



Written by [Bob Adelman](#) on May 3, 2024

Court to Hear Arguments That Regulation of Firearm Silencers Is Unconstitutional

In a lawsuit with the potential to advance greatly the cause of state nullification of unconstitutional federal law, [a three-judge panel is hearing arguments](#) in *Paxton v. Dettelbach* over the issue of home-built firearm suppressors, or “silencers.”

From the lawsuit:

The National Firearms Act of 1934 (“NFA”) was amended in 1968 to regulate (for the first time) the making of firearm suppressors for non-commercial, personal use in Texas.

But Defendants [including U.S. Attorney General Merrick Garland and Steven Dettelbach, the director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, or ATF] cannot demonstrate any historical tradition that can be analogized to any feature of the NFA’s regulatory regime that applies to the making of firearm suppressors for non-commercial, personal use in Texas.

Therefore, the statutes establishing that regulatory regime, and Defendants’ rules and practices implementing and enforcing that regulatory regime, are unconstitutional.



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The question before the panel is whether a Texan (three of whom are named as plaintiffs in the suit) must first apply for permission from the ATF to build, in his own garage, using his own materials, a suppressor, which he intends only for his own personal use. Must he not only make an application, but pay the \$200 fee required under the NFA?

Texas Attorney General Ken Paxton filed the suit after the Texas Legislature passed a bill requiring him to challenge the federal law. It was [initially denied](#) because, according to the judge, the plaintiffs failed “to allege a substantial risk of prosecution based solely on the desire to do something the [federal] government has prosecuted in the past.... [Their] fear of prosecution is ‘imaginary or speculative’ at best — and insufficient for ... standing.”



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The issue of “standing” is being presented on appeal to that three-judge panel. Assuming the state and its three citizens can show that they have “standing” to bring the challenge, then the real issue can be debated: Can the state of Texas override a federal law?

In 2021, Texas [adopted a law](#) declaring that “a firearm suppressor that is manufactured in this state and remains in this state is not subject to federal law or federal regulation, including registration.”

The [ATF said no](#). That law “conflicts with federal firearms laws and regulations, [and therefore] federal law supersedes [it].... All provisions of the Gun Control Act (GCA) and the National Firearms Act (NFA) ... continue to apply to [all gun dealers] and other persons in Texas.”

That was enough to generate the initial complaint. [In the appeal](#) the plaintiffs wrote:

In other words, the district court held that the Individual Plaintiffs could not challenge the NFA requirements unless they broke the law or had already been targeted for potential prosecution. Because the Constitution does not put plaintiffs [in a position of having to make] such a zero-sum choice, the district court erred.

Once the issue of “standing” is resolved, the lawsuit may move forward.

As a side note: Dean Weingarten the journalist with *Ammoland* who has been following this case closely, [said](#):

It is difficult to understand why the heavy regulation in the United States was put into effect. Silencers are seldom used in crime. They have significant benefits to protect hearing, reduce sound pollution, aid in training and are more and more being used in the military. They have obvious advantages for defense of the home and for hunting.

Those who wish the population disarmed likely want to keep silencers heavily regulated precisely because of the many advantages of the devices.



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