

TESTIMONY OF RYAN M. CLECKNER

**BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON THE ADMINISTRATIVE STATE, REGULATORY REFORM,
AND ANTITRUST**

MARCH 10, 2023

**“REINING IN THE ADMINISTRATIVE STATE: RECLAIMING CONGRESS’S
LEGISLATIVE POWER”**

Good morning Chairman Massie, Ranking Member Cicilline, and members of the Subcommittee. I am Ryan Cleckner, an attorney specializing in federal firearms law and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) compliance, co-founder of Mayday Safety, a software company dedicated to helping respond to emergencies, co-owner of GunUniversity.com, a website dedicated to educating people about firearms, their use, and laws, owner of RocketFFL, an online training platform to help Federal Firearm Licensees (FFLs) stay compliant with ATF rules and regulations, and other firearm industry related ventures. I am also a former university lecturer, special operations sniper with combat deployments, and a sniper instructor.

I am concerned with Federal Administrative Agency overreach with respect to rule making. I believe that power in the government should be limited, it should only be in the hands of those accountable to the people, and decisions and debates on matters and legislation should be open and transparent to the public.

Each branch of our government, with clearly defined areas of authority in our Constitution, is limited in its power through a series of checks and balances. You each, as members of Congress, have been given power to make laws as representatives of the citizens of your districts. If you do not represent the wishes of your constituents, or if you attempt to do something outside of Congress’s authority, you can be held accountable for your decisions and actions.

When you consider legislation or hold hearings on matters, it is open to the public. This transparency is fundamental to our Government. Debates on legislation and hearing such as this one, allow for differing opinions to be heard and considered before legislation is passed.

Allowing non-elected and non-representative government bureaucrats in Federal Agencies to exercise power that should be limited to Congress, and to do so behind closed doors without accountability nor transparency, is destructive to America, its citizens, and to Congress.

I implore you to not let these federal agencies under the Executive branch continue to steal power that has been entrusted to you by us.

A recent example of agency overreach where laws are being changed by unelected bureaucrats with decisions being made behind closed doors is the ATF's latest rule 2021R-08F "Factoring Criteria for Firearms with Attached 'Stabilizing Braces'" published in the Federal Register on January 31, 2023.

This latest rule that the ATF has made redefines laws passed by Congress and criminalizes the possession of firearms with certain accessories that the ATF itself had previously specifically approved. This rule, by fiat, effectively gives the ATF the power to determine who is a felon by the stroke of a bureaucrat's pen. This is not an appropriate enforcement of law - it is tyranny.

Worse yet, the ATF's opinion and position on this matter has shifted multiple times over the past ten years leaving citizens confused about what is lawful. Pistol stabilizing braces were approved by the ATF in 2012 to be used on firearms without converting handguns, standard firearms under the Gun Control Act of 1968, into highly regulated Short Barreled Rifles (SBRs) under the National Firearms Act of 1934 which require special registration, ATF approval, and the payment of transfer taxes.

In a 2021 report by the Congressional Research Service¹, it is estimated that somewhere between 10 and 40 million of these pistol braces are in civilian hands. It is common for manufacturers of these braces to display the ATF approval on their websites and/or include copies of ATF approval with the items. This means that at least 10 million of these products were purchased with the assurance that they were legal to possess and use.

Three years after their approval, the ATF determined that the pistol stabilizing braces were still lawful on handguns as long as the shooter did not place the brace into their shoulder when firing. Then, two years later, the ATF rescinded their "shouldering" opinion. In 2020, the ATF sought to reclassify these braced pistols as SBRs with a shortened 14-day comment period. The ATF then decided to retract their position until last year where a new rule was proposed with a scorecard of ambiguous features where it was left to citizens to determine if what they possessed was legal. Earlier this year, the ATF has yet again changed their position and has most recently published a list of ambiguous characteristics which, if they apply to a particular object, would change the status of a firearm and make the possessor of such a configured firearm a felon if not registered with the government or surrendered or destroyed.

¹ <https://crsreports.congress.gov/product/pdf/IF/IF11763>

The crux of this issue concerns the rewriting of law. Federal law currently says that a firearm is a rifle if it is "...designed and intended to be fired from the shoulder . . .²" The ATF is currently changing that definition in their regulations to include firearms with accessories that meet certain factors. These factors include ambiguous things such as an undefined amount of rear surface area, a firearm weight or length similar to other rifles, the manufacturer's promotional materials, information demonstrating the likely use of a firearm, among others.

It is unfair for the ATF to expect average citizens to not only be aware of these changes but also to expect them to make these determinations themselves without clear directions about what the ATF considers to be legal. However, even with clear instructions, these changes to legal definitions within the law are not appropriate for the ATF to make.

The ATF is rewriting the law, effectively creating shifting criminal statutes, is also rewriting tax law concerning the registration of these firearms, and is turning otherwise law-abiding citizens, who have relied upon previous ATF guidance, into felons. We can not have a Republic when unelected bureaucrats are allowed to determine who is a criminal day by day.

If Congress doesn't rein in Federal Agencies and these agencies are permitted to continue to change laws and provide conflicting guidance to citizens, chaos ensues.

Thank you for the opportunity to speak here today and I'm willing to answer any questions you may have,

Ryan Cleckner

² 18 USC 921(a)(7)