Written by **Bob Adelmann** on December 4, 2023

Court Strikes Down Federal Law Prohibiting 18-20-year-olds From Purchasing Handguns

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Another part of the Gun Control Act of 1968 (GCA) was ruled unconstitutional last Friday. The defendants — the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); U.S. Attorney General Merrick Garland; and ATF Director Steven Dettelbach — failed to persuade Judge Thomas Kleeh, U.S. District judge for the Northern District of Virginia, that the federal law prohibiting law-abiding citizens ages 18 to 20 from purchasing a handgun was constitutional.

Plaintiffs Steven Brown and Benjamin Weekley, with legal assistance from the Second Amendment Foundation and the West Virginia Citizens Defense League, filed suit last summer after they each attempted to purchase a handgun in West Virginia and were turned down because they were under the age of 21.

Kleeh wrote:

> Because neither the First nor Fourth Amendments exclude, nor have been interpreted to exclude, 18-to-20-year-olds, the Court can discern no reason to read an implicit age restriction into the Second Amendment's plain text….

And when lawyers for the defendants tried to argue that those under the age of 21 were not really part of "the people" (as noted in the Second Amendment), Kleeh responded:

> Beyond the First and Fourth Amendments, other constitutional provisions, which do not specifically mention "the people," support the Court's conclusion that "the people" protected by the Second Amendment include 18-to-20-year-olds….
>
> Considering this analysis, the Court concludes 18-to-20-year-old law abiding citizens are part of "the people" [whom] the Second Amendment protects.
>
> Plaintiffs themselves and the activity which federal law and regulation currently prevent them from undertaking are covered under the Second Amendment's umbrella of constitutional freedoms.

After lawyers for the defendants tried to show that, under *Bruen's* new standard, there was historical precedent, or analog, for the infringement, Kleeh remained unpersuaded: "The historical data close in

time to ratification in 1791 confirms 18-to-20-year-olds have the right to keep and bear arms, and are protected as part of 'the people' under the Second Amendment."

Kleeh summed up his ruling:

> The core issue the Court must answer under Bruen remains whether our Nation's history and tradition contains "analogous" restrictions on the ability of 18-to-20-year-olds to purchase firearms.
>
> Defendants have not presented any evidence of age-based restrictions on the purchase or sale of firearms from before or at the Founding or during the Early Republic.
>
> Defendants have likewise failed to offer evidence of similar regulation between then and 1791 or in a relevant timeframe thereafter.
>
> For that reason alone, Defendants have failed to meet the burden imposed by Bruen….
>
> In summary, because Plaintiffs' conduct — the purchase of handguns — "fall[s] [within] the Second Amendment's 'unqualified command'" and the challenged statutes and regulations are not "consistent with the Nation's historic tradition of firearm regulation," the Court FINDS 18 U.S.C. §§ 922(b)(1) and (c)(1) [the relevant part of the Gun Control Act of 1968] facially unconstitutional….
>
> Defendants are ENJOINED from enforcing [the federal law] against plaintiffs and otherwise-qualified 18-to-20-year-olds.

That last sentence makes his ruling apply across the land, and not just to the instant case in West Virginia.

Kleeh's ruling raises an inevitable question: Are such rulings setting the stage for courts to consider the constitutionality of the Gun Control Act of 1968 itself?

The GCA was signed into law in October 1968 — 55 years ago — following a number of high-profile shootings, including the assassination of President John Kennedy in November 1963, the assassination of Martin Luther King in April 1968, and the assassination of Robert F. Kennedy in June of that same year.

These followed the University of Texas tower shooting in August 1966 in which a deranged shooter shot and killed 15 people and wounded 31 others.

Since then, gun-control interests have been amending the act, using it as the vehicle of choice to invade the Second Amendment's clear guarantee of the people's right to keep and bear arms. The act was amended in 1993 with passage of the Brady Handgun Violence Prevention Act (aka the Brady Bill or the Brady Act — named for James Brady, who was paralyzed during the attempted assassination of President Reagan in 1981).

That law introduced the background-check system and mandated the licensing of individuals and companies engaged in the business of selling firearms. It also expanded the list of those ineligible to own a firearm, including those dishonorably discharged from the military or convicted of certain misdemeanors or domestic violence crimes.

After that, the number of gun dealers dropped precipitously. In the period prior to Brady there were about 250,000 gun dealers operating in the country. In 2020 that number had dropped to just over

52,000.

It was all part of the plan, as noted at the time by then-President Lyndon Johnson:

> Congress adopted most of our recommendations.
>
> But this bill — as big as this bill is — still falls short, because we just could not get the Congress to carry out the requests we made of them.
>
> I asked for the national registration of all guns and the licensing of those who carry those guns. For the fact of life is that there are over 160 million guns in this country — more firearms than families.
>
> If guns are to be kept out of the hands of the criminal, out of the hands of the insane, and out of the hands of the irresponsible, then we just must have licensing.
>
> If the criminal with a gun is to be tracked down quickly, then we must have registration in this country.
>
> The voices that blocked these safeguards were not the voices of an aroused nation. They were the voices of a powerful lobby, a gun lobby, that has prevailed for the moment in an election year.

Is it now time to consider the unconstitutionality of the mother ship from which is springing these minor but annoying infringements? The ruling from Judge Kleeh in West Virginia is another victory for the Second Amendment, but it is only a trimming of the hedges. Perhaps plaintiffs should begin to focus on the breeding ground of those infringements and challenge the GCA itself.

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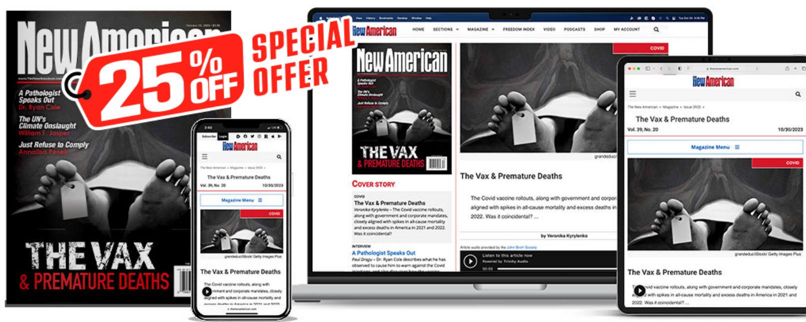

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