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August 19, 2021

The Honorable Marvin Richardson  
Acting Director  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
99 New York Avenue, NE  
Washington, DC 20226

Submitted via [regulations.gov](https://www.regulations.gov)

**Re: Comments of the States of West Virginia, Arizona, Alabama, Arkansas, Alaska, Florida, Georgia, Indiana, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Ohio, Oklahoma, North Dakota, South Carolina, and South Dakota, on the proposed rule entitled *Definition of “Frame or Receiver” and Identification of Firearms*, 86 Fed. Reg. 27,720 (May 21, 2021) (Docket No. ATF 2021R-05).**

Dear Acting Director Richardson:

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) has proposed a rule that would substantially expand federal regulation of firearm parts manufacturers. *See* 86 Fed. Reg. 27,720 (May 21, 2021). The rule as proposed appears to be an effort to regulate firearm *parts*, which is beyond the scope of the ATF’s authority under the Gun Control Act of 1968. Moreover, the sweeping definition of firearms “receiver” that it proposes would be impractical to apply—and worse still, the rule attempts to solve this self-imposed problem by granting ATF unconstitutionally unrestrained discretion over which “receivers” under the newly expanded definition would, in fact, be subject to regulation. Equally concerning is the proposed rule’s lack of consideration of the half-century of reliance interests in the existing definition of “firearm” and “receiver,” as ATF acknowledges that a large number of parts manufacturers would likely be put out of business if the proposed rule is adopted.

Private individuals have the right to assemble firearms for their own use—a fact borne out in early American history and expressly recognized by the Gun Control Act. The proposed rule treats this activity as a problem to be stamped out, rather than a right and tradition to be respected. For this reason, and because of the proposed rule’s legal infirmities, we strongly urge you to reconsider it.

## BACKGROUND

### I. The American Tradition Of Private Firearm Assembly

*The Colonists in America were the greatest weapon using people of that epoch in the world. Everywhere the gun was more abundant than the tool. It furnished daily food . . . it maintained its owner's claims to the possession of his homestead . . . [and] helped to win the mother country's wars for possession of the country as a whole.*

CHARLES WINTHROP SAWYER, FIREARMS IN AMERICAN HISTORY 7  
(Chronicon Books ed. 2021)

Private civilian ownership of firearms has been widespread since the early 18th century. Although individuals have always owned firearms for private use, the earliest firearms lacked inexpensive and reliable mechanisms for igniting gunpowder, or “locks.” DK SMITHSONIAN, FIREARMS: AN ILLUSTRATED HISTORY 24-25, 302 (2014). Those that relied on tinder or match cords (“matchlock” firearms) were reliably unreliable, as these required an active flame to ignite gunpowder. *Id.* at 24-25. The alternative “wheel-lock” firearms avoided this problem by utilizing an intricate—and therefore expensive-to-assemble—mechanism of steel and pyrite to ignite gunpowder with sparks. *Id.* at 26-27. Gunsmiths in the late 17th century, however, developed a simplified lock mechanism connecting the trigger to a “hammer” that held a piece of flint. *Id.* at 38-39. When the trigger was pulled, the hammer would spring forward to strike the flint into the powder pan, producing sparks which then ignited the gunpowder. *Id.* at 38-39. These “flintlock” firearms were less expensive to produce, and thus became common in both military and civilian use by the early 18th century. *Id.*

Prior to the Industrial Revolution, production of firearm components was the province of skilled, specialized tradesmen—and therefore assembling firearms was rarely a centralized or integrated process. Even comparatively simple flintlock firearms required the labor of woodworkers to carve the stock, blacksmiths to forge the barrel, and mechanists to craft the firing components. WILL FOWLER ET AL., THE ILLUSTRATED WORLD ENCYCLOPEDIA OF GUNS 42 (2019). Accordingly, American gunsmithing in the 1700s typically consisted of purchasing such parts separately, often importing them from abroad, and then assembling them. *Id.* at 43; *see also* GEORGE D. MOLLER, AMERICAN MILITARY SHOULDER ARMS VOL. I: COLONIAL AND REVOLUTIONARY WAR ARMS 69-70, 73 (“birding and fowling muskets . . . necessary to provide sustenance for the early colonists” were assembled in North America using locks and barrels imported from England, Spain, and the Netherlands).

