



Written by [Joe Wolverton, II, J.D.](#) on December 4, 2016

New ATF Regulation Denies 2nd Amendment to Legal Drug Users

A recent update to the regulations promulgated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) could surreptitiously strip millions of law-abiding Americans of their right to keep and bear arms as protected by the Second Amendment.



The newly amended Form 4473 — the form one must fill out in order to purchase a firearm from a federally licensed dealer — includes the following question: “Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?”

Following the question, the ATF form declares, in bold type:

The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.

What’s the problem? We don’t want drug heads owning guns, do we?

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Some might argue that convicted criminals should be prohibited from purchasing weapons, but what of the millions of Americans who live in states where possession of marijuana is legal and the millions more who live in states where, although recreational use of cannabis is criminalized, the use of the drug as medicine is perfectly lawful?

Will these people, these law-abiding Americans, now be denied the right to buy a weapon because they participate in an activity of which the ATF does not approve?

We all know how that worked out in Waco, Texas, don’t we?

In a blog post published on November 30, *Reason* reported the following statements on the subject:

We were concerned that some buyers who use marijuana may read the 2012 language asking if they were an ‘unlawful user of, or addicted to, marijuana’ and erroneously say no because in that particular state, marijuana has been legalized,” an ATF spokeswoman [told](#) The Denver Post last week. “Most dealers recognize that marijuana use prohibits people from purchasing firearms under federal law, but many members of the general public may not be as familiar with the Gun Control Act.

Let’s examine the relationship between the Gun Control Act and the denial to “drug users” of their right to keep and bear arms.

According to an [online textbook](#) in the section on the Second Amendment:



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Following the assassination of President John F. Kennedy in 1963 and the handgun related assassinations of Reverend Martin Luther King Jr. and Senator Robert Kennedy in 1968, Congress enacts the Gun Control Act. The act regulates imported guns, expands licensing and record keeping requirements, bans mail-order sales of guns and ammunition, raises the age at which one can legally buy a gun, and prevents convicted felons, mentally ill people, and illegal drug users from buying guns.

This was, incidentally, the same year the ATF itself was created. As described in the textbook mentioned above:

Displeased with the lack of vigorous enforcement of federal gun control laws, Congress separates the Bureau of Alcohol, Tobacco, and Firearms (ATF) (since renamed the Bureau of Alcohol, Tobacco, Firearms, and Explosives) from the Internal Revenue Service and forms it as a separate law enforcement organization within the U.S. Department of Justice.

The ATF (part of the executive branch) is not the only arm of the federal government working to abolish the protections provided by Second Amendment for any American lawfully using marijuana, however.

In September, the Ninth Circuit Court of Appeals got in on the act, redefining the boundaries of the Second Amendment's scope.

"The Government argues that empirical data and legislative determinations support a strong link between drug use and violence," the court ruled. This claim was supported by "studies and surveys relied on in similar cases suggest a significant link between drug use, including marijuana use, and violence."

"It is beyond dispute," the federal appeals court adds, "that illegal drug users, including marijuana users, are likely as a consequence of that use to experience altered or impaired mental states that affect their judgment and that can lead to irrational or unpredictable behavior."

Furthermore, "they are also more likely to have negative interactions with law enforcement officers because they engage in criminal activity," and "they frequently make their purchases through black market sources who themselves frequently resort to violence."

Consider this analysis of that despotic decision provided by *Reason*:

The first two rationales—a link to violence and the possibility of impairment—apply with equal or greater force to alcohol. Would the 9th Circuit think it reasonable to strip all drinkers of their Second Amendment rights?

Probably not. The third and fourth rationales—an enhanced risk of "negative interactions" with cops and a need to buy marijuana from possibly violent black-market dealers—are byproducts of prohibition and do not really apply to state-authorized medical marijuana patients, especially those who, like Wilson, never actually use marijuana. Still, the 9th Circuit says, "individuals who firearms dealers have reasonable cause to believe are illegal drug users are more likely actually to be illegal drug users (who, in turn, are more likely to be involved with violent crimes)." Hence a ban on gun sales to medical marijuana cardholders is perfectly consistent with the Second Amendment.

That conclusion extends the logic of *Dugan*, which held that if felons and people who have undergone forcible psychiatric treatment can constitutionally be deprived of their right to arms, so can illegal drug users. "We see the same amount of danger in allowing habitual drug users to traffic in firearms as we see in allowing felons and mentally ill people to do so," the 9th Circuit said in that



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case. “Habitual drug users, like career criminals and the mentally ill, more likely will have difficulty exercising self-control, particularly when they are under the influence of controlled substances.”

With the election of Donald Trump to be president, there is a chance that he will hold true to his professed dedication to the restoration of the rights protected by the Second Amendment.

There is some doubt about this desirable change of course, though, in light of Trump’s declared intent to nominate Senator Jeff Sessions (R-Ala.) to be attorney general — the man in charge of the Justice Department, including the ATF.

In April 2015, Sessions testified, “We need grownups in charge in Washington to say marijuana is not the kind of thing to be legalized.”

““The Department of Justice needs to be clear, and the president needs to assert some leadership,” he added.

That statement is in direct contradiction to one made by Donald Trump during [a campaign event held in Reno, Nevada in 2015](#).

“I really believe you should leave it up to the states,” Trump told supporters. “It should be a state situation.... In terms of marijuana and legalization, I think that should be a state issue, state by state.”

Perhaps as president, Donald Trump will have some sway over Sessions and the policies he promotes as attorney general. If so, we may yet see the Second Amendment restored to the millions of law-abiding Americans who have lost its protections — and the right to purchase a gun — under the Obama administration’s ATF regulations.



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