

TWENTY-FOURTH JUDICIAL CIRCUIT OF VIRGINIA

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COMMONWEALTH OF VIRGINIA
CITIES OF LYNCHBURG AND BEDFORD
COUNTIES OF AMHERST, BEDFORD, CAMPBELL AND NELSON

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October 16, 2025

Re: Raul Wilson, et al., v. Colonel Matthew D. Hanley (In His Official Capacity as Superintendent of the Virginia State Police) Case No. CL20000582

Dear Counsel:

I am writing to furnish you with the decision of the Court in the above case. The parties came before the Court on a final hearing for this case which has been ongoing since 2020. Over the course of the past several years, there has been what some describe as a seismic shift in the landscape of American gun rights. Most notably, the Supreme Court in *New York State Rifle & Pistol Association v. Bruen* set forth a new test for evaluating the constitutionality of firearm regulations. See *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022). Under *Bruen*, any regulation affecting the right to

bear arms must be rooted in the “historical tradition of firearm regulation” in the United States. *Bruen*, 597 U.S. at 17.

When this matter first came before the Court, it appeared that the question this Court would be tasked to answer is whether Virginia Code Section 18.2-308.2:5—which mandates background checks for all firearm transactions, including private sales—is constitutional. *See* Va. Code Ann. § 18.2-308.2:5 (“The Act”). Under *Bruen*, this would require the Court to embark on an analysis as to whether Virginia’s background check requirements comport with the “historical tradition of firearm regulation” in the United States. *Id.* However, at this time, the Court need not engage in such an analysis. In exercising judicial restraint, the Court finds it improper to resolve the question of firearm regulation through the lens of *Bruen*. Instead, the inherent as-applied constitutional deficiencies of the Act require that the court strike the statute in its entirety.

The Court previously detailed the facts set forth in this case in its July 14, 2020 preliminary injunction opinion and December 17, 2024 letter opinion, and the Court incorporates by reference those facts.

Background

By way of background, in July of 2020 this Court enjoined the Act as it applied to adults under the age of 21. *See Elhert v. Settle*, 105 Va. Cir. 326, 338 (Jul. 14, 2020). Prior to the Act, those between the ages of 18 and 21 could purchase a handgun through a private sale, though they were barred from doing so through a licensed dealer. *Id.* at 334; *see* 18 U.S.C. § 922(b)(1). However, after the imposition of the Act, those between the ages of 18 and 21 were effectively barred from purchasing handguns altogether—even through private sales. *Elhert*, 105 Va. Cir. at 336-37. Although the Act did not expressly prohibit private handgun sales to those ages 18 to 20, it required all firearm purchases to be subject to a background check. In order to obtain the Act’s requisite background

check, an individual seeking to purchase a firearm would have to go to a licensed dealer who would perform the background check using the National Instant Criminal Background Check System (“NICS”). Herein lies the problem. The NICS system automatically rejects handgun transfers to individuals under the age of 21. As a result, although Virginia law permits those 18 to 21 years of age to possess handguns, there was no lawful mechanism for them to acquire the required background check, thus effectively barring them from lawfully purchasing a handgun. *Id.* at 334.

Following this Court’s 2020 opinion, the State attempted to remedy this issue by creating a mechanism that required the State Police to attend gun shows within the Commonwealth.¹ This allowed sellers and buyers to appear in person and have the State Police perform the necessary background checks for adults under the age of 21, using a separate state background check system, bypassing the NICS system.

After this new mechanism was implemented, the parties appeared for a bench trial. The Plaintiffs sought declaratory relief in the form of finding the Act unconstitutional under Article 1 Section 13 of the Constitution of Virginia, and permanent injunctive relief which would enjoin the administration, enforcement, and imposition of the requirements of the Act on the same basis. Simply put, the parties wanted the Court to decide whether requiring background checks for private handgun sales is constitutional.

