



Can the Government Prohibit 18-Year-Olds from Purchasing Firearms?

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On March 9, 2018, Florida [enacted](#) new [gun control legislation](#) in the wake of a mass shooting at a Parkland high school by a 19-year-old former student. Shortly after the Florida measure was signed into law, the National Rifle Association (NRA) filed [suit](#) in federal court seeking to enjoin [a provision](#) of the Florida statute, which renders it a felony for a person under the age of 21 to purchase a firearm. The NRA contends that the provision is an unconstitutional infringement upon the rights of 18-to-20-year-olds to keep and bear arms under the [Second Amendment](#). [Reviewing courts have held](#) that some age-based restrictions on firearms purchases by persons under 21 are permissible, including [federal restrictions](#) on commercial dealers selling handguns to persons under 21 and juveniles under the age of 18 possessing a handgun. But Florida's blanket prohibition on 18-to-20-year-olds purchasing *any* firearm may go further than many measures that reviewing courts have previously upheld, raising the possibility that the NRA's legal challenge to the restriction may clarify jurisprudence on whether and how the Second Amendment applies to persons under 21.

In 2008, the Supreme Court issued its landmark decision in *District of Columbia v. Heller*, holding that the Second Amendment guarantees an individual right to possess firearms for historically lawful purposes, such as self-defense in the home, placing some constraints upon the federal government's ability to regulate firearms access. Two years later, in *McDonald v. City of Chicago*, the Court concluded that states are similarly barred from infringing upon this right by way of the Fourteenth Amendment. But neither *Heller* nor *McDonald* purported to define the scope of the right protected by the Second Amendment, and Justice Scalia's majority opinion in *Heller* cautioned that "the right secured by the Second Amendment is not unlimited." The *Heller* majority further emphasized that the Court's recognition of an individual right to keep and bear arms did not upend many "[longstanding prohibitions](#)" on the possession of firearms by certain categories of people (e.g., felons and the mentally ill). Nor did the Court's ruling necessarily cast doubt upon "[laws imposing conditions and qualifications on the commercial sale of arms.](#)"

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In the aftermath of *Heller* and *McDonald*, lower courts have considered numerous constitutional challenges to federal and state firearms restrictions. In resolving these challenges, courts have typically employed a two-step inquiry. First, does the challenged measure affect conduct protected under the Second Amendment? If the restriction addresses activity that has historically been understood to fall outside the scope of conduct protected by the Second Amendment, the court's inquiry ends and the law is upheld. But if the challenged restriction is found to burden conduct protected by the Second Amendment, the court will next consider the appropriate standard of scrutiny to apply and assess whether the firearms restriction has been adequately justified by the government. A reviewing court considering a blanket prohibition on firearms purchases by persons under 21 would need to address at least the first question, and quite possibly the second, in order to determine whether the prohibition comports with the Second Amendment.

With respect to the first prong, the U.S. Court of Appeals for the First Circuit (First Circuit), for example, held that the federal prohibition on handgun possession by persons *under the age of 18* did not run afoul of the Second Amendment, as the court concluded that “regulating juvenile access to handguns was permissible on public safety grounds” since at least the Civil War period and possibly since the Founding. The U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) has gone somewhat further in a case considering a challenge to the federal prohibition on the sale of handguns by commercial dealers to persons under the age of 21. In assessing whether the measure comported with the Second Amendment, the Fifth Circuit suggested that 18-to-20-year-olds would have been considered “minors” in the Founding era and likely deemed “unworthy of the Second Amendment guarantee.” But the Fifth Circuit opted not to definitively rule on this matter, concluding that, while there was “considerable historical evidence” that the age restriction did not implicate Second Amendment rights, the federal restriction nonetheless passed constitutional muster at the second prong. For its part, when reviewing a state firearms licensing restriction on 18-to-20-year-olds, the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit) noted both the Fifth Circuit's arguments in favor of construing the Second Amendment as not covering persons considered “minors” at the time of the Founding, along with counterarguments that the Second Amendment should be construed in light of the present-day status of 18-to-20-year-olds, who are considered to have reached the age of majority in a variety of contexts (e.g., the ability to vote, marry, and own land). Ultimately, however, the Seventh Circuit decided it unnecessary to opine on the relative merits of these arguments in resolving the case before it.

