**Here Are The 23 Executive Orders On Gun Safety Signed Today By The President (2013)**

Rick Ungar

CONTRIBUTOR

I write from the left on politics and policy.

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President Barack Obama signs a series of executive orders about the administration's new gun law proposals as children who wrote letters to the White House about gun violence, (L-R) Hinna Zeejah, Taejah Goode, Julia Stokes and Grant Fritz, look on. (Photo by Chip Somodevilla/Getty Images)

President Obama has signed 23 executive orders designed to address the problem of gun violence in America. The following are the items addressed:

**Gun Violence Reduction Executive Actions:**

1. Issue a Presidential Memorandum to require federal agencies to make relevant data available to the federal background check system.

2. Address unnecessary legal barriers, particularly relating to the Health Insurance Portability and Accountability Act, that may prevent states from making information available to the background check system.

3. Improve incentives for states to share information with the background check system.

4. Direct the Attorney General to review categories of individuals prohibited from having a gun to make sure dangerous people are not slipping through the cracks.

5. Propose rulemaking to give law enforcement the ability to run a full background check on an individual before returning a seized gun.

6. Publish a letter from ATF to federally licensed gun dealers providing guidance on how to run background checks for private sellers.

7. Launch a national safe and responsible gun ownership campaign.

8. Review safety standards for gun locks and gun safes (Consumer Product Safety Commission).

9. Issue a Presidential Memorandum to require federal law enforcement to trace guns recovered in criminal investigations.

10. Release a DOJ report analyzing information on lost and stolen guns and make it widely available to law enforcement.

11. Nominate an ATF director.

12. Provide law enforcement, first responders, and school officials with proper training for active shooter situations.

13. Maximize enforcement efforts to prevent gun violence and prosecute gun crime.

14. Issue a Presidential Memorandum directing the Centers for Disease Control to research the causes and prevention of gun violence.

15. Direct the Attorney General to issue a report on the availability and most effective use of new gun safety technologies and challenge the private sector to develop innovative technologies.

16. Clarify that the Affordable Care Act does not prohibit doctors asking their patients about guns in their homes.

17. Release a letter to health care providers clarifying that no federal law prohibits them from reporting threats of violence to law enforcement authorities.

18. Provide incentives for schools to hire school resource officers.

19. Develop model emergency response plans for schools, houses of worship and institutions of higher education.

20. Release a letter to state health officials clarifying the scope of mental health services that Medicaid plans must cover.

21. Finalize regulations clarifying essential health benefits and parity requirements within ACA exchanges.

22. Commit to finalizing mental health parity regulations.

23. Launch a national dialogue led by Secretaries Sebelius and Duncan on mental health.

It does not appear that any of the executive orders would have any impact on the guns people currently own-or would like to purchase- and that all proposals regarding limiting the availability of assault weapons or large ammunition magazines will be proposed for Congressional action. As such, any potential effort to create a constitutional crisis—or the leveling of charges that the White House has overstepped its executive authority—would hold no validity.

*District of Columbia v. Heller* – Case Brief Summary

Summary of *District of Columbia v. Heller*, 554 U.S. \_\_, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

**Facts**

Handgun possession is banned under District of Columbia (D) law. The law prohibits the registration of handguns and makes it a crime to carry an unregistered firearm. Furthermore all lawfully owned firearms must be kept unloaded and dissembled or bound by a trigger lock unless they are being used for lawful recreational activities or located in a place of business.

Dick Heller (P) is a special police officer in the District of Columbia. The District refused Heller’s application to register a handgun he wished to keep in his home. Heller filed this lawsuit in the Federal District Court for the District of Columbia on Second Amendment grounds. Heller sought an injunction against enforcement of the bar on handgun registration, the licensing requirement prohibiting the carrying of a firearm in the home without a license, and the trigger-lock requirement insofar as it prohibits the use of functional firearms within the home.

The District Court dismissed Heller’s complaint. The Court of Appeals for the District of Columbia Circuit reversed and directed the District Court to enter summary judgment in favor of the District of Columbia. The Court of Appeals construed Heller’s complaint as seeking the right to render a firearm operable and carry it in his home only when necessary for self defense, and held that the total ban on handguns violated the individual right to possess firearms under the Second Amendment. The Supreme Court granted certiorari.

**Issue**

* What rights are protected by the Second Amendment?

**Holding and Rule (Scalia)**

* The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.

**Text of the Second Amendment**

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.

