

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MACK ESCHER, GUN OWNERS' ACTION)
LEAGUE, COMMONWEALTH SECOND)
AMENDMENT, FIREARMS POLICY)
COALITION, INC., SECOND AMENDMENT) CIVIL ACTION NO. 1:25-cv-10389-GAO
FOUNDATION, NATIONAL RIFLE)
ASSOCIATION OF AMERICA, and GUN)
OWNERS OF AMERICA, INC,)
Plaintiffs,)
)
v.)
)
COLONEL GEOFFREY NOBLE, in his official)
capacity as Superintendent of the Massachusetts)
State Police and of the Commonwealth of)
Massachusetts, JAMIE GAGNON, in his official)
Capacity as Commissioner of the Department of)
Criminal Justice Information Services, and)
HEATH J. ELDREDGE, in his official capacity)
as Chief of Police of Brewster, Massachusetts,)
Defendants)

**PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

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INTRODUCTION

Massachusetts' arguments in favor of its Ban on 18-to-20-year-olds acquiring many of the most common arms in America today or carrying arms in public for their self-defense are contrary to the "Second Amendment's unqualified command," *N.Y. Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 17 (2022) (quotation marks omitted), and it finds no support in the history of our country. It is historical fact that, at the Founding or shortly thereafter, (1) federal law, as well as the laws of all thirteen states, *required* 18-year-old Americans to be armed with firearms of their own, (2) those weapons were the very same ones that were "in common use at the time for lawful purposes like self-defense," *District of Columbia v. Heller*, 554 U.S. 570, 624 (2008) (quotation omitted), and (3) there were *zero* laws from the period that restricted their ability to use those arms lawfully on account of their age.

Massachusetts' Ban is directly contrary to those historical facts and therefore cannot be supported by the historical tradition of firearm regulation that was evidenced at the Founding. To argue the contrary, the Commonwealth spends much of its brief arguing that, in fact, 18-year-olds in 1791 were subject to restrictions on their ability to contract on account of their age and minority status, and that those limitations, also evidenced by some militia statutes that required parents to ensure their 18-year-old children were armed, demonstrate that 18-year-olds in fact lacked access to firearms. But whether firearms were among the goods that 18-year-olds' contracting disabilities affected or whether they were "necessaries" that were exempt from them (as discussed below, it was the latter) is really beside the point because Founding-era contract law cannot establish what the Commonwealth needs to establish in order to win. One way or another, 18-year-olds in fact had firearms at the Founding. No amount of historical work can obscure that dispositive fact.

When it comes to later history, the Commonwealth's historical support is too late to matter

given the state of the law and the facts at the Founding. But even aside from that, those historical laws show, at most, a history of limiting the rights of minors. Eighteen-year-olds like Plaintiff Escher are legal adults today, and historical restrictions limiting access to arms by children cannot support the Ban even if they are considered as historically relevant, because they are not “relevantly similar” to the Ban. The Court should grant summary judgment in Plaintiffs’ favor.

ARGUMENT

I. The Commonwealth’s Putative Founding Era Restrictions Are Inadequate to Support the Ban.

The Commonwealth’s response identifies “three faulty arguments” on which it claims Plaintiffs’ position with respect to Founding-era history depends: (1) the voidability rule, which restricted the rights of minors to contract for goods other than “necessaries,” did not actually prevent access to firearms, (2) that individuals over 18 today cannot be restricted based on putative limitations on minors because they are now adults, and (3) militia laws at the Founding demonstrate 18-to-20-year-olds were armed. *See* Defs.’ Mem. in Opp’n to Pls.’ Mot for Summ. J. (“Mass. Resp.”), Doc. No. 58 (Dec. 18, 2025) at 3. This misstates Plaintiffs’ position in two ways. First, these are not really three distinct arguments. Rather, the third—the reality that the militia laws at the Founding *required* 18-to-20-year-olds to be armed—is better thought of simply as a historical fact for which the Commonwealth cannot account. Massachusetts law restricts firearm ownership by 18-to-20-year-olds, but the Founders *ensured* they had arms. *See Reese v. BATFE*, 127 F.4th 583, 596 (5th Cir. 2025) (“[T]he government must overcome this clear and germane evidence that eighteen-to-twenty-year-olds enjoyed the same Second Amendment rights as their twenty-one-year-old peers at the founding.”). That defeats any historical analogy on its own, and it provides confirmation of the correctness of the first argument—that the “voidability rule” that applied to minors did not actually prevent them from having firearms. Second, this Court does not