Assuming that a reviewing court concludes that a Second Amendment interest is implicated by a ban on all persons under 21 from purchasing a firearm, a reviewing court would next determine the suitable standard of constitutional scrutiny to employ in its review of the restriction. Post-*Heller*, most firearm laws held or assumed to impinge upon a Second Amendment right have been reviewed under intermediate scrutiny (or a standard closely resembling it), where the courts require a reasonable fit between the challenged law and a substantial or important governmental interest asserted as the basis for the law. But a number of courts have also held or suggested that a firearm restriction encroaching upon a “core” function of the Second Amendment – such as the ability to lawfully keep a firearm in one's home for self-defense – may be subject to strict scrutiny. Under this more exacting standard, the government must show that the regulation furthers a compelling governmental interest and is narrowly tailored to serve that interest.

Those courts that have upheld firearms restrictions relating to 18-to-20-year-olds have applied a standard lower than strict scrutiny, though these challenged restrictions were arguably not as expansive as the Florida ban. In each case, the court found that the government proffered an adequate justification for limiting 18-to-20-year-olds' ability to acquire certain firearms; namely, that 18-to-20-year-olds may be more prone to criminal violence and irresponsible behavior than older persons. (It should be noted, however, that not all observers believe the relevant data clearly evidences a legally meaningful distinction between the criminality of 18-to-20-year-olds and slightly older individuals.) Significantly, however, none of these challenged firearms restrictions were found to implicate a “core” Second Amendment right. For example, in applying intermediate scrutiny when reviewing a federal restriction on commercial dealers

selling handguns to persons under 21, the Fifth Circuit stressed that [other avenues remained](#) for 18-to-20-year-olds to acquire a firearm for protection. For example, federal law did not proscribe such persons from purchasing rifles or shotguns or possessing a handgun that was gifted from a parent or guardian. Similarly, the Seventh Circuit concluded that an Illinois statute generally barring 18-to-20-year-olds from obtaining a firearm license [did not constitute](#) a “categorical ban” on firearms possession potentially triggering strict scrutiny analysis. Assuming such persons were covered by the Second Amendment, the circuit court construed the state statute as not unduly hampering the exercise of a constitutional right because the statute allowed an 18-to-20-year-old to obtain a firearms license either with the consent of a parent/guardian or following an individualized assessment of the applicant by the licensing authority.

The Florida law’s restrictions on firearm purchases by 18-to-20-year-olds appears to go further than those upheld by the Fifth and Seventh Circuits, and therefore may be more likely to be reviewed under a strict scrutiny standard. Whereas the measures challenged in those cases allowed 18-to-20-year-olds to lawfully obtain firearms in *some* cases, the Florida ban comes much closer to a categorical ban, and therefore would more likely implicate a “core” right under the Second Amendment. However, while the Florida ban may be more expansive than the laws upheld by the Fifth and Seventh Circuits as constitutional, an argument could be made that the new law is not so severe as to trigger strict scrutiny. Notably, the Florida statute does not necessarily prohibit 18-to-20-year-olds from acquiring a firearm in all circumstances (e.g., when such firearms are not purchased, but instead gifted from a parent or guardian).

Moreover, even if the Florida statute is deemed to effectively constitute a categorical ban on firearms that implicates the Second Amendment rights of 18-to-20-year-olds, this may not necessarily result in a reviewing court employing strict scrutiny. The Fifth Circuit, for example, suggested that even if the Second Amendment applies to persons under 21, an age-based firearms restriction [might be more permissible](#) than other categorical restrictions because “[a]ny 18–to–20–year–old subject to the ban will soon grow up and out of its reach.” On the other hand, if a reviewing court concludes that the Second Amendment applies to 18-to-20-year-olds, it is not obvious that the government may impinge upon such persons’ constitutionally protected rights solely on the ground that the impingement would last no longer than three years.

Ultimately, a constitutional challenge to Florida’s new firearms restriction appears likely to have consequences on the nature of future gun legislation and, perhaps, the validity of many current firearms restrictions. A ruling that the Florida statute is permissible – either because those under 21 years of age are not covered by the Second Amendment or because, more generally, government restrictions on such persons’ ability to obtain firearms withstands constitutional scrutiny – would signal that states and the federal government have broad leeway to restrict firearms access to persons under the age of 21. On the other hand, a ruling that the Florida measure unconstitutionally impinges upon the Second Amendment rights of persons under 21 years of age could prompt new judicial challenges to many state and federal restrictions that many observers (and some reviewing courts) had previously considered presumptively lawful.

For further discussion of developing jurisprudence concerning the scope of the Second Amendment’s protections, see CRS Report R44618, *Post-Heller Second Amendment Jurisprudence*, by Sarah Herman Peck.