Fincher, 538 F.3d 868, 874 (8th Cir. 2008).

68. *See* United States v. Bishop, 926 F.3d 621, 633 (10th Cir. 2019).

69. 907 F.2d 1041–42 (11th Cir. 1990).

70. *Id.* at 1042.

71. *Id.* at 1045.

reversed on appeal, ruling that congressional debates about FOPA clearly expressed an intent to prohibit future private machine gun possession.[72]

Thus, across circuits, federal courts have concluded that Second Amendment rights are not absolute and have generally been comfortable with a ban on machine gun possession. As such, in keeping with precedent, the Fifth Circuit is likely to overrule Judge Reeves's dismissal of the charges in *Brown*. Nevertheless, Judge Reeves's decision demonstrates his willingness to depart from the jurisprudence of the Fifth Circuit, as well as other circuits when justice demands it.

III. UNPACKING UNITED STATES V. BROWN

Brown is an outlier in Second Amendment jurisprudence and presents an interesting example of a judge claiming to faithfully apply the law while coming to a conclusion that appears to contravene the Supreme Court precedent from *Heller*. This S discusses Judge Reeves's analysis, explores when a firearm is "dangerous and unusual," and considers unpacks how Judge Reeves may have been engaging in malicious compliance when adjudicating this case.

A. UNITED STATES V. BROWN

In *Brown*, the defendant was charged with knowingly possessing of a machine gun in violation of 18 U.S.C. §§ 922(o) and 924(a)(2).[73] Brown moved to dismiss these charges under the Second Amendment, bringing an as-applied challenge to the ban on machine gun possession.[74] In its determination, the relevant inquiry for the court was whether 18 U.S.C. §§ 922(o) and 924(a)(2) are "consistent with the Nation's historical tradition of firearm regulation."[75] This analysis turns on whether machine guns are both (1) dangerous and (2) unusual;[76] if machine guns are both, they can be restricted under the Second Amendment.[77] The court concluded that machine guns are dangerous, but held

72. *Id.*
73. United States v. Brown, 764 F. Supp. 3d 456, 459 (S.D. Miss. 2025).
74. *Id.*
75. *Id.* (quoting United States v. Diaz, 116 F.4th 458, 467 (5th Cir. 2024)).
76. *Id.* at 462.
77. *Id.* at 461–62; District of Columbia v. Heller, 554 U.S. 570, 626 (2008).

that the government failed to prove that they are unusual.[78] Thus, the court dismissed the charges against the defendant.[79]

In its argument, the government contended that the machine gun ban fit within the history and tradition of firearm regulation.[80] It first turned to colonial "going armed" laws, which allowed punishment for individuals who moved about their communities while armed in order to terrorize others.[81] These types of laws were also discussed in *United States v. Rahimi*, in which the Supreme Court analogized the ban on felons possessing firearms to two types of historical regulations: surety laws and "going armed" laws.[82] It is worth noting here that these laws disarmed individuals who were dangerous to others.[83] In contrast to these laws that focus on disarming dangerous individuals, 18 U.S.C. § 922(o) authorizes punishment of individuals possessing machine guns, whether or not they intended to use the machine guns to commit violent acts against another person.[84]

The government also pointed to 19th and 20th-century firearms law cases from Mississippi that prohibited possessing firearms in specific times and places, like on the Sabbath.[85] However, Judge Reeves stated that these historical laws do not support the case against Defendant, who possessed the firearm in his home and did not pose a threat of violence to others.[86] There is no question that firearms are dangerous, but whether they are unusual is a different story.[87]

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78. *Brown*, 764 F. Supp. 3d at 464.

79. *Id.* at 465.

80. *Id.* at 460.

81. *Id.*

82. United States v. Rahimi, 602 U.S. 680, 698 (2024). While "going armed" laws punished offenders after the fact, surety laws punished individuals preemptively who were suspected of imminently planning to commit violence against others. *Id.* at 695, 697.

83. *See id.* at 698.

84. *See Brown*, 764 F. Supp. 3d at 459 (citing United States v. Morgan, No. 23-100047, 2024 WL 3936767, at *4 (D. Kan. 2024)).

85. *Id.* at 461. These laws focus on time and place restrictions for firearm possession. *Id.* The government can regulate one's ability to possess a firearm in certain times and at certain places, but these restrictions do not extend to one's home, which is where Defendant was located while in possession of the machine gun. *See id.*

86. *Id.*

87. *Id.*

Relying on *Hollis v. Lynch*,[88] the government argued that when determining whether machine guns are unusual or in common use, courts should consider statistical ownership data, legal permissibility across several jurisdictions, and how frequent civilian use is.[89] However, in his analysis, Judge Reeves noted that *Hollis* predated *Bruen* and was no longer good law.[90] Thus, the court was to use the history and tradition test in weighing an as-applied challenge, and the government bore a "heavy burden" to identify a historical analogue to the machine gun ban.[91]

As a result, Judge Reeves turned to *United States v. Morgan*, an "outlier" case in which a district court judge in Kansas found that the ban on machine guns is not in line with the history and tradition of our nation.[92] In *Morgan*, the defendant was charged with two counts of possessing a machine gun in violation of 18 U.S.C. § 922(o).[93] The court there found that machine guns are "bearable arms" within the original meaning of the Second Amendment.[94] The court also found that the government failed to establish that the nation's history of firearm regulation justifies the application of 18 U.S.C. § 922(o) to Morgan and, therefore, granted his motion to dismiss.[95] In *Brown*, Judge Reeves found *Morgan* persuasive and stated that outlier cases can be instructive, especially if they faithfully apply the law.[96]

Morgan served as a touchstone for Judge Reeves in applying the *Bruen* standard to the possession of machine guns. In his

88. 827 F.3d 436 (5th Cir. 2016), *abrogated by* United States v. Diaz, 116 F.4th 458 (5th Cir. 2024).

89. *See id.* at 449. In *Hollis*, the Fifth Circuit held that machine guns are not firearms protected under the Second Amendment because they are "dangerous and unusual" weapons not in common use. *Id.* at 451. There, the ATF had accidentally granted Hollis's application to manufacture machine guns, before subsequently denying it. *Id.* at 440–41. Hollis challenged this denial, arguing among other things that the ban on machine gun possession violated the Second Amendment. *Id.* at 441. However, the Fifth Circuit dismissed Hollis's claim after analyzing how common civilian machine gun ownership is. *Id.* at 451.

90. *Brown*, 764 F. Supp. 3d at 463. *See* United States v. Diaz, 116 F.4th 458, 465 (5th Cir. 2024) (holding that *Bruen* "render[s] our prior precedent obsolete" (internal quotation marks omitted)).

91. *Id.* at 459 (quoting United States v. Daniels, 124 F.4th 967, 973 (5th Cir. 2025) (internal quotation marks omitted)).

92. *Id.* at 459–60.

93. United States v. Morgan, No. 23-100047, 2024 WL 3936767, at *1 (D. Kan. 2024).

94. *Id.* at *2.

95. *Id.* at *4–5.