The Court, however, could not ignore the glaring infirmities in the statute itself. In its letter opinion dated December 17, 2024 the Court declined to rule on the Plaintiff’s facial challenge. Instead, the Court directed the parties to brief and present further argument on whether the Act should be invalidated as a whole in light of *Ayotte*’s three-

¹ According to the stipulated facts, in 2023 there were 48 guns shows in the Commonwealth, taking place on weekends, with 7 of them also open on Friday afternoons.

prong test. The test requires courts to determine the appropriate remedy when a statute is found unconstitutional as-applied. *See Ayotte v. Planned Parenthood*, 546 U.S. 320. This is the appropriate test to apply at this time because the Court found in its 2020 opinion that the statute is unconstitutional as-applied to those 18 to 20 years of age. *Elhert*, 105 Va. Cir at 338. It is necessary, then, under *Ayotte*, to determine what must be done with the remainder of the Act, after those 18 to 20 years of age have been excluded from its application.

After considering the arguments presented at the June 4th, 2025 hearing, the Court finds that the Act must be stricken in its entirety.

I. In Light of *Ayotte*, The Act must be Stricken in its Entirety.

Ayotte requires that a court consider three interrelated principles to determine the appropriate remedy when a statute is unconstitutional as-applied. First, the Court must refrain from “nullify[ing] more of the legislature’s work than is necessary, for . . . ‘[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.’” *Ayotte*, 540 U.S. at 329 (quoting *Regan v. Time, Inc.*, 468 U.S. 641, 652 (1984)). Second, courts should not rewrite state law to make it constitutional unless the statute is readily susceptible to such a limitation. *See id.*; *Virginia v. American Booksellers Ass’n*, 484 U.S. 383, 397 (1988). Finally, the remedy must align with legislative intent, as courts cannot use their powers to circumvent the legislatures objectives. *Ayotte*, 540 U.S. at 330.

Under the first prong, the Court considers whether it can nullify only the unconstitutional portion of the statute without invalidating the entire statute. In other words, the Court must consider whether it can merely sever the statute as it applies to those ages 18 to 20 and leave the statute intact and enforceable as to everyone else. Ultimately, this alteration to the statute would render those ages 18 to 20 exempt from

obtaining a background check before purchasing a handgun, while requiring a background check for all those over the age of 20. This proposition strains reason. Any such attempt to remedy the constitutional infirmity would likely give rise to a new set of constitutional challenges—particularly under the Equal Protection Clause.²

Under the Equal protection Clause, age-based classifications must be rationally related to a legitimate government interest. *See Gregory v. Ashcroft*, 501 U.S. 452 (1991); *see also D.L.G. v. Commonwealth*, 60 Va. App. 77, 81 (2012) (explaining that age is not a suspect classification, and thus age-based restrictions must only bear a “reasonable relation to a legitimate government objective”). Here, the Court finds no legitimate government interest in exempting individuals ages 18 to 20 from background checks while requiring them for those over the age of 20. Such a distinction would be as arbitrary as exempting any age range, such as 57 to 59, without justification. Indeed, such an exemption for those 18 to 20 years of age would go against reason. *See Lara v. Comm’r Pa. State Police*, 97 F.4th 156, 163 (discussing how modern crime statistics confirm that “youth under 21 commit violent gun crimes at a far disproportionate rate”). A large reason for this is in 2019, “although 18 to 20-year-olds made up less than 4% of the U.S. population, they accounted for more than 15% of all homicide and manslaughter arrests. National data collected by the [FBI] also confirms that homicide rates peak between the ages of 18 and 20.” *Id.* Given these grim statistics, there seems to be no justification for a statute that would allow those ages 18 to 20 years of age to purchase a

² In support of its position that *Ayotte* requires the Court to merely exempt those ages 18 to 20 from the Act’s application, the Commonwealth referenced an Arkansas case, *Jackson v. Norris*, 2013 Ark. 175, where the court severed juveniles from a statute imposing life imprisonment without parole for capital murder to resolve a constitutional issue. However, this case is distinguishable for the current matter. In the present case, severing individuals 18 to 20 years of age would arguably create a new constitutional issue under the Equal Protection Clause. Where severance in the Arkansas case remedied a constitutional issue, here, severance creates a constitutional issue.

handgun through a private sale without first obtaining a background check but require all others to do so. Thus, even under the deferential rational basis standard, the Court cannot identify a rational connection to a legitimate government interest in this scenario. The first prong weighs in favor of striking the Act in its entirety.

