

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States  
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951  
judiciary.house.gov

July 16, 2021

Mr. Marvin Richardson  
Acting Director  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
99 New York Avenue N.E.  
Washington, DC 20226

Dear Acting Director Richardson:

We have serious concerns about the attempt by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to regulate firearms with stabilizing braces. ATF's regulatory notice is deeply flawed, beyond the scope of its authority, contrary to years of previous ATF opinions, and harmful to millions of law-abiding American firearm owners. We therefore write to request information about the Biden Administration's flagrant effort to restrict Americans' fundamental Second Amendment rights.

On December 18, 2020, ATF initially sought to regulate stabilizing braces by publishing a notice in the *Federal Register* entitled, "Objective Factors for Classifying Weapons with 'Stabilizing Braces.'"<sup>1</sup> ATF abandoned its ill-conceived effort and withdrew this notice on December 31, 2020, after receiving over 60,000 comments largely in opposition to the proposed guidance.<sup>2</sup>

On June 7, 2021, ATF renewed its effort to regulate stabilizing braces, publishing a notice in the *Federal Register* entitled, "Factoring Criteria for Firearms with Attached 'Stabilizing Braces.'"<sup>3</sup> The proposed rule sets out criteria that ATF would consider when evaluating firearms with attached stabilizing braces to determine whether the devices would be considered firearms under the National Firearms Act (NFA) or the Gun Control Act (GCA).<sup>4</sup>

In particular, the proposed rule creates a new document—bureaucratically labeled Worksheet 4999—with criteria that ATF would use in regulating stabilizing braces. Worksheet 4999 lists several characteristics that would automatically subject a firearm to regulation under

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<sup>1</sup> Alcohol, Tobacco, Firearms, and Explosives Bureau, Objective Factors for Classifying Weapons with "Stabilizing Braces," 85 Fed. Reg. 82,516 (Dec. 18, 2020).

<sup>2</sup> Alcohol, Tobacco, Firearms, and Explosive Bureau, Objective Factors for Classifying Weapons with "Stabilizing Braces,"; Withdrawal of Guidance, 85 Fed. Reg. 86,948 (Dec. 31, 2020).

<sup>3</sup> Alcohol, Tobacco, Firearms, and Explosives Bureau, Factoring Criteria for Firearms with Attached "Stabilizing Braces," 86 Fed. Reg. 30826 (Jun. 7, 2021).

<sup>4</sup> *Id.*

the NFA. In addition, the Worksheet lists certain features that a short-barreled firearm could possess and assigns them a complex and arbitrary point value.<sup>5</sup> If the firearm exceeds the ATF's arbitrary point value, ATF deems the firearm to be a short-barreled rifle (SBR) requiring registration under the NFA. Although ATF attempts to explain why certain firearm features merit their associated point values, the criteria in Worksheet 4999 are vague and not well-defined. These vague criteria would allow ATF to make these determinations on a case-by-case basis rather than providing firearm owners and manufacturers with an objective set of standards and certainty.

Even worse, ATF's proposed rule goes well beyond the authority granted to the agency in any applicable federal statutes. Congress has not criminalized the use of a pistol arm-stabilizing brace under the GCA or allowed for its regulation under the NFA. Through its proposed rule, ATF seeks to subject stabilizing braces to GCA criminal penalties and NFA regulation without Congressional prohibition of the underlying activity.

ATF's proposed rule is also arbitrary and capricious and directly contradicts several years of ATF opinions on stabilizing braces relied upon by law-abiding firearm manufacturers and owners.<sup>6</sup> Furthermore, ATF's proposed rule does not contain a grandfathering clause for individuals who lawfully purchased a firearm with a brace pre-installed by a manufacturer. If implemented, ATF's proposed rule has the potential to turn three to four million law-abiding firearm owners into felons.<sup>7</sup>

According to one estimate, there are between ten and forty million stabilizing braces in circulation today.<sup>8</sup> ATF's regulation would amount to an unconstitutional infringement of fundamental Second Amendment rights. We strongly urge ATF to abandon its proposed rule issued on June 7, 2021, entitled, "Factoring Criteria for Firearms with Attached 'Stabilizing Braces.'" In addition, to better understand ATF's reasons for issuing the proposed rule, we request that you provide the following information:

1. Please explain when ATF first began to conceive of the need to regulate stabilizing braces through an agency notice.

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<sup>5</sup> *Id.*

<sup>6</sup> See, Letter from Earl Griffith, Chief Firearms Technology Branch, to Sergeant Joe Bradley (Mar. 14, 2014), [files.osgnetworks.tv/2/files/2014/04/S72-LEGAL-B1404030900021.jpg](https://files.osgnetworks.tv/2/files/2014/04/S72-LEGAL-B1404030900021.jpg). (addresses specific reasons why "[the ATF] ha[s] determined that firing a pistol from the shoulder would not cause the pistol to be reclassified as an SBR"); See also Alcohol, Tobacco, Firearms, and Explosives Bureau, Open Letter on the Redesign of "Stabilizing Braces," (Jan. 16, 2015) ("ATF hereby confirms that if used as designed—to assist shooters in stabilizing a handgun while shooting with a single hand—the device is not considered a shoulder stock and therefore may be attached to a handgun without making a NFA firearm.")

<sup>7</sup> Bedard, Paul, 'Secret' ATF move could turn 3M to 4M gun owners into felons, WASH. EXAMINER (Oct. 9, 2020), <https://www.washingtonexaminer.com/washington-secrets/secret-atf-move-could-turn-3m-to-4m-gun-owners-into-felons>.

<sup>8</sup> WILLIAM J. KROUSE, CONG. RES. SERV., IFII763, HANDGUNS, STABILIZING BRACES, AND RELATED COMPONENTS 2 (Apr. 19, 2021).