96. *Brown*, 764 F. Supp. 3d at 460.

analysis, Judge Reeves references the same data on machine gun ownership as the Fifth Circuit did in *Morgan*: the ATF's Annual Statistical Update from 2021.[97] According to this report, over 740,000 machine guns are possessed lawfully in the U.S., though there is variance across states in how widespread ownership is.[98] While in Georgia there are 42,545 machine guns in possession of individuals, in California—a larger state by population size—there are 29,112 machine guns.[99] These numbers only encompass the number of machine guns that are possessed *lawfully* within the United States.[100] The numbers on machine gun ownership per state were updated in a more recent statistical update from 2024, with a total machine gun count of over 780,000 and continued disparities between machine gun ownership by state.[101]

Relying on *Bruen*, the court concluded that the government failed to establish that machine guns are unusual and that "it therefore [could not] restrict Mr. Brown's possession of one in his home."[102] Judge Reeves demonstrated a vast amount of pessimism for the history and tradition test: "[T]his Court has its doubts that the historical approach wielded in these recent Second Amendment cases is the right one."[103] This approach requires judges to compare firearm regulations to historical laws that are "relevantly similar,"[104] but if a court chooses to analyze only certain historical analogues, that shapes the outcome of the analysis.[105] Not only did Judge Reeves use this opinion to voice his concerns about the new history and tradition test in Second Amendment litigation, but he also criticized the "dangerous and unusual test" as "standardless."[106] Ultimately, the court stated that "the Supreme Court's recent Second Amendment cases are predicated upon a lack of trust" that courts will sufficiently protect

97. *Id.* at 462.

98. ATF, FIREARMS COMMERCE IN THE UNITED STATES: ANNUAL STATISTICAL UPDATE 2021, at 16 (2021), https://www.atf.gov/firearms/docs/report/2021-firearms-commerce-report/download [https://perma.cc/M5VW-XGYQ].

99. *Id.*

100. *Id.*

101. ATF, *supra* note 62. For example, while the amount of machine guns owned in Georgia has climbed to over 50,000, at the same time, the number of machine guns in California has decreased by almost 3000. Id.

102. *Brown*, 764 F. Supp. 3d at 464.

103. *Id.*

104. *Id.*

105. *Id.* n.16.

106. *Id.* n.16.

Second Amendment rights.[107] Judge Reeves sees his role as applying the law faithfully, but he also criticizes the way that *Bruen* is forcing him to apply the law, leading to an outcome that, on its face, appears to contradict the Supreme Court's decision in *Heller*.

Although Judge Reeves's criticism of the Supreme Court's Second Amendment cases points to the issues with the history and tradition test, he also acknowledges the importance of refining this test through case law. He relied on the proposition from *United States v. Daniels* that the history and tradition test requires more case law to "determin[e] the contours of acceptable prosecutions . . . ."[108] In *Daniels*, the Fifth Circuit held that § 922(g)(3), a statute barring firearm possession by unlawful drug users, cannot be constitutionally applied to a defendant based solely on "habitual or occasional drug use."[109] This case was decided shortly before *Brown* and provided context for application of the history and tradition test, stating that courts should determine Second Amendment challenges based on the evidence offered by the parties in the case.[110] This likely explains why Judge Reeves did not look for external historical evidence that could include historical analogues for the machine gun ban.

Judge Reeves's decision in *Brown* demonstrates a commitment to fairness and the faithful application of the law. Whatever his personal views of the Second Amendment are, in *Brown*, he applies *Bruen* to the best of his ability while acknowledging its shortcomings. Though gun advocates may hope that this case paves the way for machine gun ownership, in reality, its holding was narrow and based on the lack of evidence the government proffered. Judge Reeves upheld the defendant's as-applied challenge to the ban on machine guns because the government failed to offer sufficient historical analogues to 18 U.S.C. § 922(o). If the government *had* offered sufficient evidence, the court likely would have ruled differently.

In any event, this case demonstrates that Judge Reeves is not afraid to issue notable rulings in Second Amendment cases when such rulings are the outcome to which the law leads him.[111] This

107. *Id.* at 464–65.

108. *Id.* at 465 (quoting United States v. Daniels, 124 F.4th 967, 978 (5th Cir. 2025) (internal quotation marks omitted)).

109. 124 F.4th at 970 (quoting United States v. Connelly, 117 F.4th 269, 282 (5th Cir. 2024)).

110. *Brown*, 764 F. Supp. 3d at 460 (citing *Daniels*, 124 F.4th at 977–78).

111. In fact, this case is not Judge Reeves's first controversial decision in the world of Second Amendment jurisprudence. His firearms jurisprudence is

willingness to go wherever the law takes him demonstrates a strong commitment to the process of justice and the rule of law. When the law is taken on its face and to its extreme, judges protect what the law is and give appellate courts the chance to course correct its contours. Thus, although *Brown* will likely be overturned on appeal, this decision is leading to discussion about whether to apply the "dangerous and unusual" standard in light of the *Bruen* decision.

B. MALICIOUS COMPLIANCE/UNCIVIL OBEDIENCE

United States v. Brown is an example of Judge Reeves following the letter of the law (if not its spirit) to disrupt the legal system. This method of rebellion is referred to as malicious compliance or uncivil obedience.[112] Malicious compliance is an "aggressive and sometimes overly literal implementation of a command or policy."[113] Much of the current literature on malicious compliance involves labor relations. In this context, employees demonstrate malicious compliance when they follow company rules and policy but knowingly commit actions that have a negative effect on the business.[114] Consequently, malicious compliance can be seen as uncivil obedience, since both entail deliberate action that is meant to communicate criticism of the status quo by following the laws exactly.

Uncivil obedience "disrupt[s] an existing legal regime" by following its "formal rules."[115] In many ways, uncivil obedience is the inverse of civil disobedience.[116] Like the latter, uncivil obedience seeks to disrupt laws and norms as a method of creating change. While civil disobedience focuses on breaking laws and accepting the consequences, uncivil obedience centers around "conspicuous law-abiding[]."[117] The elements of uncivil

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discussed further in Part IV.A of this Essay, but perhaps his most contentious decision in the area of firearms law is *United States v. Bullock*. 679 F. Supp. 3d 501 (S.D. Miss. 2023), *rev'd* 123 F.4th 183 (5th Cir. 2024). As can be seen from the case's subsequent history, the Fifth Circuit reversed Judge Reeves's decision in *Bullock*. *Id.*

112. Jessica Bulman-Pozen & David E. Pozen, *Uncivil Obedience*, 115 COLUM. L. REV. 809, 810 (2015); Nichols, *supra* note 8.

113. Nichols, *supra* note 8.

114. Indeed Employer Content Team, *What Is Malicious Compliance?*, INDEED FOR EMPS. (Dec. 3, 2024), https://uk.indeed.com/hire/c/info/malicious-compliance-guide [https://perma.cc/T42K-AUTR].

115. Bulman-Pozen & Pozen, *supra* note 112, at 810.

116. *Id.* at 812.

117. *Id.* at 817–18.

obedience are (1) conscientiousness, (2) communicativeness, (3) reformist intent, (4) legality, and (5) legal provocation.[118] The first element, conscientiousness, is met if an act is done with serious conviction.[119] The second element is satisfied when the "act convey[s] disapproval of a law or policy."[120] Reformist intent requires a desire to change a law, and the element of legality means that the law is being followed.[121] The last element, legal provocation, is fulfilled when the act "strike[s] others as jarring or subversive."[122] While it challenges laws, the broader goal of uncivil obedience is to spark new debates and strengthen democracy.[123]

Brannon Denning contends that uncivil obedience can, and has been, exemplified in judicial decisions—namely in the areas of the Commerce Clause, the anti-commandeering principle, and affirmative action.[124] He also explores this concept in the context of the Second Amendment.[125] Denning offers that the clearest instance of judicial uncivil obedience comes from Judge Richard Posner's opinion in *Moore v. Madigan*, which struck down Illinois's ban on public carry of firearms.[126] Posner had been a sharp critic of *District of Columbia v. Heller*.[127] Yet, he extended its logic beyond the home, arguing that the right of armed self-defense necessarily applies in public.[128] Other circuits resisted such broad reading, but Posner's decision dramatized the potential consequences of *Heller*'s reasoning.[129] In *Moore*, a petition for certiorari was never filed, but the Supreme Court has denied cert in similar cases, leaving *Moore*'s provocation unresolved.[130]

Denning argues that uncivil obedience is attractive to judges precisely because it allows critique under the guise of obedience.[131] Lower courts lack the authority to defy or overrule the

118. *Id.* at 820.
119. *Id.* at 821.
120. *Id.* at 822.
121. *Id.* at 824.
122. *Id.* at 825.
123. *See id.* at 868.
124. Brannon P. Denning, *Can Judges Be Uncivilly Obedient?*, 60 WM. & MARY L. REV. 1, 14–29 (2018).
125. *Id.* at 29.
126. *Id.* at 30, n.188.
127. *Id.* at 30.
128. *Id.* at 30–31.
129. *See id.* at 31.
130. *See id.* at 37.
131. *Id.* at 39.

