

THE WRONG LEVEL OF GENERALITY: MISAPPLYING *BRUEN* TO YOUNG-ADULT FIREARM RIGHTS

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INTRODUCTION

Three relatively recent appellate opinions—*McCoy v. ATF*,¹ *National Rifle Ass'n v. Bondi*,² and *Rocky Mountain Gun Owners v. Polis*³—upheld modern restrictions on 18-to-20-year-old adults' ability to purchase firearms. Each does so by choosing the wrong level of generality in its historical analysis. Rather than ask whether there is a tradition of

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1. 140 F.4th 568 (4th Cir. 2025).
2. 133 F.4th 1108 (11th Cir. 2025) (en banc).
3. 121 F.4th 96 (10th Cir. 2024).

restricting young adults' arms rights, *McCoy*⁴ and *Bondi*⁵ reach for broad, non-firearm-specific infancy rules from contract law; *Polis* reframes the question as a generic regulation of commercial sales. These choices depart from *New York State Rifle & Pistol Ass'n v. Bruen*'s⁶ analogical method, which instructs courts to use closely matching analogues where available and to abstract up only when necessary.⁷ When the historical record includes firearm-specific sources about 18-to-20-year-olds' rights and duties, courts must use those sources rather than attenuated contract law rules designed to protect minors from unscrupulous adults or a rebuttable safe harbor for sales regulations.

I. *BRUEN*'S ANALOGICAL METHOD AND THE LEVEL-OF-GENERALITY PROBLEM

This Part sets forth *Bruen*'s analogical method, and the level-of-generality constraint it imposes, on courts adjudicating Second Amendment cases. It first explains how *Bruen* directs courts to begin with the text, and then to look for distinctly similar Founding-era firearm regulations before resorting to higher levels of abstraction. It then applies that method to 18-to-20-year-olds, showing that they fell within the core of the Founding-era arms-bearing population and that the historical record lacks categorical prohibitions on their acquiring, keeping, or carrying arms. Taken together, this Part shows that *Bruen*'s method fixes the right's meaning while constraining courts from diluting it through overgeneralization.

A. *Bruen's Analogical Method*

Bruen first asks whether the Second Amendment's text covers the conduct in question; if so, the government must justify its law by showing consistency with the "Nation's historical tradition of *firearm* regulation."⁸ Next, *Bruen* is clear that the way in which the Founding⁹ generation actually addressed—or not—a potential societal problem is the most "straightforward" evidence of constitutionality.¹⁰ The presence or absence

4. 140 F.4th at 575–77.

5. 133 F.4th at 1118–23.

6. 597 U.S. 1 (2022).

7. See *infra* notes 8–17 and accompanying text.

8. *Bruen*, 597 U.S. at 17 (emphasis added).

9. *Bruen* left it for later whether only the First Founding (when the Second Amendment was ratified in 1791), or that plus the Second Founding (when the Fourteenth Amendment was ratified in 1868), are relevant analogical eras. *Id.* at 37–38.

10. *Id.* at 17.

of a Founding-era *firearm* regulation “distinctly similar” to the one being challenged by a right-asserting plaintiff is strong evidence under *Bruen*. In that case, when the societal problem at issue (potential firearm misuse by 18-to-20-year-olds, in this case) is identical, upward abstraction is unnecessary.¹¹

When courts confront a regulatory situation “implicating unprecedented societal concerns” or that was “unimaginable at the founding,” a “more nuanced approach” involving finding analogues that are “relevantly similar” to the challenged regulation is required.¹² Abstraction is appropriate in this case, bounded “at least”¹³ by *Bruen*’s “how and why” inquiry: a present-day law must impose a comparable burden for a comparable justification to be constitutional.¹⁴

Courts must therefore look first for close historical analogues; only in the absence of such analogues should they generalize upward. *Bruen* is “neither a regulatory straightjacket nor a regulatory blank check.”¹⁵ In the appropriate circumstances,¹⁶ it allows for relying on historical laws that are similar enough to the ones being challenged, as the Court did in *United States v. Rahimi*.¹⁷ But it is not a license to swap in non-firearm-specific doctrines when firearm-specific analogues exist, or to abstract higher than necessary. *Bruen*’s method fixes meaning while allowing

11. *Id.* at 26 (“[W]hen a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.”).