**Constitutional Construction**

The prefatory clause “A well regulated Militia, being necessary to the security of a free State” merely announces a purpose. It does not limit or expand the scope of the operative clause “the right of the people to keep and bear Arms, shall not be infringed.” The operative clause’s text and history demonstrate that it connotes an individual right to keep and bear arms.

The militia consisted of all males capable of acting together for the common defense. The Antifederalists feared that the Federal Government would disarm the people in order to disable citizen militias, thereby enabling a politicized standing army or a select militia to rule. The Antifederalists therefore sought to preserve the citizens’ militia by denying Congress the power to abridge the right of individuals to keep and bear arms.

This interpretation is confirmed by analogous arms-bearing rights adopted in state constitutions immediately preceding and following the Second Amendment. Furthermore, the drafting history reveals three proposals that unequivocally referred to an individual right to bear arms. Interpretation of the Second Amendment by scholars, courts, and legislators from ratification through the late 19th century also supports the Court’s interpretation.

No precedent forecloses this interpretation. United States v. Miller limits the type of weapons to which the right applies to those in common use for lawful purposes, but does not limit the right to keep and bear arms to militia purposes.

The Second Amendment right is not a right to keep and carry any weapon in any manner and for any purpose. The Court has upheld gun control legislation including prohibitions on concealed weapons and possession of firearms by felons and the mentally ill, laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, and laws imposing conditions and qualifications on the commercial sale of arms. The historical tradition of prohibiting the carrying of dangerous and unusual weapons supports the holding in United States v. Miller that the sorts of weapons protected are those in common use at the time.

The handgun ban and the trigger-lock requirement (as applied to self-defense) violate the Second Amendment. The total ban on handgun possession in the home amounts to a prohibition on an entire class of arms that Americans overwhelmingly choose for the lawful purpose of self-defense. This prohibition would fail constitutional muster under any standard of scrutiny. Similarly, the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock makes it impossible for citizens to use arms for the core lawful purpose of self-defense and is therefore unconstitutional.

The Court assumes that a license will satisfy Heller’s prayer for relief and therefore does not address the constitutionality of the licensing requirement. Assuming Heller is not otherwise disqualified from exercising Second Amendment rights, the District of Columbia must permit him to register his handgun and must issue him a license to carry it in the home.

**Disposition**

Affirmed.

**Dissent (Stevens)**

The Second Amendment was adopted to protect the right of the people to maintain a well regulated militia. It was a response to the concern that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to state sovereignty. Neither the text of the Second Amendment nor the arguments advanced by its proponents evidence the slightest interest by the Framers in limiting any legislature’s authority to regulate private civilian uses of firearms.

There is no indication that the Framers intended to enshrine the common law right of self-defense in the Constitution. The view in Miller that the Second Amendment protects the right to keep and bear arms for certain military purposes, but does not curtail the Legislature’s power to regulate the nonmilitary use and ownership of weapons, is both the most natural reading of the Amendment’s text and the interpretation most faithful to the history of its adoption. The majority fails to identify any new evidence supporting the view that the Amendment was intended to limit the power of Congress to regulate civilian uses of weapons.

**Dissent (Breyer)**

The Second Amendment protects militia-related interests, not self-defense-related interests. Furthermore, the Amendment permits government to regulate the interests that it serves. Colonial history itself offers important examples of the kinds of gun regulation that citizens would then have thought compatible with the right to keep and bear arms, including substantial regulation of firearms in urban areas, and regulations that imposed limitations on the use of firearms for the protection of the home.

Adoption of a true strict scrutiny standard for evaluating gun control regulations would be impossible and I would adopt an interest-balancing inquiry. In applying this kind of standard the Court normally defers to a legislature’s empirical judgment in matters where a legislature is likely to have greater expertise and greater institutional fact finding capacity.

This case is also cited as DC v. Heller. See [***United States v. Lopez***](http://www.lawnix.com/cases/united-states-lopez.html) for a constitutional law case brief addressing the constitutionality of gun control legislation enacted by Congress in exercise of its power under the [**Commerce Clause**](http://www.lawnix.com/cases/commerce-clause.html).

*McDonald v. Chicago*

Facts of the case

Several suits were filed against Chicago and Oak Park in Illinois challenging their gun bans after the Supreme Court issued its opinion in *District of Columbia v. Heller*. In that case, the Supreme Court held that a District of Columbia handgun ban violated the Second Amendment. There, the Court reasoned that the law in question was enacted under the authority of the federal government and, thus, the Second Amendment was applicable. Here, plaintiffs argued that the Second Amendment should also apply to the states. The district court dismissed the suits. On appeal, the U.S. Court of Appeals for the Seventh Circuit affirmed.