Supreme Court openly.[132] But by "working to rule," and applying precedents to their logical extremes, courts can dramatize consequences, highlight doctrinal incoherence, and pressure the Court to clarify its rulings.[133] This is dissent from within the law's four corners. Moreover, uncivil obedience resonates with judicial culture. Judges value legality, hierarchy, and fidelity to text. This tactic lets them appear faithful while actually engaging in subtle reform. It also aligns with the observation that conservative judges (and judges in hierarchical institutions generally) may prefer dissent cloaked in obedience rather than outright resistance.

Arguably, Judge Reeves's opinion in *Brown* is an example of uncivil obedience or malicious compliance. As this was a ruling in a federal case, Judge Reeves's opinion was certainly issued with conviction. Further, as discussed above, his opinion also clearly communicated disapproval of the text, history, and tradition test in the context of the Second Amendment. His reformist intent is evident from the way he takes laws to the extreme, revealing how applying the text, history, and tradition test faithfully can lead to results that the Supreme Court did not intend upon its adoption. As he does this though, Judge Reeves is careful to follow the letter of the law. Finally, the various news articles written about Judge Reeves's decision-making and the media attention he garners reveal that these decisions do strike others as subversive.[134]

IV. BLACK JUDGES AND BLACK STEEL: A COMPARATIVE LOOK AT JUDGE REEVES AND JUSTICE THOMAS

A. JUDGE REEVES: BIOGRAPHY AND FIREARMS JURISPRUDENCE

Judges' personal characteristics and emotions have been shown to influence their decision-making.[135] However, recent U.S. Supreme Court nominees have expressed commitment to a version of restrained judging, a rejection of judicial activism. During his confirmation hearing, Chief Justice Roberts famously

132. *Id.* at 39–40.

133. *See id.* at 40 (quoting Bulman-Pozen & Pozen, *supra* note 112, at 863 (cleaned up)).

134. *See* Gutowski, *supra* note 4; Eger, *supra* note 5; Woodard, *supra* note 6.

135. Gregory S. Parks, *Jeffrey Rachlinski: Man, Myth, Legend*, 88 U. CHI. L. REV. 1757, 1764 (2021).

claimed that judges should simply "call balls and strikes" rather than impose their own policy choices and preferred outcomes in cases.[136] But judges are also human and bring their life experiences to the bench.[137] They unconsciously take their own life experiences into account, which can mean considering diverse perspectives and reaching more just outcomes.

What may be driving Judge Reeves's firearms jurisprudence is a desire for racial fairness in who is prosecuted for gun crimes, driven by his own life experiences. Judge Reeves was born in Fort Hood Texas in 1964, an integral year for the Civil Rights Movement in which the Civil Rights Act was passed, bringing the African-American community one step closer to equality in America.[138] He grew up in the rural town of Yazoo City, Mississippi, where he was a part of the town's first integrated high school class.[139] Reeves was the first member of his family to attend a four-year college and graduated magna cum laude from Jackson State University, an HBCU, in 1986.[140] He then attended University of Virginia Law School and graduated in 1989.[141]

He has spoken out about the racism he experienced growing up, and this racism did not cease when he started his legal career.[142] Judge Reeves spent his high school summers watching trials at his local courthouse, and by the time he graduated from law school at the University of Virginia, he knew he wanted to return to Mississippi.[143] In 2010, he became the second Black

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136. *See* Todd S. Purdum & Robin Toner, *Senators to Question 1st Supreme Court Nominee in 11 Years*, N.Y. TIMES (Sept. 13, 2005), https://www.nytimes.com/2005/09/13/politics/politicsspecial1/senators-to-question-1st-supreme-court-nominee-in.html [https://perma.cc/K8VM-VNYT].

137. *See* Gregory S. Parks, *Judicial Recusal: Cognitive Biases and Racial Stereotyping*, 18 N.Y.U. J. LEGIS. & PUB. POL'Y 681, 681–82, n.5 (2015).

138. *Reeves, Carlton Wayne*, FED. JUD. CTR., https://www.fjc.gov/history/judges/reeves-carlton-wayne [https://perma.cc/B7AQ-G47T].

139. Claude Summers, *The Remarkable Judge Carlton Reeves*, NEW C.R. MOVEMENT (July 5, 2016), https://www.thenewcivilrightsmovement.com/2016/07/the_remarkable_judge_carlton_reeves [https://perma.cc/63AP-N8CU]; Downs, *supra* note 13.

140. Summers, *supra* note 139.

141. *Id.*

142. *Id.* Judge Reeves has spoken out about an incident when he was in law school, and a fraternity hung a racist banner. *Id.* This incident led him to go to the school's judiciary committee, a moment of advocacy that foreshadows his later judicial career. *Id.*

143. Downs, *supra* note 13.

judge appointed to a federal judgeship in Mississippi.[144] As this Essay explores below, his desire for racial justice underscores his jurisprudence both in and outside the realm of firearms law.

Judge Reeves has been lauded as "one of the most eloquent, courageous, and principled jurists in the United States."[145] He has shown an unparalleled willingness to challenge the Executive branch[146] and Supreme Court conventions.[147] *Brown* is therefore cast against the backdrop of Judge Reeves's jurisprudence and worldview.

Outside of *Brown*, Judge Reeves's other firearms law jurisprudence reflects the same values that *Brown* does—of following the law in a way that prioritizes individual rights and promotes racial fairness. Perhaps the most important firearms case that Judge Reeves has adjudicated outside of *Brown* is *United States v. Bullock*.[148] *Bullock* is a prime example of Judge Reeves reaching a controversial decision in a case while seeking further clarification on applying *Bruen*. There, Judge Reeves dismissed charges against the defendant for felon in possession of a firearm,[149] and the Fifth Circuit reversed the decision.[150] The defendant had raised an as-applied challenge to 18 U.S.C. § 922(g)(1), arguing that § 922(g)(1) violated his Second Amendment right to possess firearms in his home for self-defense.[151] Judge Reeves had dismissed the charge because the government did not sufficiently demonstrate a historical tradition of firearms

144. NPR Staff, *A Black Mississippi Judge's Breathtaking Speech To 3 White Murderers*, CODE SWITCH (Feb. 13, 2015, 12:54 PM), https://www.npr.org/sections/codeswitch/2015/02/12/385777366/a-black-mississippi-judges-breathtaking-speech-to-three-white-murderers [https://perma.cc/V7N5-STF9].

145. *Assault on Our Judiciary*, *supra* note 12.