12. *Id.* at 27–29.

13. *Id.* at 29. Presumably, the other four members of the “Five Ws”—Who, What, When, and Where—are also relevant. Indeed, the cases discussed herein implicate “Who.” A “sensitive places” case, *id.* at 30 (citing *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)), would implicate “Where.”

14. *See id.* at 29 (“[W]hether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are central considerations.” (internal quotation marks omitted)). *Bruen* also instructs courts to consider whether Founding-era courts rejected similar laws on constitutional grounds. *Id.* at 27.

15. *Id.* at 30.

16. *See supra* notes 12–14 and accompanying text.

17. 602 U.S. 680, 692–700 (2024) (relying on surety and affray laws to uphold the constitutionality of modern bans on arms possession by those under domestic violence restraining orders); *see also* Jamie G. McWilliam, *Second Amendment Principles*, 33 WM. & MARY BILL RTS. J. 1127, 1180 (2025) (explaining how higher levels of generality may be appropriate in some regulatory circumstances under *Rahimi*); George A. Mocsary, *In Denial About the Obvious: Upending the Rhetoric of the Modern Second Amendment*, 2024 CATO SUP. CT. REV. 201, 212–14 (discussing *Rahimi*).

application to new circumstances; it does not allow courts to dilute the right by changing the lens of comparison.¹⁸

B. In the Founding Era, 18-to-20-Year-Olds Could Keep and Bear Arms

The history is straightforward. 18-to-20-year-olds stood within the core of the Founding-era arms-bearing populace. The Militia Act of 1792¹⁹ enrolled able-bodied citizens from 18 to 45 and required each to “provide himself” with a musket.²⁰ States sometimes required parents to furnish arms for minors, but that facilitative feature never amounted to a categorical disarmament of 18-to-20-year-olds; indeed, several state practices—ranging from armed-community-service mandates to mandating arms carriage when traveling or going to church—assumed that those young adults would be armed.²¹

Courts striking down age-based restrictions have thus emphasized both the presence of duty at age 18 and the absence of Founding-era prohibitions on 18-to-20-year-olds’ acquiring or carrying arms.²² Consistent with that record, modern courts recognizing the right for this cohort have held that 18-to-20-year-olds are among “the people” and that the government bears the burden of identifying *firearm* regulations with a comparable burden and justification.²³

Finally, as the Fifth Circuit has explained in *Reese v. ATF*, the right “to keep and bear” implies a corollary right to acquire.²⁴ One cannot keep what one is forbidden to obtain. Treating purchase as outside the Second Amendment invites governments to destroy the right by closing access points.

18. Cf. *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring) (“[A] court must be careful not to read a principle at such a high level of generality that it waters down the right.”).

19. Militia Act of 1792, ch. 33, 1 Stat. 271 (1792).

20. *Id.*

21. George A. Mocsary, *Treating Young Adults as Citizens*, 27 TEX. REV. L. & POL. 607, 621–25 (2023) (discussing practices and citing sources).

22. E.g., *Reese v. ATF*, 127 F.4th 583 (5th Cir. 2025); *Lara v. Comm’r Pa. State Police*, 125 F.4th 428 (3d Cir. 2025); *Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024); *Firearms Pol’y Coal. v. McCraw*, 623 F. Supp. 3d 740 (N.D. Tex. 2022).

23. *Reese*, 127 F.4th at 589–95; *Lara*, 125 F.4th at 435–38; *Worth*, 108 F.4th at 688–92; *McCraw*, 623 F. Supp. 3d at 748–49.

24. *Reese*, 127 F.4th at 590.

