

At What Age Do You Have Rights?



By Paul Engel

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- Once you turn 18, you assume you're an adult, right?
- California law doesn't think so, at least when it comes to certain firearms.
- Believe it or not, the Ninth Circuit Court of Appeals told California that their restrictions on young adults purchasing center fire semiautomatic rifles was unconstitutional.

As children, we receive protection of our rights through our parents. But have you ever considered at what age you receive protections for your rights directly? Is it the same for all rights, or are there different ages when you receive protections for different rights?

The case *Jones v. Bonta* asked the question, when do you receive protections for your right to keep and bear arms? The answer out of the Ninth Circuit Court of Appeals may surprise you.

Background

California law strictly regulates the possession, ownership, and use of firearms in multiple ways. One of these laws requires anyone purchasing a firearm have a "firearm safety certificate" ("FSC"). The law does provide exemptions from the FSC requirement for people with hunting licenses, active and

reserve law enforcement, and active or honorably discharged members of the military. California also prohibits the sale of almost all kinds of firearms to young adults (those ages 18-20), with a few exceptions. Long guns (those with barrels generally longer than 18" and designed to be shot from the shoulder rather than the hand), can only be sold to young adults who have a hunting license, are active law enforcement, or are active or honorably discharged military. California also prohibits the sale of semiautomatic centerfire rifles to young adults except for those in law enforcement or active duty military.

Several young adults, gun shops, and advocacy groups filed suit in federal district court, claiming California's regulations violated both the Second and Fourteenth Amendments to the Constitution of the United States.

The district court declined to preliminarily enjoin the laws, holding that Plaintiffs had not shown that they were likely to succeed on the merits, both because the laws did not burden Second Amendment rights and would likely survive intermediate scrutiny. The district court also held that Plaintiffs had not shown irreparable harm and that the balance of interests did not favor enjoining the laws.

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The district court noted that other courts found that these laws were both longstanding and do not violate the Second Amendment and are therefore assumed to be constitutional.

The district court then reasoned that "[i]ndividuals under the age of 21 were considered minors or 'infants' for most of our country's history without the rights afforded adults" and therefore they are among those "believed unfit of responsible firearm possession and use." ... It did address the tradition of militia members who were under 21 years old, but reasoned this tradition actually supported the constitutionality of the

laws... In the district court's view, "[m]ilitia members were required to possess their own firearms if they complied with accountability and maintenance regulations" and thus the "strict rules surrounding militia duty" show that the "right to firearm possession came with obligations to ensure public safety."

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Don't you just love it when courts simply make up their own rules rather than following the law? Yes, for years in our nation's history people under 21 were not allowed to vote, drink alcohol, or be expected to fight either in the military or the militia, but they were not considered 'infants'.

1. *A child in the first period of life, beginning at his birth; a young babe. In common usage, a child ceases to be called an infant within the first or second year, but at no definite period. In some cases, authors indulge a greater latitude, and extend the term to include children of several years of age.*

[Infant – Webster's 1828 Dictionary](#)

Since then, the Constitution now protects the right to vote and federal law protects the right to join the military once a person reaches 18 years of age. Also, look at the exemptions listed in the California law. If someone can be expected to safely operate a firearm in the military or law enforcement, why not as a civilian? Does joining one of those organizations suddenly increase a person's maturity level, but nothing else does? Speaking of the militia, our nation's history is replete with those under that age of 21 participating in the militia. Most famously would be John Adams' son, John Quincy, who at the age of 8 performed military drills with the local militia. Yet the district court believes anyone under the age of 21 is "unfit of responsible firearm possession and use" unless they are in law enforcement or the military. The court did note

that militia service before one's 21st birthday was common, but reasoned that the "strict rules surrounding militia duty" were cause enough to show that the "right to firearm possession came with obligations to ensure public safety." However, the obligations to public safety has nothing to do with militia service. If the issue were truly public safety, then the firearms safety certificate or hunting license, which I believe comes with a safety training requirement, should cover that need.

Second, because it found no burden on Second Amendment rights, the district court did not need to apply any tier of scrutiny. Still, "in an abundance of caution," the district court also determined that intermediate scrutiny applied and that the laws likely survived it. Id.

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Since the district court found that infringing on the right of certain people to keep and bear arms somehow did not burden the Second Amendment, they figured they were done. However, in an effort to cover their backside, the court determined that this question should receive intermediate scrutiny. But what is this "scrutiny"?