146. *Id.*

147. Mark Joseph Stern, *A Federal Judge Calls Clarence Thomas' Bluff on Gun Rights and Originalism*, SLATE (Nov. 2, 2022, 12:00 PM) [hereinafter *A Federal Judge Calls Clarence Thomas' Bluff*], https://slate.com/news-and-politics/2022/11/federal-judge-clarence-thomas-gun-rights-originalism.html [https://perma.cc/8V3C-AWR3]; Ariane de Vogue, *Federal Judge Blasts the Supreme Court for its Second Amendment Opinion*, CNN (Nov. 1, 2022, 8:20 PM), https://www.cnn.com/2022/11/01/politics/second-amendment-opinion-supreme-court-judge-carlton-reeves [https://perma.cc/7DMA-9Q85].

148. 679 F. Supp. 3d 501 (S.D. Miss. 2023), *rev'd* 123 F.4th 183 (5th Cir. 2024).

149. *See Bullock*, 679 F. Supp. 3d at 540.

150. *Bullock*, 123 F.4th at 185.

151. *Bullock*, 679 F. Supp. 3d at 504.

regulations like the felon ban.[152] In subsequent media, the case was deemed "notable"[153] and described as a "remarkable ruling."[154]

In his opinion in *Bullock*, Judge Reeves criticized the Supreme Court's recent Second Amendment cases, pointing out that judges are not historians and that the parties declined the court's offer to appoint an expert historian to the case.[155] He was concerned by the lack of involvement of a professional historian in the case because "an overwhelming majority of historians" disagree with the prevailing interpretation of the Second Amendment as protecting the individual right to keep and bear arms.[156] This concern with Supreme Court decision-making is also reflected in Judge Reeves's holding in *Brown*.

While the government in *Bullock* cited over 120 federal court decisions rejecting challenges to the felon ban, those decisions relied on the concurrences and dissents in *Bruen*,[157] which reveal that at least five of the Supreme Court justices support the constitutionality of the felon ban.[158] Even so, none of those 120 cases consulted historians.[159] Judge Reeves noted his disappointment in the lack of expert historian input in those district court cases and the case at hand.[160] His desire for an expert historian reflects concerns from various legal scholars regarding the methodology of the history and tradition test when applied to district courts, which as Judge Reeves mentions, do not benefit from amicus briefs.[161] From his decisions, it is clear that Judge

152. *Id.* at 508.

153. Andrew Willinger, *Thoughts on Judge Carlton Reeves' Critique of Text, History, and Tradition*, DUKE CTR. FOR FIREARMS L.: SECOND THOUGHTS BLOG (July 19, 2023), https://firearmslaw.duke.edu/2023/07/thoughts-on-judge-carlton-reeves-critique-of-text-history-and-tradition [https://perma.cc/GHS9-TELD].

154. Ruth Marcus, *A U.S. District Judge Calls the Supreme Court's Bluff on Guns*, WASH. POST (July 7, 2023), https://www.washingtonpost.com/opinions/2023/07/07/originalism-supreme-court-second-amendment-reeves [https://perma.cc/G8Z8-WMKS].

155. *Id.*

156. *Id.*

157. *Bullock*, 679 F. Supp. 3d at 509.

158. *Id.* at 518.

159. *Id.* at 509.

160. *Id.* at 519.

161. *See* Alexandra Michalak, *Historians Wear Robes Now? Applying the History and Tradition Standard: A Practical Guide for Lower Courts*, 32 WM. & MARY BILL RTS. J. 479, 503 (2023); Kimberly Strawbridge Robinson & Lydia Wheeler, *Justices' History Focus Tests Lawyers, Judges, and Law Schools*,

Reeves would prefer to leave historical analysis to historians to avoid misinterpretation by judges and attorneys.

Judge Reeves came to a controversial decision in *Bullock* based on the same concerns that many legal scholars and media outlets voiced about the *Bruen* test.[162] His decision exposes how ridiculous *Bruen* could be in practice and, in an earlier order in *Bullock*, he emphasized that judges "are not experts in what white, wealthy, and male property owners thought about firearms regulation in 1791."[163] Judge Reeves has spoken out about the importance of including diverse perspectives in the judiciary, and the history and tradition test does the opposite. It forces federal judges to get into the minds of a small, very privileged historical group and divine what their views would be today about firearm regulations. The *Bruen* test's reliance on history and tradition may reflect "one-sided justice" that does not account for diverse perspectives, but the test also leads to results vastly favoring defendants and placing a large burden on the government in each case about firearms law. Every time the government does not present sufficient historical evidence, individual Second Amendment rights are expanded. In this way, the Supreme Court has set forth a precedent that is difficult for judges to work with and that may unfairly prioritize the privileged perspectives of white land-owning men during the Founding Era. While *Bullock* does not mention machine guns, it reveals Judge Reeves's criticisms of recent Supreme Court Second Amendment cases and how those precedents impact his analyses.

Throughout other cases in his firearms law jurisprudence, Judge Reeves has similarly focused on upholding racial justice in ways that have led to favorable outcomes for defendants. In *United States v. Benito*,[164] Judge Reeves found that Second Amendment protections applied to an undocumented immigrant.[165] The defendant, an undocumented immigrant, was charged with possessing a firearm while unlawfully in the United States, but the court dismissed the charges against him

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BLOOMBERG LAW (Oct. 12, 2024, 6:00 AM), https://news.bloomberglaw.com/us-law-week/justices-history-focus-tests-lawyers-judges-and-law-schools [https://perma.cc/2HFZ-NC57]; United States v. Bullock, 679 F. Supp. 3d at 520–22.

162. *See A Federal Judge Calls Clarence Thomas' Bluff*, *supra* note 147; de Vogue, *supra* note 147.

163. United States v. Bullock, No. 18-CR-165, 2022 WL 16649175, at *1 (S.D. Miss. Oct. 27, 2022).

164. 739 F. Supp. 3d 486 (S.D. Miss. 2024).

165. *Id.* at 495–96.

because it found that he was among "the people" protected by the Constitution.[166] The court ruled this way based on the defendant's substantial connections with the United States, which included his living in the country for the last three years.[167] While the court reviewed possible historical analogues that could justify allowing the disarmament of immigrants, it held that these regulations were not sufficiently similar because they did not serve the *same purpose* as the regulation in question.[168] Thus, Judge Reeves's focus on the purpose of historical laws when identifying historical analogues reflects his commitment to fairness. Additionally, in *United States v. Jones*, the defendant was charged with violating 18 U.S.C. § 922(g)(1), which he challenged as unconstitutional under *Bruen*.[169]

Despite being armed with and shooting at several people with an AR-15 at the time of his arrest, the defendant had never previously been convicted of a violent felony, as required by the statute.[170] Based on the Seventh Circuit, "legislatures have the power to prohibit *dangerous* people from possessing guns."[171] In *Jones*, the government had failed to prove that the defendant was dangerous since his previous offenses were non-violent, drug crimes.[172] Because of the flaws in the Supreme Court's ruling in *Bruen*, the court granted the defendant a revocation hearing.[173] The court's ruling demonstrates that it does not support permanent disarmament on "generalized interests of public safety" but rather is aimed at preventing "armed rebellions."[174] Importantly, if the defendant had been previously convicted of a violent felony, Judge Reeves likely would have ruled differently.[175]

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166. *Id.* at 492, 494.
167. *Id.* at 493.
168. *Id.* at 494.
169. No. 23-CR-74, 2024 WL 86491, at *1 (S.D. Miss. Jan. 8, 2024).
170. *Id.*
171. *Id.*
172. *Id.* at *2.
173. *Id.* at *3.
174. *Id.* at *2.
175. Almost a year after he decided this case, Judge Reeves adjudicated *United States v. Doster*, No. 24-CR-82, 2024 WL 5204592 (S.D. Miss. 2024). In that case, the defendant was charged with knowingly possessing a firearm as a convicted felon, violating 18 U.S.C. §§ 922(g)(1) and 924(a)(8). *Id.* at *1. Judge Reeves denied the defendant's motion to dismiss because he had been previously convicted of a violent felony. *Id.* at *3.