II. *McCoy*: CONTRACT LAW'S INFANCY DOCTRINE IS THE WRONG ANALOGUE

The *McCoy* majority upholds the federal ban on federal firearm licensee handgun sales to 18-to-20-year-olds by analogizing to contract law's infancy doctrine in the Founding era.²⁵ Contracts entered into by persons under the age of 21 were generally voidable at the option of the under-21 party (then considered a minor for contracting purposes). The aim was to protect minors, by giving them the *option* to avoid the contract. *McCoy* characterizes the power to void contracts for non-necessaries as a disability "burdening" minors' ability to purchase firearms, opining that this power made sales on credit risky.²⁶ From there, the court reasons that 18 U.S.C. § 922(b)(1)'s ban is "relevantly similar" in its *how* (detering sales) and *why* (youthful judgment) to the common-law rule.²⁷

This is the wrong level of generality. The infancy doctrine is a general contract rule, not an American gun law. It incidentally affected all non-necessary purchases; it did not single out arms or reflect a historical judgment that young adults may be disarmed or barred from acquiring firearms. Even on its own terms, the doctrine's effect is contested and fact-bound (merchants sometimes extended credit; "necessaries" could be context-sensitive), which is why the dissent criticized the majority's economic speculation and emphasized the militia tradition requiring 18-year-olds to be armed.²⁸

Bruen requires firearm-specific analogies when they exist. Here, they do: Founding-era statutes and practices establish 18 as an age of arms-bearing responsibility, with no categorical ban on acquisition by 18-to-20-year-olds. Abstracting to the contract law of infancy to validate a purchase ban sidesteps *Bruen*'s "how and why" inquiry and substitutes a non-firearm, non-disability for a firearm regulation.

25. *McCoy v. ATF*, 140 F.4th 568, 576–77 (4th Cir. 2025).

26. *Id.* at 577.

27. *See id.* (citing 18 U.S.C. § 922(b)(1)).

28. *See id.* at 589–90 (Quattlebaum, J., dissenting); *see e.g.*, 1 E. ALLAN FARNSWORTH, FARNSWORTH ON CONTRACTS § 4.3 (3d ed. 2004) ("[S]ubstantial areas of commercial activity have developed that could scarcely survive without the patronage of those who are known to be minors."); Larry A. DiMatteo, *Deconstructing the Myth of the "Infancy Law Doctrine": From Incapacity to Accountability*, 21 OHIO N.U. L. REV. 481, 502 (1994) ("The 'fact' is that the ever-growing size of the infant consumer market is an indication that the infancy law doctrine has done little to discourage adults from selling or contracting with minors."); *cf.* Wayne Barnes, *Arrested Development: Rethinking the Contract Age of Majority for the Twenty-First Century Adolescent*, 76 MD. L. REV. 405, 444–46 (2017) (arguing that it is unlikely that changing the age of majority to twenty-one would have a meaningful impact on 18-to-21-year-olds' access to the marketplace).

III. *BONDI*: DOUBLING DOWN ON THE INFANCY THEORY

The Eleventh Circuit’s en banc majority in *Bondi* similarly leans on contract law’s general infancy principles—minors’ ability to void their own contracts, parental control, and wage rules—to assert that minors “generally could not purchase firearms.”²⁹ Its framing of Florida’s under-21 purchase ban as analogous in *how* and *why* terms to this legal regime suffers from two doctrinal flaws.

First, this is the same level-of-generality error as *McCoy*’s: a non-firearm-specific potential disability (voidable contracts) is not the relevant tradition under *Bruen*. Judge Branch’s dissent correctly observes that the majority’s analogue is not a tradition of firearm regulation at all, but a general rule with inferred economic effects, which cannot substitute for the “Nation’s historical tradition of ‘firearm regulation’” in *Bruen*’s sense.³⁰

Second, the *whys* don’t match. The purpose of contract law’s infancy doctrine is to protect a young buyer from improvidence. Florida’s gun law is aimed at preventing violent misuse. Those justifications are incommensurable.³¹ And Florida conceded that at the Founding an 18-year-old could lawfully purchase a gun with cash—the conduct the statute now forbids—underscoring the mismatch.³²

IV. *POLIS*: COMMERCIAL “SAFE HARBOR” IN PLACE OF FIREARM-SPECIFIC HISTORY

The Tenth Circuit in *Polis* takes a different route to the same destination. Recasting Colorado’s across-the-board purchase prohibition for 18-to-20-year-olds as a “condition[] and qualification[] on the commercial sale of arms,” it treats the law as a “presumptively lawful” sales regulation under *District of Columbia v. Heller*,³³ and suggests that purchase may not be covered by the Second Amendment.³⁴ That framing lets the court avoid the firearm-specific analogies that *Bruen* demands and relies instead on a broad “commercial regulation” presumption (but not a categorical rule, in any event).³⁵

29. Nat’l Rifle Ass’n v. Bondi, 133 F.4th 1108, 1118 (11th Cir. 2025).

30. *Id.* at 1164–65 (Branch, J., dissenting) (quoting United States v. Rahimi, 602 U.S. 680 (2024)).