need to accept each of these arguments. Rather, the first two are effectively two different ways of reaching the same conclusion. If this Court accepts *either* then Plaintiffs must prevail.

A. The Voidability Rule for Infants Did Not, In Fact, Prevent Anyone from Acquiring Arms, as the Militia Laws Prove.

The Commonwealth claims that Plaintiffs dismiss the infancy doctrine as a historical analogue “because it was, according to Plaintiffs, only a ‘de facto limitation’ on minors’ access to firearms resulting from contract law and supposedly did’ not actually have the effect of restricting minors’ acquisition of firearms.” Mass. Resp. 3. It claims there are two problems with this line of argument: First, “the infancy doctrine was not merely a ‘de facto limitation’; it was a broad de jure rule recognized by courts” and, second, that the infancy doctrine did, in fact, restrict acquisition of firearms. *Id.* at 4, 6 (cleaned up). As to the first point, this misunderstands Plaintiffs’ argument. Of course, the common law rule was “de jure,” but even in the best light for the Commonwealth, this was a de jure restriction that impacted firearm rights only incidentally. It affected them, if it affected them at all, only by virtue of firearms also being “goods” subject to a generally applicable commercial rule. That, alone, disqualifies it as a historical analogue, because the Ban directly and specifically regulates the firearm access of 18-to-20-year-olds, and therefore imposes a burden on the right for an incomparable reason, since it is not founded on a general recognition of the inability of 18-year-olds to contract, but on a specific rejection of their right to keep arms. The burden is also more severe than under these historical laws. Even accepting *arguendo* that 18-year-olds could not contract for firearms at the Founding, they could have firearms that were given to them by their parents, since the voidability rule was merely concerned with ability to contract, not the actual mechanics of firearm ownership. But that same thing is impossible under Massachusetts law which forbids even mere possession of many firearms by individuals in this age group. To be clear, Plaintiffs are not holding the Commonwealth to an obligation to identify a “historical twin” for the

ban, *see id.* at 6 (quoting *Bruen*, 597 U.S. at 30), but the relevant history demonstrates that both “how” (again, if at all, even accepting the Commonwealth’s assertions on that front for the sake of argument) and “why” the historical restriction impacted arms-bearing activity was utterly unlike the Ban.

Much more importantly, the Commonwealth has failed to demonstrate that the voidability rule actually *was* a barrier to firearm acquisition at the Founding. As the party bearing the burden, it is imperative that the Commonwealth show that the rule actually impeded firearm acquisition to succeed. It is the only possible historical support the Commonwealth has from the Founding, *id.* at 4–5, which as Plaintiffs have emphasized, is the critical period for understanding the scope of the Second Amendment, Br. in Supp. Mot. for Summ. J. (“Pls.’ Opening Br.”), Doc. No. 44 (Nov. 20, 2025) at 8–9. Indeed, the Commonwealth blames its inability to find other historical support from this period on the purported effect of the voidability rule on 18-to-20-year-olds, making any specific restrictions on firearm access for this group at the Founding redundant. Mass. Resp. at 6.