These cases demonstrate Judge Reeves's commitment to fairness that takes into consideration racial justice and diverse perspectives. His jurisprudence as a whole reveals that his decision-making is informed by his desire to protect the interests of ordinary citizens and preserve individual rights. While in the Second Amendment context, that often leads to decisions supporting a broad right to keep and bear arms,[176] in other contexts, this philosophy leads to decisions more in line with traditional liberal values.

B. JUSTICE THOMAS: BIOGRAPHY AND FIREARMS JURISPRUDENCE

Clarence Thomas was born on June 23, 1948, in Pin Point, Georgia, a small, mainly African American community founded by freed slaves.[177] Thomas grew up in poverty, born in a one-room shack with dirt floors and no plumbing.[178] When Thomas was just two years old, his father divorced his mother and abandoned the family.[179] Unable to support her children on a maid's salary in Savannah, Thomas's mother sent him and his younger brother to live with their grandfather, Myers Anderson, when Thomas was six.[180]

Thomas has often described his grandfather as the most influential figure in his life.[181] Anderson, a self-made businessman who delivered coal and oil, emphasized discipline, hard work, and self-reliance.[182] Thomas's idolization of his grandfather likely influenced his eventual penchant for originalism. Thomas's grandfather supported civil rights efforts, even using his resources to bail out jailed demonstrators and taking Thomas

176. *But see* United States v. Shepherd, No. 23-CR-39, 2024 WL 71724, at *5 (S.D. Miss. Jan. 5, 2024). In *Shepherd*, the defendant was charged with possessing an unregistered short-barreled shotgun. *Id.* Like in *Brown*, the dangerousness of the firearm was not in question, but rather the analysis focused on whether it was unusual. *Id.* at *4. Judge Reeves found that short-barreled shotguns are unusual and not the kind of firearm commonly used for lawful purposes like self-defense, and thus, can be subject to regulation. *Id.* at *5.

177. *Clarence Thomas*, OYEZ, https://www.oyez.org/justices/clarence_thomas [https://perma.cc/7DL7-D9SC] (last visited Oct. 21, 2025).

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

to NAACP meetings.[183] These experiences left Thomas with a strong belief in civic responsibility and passion for fighting racial injustice, but they did not lead him to a judicial philosophy of rebellion and revolution.

Unlike Judge Reeves's experience growing up in a newly integrated school system and going to an HBCU, Justice Thomas attended a segregated Catholic school before becoming the first Black student at St. John Vianney Minor Seminary.[184] While he originally intended to become a priest, the racial discrimination he experienced ultimately led him to pursue a legal career.[185] Justice Thomas went on to complete his undergraduate education at the College of the Holy Cross.[186] He graduated in 1971 with a degree in English literature, a major personal accomplishment since he grew up speaking Gullah—an English-based creole spoken in his hometown.[187] During college, he was secretary for the Black Student Union and became an active participant in the civil rights and anti-war movements.[188] At that time, Thomas became an avid student activist, participating in protests, marches, and even the 1970 Harvard Square riots.[189] In subsequent years, Thomas credited his time as an activist for his turn to conservatism, as participating in protests left him disillusioned with leftist movements.[190]

After college, Thomas earned his Juris Doctor from Yale Law School in 1974.[191] Although he benefited from the affirmative action admissions policies at Yale as one of twelve black students accepted his year, Thomas would later become one of the policy's most vocal critics, arguing that such policies led others to question the legitimacy of his accomplishments.[192] While trying to find work as a corporate lawyer in Atlanta, Thomas said

183. *A Conversation with Justice Clarence Thomas*, HILLSDALE COLL.: IMPRIMIS, April 2016, https://imprimis.hillsdale.edu/a-conversation-with-justice-clarence-thomas [https://perma.cc/D466-3EJC].

184. *Id.*

185. *Id.*

186. *Id.*

187. OYEZ, *supra* note 177.

188. *Id.*

189. *Id.*

190. Chantelle Lee, *'He's a Bundle of Contradictions': Why Clarence Thomas Left the Black Power Movement Behind*, PBS: FRONTLINE (May 9, 2023), https://www.pbs.org/wgbh/frontline/article/clarence-thomas-black-power-movement [https://perma.cc/KFP4-YH6D].

191. *Id.*

192. *Id.*

firms often assumed he had gotten into Yale and received better grades because of these affirmative action policies.[193] In his 2007 memoir, *My Grandfather's Son,* Thomas wrote, "I peeled a fifteen-cent sticker off a package of cigars and stuck it on the frame of my law degree to remind myself of the mistake I made by going to Yale."[194]

Eventually, Thomas managed to find work as an assistant attorney general in Missouri under John Danforth.[195] When Danforth became a U.S. Senator, Thomas followed him to Washington D.C to become his legislative assistant.[196] In 1981, Thomas was appointed the Assistant Secretary for Civil Rights in the U.S. Department of Education where he worked until President Ronald Reagan appointed him as the Chairman of the Equal Employment Opportunity Commission (EEOC) in 1982.[197] At the EEOC, Thomas focused on enforcing federal laws prohibiting employment discrimination such as the Civil Rights Act of 1964.[198] Thomas's time had a lasting impact on the organization, resulting in the litigation volume and settlement award amounts for discrimination victims almost tripling.[199] The longest serving chairman in the agency's history, Thomas oversaw the organization until his appointment to the U.S. Court of Appeals in the District of Columbia Circuit by President George H.W. Bush in 1990.[200]

Thomas served in that role for nineteen months before Bush appointed him to the U.S. Supreme Court in 1991, replacing Justice Thurgood Marshall.[201] After a rocky confirmation process due to sexual harassment allegations from Anita Hill, a former EEOC subordinate,[202] Thomas was eventually confirmed by the Senate in a 52-48 vote to be the second African American Supreme Court Justice.[203] Once on the Supreme Court, Justice Thomas's jurisprudence has been established in originalism. In

193. *Id.*

194. CLARENCE THOMAS, MY GRANDFATHER'S SON: A MEMOIR (New York: HarperCollins, 2007).

195. *Id.*

196. *Id.*

197. OYEZ, *supra* note 177.

198. *Id.*

199. *Id.*

200. *Clarence Thomas*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/history/clarence-thomas [https://perma.cc/HUB8-7DW6].

201. *Id.*

202. *Id.*

203. OYEZ, *supra* note 177.

District of Columbia v. Heller, Justice Thomas emphasized the Second Amendment's roots in protecting Black Americans post-Civil War, arguing the Fourteenth Amendment was meant in part to protect gun rights. Justice Thomas authored the majority opinion in *Bruen*, the case which established the text, history, and tradition test for Second Amendment regulations. This decision was rooted in originalism and more clearly defined the government's burden for imposing on the fundamental Second Amendment right to bear arms.

Judge Reeves and Justice Thomas ostensibly experienced similar instances of racial discrimination at a young age and as they started their legal career. Yet, these experiences have led them to opposing philosophies. Where Judge Reeves focuses on the spirit of the law and intent behind it to promote racial justice and fairness, Justice Thomas seeks to promote justice through adherence to originalism. Their willingness to rule contrary to precedent, however, is one place where these two judges' philosophies converge. A vocal critic of *stare decisis*, Thomas has shown a strong willingness to overturn prior rulings if he believes they conflict with the Constitution's text.[204] As Justice Antonin Scalia once remarked, "[h]e does not believe in stare decisis, period."[205] His lack of belief in *stare decisis* mirrors Judge Reeves's willingness to rule in a way that may seem unpopular or uncalled for given precedent.

