



Written by [Joe Wolverton, II, J.D.](#) on August 9, 2023

White House Set to Issue New Regulations Infringing Further on Second Amendment

The Biden administration is planning to issue a slate of new regulations affecting the Second Amendment in order to bypass congressional delay on dealing with the administration's goal of banning "assault weapons," according to [a report published in *The New York Times*](#).

The reason for the White House's desire to make an end run around Congress is explained in the *Times* article:

But the regulatory landscape might be changing. Senate Democrats, long blocked in their attempts to require universal background checks, negotiated a provision into the Bipartisan Safer Communities Act, signed into law last year, that is expected to vastly increase the number of background checks in the unregulated gun market.



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It should be recalled by readers that the Bipartisan Safer Communities Act would not have passed had [Republicans not agreed to it](#) as part of a package of compromises. The blame, therefore, can't be put on one party.

In [a statement released on their website](#), Gun Owners of America (GOA) recognizes the Republicans' culpability in passing this assault on the right to keep and bear arms. The GOA statement reads:

While Gun Owners of America fights for the Second Amendment in the courts, Congress must repeal the Bipartisan Safer Communities Act — which was a compromise with the Biden Administration that Republicans NEVER should have struck. It has been completely weaponized, gun owners have gained nothing, and America is no safer. Cornyn-Murphy has got to go, and Republicans must expiate for this sin.

Next, zeroing in on the unconstitutional use of regulations in the place of laws, GOA calls on Congress to take back its exclusive authority to make laws for the union:

Congress must also participate in the rulemaking process and voice its opposition to backdoor universal background registration checks during the public notice and comment period alongside GOA members. After commenting during the proposed rule phase, Congress must also take up a joint resolution of disapproval pursuant to the Congressional



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Review Act and strike down this unconstitutional infringement.

The regulations being prepared are designed to give teeth to that act and will require anyone who earns a profit from selling firearms to obtain a federal license and conduct background checks.

Put simply, Biden is going to use regulations in place of actual laws, a policy so popular with previous presidential administrations frustrated with the lawmaking process set out in the Constitution.

In this case, the regulations will be aimed at requiring anyone who sells firearms or weapons components online to register with the federal government and obtain a license, regardless of whether it's their chief source of income.

The Justice Department alongside the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) are collaboratively crafting fresh regulations, as reported by the *Times*.

As per the *Times'* account, a new provision included in the regulations would establish a specific threshold for the quantity of transactions necessary to classify an individual as a dealer. Advocates for gun control are seeking to set this threshold at five sales or fewer per year. Enforcing these regulations will signal the beginning of an emboldened endeavor by the Biden administration to identify and prosecute any individual or business entity that fails to clear the bureaucratic hurdles. Enforcement of the forthcoming regulations will encompass accessing financial records, agreements for storage units, and other financial outlays suspected by the federal government of being linked to the operation of an unrecorded firearm selling business.

With word of the soon-to-be-issued regulations spreading, groups created to support the infringement of the Second Amendment are praising the president for his help in pushing their plan forward.

"Every gun sale should require a background check. Thanks to @POTUS, we're almost there. For years, we've pushed for the government to require more gun sellers to become licensed dealers and conduct background checks. ATF is expected to act any day now," Giffords.org tweeted. This is the group started by and named for Gabby Giffords, the former member of Congress. Senator Richard Blumenthal of Connecticut was a co-founder with Giffords.

In the *Times* article, Senator Chris Murphy (D-Conn.) is quoted as saying that "everybody agrees" that everyone should pass a background check regardless of how many guns are sold by the individual.

While there are certainly many people who do agree with Murphy and the rest of the gun grabbers, the Constitution most certainly does *not* agree. In fact, the Second Amendment is unquestionably clear in its prohibition on government interference with the people's natural right to keep and bear arms.

The second clause of the Second Amendment — and by the far the easiest to understand — states: "The right of the people to keep and bear arms shall not be infringed." The use of the words "shall not" is what is known as an imperative. Here's the Cornell Law School online legal dictionary distinction between "shall" and "may":

Shall is an imperative command, usually indicating that certain actions are mandatory, and not permissive. This contrasts with the word "may," which is generally used to indicate a permissive provision, ordinarily implying some degree of discretion.

People may want to argue about the Framers' original intent and meaning of the militia clause, but



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there is very little room for rational disagreement over the phrase “shall not be infringed.”

While Americans interested in protecting their God-given right of self-defense using any means at hand are certainly encouraged to contact their congressional representatives and senators to urge them to pass legislation overriding the imminent infringements, the surest way to prevent these regulations from being enforced is to remind state legislators of the oath they swore to support the Constitution, as set out in Article VI of the U.S. Constitution. Carrying out a federal regulation that is a direct assault on the Second Amendment is not the act of one supporting the Constitution.

Per the 10th Amendment, state lawmakers and governors retain the authority to refuse to cooperate with any unconstitutional act, edict, regulation, or declaration of the federal government that violates the limits of the few and defined powers granted by the states to the federal government within the four corners of the Constitution.

To put it more directly, let’s let James Madison have the last word:

In case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, *and are in duty bound*, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them. [Emphasis added.]





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