31. *See, e.g., id.* at 1179 (Brasher, J., dissenting).

32. *See id.* at 1178.

33. 554 U.S. 570 (2008).

34. Rocky Mountain Gun Owners v. Polis, 121 F.4th 96, 119–20 (10th Cir. 2024).

35. *See Mocsary, supra* note 17, at 214 n.78.

That approach is a category mistake.³⁶ As the Fifth Circuit has explained, closing off the ordinary means of acquiring arms to a class of lawful adults is an abridgement of the right and cannot be insulated merely by relabeling it “commercial.”³⁷ Purchase is a corollary act practically necessary to “keep,” so such bans must be justified under *Bruen*’s history-and-tradition test rather than swept aside by a rebuttable “safe harbor.”³⁸

Once the correct frame is restored, the better analogues are the same Founding-era sources *Polis* sidelined: militia-enrollment and provisioning laws that treated 18-year-olds as arms bearers, and the conspicuous absence of categorical purchase bans for 18-to-20-year-olds. *Heller*’s illustrative list of “presumptively lawful” measures conspicuously did not include age limits.³⁹

Separating “purchase” from “keep and bear” is not doctrinally coherent: a right to possess that denies lawful means of acquisition is illusory. *Reese* is correct that the constitutional guarantee implies access; allowing a categorical sales ban for an entire class of adults invites the very end-run *Bruen* forbids.

V. THE CORRECT LEVEL OF GENERALITY

Applied correctly, *Bruen*’s method proceeds in the following order:

1. *Use close firearm-specific analogues first.* In this case, courts should use Founding-era militia and arms-possession practices for 18-to-20-year-olds. Those sources show inclusion within “the people,” an affirmative duty to be armed at 18, and no categorical purchase disqualifications for that cohort.
2. *Only if close analogues are lacking and more nuance is warranted* should courts abstract. But not to global doctrines (like general contract voidability) that merely had incidental spillover effects

36. Simply, a category mistake is a semantic or ontological error that occurs when something is treated as though it belongs to a different kind of group than the one to which it actually belongs. For a thorough discussion of category errors, see Ofra Magidor, *Category Mistakes*, STAN. ENCYC. PHIL. (Jan. 7, 2025), <https://plato.stanford.edu/archives/spr2025/entries/category-mistakes> [<https://perma.cc/5ASN-QA6D>].

37. *Reese v. ATF*, 127 F.4th 583, 590 (2025).

38. *Contra Polis*, 121 F.4th at 119 n.5.

39. *See* *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008).

on all purchases. Abstraction should preserve *Bruen*'s "how and why" focus: comparable burdens for comparable reasons.

McCoy and *Bondi* err by treating contract law's infancy doctrine as the controlling analogue. *Polis* errs by elevating a commercial-regulation safe harbor over firearm-specific history and by downplaying purchase as a necessary incident of "keep and bear." Each opinion therefore rests on an incorrect level of generality.

CONCLUSION

The historical record that *Bruen* makes decisive is not an empty shelf. It contains firearm-specific rules and practices about young adults, including a federal statute that presupposed 18-year-olds would arm themselves, and no Founding-era tradition of categorically forbidding 18-to-20-year-olds from purchasing arms. When courts bypass those close analogues for distant doctrines about minors' contracts (*McCoy*, *Bondi*) or for general commercial "safe harbors" (*Polis*), they invert *Bruen*'s method. The right to keep and bear arms protects 18-to-20-year-old adults, and because keeping presupposes acquisition, age-based purchase bans demand genuine historical justification. On this record, the correct level of generality shows that justification is missing.