Outside the courtroom, Thomas is known for his deeply held beliefs in faith and personal responsibility, and limited government. Once famously silent during oral arguments, going almost

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204. *See* Lyle Denniston, *Justice Thomas, Originalism and the First Amendment*, NAT'L CONST. CTR.: CONST. DAILY BLOG (Feb. 20, 2019), https://constitutioncenter.org/blog/justice-thomas-originalism-and-the-first-amendment [https://perma.cc/7K6X-E73L].

205. *Live Coverage: Supreme Court Appears Open to Upholding Mississippi Abortion Ban*, N.Y. TIMES (Dec. 1, 2021), https://www.nytimes.com/live/2021/12/01/us/abortion-mississippi-supreme-court [https://perma.cc/VF5Z-UUPZ]. One example of Justice Thomas's willingness to depart from precedent is *McDonald v. City of Chicago*, 561 U.S. 742 (2010). There, Justice Thomas was the sole justice to argue that the Second Amendment should apply to the states through the Privileges or Immunities Clause rather than the Due Process Clause, demonstrating his willingness to reconsider foundational doctrines. *Id.*

Similarly, in Dobbs v. Jackson Women's Health Organization, 597 U.S. 215, Thomas joined the majority overturning Roe v. Wade and authored a separate concurring opinion suggesting that the court should also revisit cases involving contraception and same-sex marriage, arguing that the doctrine of substantive due process doctrine is unconstitutional. Dobbs, 597 U.S. (Thomas, J., concurring).

ten years without asking a single question, Thomas has become more active on the bench in recent years. His solo concurrences and dissents, once seen as outliers, have gained support as the Court has shifted right, especially after Donald Trump's presidency.[206] In contrast to Justice Thomas's historical silence, Judge Reeves is widely known for being a great orator and has been quick to offer up not just questions in court, but also his own remarks and commentary. Today, though, Justice Clarence Thomas is not only a key figure in shaping the Court's modern conservative majority, but also an example of consistency, holding steadfast in his belief of remaining true to the original meaning of the Constitution regardless of politics or popularity.

In this way, both judges are particularly concerned with protecting individual rights in the Second Amendment context, even if those concerns manifest in different ways. Unlike Justice Thomas, Judge Reeves is similarly concerned with preserving Black Americans' ability to access their Second Amendment rights.

206. Adam Liptak, *Justice Clarence Thomas, Long Silent, Has Turned Talkative*, N.Y. TIMES (May 3, 2021), https://www.nytimes.com/2021/05/03/us/politics/clarence-thomas-supreme-court.html[https://www.nytimes.com/2022/05/16/us/clarence-thomas-supreme-court.html] [https://perma.cc/XE7M-YGQV].

V. JUDGE REEVES'S BROADER JURISPRUDENCE AND PHILOSOPHY

A. JUDGE REEVES'S JURISPRUDENCE

What may drive Judge Reeves's firearms jurisprudence is a simple desire for fairness. This sentiment is underscored across Judge Reeves's jurisprudence in areas like the welfare of children,[207] reproductive rights,[208] sexual orientation,[209] race,[210] and the power of the state.[211] This variety indicates that Judge Reeves's desire for fairness extends not just to the firearms law context, but to all of the cases that he adjudicates.

In 2023, Judge Reeves protected the welfare of children by ruling that the City of Jackson had violated the Due Process rights of over 1,000 children when it intentionally misled them to consume lead-contaminated water.[212] He started the opinion by discussing the importance of water: "Water is essential. In the Book of Genesis, water precedes light and land, plants and trees, animals and people."[213] By providing children with contaminated water, the city had created a danger for the children who live there.[214] Judge Reeves criticized the Fifth Circuit for not recognizing the right to remedy state-created danger, stating that "[t]he Fifth Circuit's categorical bar on holding government actors accountable for the dangers they create or enhance has also had nightmarish consequences for ordinary citizens."[215] This decision's protection of the welfare of children shows that Judge Reeves is committed to ensuring that ordinary citizens remain at the heart of his decisions as a judge.

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207. *See* J.W. v. City of Jackson, No. 21-CV-663, 2022 WL 22270628 (S.D. Miss. July 20, 2022).

208. *See* Jackson Women's Health Org. v. Currier, 349 F. Supp. 3d 536 (S.D. Miss. 2018); Jackson Women's Health Org. v. Dobbs, 379 F. Supp. 3d 549 (S.D. Miss. 2019).

209. *See* Barber v. Bryant, 193 F. Supp. 3d 677 (S.D. Miss. 2016), *rev'd*, 860 F.3d 345 (5th Cir. 2017); Campaign for S. Equal. v. Bryant, 64 F. Supp. 3d 906 (S.D. Miss. 2014).

210. *See* United States v. Butler, No. 12CR34C, 2012 WL 974991 (S.D. Miss. Mar. 21, 2012).

211. *See* Jamison v. McClendon, 476 F. Supp. 3d 386 (S.D. Miss. 2020); Green v. Thomas, 734 F. Supp. 3d 532 (S.D. Miss. 2024).

212. J.W. *ex rel.* Williams v. City of Jackson, 663 F. Supp. 3d 624 (S.D. Miss. 2023).

213. *Id.* at 628.

214. *Id.*

215. *Id.* at 646.

Judge Reeves's commitment to fairness for all groups is apparent in his commentary in cases. In *Jackson v. Currier*, Judge Reeves issued an injunction and later struck down a law prohibiting abortions after the first fifteen weeks of pregnancy, with few exceptions.[216] Judge Reeves held that the law was an unconstitutional limitation on Due Process rights and called the law "pure gaslighting."[217] In his opinion, he acknowledged, "The fact that men, myself included, are determining how women may choose to manage their reproductive health is a sad irony not lost on the Court."[218] After *Jackson*, Judge Reeves issued a preliminary injunction in *Jackson Women's Health Org. v. Dobbs* before the case eventually made its way to the Supreme Court.[219] In *Dobbs*, Mississippi Governor Phil Bryant signed a law, scheduled to go into effect on July 1, 2019, that would ban abortions later than six weeks of pregnancy.[220] The Center for Reproductive Rights challenged the law.[221] Judge Reeves criticized the law for defying his earlier decision and inquired, "Doesn't it boil down to six is less than fifteen?"[222] In both cases, Judge Reeves protected individual Due Process rights and upheld the precedent of *Roe v. Wade*.[223]

Further, in *Campaign for Southern Equality v. Bryant*, Judge Reeves ruled that Mississippi's same-sex marriage ban violated both the Due Process and Equal Protection Clauses of the Fourteenth Amendment.[224] In 2014, the Campaign for Southern Equality and two same-sex couples challenged Mississippi's statutory and constitutional denial of their marriage rights.[225] Judge Reeves's opinion noted the connection between racism and homophobia and how that connection oppressed both Black and

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216. Jackson Women's Health Org. v. Currier, 349 F. Supp. 3d 536, 538 (S.D. Miss. 2018).

217. *Id.* at 545, n.22.

218. *Id.* at 545.

219. 379 F. Supp. 3d 549 (S.D. Miss. 2019).

220. *Id.* at 553.

221. *Id.* at 551.

222. Jackson Women's Health Org. v. Currier, 349 F. Supp. 3d 536, 551 (S.D. Miss. 2018); Kate Smith, *Mississippi Federal Judge Says the State's Six-Week Abortion Ban "Smacks of Defiance to This Court,"* CBS NEWS (May 21, 2019, 1:05 PM), https://www.cbsnews.com/news/mississippi-abortion-laws-mississippi-abortion-bill-smacks-of-defiance-says-federal-judge-carleton-reeves-2019-05-21 [https://perma.cc/E8T7-LAQ4].