Question

Does the Second Amendment apply to the states because it is incorporated by the Fourteenth Amendment's Privileges and Immunities or Due Process clauses and thereby made applicable to the states?

Conclusion

The Supreme Court reversed the Seventh Circuit, holding that the Fourteenth Amendment makes the Second Amendment right to keep and bear arms for the purpose of self-defense applicable to the states. With Justice Samuel A. Alito writing for the majority, the Court reasoned that rights that are "fundamental to the Nation's scheme of ordered liberty" or that are "deeply rooted in this Nation's history and tradition" are appropriately applied to the states through the Fourteenth Amendment. The Court recognized in *Heller* that the right to self-defense was one such "fundamental" and "deeply rooted" right. The Court reasoned that because of its holding in *Heller*, the Second Amendment applied to the states. Here, the Court remanded the case to the Seventh Circuit to determine whether Chicago's handgun ban violated an individual's right to keep and bear arms for self-defense.

Justice Alito, writing in the plurality, specified that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*. He rejected Justice Clarence Thomas's separate claim that the Privileges or Immunities Clause of the Fourteenth Amendment more appropriately incorporates the Second Amendment against the states. Alito stated that the Court's decision in the *Slaughterhouse Cases* -- rejecting the use of the Privileges or Immunities Clause for the purpose of incorporation -- was long since decided and the appropriate avenue for incorporating rights was through the Due Process Clause.

Justice Antonin Scalia concurred. He agreed with the Court's opinion, but wrote separately to disagree with Justice John Paul Stevens' dissent. Justice Clarence Thomas concurred and concurred in the judgment. He agreed that the Fourteenth Amendment incorporates the Second Amendment against the states, but disagreed that the Due Process Clause was the appropriate mechanism. Instead, Justice Thomas advocated that the Privileges or Immunities Clause was the more appropriate avenue for rights incorporation. Justice John Paul Stevens dissented. He disagreed that the Fourteenth Amendment incorporates the Second Amendment against the states. He argued that owning a personal firearm was not a "liberty" interest protected by the Due Process Clause. Justice Stephen G. Breyer, joined by Justices Ruth Bader Ginsburg and Sonia Sotomayor, also dissented. He argued that there is nothing in the Second Amendment's "text, history, or underlying rationale" that characterizes it as a "fundamental right" warranting incorporation through the Fourteenth Amendment.

**“ONLY LAW ENFORCEMENT WILL BE ALLOWED TO HAVE GUNS”:**

**HURRICANE KATRINA AND THE NEW ORLEANS FIREARM CONFISCATIONS**

Stephen P. Halbrook[1](http://intellectual-thoughts.com/Hurrican%20Katrina%20Gun%20Confiscatio.htm" \l "_ftn1" \o ")

            In the wake of Hurricane Katrina, New Orleans authorities announced that only police would be allowed to possess firearms and proceeded to seize lawfully-possessed firearms from citizens at gunpoint.  Suit was filed alleging that the confiscations violated the right to keep and bear arms under the Federal and Louisiana constitutions, deprived citizens of liberty and property without due process, violated equal protection, and constituted unlawful searches and seizures.  The U.S. district court enjoined the mayor and police superintendent from making further seizures and ordered return of the confiscated firearms.[2](http://intellectual-thoughts.com/Hurrican%20Katrina%20Gun%20Confiscatio.htm" \l "_ftn2" \o ")  This Article describes the claims and proceedings in the case.

            Images of flooding, death, looting, and devastation flashed across television screens after Katrina hit.  Two news clips are of particular interest here.  One featured Police Superintendent Eddie Compass announcing on September 8, 2005: “No one will be able to be armed. Guns will be taken.  Only law enforcement will be allowed to have guns.”  The other was the footage of Patricia Konie, a 58-year old petite woman at her home with an old revolver for protection. Several burley policemen slammed her to the ground, fracturing her shoulder, and took her into custody.[3](http://intellectual-thoughts.com/Hurrican%20Katrina%20Gun%20Confiscatio.htm" \l "_ftn3" \o ")