Massachusetts points to the decisions of two circuit courts that found that, as a result of this rule, “minors were heavily impeded from purchasing firearms.” Mass. Resp. at 7 (citing *National Rifle Ass’n, Inc. v. Bondi*, 133 F.4th 1108, 1118 (11th Cir. 2025) (en banc); *McCoy v. BATFE*, 140 F.4th 568, 576 (4th Cir. 2025)). But Plaintiffs have already explained that neither *McCoy* nor *Bondi* add support to the Commonwealth’s argument. Rather, both merely restate the Commonwealth’s other historical evidence regarding the scope of the “necessaries” exception which, as Plaintiffs have explained, does not demonstrate that firearms were not necessities in all cases. *See* Pls.’ Opp’n to Defs.’ Mots. For Summ. J. (“Pls.’ Resp.”), Doc. No. 59 (Dec. 18, 2025) at 12–13.

The Commonwealth attempts to flip its burden, and faults Plaintiffs for “cit[ing] no direct

historical evidence” or even “a single historical source stating that firearms were considered ‘necessaries’ under that doctrine.” Mass. Resp. at 7. In addition to getting *Bruen* backwards, this is wrong because Plaintiffs *have* cited such evidence—the militia laws. As Plaintiffs have explained, at the Founding or shortly thereafter, every state set the age for militia participation at 18, as did a federal law enacted just months after the ratification of the Second Amendment. Pls.’ MSJ at 7. The Commonwealth disputes this in part—it acknowledges that “persons between the ages of 18 to 20 were often required as a matter of federal and state statute to serve in militias at the Founding” but also asserts that “the age of 18 was not even a uniform or constant line that was drawn.” Mass. Resp. at 12. But any deviations from this line were both infrequent and short-lived; moreover, “even if 18-year-olds were not part of the compulsory militia” at different times and states in the decades after ratification, “they were not necessarily excluded . . . from service in the militia” at those times either. *Hirschfeld v. BATFE*, 5 F.4th 407, 430–34 (4th Cir. 2021), *vacated as moot*, 14 F.4th 322 (4th Cir. 2021) (summarizing deviations from the 18-year-old age threshold and concluding “state and federal militia laws show that 18-year-olds had a right to keep and bear arms”). And as such, they would have had the ability to acquire arms in part to further such service.

The central fact that the Commonwealth cannot dispute is that participation in the militia entailed an obligation to possess arms. Mass. Resp. at 12; Pls.’ MSJ at 7; *see* Militia Act of May 8, 1792, ch. 33, § 1, 1 Stat. 271. This is fatal to the Commonwealth’s argument because it shows, affirmatively, that 18-year-olds at the Founding needed to be and in fact were armed. Given that “necessaries” were things that a minor needed to possess according to his “real circumstances,” 2 JAMES KENT, COMMENTARIES ON AMERICAN LAW 239 (1848); *see* Pls.’ Resp. at 12, firearms must have qualified as “necessaries.” The Commonwealth responds that some militia laws required parents to provide arms for their children or pay the penalty for their children’s failure to acquire

arms as a “mechanism[] to account for the fact that persons under the age of 21 lacked the ability to purchase firearms on their own account.” Mass. Resp. at 12. But that hardly defeats the argument, as a “necessary” for a minor was, effectively, those sorts of things that a guardian performing his proper function would ordinarily acquire for the minor, but effectively could not for one reason or another. *See* 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 436 (1765) (“[N]atural right obliges [a parent] to give a necessary maintenance to children.”); *id.* at 454 (discussing necessities for which a minor could bind himself in contract). And even if that were not the case, somehow, and such arms did not qualify as necessities, it would not matter because the fact would remain that 18-year-olds, whether subject to contractual restrictions or not, were armed.