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2. Please provide information on the comments received before ATF rescinded the original stabilizing brace notice posted on December 18, 2020, including:
  - a. The total number of comments regarding the notice;
  - b. The number of comments in support of the notice; and
  - c. The number of comments in opposition to the notice.
3. Please explain the circumstances of ATF's decision to rescind the notice it originally published on December 18, 2020, including the individuals and offices involved in the decision-making process.
4. Please identify the offices within ATF that conceived, drafted, reviewed, and approved the June 7, 2021, notice.
5. Please explain whether the Justice Department reviewed and approved ATF's June 7, 2021, notice, including the entities involved in the review and the timing of the review.
6. Please explain whether the Office of Management and Budget reviewed and approved ATF's June 7, 2021, notice, including the entities involved in the review and the timing of the review.
7. Please provide the following information with respect to ATF Worksheet 4999:
  - a. Please explain what constitutes a "non-operational accessor[y]" in "Section I – Prerequisites";
  - b. Please explain in more detail how ATF determined that weapons with a stabilizing brace and a weight of less than 64 ounces in "Section I – Prerequisites" will need to be regulated under the NFA;
  - c. Please explain in more detail how the lack of a sight on a firearm with a stabilizing brace will accrue a point in "Section II – Accessory Characteristics"; and
  - d. Please explain what objective criteria ATF will use in determining the point value for firearms under the "Rear Surface Area" in "Section II – Accessory Characteristics."

We ask that you provide this information as soon as possible but no later than 5:00 p.m. on July 30, 2021.

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The House Committee on the Judiciary has jurisdiction over criminal law and federal administrative procedure pursuant to House Rule X. If you have any questions about these requests, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,



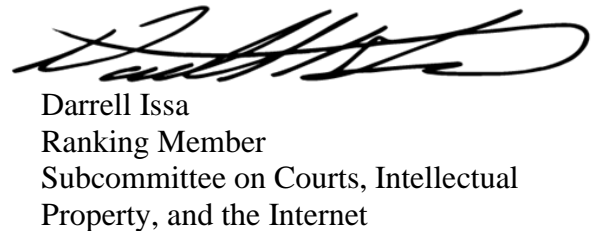
Jim Jordan  
Ranking Member



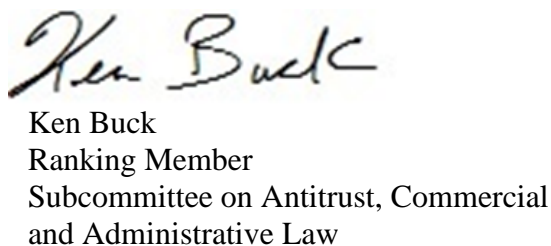
Steve Chabot  
Member of Congress



Louie Gohmert  
Member of Congress



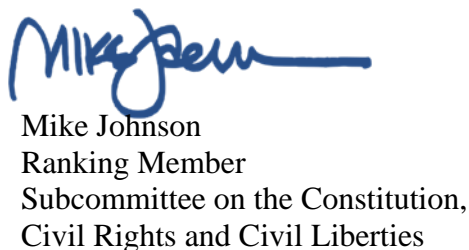
Darrell Issa  
Ranking Member  
Subcommittee on Courts, Intellectual  
Property, and the Internet



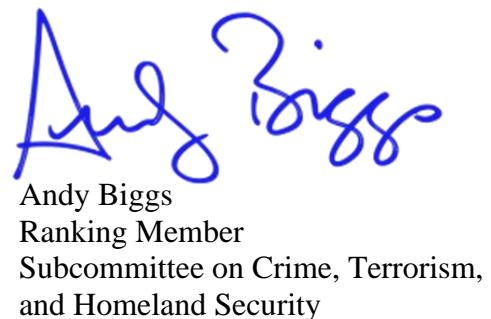
Ken Buck  
Ranking Member  
Subcommittee on Antitrust, Commercial  
and Administrative Law



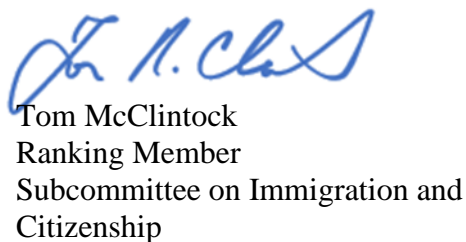
Matt Gaetz  
Member of Congress



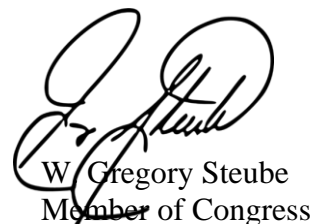
Mike Johnson  
Ranking Member  
Subcommittee on the Constitution,  
Civil Rights and Civil Liberties



Andy Biggs  
Ranking Member  
Subcommittee on Crime, Terrorism,  
and Homeland Security



Tom McClintock  
Ranking Member  
Subcommittee on Immigration and  
Citizenship

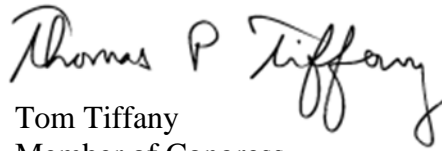


W. Gregory Steube  
Member of Congress

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Tom Tiffany  
Member of Congress



Thomas Massie  
Member of Congress



Chip Roy  
Member of Congress



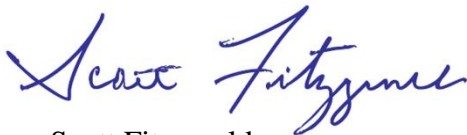
Dan Bishop  
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Michelle Fischbach  
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Scott Fitzgerald  
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Cliff Bentz  
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Burgess Owens  
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