



Judge Excoriates ATF in Ruling Against Ban on Pistol Braces

U.S. District Court Judge Reed O'Connor didn't hold back in his criticism of the ATF in his decision yesterday in [Mock v. Garland](#): "The Court VACATES the Final Rule [turning pistols with braces into short-barreled rifles to be regulated under the National Firearms Act of 1934 (NFA)] on the grounds that [the ATF] violated the APA's (Administrative Procedures Act) procedural requirements in promulgating it" and "because it was arbitrary and capricious...."

The fractious rule was birthed when Joe Biden learned that the shooter who murdered 10 people at a grocery store in Boulder, Colorado, in 2020 used a gun fitted with a brace. The ATF had for nearly a decade repeatedly ruled that a pistol brace did not turn a pistol into a rifle to be registered under the NFA.

But in January 2023 it changed its position to reflect Biden's anti-gun agenda and ruled that a pistol with a brace now became a rifle. The ATF offered the flimsy excuse that design changes in braces over the years required the agency to declare pistols fitted with them made them rifles.

William Mock, assisted by the Firearms Policy Coalition (FPC), filed suit against the agency over its change, and in August 2023 an appeals court decided in their favor. It held that "the Final Rule was not a logical outgrowth of the (original) Proposed Rule, and [that] the monumental error was prejudicial ... [and] ... therefore must be set aside as unlawful."

More litigation followed, and an appeals court sent the lawsuit to O'Connor for final disposition. O'Connor was nominated to his present post by then-President George W. Bush in 2007, and has been a thorn in the side of anti-gunners ever since. He is a longtime member of the Federalist Society, and in 2015 held that a portion of the Gun Control Act of 1968 was unconstitutional. Unfortunately, that ruling was reversed on appeal.

O'Connor wrote in yesterday's ruling:

In their Motion for Summary Judgment, Plaintiffs claim that the Final Rule violated the APA's procedural requirements because: (1) it was not a logical outgrowth of the Proposed Rule; (2) Defendants acted arbitrarily when they failed to consider important aspects of the problems presented and caused by the Final Rule; (3) Defendants impermissibly extended their statutory authority under the National Firearms Act of 1934 ("NFA") and the Gun Control Act of 1968 ("GCA"); and (4) it violates various aspects of the United States Constitution.



Ekaterina Bolovtsova/pexels



Written by [Bob Adelman](#) on June 14, 2024

Additionally, and in the alternative, Plaintiffs argue that if the Court were to find that the Final Rule was properly promulgated under the APA, “then the NFA’s onerous and ahistorical regulation of short-barreled rifles (“SBRs”), which are commonly possessed by law-abiding individuals for lawful purposes, violates the Second Amendment.

Thanks to the egregious overreach attempted by the ATF, the court didn’t have to consider the violation of the Second Amendment by the new rule. The agency’s violation of normal operating procedures was more than enough to convict the ATF of overreach. O’Connor wrote: “The Court finds that the adaptation of the Final Rule was arbitrary and capricious, for two reasons. First, the Defendants [the ATF] did not provide a detailed justification for their reversal of the agency’s longstanding position. And second, the Final Rule’s standards are impermissibly vague.”

He took extra pains to castigate the agency’s actions:

The Defendants’ disregard for the principles of fair notice and consideration of reliance interests is further exacerbated by its failure to follow the APA’s procedural requirements for public notice and comment.

The FPC counted coup over the decision:

Today, Firearms Policy Coalition announced a major legal victory in its *Mock v. Garland* lawsuit challenging the Biden Administration’s “pistol brace” ban rule issued by the Bureau of Alcohol Tobacco, Firearms and Explosives (ATF). In the decision, United States District Court Judge Reed O’Connor granted summary judgment in favor of FPC and its co-plaintiffs and issued a final judgment and order vacating the ATF’s rule.

[Said FPC President](#) Brandon Combs:

The Biden Administration’s ATF hates us so much that it lawlessly acted to turn millions of gun owners into felons, but FPC and our members ran towards the fire and defeated this evil. Today’s order shows that our community can take on an immoral government and win. FPC members should be proud of what was accomplished today. We look forward to defending this victory on appeal and up to the Supreme Court, just as we have in other cases.

An appeal of O’Connor’s ruling by the ATF is unlikely, though, given courts’ relentless rulings against the agency’s continued overreach of its authority. The owners of the estimated 10 million braced firearms in existence, for the moment at least, may rest easy.

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