STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

August 29, 2024

Opinion No. 24-014

Self-Defense and Long Guns

Question

In light of the U.S. Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), are rifles and other long guns, such as shot guns, muzzleloaders, carbines, etc., regardless of their type of actions (single shot, pump, lever, bolt, or semi-automatic) covered under the Second Amendment to the United States Constitution and Article I, § 26 of the Tennessee Constitution?

Opinion

The Second Amendment to the U.S. Constitution and Article I, § 26 of the Tennessee Constitution protects some (but not all) rifles and long guns in some (but not all) circumstances.

ANALYSIS

Both the U.S. and Tennessee Constitutions protect the right to keep and bear arms. The Second Amendment to the U.S. Constitution declares: "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." And Article I, Section 26 of the Tennessee Constitution similarly states "[t]hat the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have the power, by law, to regulate the wearing of arms with a view to prevent crime." The Tennessee Supreme Court has stated that these constitutional provisions protect "the same rights." *Andrews v. State*, 50 Tenn. 165, 177 (1871).

The question presented to the Office asks whether "rifles and other long guns" are "covered" under the Second Amendment and the Tennessee Constitution "regardless of their type of actions (single shot, pump, lever, bolt, or semi-automatic)." That question cannot be answered with a simple "yes" or "no."

The Second Amendment's text "extends, prima facie, to all instruments that constitute bearable arms, even those that were not [yet] in existence." *United States v. Rahimi*, 144 S. Ct. 1889, 1897 (2024) (quoting *Heller*, 554 U.S. at 582). That said, the Court has stated that the Second Amendment protects an individual's right to bear arms that are "in common use," as opposed to those that "are dangerous and unusual." *Bruen*, 597 U.S. at 47 (quoting *Heller*, 554 U.S. at 627). Some "rifles and other long guns" qualify for protection under that standard. *See Bruen*, 597 U.S. at 49 (discussing a colonial-era firearms regulation that did not prohibit

individuals "from carrying long guns for self-defense"); *Del. State Sportsmen's Ass'n v. Del. Dep't of Safety & Homeland Sec.*, 664 F.Supp.3d 584, 594 & n.11 (D. Del. 2023) (finding "ample support" for the argument that "assault long guns are indeed 'in common use' for lawful purposes, including self-defense"); *Heller v. District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011) ("We think it clear enough in the record that semi-automatic rifles and magazines holding more than ten rounds are indeed in 'common use.'"). Others likely do not. *See Heller*, 554 U.S. at 624-625 (suggesting that machineguns and short-barreled shotguns do not fall within the scope of the Second Amendment's protection).

That some rifles and long arms fall within the scope of the Second Amendment does not mean that States cannot restrict their use in certain scenarios. The Second Amendment does not "sweep indiscriminately," *Rahimi*, 144 S. Ct. at 1897, or impose "a regulatory straightjacket" on the ability of States to regulate firearms, *Bruen*, 597 U.S. at 30. States may prohibit firearms from "sensitive places" like schools and government buildings (among other places). *See Heller*, 554 U.S. at 626. States may also regulate "dangerous and unusual weapons," *Bruen*, 597 U.S. at 47; *Heller*, 554 U.S. at 627, and restrict the types of persons that may possess and carry firearms, *see McDonald*, 561 U.S. at 786 (casting no doubt on "longstanding regulatory measures" that prohibit dangerous "felons and the mentally ill" from possessing firearms); *Heller*, 554 U.S. at 626–27; *United States v. Williams*, 2024 WL 3912894, at *1 (6th Cir. Aug. 23, 2024).[1] Most recently, the Supreme Court, in a case addressing a federal law that prohibits the subject of a domestic violence restraining order from possessing a firearm, reaffirmed that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Rahimi*, 144 S. Ct. at 1903. The Second Amendment thus does not provide an unqualified "right to . . . carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Heller*, 554 U.S. at 626.

Any analysis of "modern firearms regulations" must follow *Bruen*'s two-step framework. 597 U.S. at 26. At step one, courts consider whether "the Second Amendment's plain text covers an individual's conduct"—and if so, "the Constitution presumptively protects that conduct." *Id.* at 17. When that presumption applies, the government at step two must "demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* And "[o]nly if a firearm regulation is consistent with [that] historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)).

In analyzing historical tradition, "[w]hy and how the regulation burdens the right are central to th[e] inquiry." *Rahimi*, 144 S. Ct. at 1898. When "laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." *Id.* That said, "[e]ven when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Id.* *Bruen*'s two-part framework ensures that the extent of a State's lawful authority to regulate

[1] As courts have consistently recognized, individuals aged 18 to 20 years old fall within the scope of "the people" protected by the Second Amendment. *See, e.g., Worth v. Jacobson*, 108 F.4th 677, 689 (8th Cir. 2024); *Firearms Pol'y Coal., Inc. v. McCraw*, 623 F. Supp. 3d 740, 745 (N.D. Tex. 2022).

firearms is "consistent with the Second Amendment's text and historical understanding." *Bruen*, 597 U.S. at 26.

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