The Commonwealth’s last argument on this point is its claim that, even accepting that 18-year-olds had firearms at the Founding because they served in the militias, its Ban is consistent with that history because it allows possession of a greater number of firearms by any “person in the military or other service of any state or of the United States” who is acting “in the performance of their official duty.” Mass. Resp. at 13 (quoting MASS. GEN. LAWS ch. 140, § 129C(f)). But this entirely misses the point. It is not that militia service *conferred* the right to keep and bear arms on 18-to-20-year-olds “in the performance of their official duty” as militiamen. Rather, militia duty *required* them to be armed, and there were no restrictions placed on their ability to exercise their Second Amendment rights when not mustering for militia service. The Commonwealth’s attempt to excuse its general ban on 18-year-olds’ acquisition of most common firearms and on carrying firearms for self-defense by referring to the fact that it does not apply to 18-year-olds who join the military and carry or possess weapons in the course of their duties must be rejected.

B. The Voidability Rule for Infants Cannot Be Applied to Restrict Legal Adults.

Even if it is assumed, contrary to the evidence, that the voidability rule restricted the ability of an 18-to-20-year-old at the Founding to acquire and possess firearms, it *still* fails as an analogue for the Ban today because it applied only to those who were minors *because* they were minors, while the Ban applies to legal adults. This flows directly from the Supreme Court’s instructions for applying the *Bruen* framework: a historical law is only “relevantly similar” to a modern restriction to the extent they restrict the right in a similar way (“how”) and for a similar reason (“why”). *Bruen*, 597 U.S. at 29. Using a historical law that applied against individuals, if at all, only because they were minors, to justify a limit placed on legal adults today, whose contract rights, it goes without saying, are unencumbered, is exactly the sort of mechanical “law trapped in amber” application of historical precedent that the Supreme Court cautioned against in *United States v. Rahimi*, 602 U.S. 680, 691 (2024). The Commonwealth offers four counterarguments, but none should be accepted.

First, the Commonwealth argues that it is “dubious” to talk about whether 18-year-olds are covered by the Second Amendment because even if they are covered, “the state may nevertheless, in many instances, lawfully burden a person’s constitutional rights in a manner that depends on age and maturity.” Mass. Resp. at 9. For support it cites a case in which the Supreme Court upheld a law restricting those under 17 from accessing obscene material because it found that law consistent with the narrower “freedom of expression constitutionally secured to *minors*.” Mass. Resp. at 9 (quoting *Ginsberg v. State of N.Y.*, 390 U.S. 629, 637–41 (1968)) (emphasis added). But that law demonstrates how strange what the Commonwealth is doing here really is. Other rights, like those protected by the First and Fourth Amendments, apply to all Americans, even those under 18, *see, e.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969); *New Jersey*

v. T.L.O., 469 U.S. 325, 334 (1985), and the only real question is to what degree a *minor*'s exercise of those rights can be circumscribed or "qualified to some degree." *Hirschfeld*, 5 F.4th at 422. The Commonwealth has not cited *one* case upholding a law restricting exercise of any other constitutional right by a legal adult on account of their age. *See* Pls.' Resp. at 11. The Supreme Court has cautioned that the Second Amendment is not to be treated as "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *Bruen*, 597 U.S. at 70 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality op.)). But permitting the government to limit the exercise, by a legal adult, of *only* this one right and no other is doing just that. The Commonwealth's argument that this should instead have been a sort of "age discrimination" claim over which the government is afforded "great latitude," does not help it on that front, *see* Mass. Resp. at 9, because while that may be the correct framework for analyzing equal protection claims based on age, the Second Amendment and *Bruen* provide the framework for analyzing restrictions on the right to keep and bear arms.

Second, the Commonwealth charges Plaintiffs with advancing an "anti-originalist view of the Second Amendment," *id.* at 10, because Plaintiffs suggest that this Court must take account of the fact that 18-year-olds today are legal adults. This is not, as the Commonwealth claims, an argument that "the federal right to keep and bear arms turns on a sliding scale defined by contemporary state law that varies from jurisdiction to jurisdiction." Mass. Resp. at 10 (quoting *Bondi*, 133 F.4th at 1125). Instead, as Plaintiffs have argued, it is a recognition of what the Supreme Court has made clear throughout its Second Amendment caselaw—that courts must account for changed societal circumstances and must examine historical and modern laws together to determine whether the same constitutional "principle" runs through them both. *See Rahimi*, 602 U.S. at 692. The aim of the inquiry is to determine what historical laws and restrictions are

consistent with the pre-existing right to keep and bear arms. Mechanically applying restrictions that historical laws placed on minors to adults today without noticing that the historical principle underlying those prior restrictions has no application any longer is contrary to that analysis. It would be akin in the “arms” context to saying only Founding-era weapons like muskets qualify.