It was this individualized and piecemeal approach to assembling firearms that carried American patriots through the Revolution. When the war began, members of colonial militias were expected to supply their own muskets. MOLLER at 58. Of the over 150,000 civilian-owned firearms pressed into military service at the start of the war, many were birding and fowling muskets that had been assembled from imported parts. *Id.* Later in the war, colonists assembled

muskets using scavenged and salvaged metal from British firearms. *Id.* This practice was essential to the colonial forces' success, as the high-quality steel used in musket barrels and fine-tooled components used in firing mechanisms were difficult to come by—and even harder to fabricate—during wartime. *Id.* at 141.

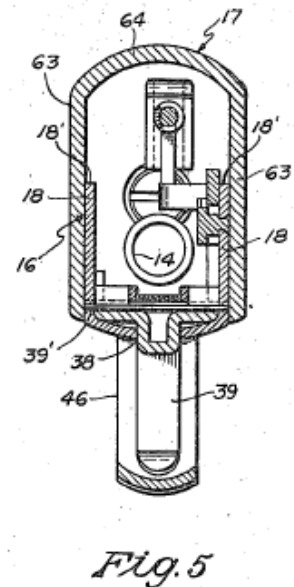
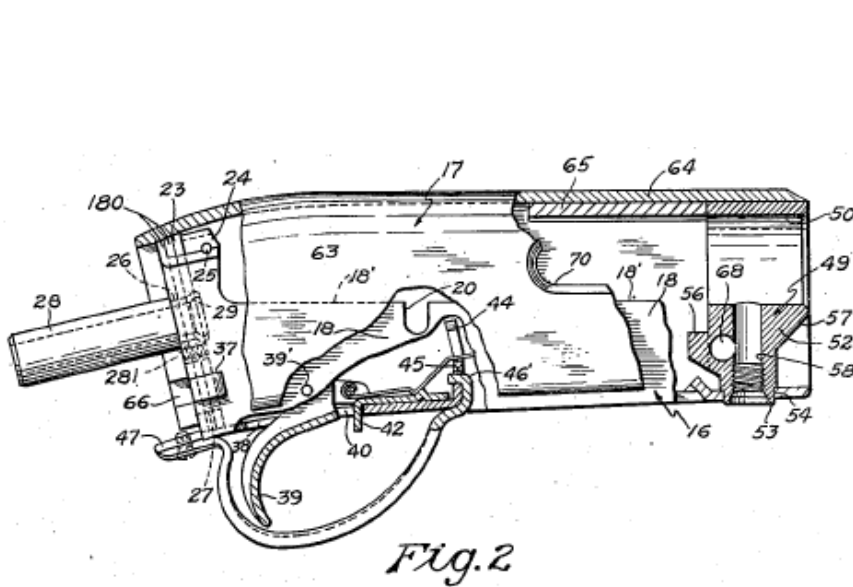
As national need for muskets grew more pressing, gunsmithing remained a predominately private, civilian endeavor. There were an estimated 2,500 to 3,000 private gunsmiths in the colonies at the start of the Revolution, most of whom supported the patriots' cause. MOLLER at 107. Conversely, the Continental Gunlock Manufactory was one of only two facilities for producing firearm components that were created under the authority of the Continental Congress, and it ceased production in 1776. *Id.* at 143. State governments established “committees of safety” responsible for procuring arms for their militias, but to date “no muskets have been identified as having been fabricated under state contract”—here too, assembling guns out of prefabricated parts was the norm. *Id.* at 106, 108. And between the Revolution and the Civil War there were only two federal armories engaged in small arms production in the United States: Springfield Armory in Massachusetts and Harpers Ferry Armory, located in what is now West Virginia. *Id.* at 137. Even among these specialized facilities, large-scale integrated fabrication of firearms was still not possible until the Industrial Revolution, with Springfield Armory beginning the commercial-scale production of interchangeable firearm parts in 1840. DK SMITHSONIAN at 62.

## **II. The Development Of Split-Receiver Firearms In The Early 20th Century**

The 1830s saw two advancements in firearms technology that enabled the development and popularization of split-receiver firearms in the 1900s. *First*, new lock systems were developed to ignite gunpowder more efficiently. Flintlock firing mechanisms were replaced with “percussion lock” systems, which relied on chemical primers capable of igniting gunpowder simply from the force of the hammer striking a primer. HENRY SMITH WILLIAMS ET AL., MODERN WARFARE 62 (1915); *see also* FOWLER ET AL. at 36-37, 304. *Second*, these chemical primers (or “percussion caps”) were integrated into the development of the modern bullet cartridge, which unified the bullet, powder load, and priming charge in one brass casing. FOWLER ET AL. at 38-39.