Under the second prong, the Court must evaluate whether the statute is readily susceptible to a constitutional interpretation through judicial modification. The Court finds that rewriting the statute to address the constitutional concerns would exceed its judicial authority and fundamentally alter the legislative scheme. The Court refuses to step into the shoes of the legislature, and as such, this prong also weighs in favor of striking the Act in its entirety.

Finally, under the third prong, the Court must analyze legislative intent, which it finds challenging to do. However, the Court concludes that the legislature would likely not intend to create arbitrary age-based exemptions. Such an outcome would undermine the statute's purpose and create an illogical disparity in its application, particularly given the public safety concerns associated with firearm access for younger individuals.

The Court also observes that it is feasible to create a system where all individuals are treated equally in obtaining a background check. For example, Nevada law requires all firearm sales and transfers, with limited exceptions, to go through a background check conducted by a federally licensed firearms dealer (FFL). NRS 202.2547. The FFL conducts the background check through the Nevada Department of Public Safety's (DPS) Point of Contact system. This system interfaces with the National Instant Criminal Background System (NICS) to determine the eligibility of the buyer to possess a firearm—regardless of age. While Virginia has not adopted such a system, whether due to cost or other reasons, Nevada demonstrates that it is possible to implement a uniform approach.

The statute as it stands, cannot remain intact. If the legislature wishes to rewrite the law to create a system that does not impose disparate treatment based on age, it may do so. At that time, a court might rightly address the question of whether it is constitutional to require a background check to obtain a handgun through a private sale. Now is not that time.

II. The Court Finds that Severability Under Virginia's Severability Statute is Not Appropriate in this Instance.

In addition to arguing for severance under *Ayotte*, the Commonwealth argued for severance of the unconstitutional portion of the statute pursuant to Virginia Code Section 1-243 which states:

The provisions of acts of the General Assembly or the application thereof to any person or circumstances that are held invalid shall not affect the validity of other acts, provisions, or other applications that can be given effect without the invalid provisions or applications. The provisions of all acts, except for the title of the act, are severable unless (i) the act specifically provides that its provisions are not severable; or (ii) it is apparent that two or more acts or provisions must operate in accord with one another.

The Commonwealth argued that the unconstitutional application of the statute to individuals 18 to 20 years of age can be severed under Virginia's severability statute, leaving the statute intact and enforceable for those over the age of 20. However, this argument fails for the same reasons discussed above. Severing the Act in this manner would lead to an absurd and untenable result.

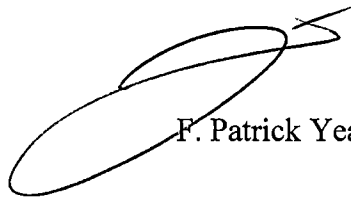
Conclusion

Let it be clear, the Court today is not holding that background checks are unconstitutional. That is a question for another day, perhaps another court. Today, the Court holds that the manner in which Virginia Code Section 18.2-308.2:5 is applied cannot pass constitutional scrutiny. If the Court were to merely hold the Act unconstitutional as-applied and simply sever those 18 to 20 years of age, the Court would be ignoring the constitutional deficiencies in the enforcement of the Act. After applying the *Ayotte* framework, the Court finds that it is left with one option at this time—that is, to strike the statute in its entirety for the reasons set forth herein.

The Court GRANTS the plaintiffs request for permanent injunctive relief, enjoining the administration, enforcement, and imposition of Virginia Code Section 18.2-308.2:5.

Mr. David Brown is directed to prepare an Order consistent with the Court's letter opinion.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by a surname, with a horizontal line extending from the end of the signature.

F. Patrick Yeatts, Judge