Third, the State suggests that there is no disconnect between the principle underlying the historical voidability rule and the Ban, suggesting both are based on a lack of maturity and judgment. Mass. Resp. at 11. But whether it is phrased as a problem with “why” or “how” the Ban operates, the historical laws were protective of 18-year-olds in the context of a system that provided them broad protection in many areas of life; as minors, they had guardians for their benefit. The burden on Plaintiff Escher’s rights, and the justification for it, are both entirely different given that he has no one legally responsible for him and yet the Commonwealth still wants to disarm him.

Fourth, the Commonwealth argues that if all legal adults were intended to have full Second Amendment rights “one would expect it to say so explicitly” by providing some sort of age cutoff in its text. *Id.* at 11. But the Second Amendment does better. By its plain text, it indicates that it protects a right held by “all Americans.” *Heller*, 554 U.S. at 581. The analysis starts with the assumption, therefore, that, as with all other fundamental rights, the Second Amendment applies in full *at least* to all adults. Only if it was intended to apply to a different subset of “the people” would it make sense for the Constitution to provide an explicit age limit. *See Worth v. Jacobson*, 108 F.4th 677, 692 (8th Cir. 2024). That is what the constitutional provisions the Commonwealth cites setting ages (above the age of majority) for eligibility to hold office as Senator or Representative, or the Twenty-Sixth Amendment, lowering the traditional threshold for voting rights, did. Mass. Resp. at 11.

II. Reconstruction-Era Laws Are Too Little, Too Late.

The Commonwealth argues that its collection of nineteenth-century age restriction laws provide additional support for its argument, but as Plaintiffs have explained at length, unless this Court accepts the Commonwealth’s historical arguments from the Founding era, these laws come too late to identify a new type of limitation on the Second Amendment right. *See* Pls.’ Resp. at 17–18. Though the Commonwealth posits that nineteenth century laws should be “particularly probative” because of changing social circumstances, as Plaintiffs explained in their Response to the Commonwealth’s earlier arguments on this score, that argument runs afoul of *Bruen* because it effectively authorizes increased regulation of firearms based on increased technological advancement, a position the Supreme Court has repeatedly rejected. *See id.* at 18–19. And furthermore, the Commonwealth’s argument utterly fails to account for the fact that these laws, too, targeted minors (in many cases, minors much younger than 18), which destroys any claim to “relevant similarity.” *See id.* at 19–20. The Commonwealth’s final argument, that these laws enshrine a principle that 18-year-olds could not be trusted with the right to bear arms is contrary to earlier history which required them to be armed, and effectively transforms, contrary to *Bruen*, the historical analogical inquiry into interest-balancing-by-another-name as the Commonwealth seeks to show that the Ban is good policy based on “both historical understanding and modern science” regarding brain development. *But see Bruen*, 597 U.S. at 29 n.7 (warning courts against “engag[ing] in independent means-end scrutiny under the guise of an analogical inquiry”).

CONCLUSION

The Court should grant Plaintiffs’ motion for summary judgment and declare the Ban unconstitutional to the extent it prohibits 18-to-20-year-olds from acquiring, possessing, or carrying arms on equal footing with other adults.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2026, I filed the foregoing Reply in Opposition to Defendants' Motions for Summary Judgment via the Court's CM/ECF appellate system, which will electronically notify all counsel requiring notice.

Respectfully submitted,

/s/ David H. Thompson
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