These developments enabled more variation in how rounds could be loaded into a firearm's chamber, and thus changes in the structure of firearms themselves. Prior to the advent of the cartridge, nearly all firearms were “muzzle-loaded,” gunpowder first and bullet second. FOWLER ET AL. at 38. The self-contained nature of the cartridge allowed for “breech-loading” and magazine-fed firearms to take the place of traditional muzzle-loaders. *Id.* With these configurations, firearms were designed with frames that could partially open, allowing cartridges to be inserted directly into the firing chamber through this “breech.” *Id.* To ensure the force of the discharge directed the bullet outward, this breech would need to be sealed before the trigger was pulled, causing the cartridge to be struck by the firing pin. Some “breech-loading” firearms, particularly shotguns, simply allowed the frame to be split open, both for loading and for ease of transport. DK SMITHSONIAN at 120-21. In the case of handguns, several rounds could be stored in a revolving wheel which served to cycle cartridges into the breech while keeping it largely sealed. *Id.* at 162-63. Bolt-action magazine-fed rifles also became popular during this era. *Id.* at 144-45.

Despite this variation, all cartridge-based firearms ultimately required two generalized components in order to function: (1) a percussion lock mechanism connecting the trigger to the firing pin; and (2) a bolt or other “breechblock” to seal the breech in the firing chamber, securing the cartridge in place and containing the explosive force used to propel the bullet. DK SMITHSONIAN at 302-03. And as split-frame firearms developed to allow stocks and barrels to be separated, the term “receiver” emerged to describe “a chamber between the barrel and the stock for holding the lock and breech-operating mechanism of the gun.” *Marlin Firearms Co. v. Dinnan*, 145 F. 628, 628 (2d Cir. 1906); *see also* FOWLER ET AL. at 503 (defining “receiver” as “[t]he heart of a firearm which houses the internal workings,” or “the structure to which all other parts are joined.”). An example of a single-piece receiver is shown below: It is “comprise[d]” of a frame (16) housing “a guide rail for slidably supporting the breech bolt” (18), and “bracket members” and “apertures” for housing “the sear” and “trigger” “of the fire control mechanism” (24, 25, 38).



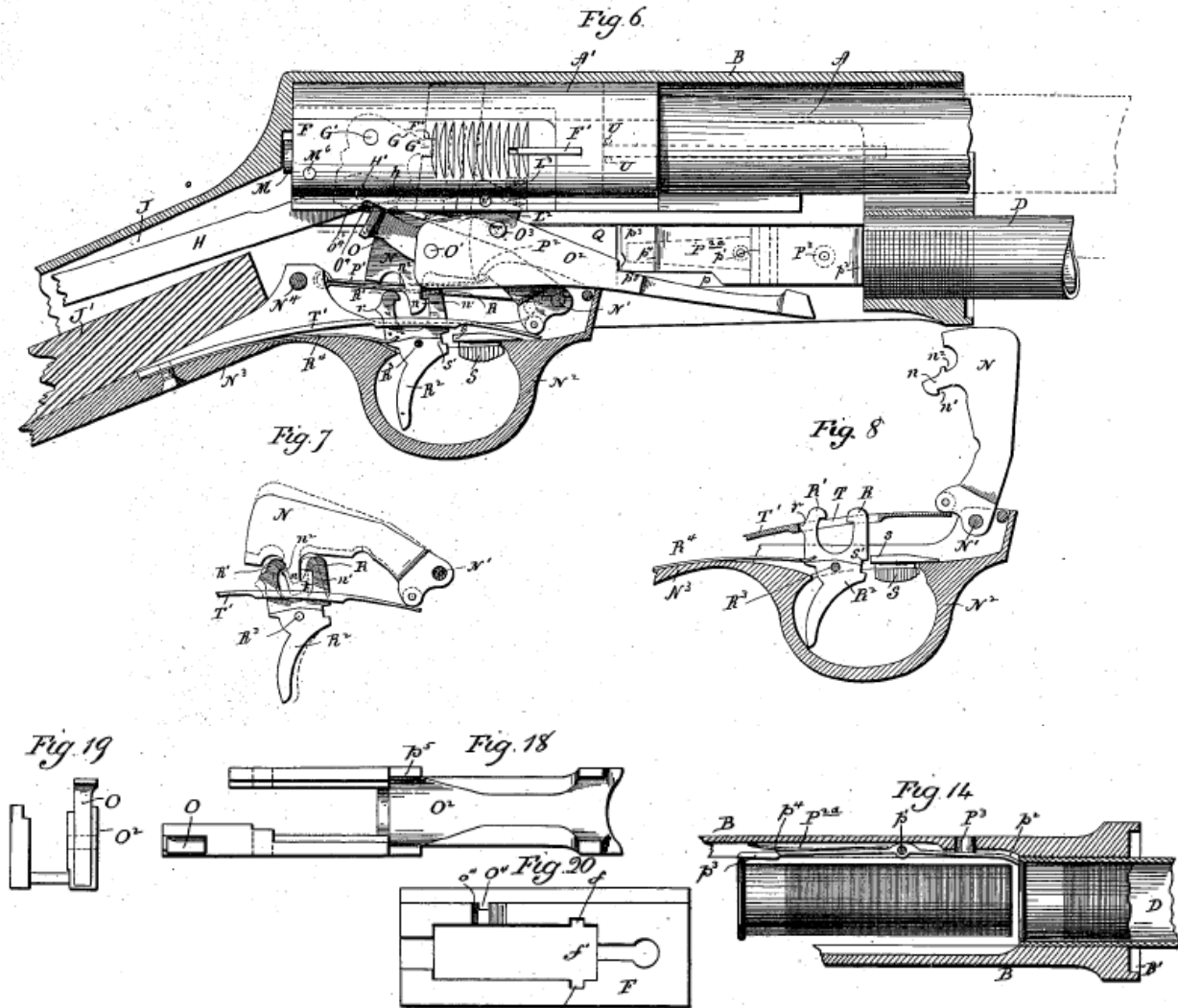
“Firearm Receiver,” U.S. Patent No. 2,455,644 (issued Dec. 7, 1948).