223. 410 U.S. 113 (1973).

224. 64 F. Supp. 3d 906, 954 (S.D. Miss. 2014).

225. *Id.* at 911–12.

LGBTQ+ Mississippians.[226] Judge Reeves further held that, just as the state's views on race had led it to oppress Blacks for generations, "Mississippi's traditional beliefs about gay and lesbian citizens . . . [took] away fundamental rights owed to every citizen. It is time to restore those rights."[227]

Then, in *Barber v. Bryant*, Judge Reeves issued an injunction against Mississippi House Bill 1523, which protected organizations, companies, and individuals who discriminated against same-sex married couples.[228] Judge Reeves held that the law violated both Equal Protection and the Establishment Clause, noting that the act did not "respect the equal dignity of all of Mississippi's citizens."[229] Judge Reeves compared Governor Bryant's opposition to the *Obergefell v. Hodges* decision to Governor James P. Coleman's opposition to the *Brown v. Board of Education* decision.[230] This comparison directly showcases Judge Reeves's focus on racial justice throughout his jurisprudence.

This focus is again seen in 2015, when Judge Reeves sentenced three young white men for their roles in a racially-charged hate crime, the death of a black man named James Craig Anderson.[231] In 2011, a group of young white men and women were drinking and partying in the small town of Puckett, Mississippi.[232] Deryl Dedmon, an 18-year-old white man, urged the group to go antagonize black people, and they drove to a predominantly Black area in Jackson.[233] They beat Anderson and then killed him by running over his body with a truck, yelling "white power" as they drove off.[234] In handing down sentences of between 7 and 50 years in prison for the defendants,[235] Reeves gave a widely publicized speech that remarked on how the killing of Anderson fit into Mississippi's "tortured past" of lynchings

226. *Id.* at 921.
227. *Id.* at 954.
228. 193 F. Supp. 3d 677, 687–88 (S.D. Miss. 2016).
229. *Id.* at 723–24.
230. *Id.* at 693, n.6.
231. *See* Downs, *supra* note 13.
232. United States v. Butler, No. 12CR34, 2012 WL 974991 (S.D. Miss. Mar. 21, 2012) (all three defendants accepted plea deals, so this citation is to the criminal complaint against them).
233. *Id.* at *3.
234. *Id.*
235. Downs, *supra* note 13.

and racism.[236] This speech is discussed in more depth in Section B, *infra*.

Judge Reeves has also criticized the doctrine of qualified immunity in cases about the power of the state. For instance, in *Jamison v. McClendon*, Judge Reeves upheld a grant of qualified immunity when a White police officer detained a Black man in a traffic stop in violation of the Fourth Amendment.[237] The defendant-police officer purportedly stopped the plaintiff-citizen because the temporary tag on his car was folded over, obstructing the officer's view of it.[238] The defendant falsely stated that an anonymous caller had reported that the plaintiff was transporting cocaine, and promised leniency in exchange for consenting to a search.[239] After repeated cajoling, during which the defendant reached his arm into the car, the plaintiff eventually consented to the search, which damaged the car but did not turn up anything suspicious.[240] The officer then brought out a drug-sniffing dog to sniff the car but, when the dog found nothing, let the plaintiff go.[241] The traffic stop lasted one hour and 50 minutes.[242] Plaintiff sued the officer pursuant to 42 U.S.C. § 1983, arguing that the stop violated his Fourth Amendment rights.[243] Judge Reeves upheld the grant of qualified immunity because he was bound by Supreme Court precedent.[244] In apparent dissent, however, he discussed how many people have died at the hands of law enforcement and argued that qualified immunity should not exist.[245]

Further, in *Green v. Thomas*,[246] Judge Reeves denied qualified immunity when the State falsely accused plaintiff Green of capital murder and held him in a jail "full of violence, rodents, and moldy food."[247] While incarcerated, Green was often forced to sleep on the floor and "constantly feared for his life."[248] By the

236. *Id.*
237. 476 F. Supp. 3d 386, 392, 424 (S.D. Miss. 2020).
238. *Id.* at 392.
239. *Id.* at 393.
240. *Id.* at 394.
241. *Id.*
242. *Id.* at 395.
243. *Id.* at 397.
244. *Id.* at 411.
245. *Id.* at 392.
246. 734 F. Supp. 3d 532 (S.D. Miss. 2024).
247. *Id.* at 539.
248. *Id.* at 540.

time the dishonest informant who implicated Green recanted and the State dropped the charges, Green had already been imprisoned for almost two years.[249] Green then sued the detective responsible for the injustice, her employer, and the city operating the jail.[250] The detective contended that the legal doctrine of qualified immunity required dismissal of the claims, but Judge Reeves disagreed and issued an opinion critiquing the Supreme Court's establishment and expansion of qualified immunity.[251] Judge Reeves discussed the racist history of qualified immunity and how the act behind 42 U.S.C. § 1983 is the Ku Klux Klan Act, which was passed to protect Black people from racist state actors during the Reconstruction.[252]

As laid out in this Section, Judge Reeves focuses on fairness and faithful application of the law across a variety of legal topics. His commitment to racial justice is underscored by his public remarks about race and the importance of diverse experiences in the judiciary. Judge Reeves's life experiences mean that he personally understands the importance of an impartial justice system. His ultimate goal is seemingly to promote a system that treats every defendant the same way.

B. JUDGE REEVES'S PHILOSOPHY

Judge Reeves does not shy away from criticizing the Supreme Court and the Executive branch when necessary to promote fairness. This Section recounts two of his speeches that garnered attention in the media. Both focus on racial justice, with the first being when Judge Reeves issued a speech upon receiving an award in 2019, and the second during a sentencing hearing in 2015. These speeches provide insight into Judge Reeves's jurisprudence both in and out of the firearms law context.

In 2019, Judge Reeves received the Thomas Jefferson Foundation Medal in Law.[253] In his remarks upon receiving the award, he could have reflected solely on his own accomplishments, but instead he chose to "engage in [a] difficult conversation[]."[254] He acknowledged that the namesake of the award, Thomas Jefferson, believed that black people were "not fit to

249. *Id.*
250. *Id.*
251. *Id.* at 569.
252. *Id.* at 543.
253. *Assault on Our Judiciary*, *supra* note 12.
254. Reeves, *supra* note 12.

attend [the University of Virginia], let alone be honored by it."[255] As a Black judge, he believes that he is obligated to speak out against injustice and cautions that we must defend against injustice today.[256] He maintained that the judiciary is "a vision of the courts as the defender of justice."[257] Some might call Judge Reeves's willingness to speak out judicial activism, and perhaps it is, but it is also reflective of a deep conviction that the ultimate goal of the court system is to bring about justice. To Judge Reeves, "justice is a search for truth."[258] He searches for that truth in each case he hears, and he also believes that finding the truth requires diverse experiences.[259] In his view, this requirement is best captured by the jury, which must be impartial and represent a cross-section of its community.[260]

Without diversity, "one-sided justice" allows for atrocities like the institution of slavery and legal conclusions that Black people were inferior to their white counterparts.[261] During the Reconstruction, the experiences of Black people were let into the judicial system in Mississippi for the first time, but the Ku Klux Klan responded with violence, "trying to assassinate black judges" and "shooting black jurors."[262] This history informs what justice has looked like throughout the history of Mississippi, and demonstrates how justice once pushed aside Black experiences and sanctioned lynchings.[263] Judge Reeves's discussion of how justice has been perverted by the judicial system through racist policies demonstrates why he prioritizes the ordinary citizen's interests when he decides cases.