**The Complaint and Consent Order Enjoining Confiscations**

            The National Rifle Association, Second Amendment Foundation, and an individual plaintiff filed a complaint and a motion for preliminary injunction against the gun seizures in the U.S. district court, which due to the flooding had moved to Baton Rouge.  The complaint alleged that, in the devastation and breakdown of law and order that followed Katrina, law-abiding citizens were left on their own without police protection to protect their families, persons, and property from looters, rapists, and criminals of various types.  Police officers who stayed on the job to do their duty were overwhelmed.  Defendants responded to this crisis in part by ordering that the law-abiding citizens be disarmed, leaving them at the mercy of roving gangs, home invaders, and other criminals.[4](http://intellectual-thoughts.com/Hurrican%20Katrina%20Gun%20Confiscatio.htm" \l "_ftn4" \o ")

            During the same period, Mayor Nagin ordered the New Orleans Police and other law enforcement entities under his authority to evict persons from their homes and to confiscate their firearms.  Police went from house to house and confiscated numerous firearms from citizens at gunpoint.  While decreeing that ordinary citizens may not possess firearms, Defendants followed a policy of allowing certain businesses and wealthy persons to hire armed security guards.[5](http://intellectual-thoughts.com/Hurrican%20Katrina%20Gun%20Confiscatio.htm" \l "_ftn5" \o ")

            On September 23, 2005, Judge Jay C. Zainey entered a Consent Order in which the New Orleans defendants “den[ied] that seizures of lawfully possessed firearms from law abiding citizens has occurred” and further denied “that any such weapons are presently in the possession of the City of New Orleans . . . .”[6](http://intellectual-thoughts.com/Hurrican%20Katrina%20Gun%20Confiscatio.htm" \l "_ftn6" \o ")  Nonetheless, the order enjoined the defendants “from confiscating lawfully-possessed firearms from citizens,” and ordered them “to return any and all firearms which may have been confiscated from . . . all . . . persons who lawfully possessed them, upon presentation of identification and execution of a receipt therefor.”[7](http://intellectual-thoughts.com/Hurrican%20Katrina%20Gun%20Confiscatio.htm" \l "_ftn7" \o ")

            In addition to the New Orleans defendants, the complaint named the sheriff of St. Tammy Parish and John Doe deputies as defendants.  Plaintiff Buell O. Teel was in his boat on Lake Pontchartrain in St. Tammany Parish working under contract to find an open path to the Industrial Canal in New Orleans.  Officers in a sheriff’s boat came alongside with assault rifles pointing at him and demanded any firearms he might have.  He surrendered two encased hunting rifles which he kept for his protection.[8](http://intellectual-thoughts.com/Hurrican%20Katrina%20Gun%20Confiscatio.htm" \l "_ftn8" \o ")  Other citizens in the parish also had firearms seized.  The plaintiffs reached an early settlement with the St. Tammany defendants with a return of the seized firearms and the entry of a permanent injunction against further confiscations.[9](http://intellectual-thoughts.com/Hurrican%20Katrina%20Gun%20Confiscatio.htm" \l "_ftn9" \o ")

**Failure to Return Seized Firearms**

            Plaintiffs filed a motion to hold the New Orleans defendants in contempt for not implementing a plan to return confiscated firearms, which was set on the court’s docket for March 15, 2006.  New Orleans Counsel Joseph DiRosa appeared before court began and offered to allow plaintiffs’ counsel to inspect firearms being held by the police and to enter into negotiations to establish a procedure for owners to claim their firearms.  Plaintiff’s counsel thereupon continued the motion pending negotiations.  This author’s contemporaneous notes reflect:

We went to the police facility where the guns are stored in a double wide trailer and a moving truck.  Some are evidence guns (for criminal cases) but most are property guns (confiscated from citizens not accused of any crime).  In both the trailer and the truck, there are piles of rifles and shotguns stacked on the floor (mostly hunting type, some military style), and large plastic buckets of handguns. The majority are rusted, some unsalvageable, others in good condition. . . .

The guns in good condition were apparently those seized from persons at their homes or in vehicles.  Those in the worst condition may have originated from flooded homes when police conducted house searches for dead bodies and guns. . . .

The guns are tagged.  Many tags have no names but only an address, or only the address of the block. . . .

The figure of 1,100 guns at the premises was given, including both evidence and property guns.

            Thereafter the NRA and SAF publicized the address and telephone number of the police facility so that owners could retrieve their firearms.  While a number of owners went to the facility, most were turned away empty handed.  Police requested original bills of sale which flood victims would not have and otherwise told claimants that they could not locate the firearms requested.