Scrutiny

The legal definition of scrutiny is the level of proof a government or their agent must overcome in order to infringe on your constitutional rights. Basically, it's how hard government has to work in order to overrule the Constitution. There are three levels of "scrutiny", rational basis, intermediate, or strict. Rational basis means government only needs to show their actions are rational to a legitimate government interest. Under intermediate scrutiny, it must be shown that the law or policy furthers an important government interest. Under strict scrutiny, the law must be narrowly tailored and the least restrictive means to further a

compelling government interest. Notice that all three levels of scrutiny are used to decide if the court will allow an infringement of a right protected by the Constitution, in direct violation of that supreme law.

Third, the district court held that Plaintiffs failed to show irreparable harm. ... The district court observed that, after filing their amended complaint, Plaintiffs waited two months before moving for a preliminary injunction. It reasoned that this delay undermined finding irreparable harm. ... "More importantly," young adults could still get firearms, either under an exception, through a transfer from family, or by using them at shooting ranges.

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So the district court only believes a harm is irreparable if the complaint is immediately followed by a request for injunction? In the court's eyes, it's not a question of can the harm be repaired, but how quickly the person files suite that determines if it's irreparable. Furthermore, the court noted that young adults weren't prohibited from owning semiautomatic centerfire firearms, only in purchasing them. If that is the case, what is the purpose of the prohibition?

Finally, the district court also held that the balance of interests weighed against enjoining the laws, reasoning that "[t]he potential harm of enjoining a duly-enacted law designed to protect public safety outweighs Young Adults' inability to secure the firearm of their choice without proper training."

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A law may be enacted, but if it is repugnant to the Constitution, it is void. At least according the Alexander Hamilton in Federalist Paper #78 and the Supreme Court in that case Marbury v. Madison.

There is no position which depends on clearer principles, than

that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid.

[Alexander Hamilton, Federalist Papers #78](#)

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.

[Marbury v. Madison Opinion](#)

The irreparable harm the district court is talking about was committed when they failed to enjoin a law that is invalid and void. Also, since not every young adult may have the ability to acquire these types of arms because they do not have an exception or a family member to transfer it to them, there is no way to repair the harm this invalid law causes.

Ultimately, the Second Amendment protects the right of the people to keep and bear arms and refers to the militia. Young adults were part of the militia and were expected to have their own arms. Thus, young adults have Second Amendment protections as “persons who are a part of a national community.”

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The Second Amendment protects the right of the people to keep and bear arms. The question is, at what age does that protection transfer from the parents to their children? The minimum age of militia services at the time of the adoption of the Second Amendment was 16. The circuit court determined that since young adults could serve in the militia when the amendment was drafted, they were entitled to protection of their right to keep and bear arms, but only if they were, or

had been, part of a militia. But that is not what the Second Amendment states.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[U.S. Constitution, Amendment II](#)

Yes, militias are necessary to keep our states free, but the right to keep and bear arms belongs to the people, not the “national community”. As the Ninth Circuit Court would note, the Supreme Court’s decision in *District of Columbia v. Heller* confirmed what had been understood throughout most of our history: That the “Second Amendment right is exercised individually and belongs to all Americans.”

Conclusion

*In conclusion, the district court erred by holding that the California laws did not burden Second Amendment rights. It properly applied intermediate scrutiny to the long gun regulation and did not abuse its discretion in finding it likely to survive. But it erred in applying intermediate scrutiny to the semiautomatic rifle ban. And even if intermediate scrutiny applied, the district court abused its discretion in finding the ban likely to survive. Finally, the district court erred in its application of the irreparable harm factor. Thus, as to the long gun regulation, the district court’s order is **AFFIRMED**. And as to the semiautomatic centerfire rifle ban, the district court’s order is **REVERSED**. We **REMAND** the case to the district court for further proceedings consistent with this opinion.*

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The Ninth Circuit Court split its decision. Yes, the requirement for a firearm safety certificate or a hunting license to a young person to purchase was, in in their

opinion, constitutional, but the prohibition on the sale of semiautomatic centerfire rifles to them was not. I'm not sure why the court found that a person's right to keep and bear arms deserves strict scrutiny in one instance, but only intermediate scrutiny in another. Maybe because California did not prohibit the purchasing of long guns in general, but only semiautomatic centerfire rifles?

Who knows if California will appeal this decision to the Supreme Court, or if that court would even take the case. This case does bring up three interesting questions I hope you will consider. First, at what age does the Constitution protect a persons rights directly, rather than through the parents? Second, should a persons right to keep and bear arms receive different levels of scrutiny based on how it is being infringed? And lastly, why did the State of California single out young adults and semiautomatic centerfire rifle purchases for this prohibition? It cannot be a safety question, since it was not illegal for young adults to own these arms, only to purchase them. Perhaps, if the people not only of California, but of all the states, can answer those questions, we will have fewer opportunities to worry about the courts allowing governments to infringe on our rights because they think they have a good reason to violate the supreme law of the land.