



Written by [Bob Adelman](#) on November 10, 2023

Court Blocks ATF's Pistol-brace Rule

Millions of law-abiding gun owners [thumbed their noses at the ATF's unconstitutional demand](#) that they register their pistols mounted with stabilizing braces with the outlaw agency. According to the Congressional Research Service, an estimated 40 million Americans own them, and by the time the deadline had passed in May, barely a quarter of a million of them had been registered.

On Wednesday, a District Court in Texas [validated the 99 percent](#) of those who ignored the new rule and vacated the ATF's ban, calling its decision to declare that a pistol with a brace was a short-barreled rifle a "monumental error" that "was prejudicial" and "must be set aside as unlawful."



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The ATF, at the bidding of the Biden administration, changed decades of rulings that a pistol with a stabilizing brace did NOT change it into a short-barreled rifle that must be registered under the National Firearms Act of 1934. Following the March 2021 mass shooting in Boulder, Colorado, in which the shooter was armed with a weapon of this sort, the Biden administration seized that as an opportunity to force the ATF to redefine the term "short-barreled rifle" in the 1934 law. In January the ATF declared:

The rule's amended definition of "rifle" *clarifies* that the term "designed, redesigned, made or remade, and intended to be fired from the shoulder" [now] includes a weapon that is equipped with an accessory ... that allows the weapon to be fired from the shoulder."
[Emphasis added.]

In an early celebration of the expectation that the District Court would rule against the ATF and in favor of law-abiding gun owners, Cody Wisniewski, an attorney for the Firearms Policy Coalition (one of the plaintiffs in the lawsuit), rejoiced:

Said in its simplest terms, the Fifth Circuit just indicated that the Plaintiffs — Firearms Policy Coalition, Maxim Defense, and FPC's individual members — are likely to defeat ATF's pistol brace rule when the merits of this case are finally heard.

This is a huge win for peaceable gun owners across the nation, a huge win for FPC's members, and yet another massive defeat for ATF and this administration's gun control agenda.

The problem for the ATF, as is usual for government agencies seeking to exercise powers they weren't granted by Congress, is that it tried to defend its redefinition as merely "interpreting" the existing law.



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But the court in June called out the ATF:

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....

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.

And that's exactly what District Court Judge Matthew Kacsmaryk — a Trump-appointed judge — did:

Given the Fifth Circuit's holding, this Court recognizes that the Rule "was not a logical outgrowth" ... and "must be set aside as unlawful."

He ruled that law-abiding gun owners who chose to add a pistol brace would likely suffer "irreparable harm" if the ATF overreach was upheld. He also noted that if the ATF's new rule was upheld it would cost, according to the ATF itself, makers of pistol braces more than a billion dollars over the next 10 years.

Judge Kacsmaryk wrote that he was, as most people are, concerned about public safety in light of recent shootings, but added that "public safety concerns must be addressed in ways that are lawful. This Rule is not."

He also expanded the ruling nationwide, as the June decision only impacted the plaintiffs and their members.



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