**The Motion to Dismiss**

            Meanwhile, New Orleans filed a motion to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a viable claim.  The motion asserted that “the states, and by extension their political subdivisions, are free to proscribe the possession of firearms, not only because the Second Amendment does not prohibit it but also pursuant to the emergency powers granted to the State and municipality during a state of emergency.”1[0](http://intellectual-thoughts.com/Hurrican%20Katrina%20Gun%20Confiscatio.htm" \l "_ftn10" \o ")  Defendants argued that the claim under the Second and Fourteenth Amendments was defective, and that “although plaintiffs also assert due-process, equal-protection, and search-and-seizure claims arising under the U.S. Constitution, none of these other claims stands without their Second Amendment claims.”1[1](http://intellectual-thoughts.com/Hurrican%20Katrina%20Gun%20Confiscatio.htm" \l "_ftn11" \o ")  The following summarizes plaintiffs’ response and then the court’s ruling.

Firearms Control Regulations Act of 1975

From Wikipedia, the free encyclopedia

The **Firearms Control Regulations Act of 1975** was passed by the [District of Columbia](https://en.wikipedia.org/wiki/District_of_Columbia) city [council](https://en.wikipedia.org/wiki/Council_of_the_District_of_Columbia) on September 24, 1976.[[1]](https://en.wikipedia.org/wiki/Firearms_Control_Regulations_Act_of_1975#cite_note-1) The law banned residents from owning [handguns](https://en.wikipedia.org/wiki/Handgun), [automatic firearms](https://en.wikipedia.org/wiki/Automatic_firearm), or high-capacity [semi-automatic firearms](https://en.wikipedia.org/wiki/Semi-automatic_firearm), as well as prohibited possession of unregistered [firearms](https://en.wikipedia.org/wiki/Firearm). Exceptions to the ban were allowed for [police officers](https://en.wikipedia.org/wiki/Police_officer) and guns registered before 1976. The law also required firearms kept in the home to be "unloaded, disassembled, or bound by a [trigger lock](https://en.wikipedia.org/wiki/Trigger_lock) or similar device";[[2]](https://en.wikipedia.org/wiki/Firearms_Control_Regulations_Act_of_1975#cite_note-2) this was deemed to be a prohibition on the use of firearms for self-defense in the home.[[3]](https://en.wikipedia.org/wiki/Firearms_Control_Regulations_Act_of_1975#cite_note-dc-circuit-opinion-3) On June 26, 2008, in the historic case of [*District of Columbia v. Heller*](https://en.wikipedia.org/wiki/District_of_Columbia_v._Heller), the [Supreme Court of the United States](https://en.wikipedia.org/wiki/Supreme_Court_of_the_United_States) determined that the ban and trigger lock provision violate the [Second Amendment](https://en.wikipedia.org/wiki/Second_Amendment_to_the_United_States_Constitution).

Constitutionality[[edit](https://en.wikipedia.org/w/index.php?title=Firearms_Control_Regulations_Act_of_1975&action=edit&section=1" \o "Edit section: Constitutionality)]

[Washington, D.C.](https://en.wikipedia.org/wiki/Washington,_D.C.)'s gun laws are considered by many to be the strictest in the [United States](https://en.wikipedia.org/wiki/United_States), and have been challenged as infringing on [constitutional](https://en.wikipedia.org/wiki/Constitutionality) rights protected by the [United States Constitution](https://en.wikipedia.org/wiki/United_States_Constitution)'s [Second Amendment](https://en.wikipedia.org/wiki/Second_Amendment_to_the_United_States_Constitution).[[4]](https://en.wikipedia.org/wiki/Firearms_Control_Regulations_Act_of_1975#cite_note-4)[[5]](https://en.wikipedia.org/wiki/Firearms_Control_Regulations_Act_of_1975#cite_note-5)[[6]](https://en.wikipedia.org/wiki/Firearms_Control_Regulations_Act_of_1975#cite_note-6)[[7]](https://en.wikipedia.org/wiki/Firearms_Control_Regulations_Act_of_1975#cite_note-7) On March 9, 2007, portions of the law were declared unconstitutional by a three-judge panel of the [United States Court of Appeals](https://en.wikipedia.org/wiki/United_States_Court_of_Appeals), in a 2-1 ruling in the case [District of Columbia v. Heller](https://en.wikipedia.org/wiki/District_of_Columbia_v._Heller).[[8]](https://en.wikipedia.org/wiki/Firearms_Control_Regulations_Act_of_1975#cite_note-8) The District subsequently applied for a rehearing [en banc](https://en.wikipedia.org/wiki/En_banc" \o "En banc), which was denied, and appealed the decision to the [Supreme Court of the United States](https://en.wikipedia.org/wiki/Supreme_Court_of_the_United_States). On June 26, 2008, the Court determined that the ban and trigger lock provision violate the Second Amendment.[[9]](https://en.wikipedia.org/wiki/Firearms_Control_Regulations_Act_of_1975#cite_note-9) However, the ruling does not prohibit all forms of [gun control](https://en.wikipedia.org/wiki/Gun_politics); laws requiring firearm registration remain in place as does the city's [assault weapon](https://en.wikipedia.org/wiki/Assault_weapon) ban.[[10]](https://en.wikipedia.org/wiki/Firearms_Control_Regulations_Act_of_1975#cite_note-10)