When *Alexander v. Holmes County*[264] required Mississippi to finally desegregate, Judge Reeves was in kindergarten.[265] He stated that his education in integrated classes "came from an effort to defend and strengthen our courts."[266] Judge Reeves has lived through historical events that were the result of justice

255. *Id.* at 1.
256. *Id.* at 2.
257. *Id.*
258. *Id.*
259. *Id.* at 3.
260. *Id.*
261. *Id.* at 4 (internal quotation marks omitted).
262. *Id.* at 5.
263. *Id.*
264. 396 U.S. 19 (1969).
265. Reeves, *supra* note 12, at 8.
266. *Id.*

informed by diverse perspectives. He believes that the recent judicial appointments of individuals with a wide array of experiences "wove the essence of America into the tapestry of our judiciary."[267] Judge Reeves is so critical of the Supreme Court's lack of faith in the lower courts when it comes to Second Amendment cases, because attacks on the judicial system were tools used by groups like the Ku Klux Klan's lawyers to advance their racist agenda.[268] These attacks indicate, to him, a desire to avoid the input of diverse perspectives and advance a narrow view of justice.

Judge Reeves argued that President Trump's attacks on the judiciary are driven by a readiness to attack diverse perspectives and carries the same racist presumptions as historical attacks on the judiciary.[269] Judge Reeves does not believe that courts are infallible, and he welcomes friendly debate but rebukes politicians who seek to spread hate.[270] His desire to uplift diverse perspectives does not end at racial diversity, and he spoke out about the stark lack of diversity in President Trump's judicial appointments, even as compared to other Republican administrations.[271] Judge Reeves ended his remarks on a positive note: "When people of every race, ethnicity, religion, gender, and sexual orientation can see their own experiences reflected in our highest institutions, they receive hope and inspiration beyond measure."[272] Judge Reeves's jurisprudence reflects a desire to protect minoritized communities, as reflected in his decisions protecting the welfare of children, reproductive rights, and LGBTQ+ rights.[273]

Because Judge Reeves is an excellent orator, his remarks on race have garnered widespread attention from the public, which is perhaps best represented in his speech at the sentencing hearing in *Butler*, which has since been read over a million times.[274] In this hearing, Judge Reeves spoke on the history of

267. *Id.* at 10.
268. *See id.*
269. *Id.* at 11.
270. *Id.*
271. *Id.* at 12.
272. *Id.* at 14.
273. *See supra* Part V.A.
274. See Downs, *supra* note 13 for the text of this speech. While he gave the speech orally during a sentencing hearing he was presiding over, it has been since published online and widely read. *Id.*

Mississippi.[275] He talked about the "savagery" of Mississippi, "slavery being the cruelest example, but a close second being Mississippi's infatuation with lynchings."[276] Judge Reeves recounted Mississippians' perception of lynchings, stating that it is estimated that 4,742 black people were killed by lynch mobs.[277] He questioned how Mississippians could engage in such "sadistic" behavior:[278]

> How could hate, fear or whatever it was transform genteel, God-fearing, God-loving Mississippians into mindless murderers and sadistic torturers? I ask that same question about the events which bring us together on this day. Those crimes of the past, as well as these, have damaged the psyche and reputation of this great state.[279]

The answer, Judge Reeves posited, is "racial hatred."[280] He framed the defendants' actions in *Butler* as a "terror campaign" like a lynching.[281] His speech underscored the hatred of the group's actions, calling it the "2011 version of the nigger hunts."[282] His adjudication of a case about a racial hate crime as the second black federal judge to be appointed in Mississippi is especially poignant. This speech reflected his desire for a justice that takes Black experiences into account, which he elaborated on in his speech at the University of Virginia four years later.

While noting that the defendants had "ripped off the scab of the healing scars of Mississippi," Judge Reeves asserted that the integrated, race-neutral operation of Mississippi's modern-day justice system was "the strongest way" for the state to reject the racism of the past.[283] Judge Reeves's public commentary about race gives the public a window into his judicial philosophy. Judge Reeves has seen Mississippi transform from "separate but equal" to integrated during his lifetime, and he knows that justice came about only when Black experiences were taken into consideration.

Judge Reeves's public commentary about racial justice reveals a staunch desire to confront the less-than-favorable history

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275. NPR Staff, *supra* note 144.
276. *Id.*
277. *Id.*
278. *Id.*
279. *Id.*
280. *Id.*
281. *Id.*
282. *Id.*
283. *Id.*

of the United States and Mississippi. By addressing this history and speaking out against hatred, Judge Reeves works towards a judicial system that treats every defendant equally. His philosophy is situated in the broader context of what it means to be Black and own a gun in America. Black Americans who own guns are far more likely than their white counterparts to be viewed by police as a possible threat for their gun ownership rather than a peacefully-armed ally.[284] In the firearms law context, Judge Reeves's philosophy means that he is more willing than many judges to issue controversial decisions in the name of pushing forward that goal.

Judge Reeves's decision in *Brown* exemplifies his goal to treat each defendant equally because he was willing to depart from precedent to apply the law. Rather than shying away from making a controversial decision, he stated in his opinion that the court's "doubts and the discourse, no matter how serious or justified, cannot deter it from faithfully applying the law, even if that application is later found to be erroneous."[285] Despite Judge Reeves's penchant for issuing controversial decisions, an exploration of his jurisprudence outside of firearms law and of his philosophy reveals that he is motivated by faithfully applying the law and working to reach fair results.

CONCLUSION

Judge Reeves has issued many newsworthy decisions, not least of which was his recent decision in *United States v. Brown*. His decision in that case is an "outlier" resulting from the government's failure to provide evidence of sufficient historical analogues to the ban on machine guns. Unpacking his analysis reveals Judge Reeves's

284. *See* Duke University School of Law, *Duke Center for Firearms Law / Policing the Second Amendment*, YOUTUBE (Feb. 10, 2021), https://www.youtube.com/watch?v=f5MKYH6nZvg [https://perma.cc/HUZ6-ZNFW]. In addition to this discussion, one of the authors of this paper, Vivian Bolen, has spent the summer interning at a public defender's office and has seen firsthand how the assumptions about Black gun owners possessing their firearms illegally can lead to their being charged with crimes. Even lawful gun owners can be subject to charges like the North Carolina state-level charge of going armed to the terror of the people. Jessica Smith, *Going Armed to the Terror of the People*, N.C. CRIM. LAW: UNC SCH. GOV'T BLOG (Dec. 20, 2012), https://nccriminallaw.sog.unc.edu/going-armed-to-the-terror-of-the-people [https://perma.cc/YB2T-KP6D].

285. United States v. Brown, 764 F. Supp. 3d 456, 465 (S.D. Miss. 2025) (citing United States v. Rahimi, 61 F.4th 443 (5th Cir. 2023), *rev'd*, 602 U.S. 680 (2024)).

critiques of recent Supreme Court Second Amendment case law and its unwieldy application. Judge Reeves has criticized this case law in other firearms law cases, and his jurisprudence more generally is driven by a desire for fairness. His decision in *Brown* did not align with the broader jurisprudence within the Fifth Circuit or in other circuits, demonstrating his willingness to issue a controversial decision. Judge Reeves's worldview informs this willingness, and his jurisprudence is underscored by his commitment to advancing justice and working towards a justice system that treats every defendant equally. He is likely to issue more controversial decisions in the future, including in the area of firearms law, especially if higher courts do not provide further guidance on how to conduct the *Bruen* analysis.