



Written by [Bob Adelman](#) on April 2, 2024

ATF Loses Again Over Pistol-brace Rule

A Clinton-appointed judge [granted last Friday the demand](#) by the National Rifle Association (NRA) that the ATF be prohibited from enforcing its “pistol brace” rule until all pending litigation has been resolved. Wrote U.S. District Court Judge Sam Lindsay: “The court determines that the NRA’s motion should be granted [in order to] maintain the status quo pending the resolution of this litigation.”

That litigation began almost immediately after the ATF rewrote its definition of a firearm in January 2023, declared that a firearm mounted with a stabilizing brace suddenly became a short-barreled rifle covered by the National Firearms Act of 1934. It didn’t matter that the agency had for decades prior ruled that such a brace *did not* turn a pistol into a short-barreled rifle.

The agency ignored its own history, the Constitution, the Administrative Procedure Act, the Second Amendment, the quarter of a million Americans who protested against it during the “public comment” period, and the letter from the Senate Republican Caucus declaring that its enforcement “would turn millions of [otherwise] law-abiding Americans into criminals overnight, and would constitute the largest Executive branch-imposed gun registration and confiscation scheme in American history.”

The rogue agency went ahead and approved the rewrite anyway, and the lawsuits began, challenging the rule.

The NRA contended that:

The Final Rule arbitrarily reverses several years of settled administrative practice and by a stroke of a pen redefines “pistols” with stabilizing braces as short-barreled “rifles” subject to the onerous licensing and taxation requirements of the National Firearms Act of 1934.

The NRA further contended that Lindsay should use the ruling in a previous lawsuit, *Mock v. Garland*, to issue the injunction, as its members were “similarly situated” as those suing the agency in *Mock*. That ruling, said the NRA, “implicitly found irreparable harm arising from the Final Rule, along with a likelihood of success on the merits” discovered in *Mock*.

In that ruling, [reviewed by *The New American* here](#), the court held:

The ATF incorrectly maintains that the Final Rule is merely interpretive, not legislative....

The Final Rule affects individual rights, speaks with the force of law, and significantly implicates private interests. Thus, it is legislative in character....



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The Final Rule is a legislative rule....

The character of the rule is legislative....

The Final Rule therefore must be set aside as unlawful or otherwise remanded [back to the lower court] for appropriate remediation.

That is the crux of the matter: In its zeal to follow the diktat of the Biden administration's ramped-up war against law-abiding American gun owners, it simply ignored the separation of powers built into the U.S. Constitution by unilaterally expanding the definition of a pistol and declaring it to be a short-barreled rifle to be covered under the NFA.

The lower court reviewed *Mock* as instructed and found that the ATF's rule violates the Second Amendment.

Lindsay expanded on the importance of the ruling in *Mock*:

Based on the reasoning in *Mock*, the court similarly determines that the NRA is likely to succeed on the merits of its claim that the Final Rule violates the APA because it is not a logical outgrowth of the Proposed Rule.

That's how a liberal judge explains the ATF move. It was "not a logical outgrowth" of the previous definition. It was, instead, an unconstitutional invasion of the power of the Legislative branch which, under the Constitution, makes laws.

In the end, the ATF was properly rebuffed:

The court, therefore, grants the NRA's Motion ... and request for a preliminary injunction, and it enjoins the ATF; Steven Dettelbach, in his official capacity as the Director of the ATF; the United States Department of Justice; and Merrick Garland, in his official capacity as the United States Attorney General from enforcing the Final Rule against the NRA's members pending the final resolution of this action on the merits.

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