**NRA v. BATFE (**Bureau of Alcohol, Tobacco, Firearms and Explosives**)**

This case is about who can legally obtain guns. It challenges the 1968 federal prohibition on licensed gun dealers selling handguns or handgun ammo to adults between the ages of 18 and 20. People in that age range can buy long guns, such as rifles or shotguns, and they can legally possess handguns. But they are barred from purchasing any of these items from licensed dealers, restricting their ability to obtain what they are permitted to own.

The case has dragged on since 2011, necessitating the addition of a new plaintiff (since the original pair of complainants have reached age 21). Two lower courts considering the case decided that 18- to 20-year-olds have no rights under the Second Amendment, never mind Heller.

The petition for certiorari requests the Supreme Court to decide "whether a nationwide, class-based, categorical ban on meaningful access to the quintessential means to exercise the right to keep and bear arms for self-defense can be reconciled with the Second Amendment." That question has potential relevance beyond the age cohort at issue: There are legal limits imposed on the gun rights of convicted felons and those adjudicated mentally ill, for example.

The lower courts' opinions in NRA v. BATFE show they are not taking the Second Amendment very seriously. The U.S. District Court for the Northern District of Texas, which initially granted the government's request to dismiss the case in September 2011, thought that since "Congress identified a legitimate state interest-public safety-and passed legislation that is rationally related to addressing that issue," neither the Second Amendment nor equal protection of the law mattered. The court's reasoning went like this: Congress did it, they thought they had their reasons, that settles it.

A panel of the Fifth Circuit Court of Appeals then decided that the Second Amendment didn't really have bearing on this case. Why? Certain types of people had been barred from gun ownership even back in the Founding era. Additionally, in the 19th and 20th centuries various laws prevented minors from owning weapons when the age of majority was still 21. (In the Founding era, though, 18- to 20-year-olds were part of the armed militia.)

The Fifth Circuit also seemed to invent a new comparative responsibility doctrine for applying full constitutional rights. The Second Amendment, the judges found, only "protects 'law-abiding, responsible' Citizens." And "Congress found that persons under 21 tend to be relatively irresponsible."

In a failed attempt to get the Fifth Circuit to rehear the case en banc, a dissent from Judge Edith Jones in the 8-7 vote wondered when else courts would ever decide that a constitutional right did not apply to "a law-abiding adult class of citizens," mocking the decision's extremely weak version of "intermediate scrutiny," its basis for determining whether the government's restriction furthers an important state interest in a directly relevant way.

The Supreme Court has not defined what level of judicial scrutiny should apply to Second Amendment cases. It has rejected as a guideline mere "interest balancing," in which a court decides whether the benefits of a given restriction outweigh its costs to the citizen. Same with a "rational basis review," in which the government merely has to prove that the rights-restriction is rationally related to furthering some state goal.

Lower court application of "intermediate scrutiny" to Second Amendment cases has curtailed the expansion of gun rights in many post-Heller cases. Alan Gura, the lawyer who won both Heller and McDonald before the Supreme Court, says that the doctrine here "is not the intermediate scrutiny that's usually applied in constitutional cases, such as gender-based discrimination under the Equal Protection Clause." Under real intermediate scrutiny, Gura contends, "post-hoc rationalizations are insufficient, and the government bears the burden of showing a substantial fit between an important interest and the regulation at issue." Yet under Second Amendment intermediate scrutiny as applied by lower courts, "the legislative excuses or police declarations are given presumptive weight, and the burden is laid upon the challengers. Sometimes the government is required to come back with more evidence, but this appears to largely be a pro forma step. Most (but not all) laws survive this analysis."