

## MARIJUANA AND THE RIGHT TO BEAR ARMS: A NEW DIRECTION EMERGES



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By: Regulated Products Section Chair [Richard Blau](#)

The conservative U.S. Court of Appeals for the Fifth Circuit yesterday weighed in on the intersection of gun rights and the war on drugs. Ruling in favor of the right to bear arms, the federal appeals court ruled that the federal law making it a crime for users of illegal drugs to own or possess firearms violated the Second Amendment rights of a Mississippi man who was arrested for possessing a gun after having been stopped for suspicion of unlawful marijuana use. It is noteworthy that while the arresting officers found evidence of past marijuana use in the defendant's car, there was no evidence in the record that he was intoxicated at the time of his arrest.

Title 18 U.S.C. § 922(g)(3) bans gun possession by anyone "who is an unlawful user of or addicted to any controlled substance," including marijuana, which is listed as a prohibited narcotic on Schedule 1 of the Controlled Substances Act of 1970. Federal law deems an "unlawful user" as someone using illegal drugs regularly and in some temporal proximity to gun possession.

The federal ban, as previously construed, applies not just while a person is intoxicated but also while the person is sober. However, yesterday's decision in [U.S. v. Daniels](#), written by Circuit Judge Jerry Smith and joined by fellow Circuit Judges Stephen Higginson and Don Willett, held that arresting someone for possessing a gun under 18 U.S.C. § 922(g)(3) when s/he is not intoxicated violates that person's Second Amendment rights, recently expanded by the U.S. Supreme Court. The Fifth Circuit specifically referenced and relied on last year's SCOTUS decision in [N.Y. State Rifle & Pistol Ass'n. v. Bruen](#), which relied on an analysis of America's "historical tradition of firearm regulation" to define the scope and extent of an individual's right to bear arms. Adopting the same jurisprudence, the three-judge panel of the New Orleans-based Fifth Circuit concluded that:

[A]t no point in the 18th or 19th century did the government disarm individuals who used drugs or alcohol at one time from possessing guns at another. A few states banned carrying a weapon while actively under the influence, but those statutes did not emerge until well after the Civil War. Section 922(g)(3)—the first federal law of its kind— was not enacted until 1968, nearly two centuries after the Second Amendment was adopted. In short, our history and tradition may support some limits on an intoxicated person’s right to carry a weapon, but it does not justify disarming a sober citizen based exclusively on his past drug usage.

Based on this historical analysis, the Fifth Circuit’s three-judge panel found that enforcement of 18 U.S.C. § 922(g)(3) against the not-intoxicated Patrick Daniels violated the Mississippi man's right to "keep and bear arms" under the U.S. Constitution's Second Amendment.

### ***So, what’s the big deal?***

Marijuana users, including consumers of medical marijuana in compliance with state laws, have faced obstacles to gun ownership for generations. Until now, federal authorities have taken the position that any use of marijuana, so long as it remains a prohibited narcotic under Schedule 1 of the Controlled Substances Act, is a disqualification from buying or possessing a firearm. Recent court rulings are reflecting a different approach.

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