With the advent of the self-loading or “automatic” firearm, it became helpful for firearm designs to contain separate housings for breechblocks and fire control mechanisms. Before this point, firearms required the manual operation of a bolt or lever to eject a spent casing, chamber a new cartridge, and reset the percussion lock. But in 1900, the American gunsmith John Moses Browning patented the Browning Auto 5: a shotgun that channeled the kinetic energy produced by a firearm’s recoil to perform these tasks automatically. “Recoil Operated Firearm,” U.S. Patent No. 659,507 (Oct. 9, 1900).

No. 659,507.

Patented Oct. 9, 1900.

J. M. BROWNING.  
RECOIL OPERATED FIREARM.  
(Application filed Feb. 8, 1900.)



*Id.* (rotation altered).

The Browning Auto 5 accomplished semi-automatic fire by housing the barrel breechblock (A & F) within a separate “barrel extension” (A’), which is then housed in the receiver (B). This separation allows the force of a bullet leaving the barrel to push the barrel and breechblock backwards—opening the breech, ejecting the spent shell, and resetting the percussion lock to be capable of firing again. *Id.* at 1-2. The hammer and trigger spring (N & R’), meanwhile, remain stationary as these are housed directly within the receiver. *Id.*

Such firearms proved immensely popular. Shortly after the Browning Auto 5 was developed, Thomas C. Johnson developed the Winchester Model 1903, a .22-caliber rifle that operated on similar principles. “Automatic Rifle,” U.S. Patent No. 681,481 (Aug. 27, 1901). Although the barrel remained stationary in the Winchester 1903, it also separated the receiver into upper and lower components to facilitate the automatic cycling of the firing mechanism and chambering of a new round. *Id.* at 1. Over 126,000 Winchester 1903s were produced before the firearm was redesigned and reissued in 1933. THOMAS HENSHAW, *THE HISTORY OF WINCHESTER FIREARMS: 1866-1992* 57-58 (1993). Over 220,000 Browning Auto 5s were produced in a similar timeframe. *Auto-5 Semi-Automatic Shotgun*, BROWNING, <https://www.browning.com/support/date-your-firearm/auto-5-semi-automatic-shotgun.html> (last visited Aug. 18, 2021). Moreover, split-receiver weapons became immensely popular with the military, law enforcement, and the general public. The Remington Model 8, another split-receiver rifle, was released in 1906 and became the first commercially successful semiautomatic rifle for civilian use. DAN SHIDELER, *STANDARD CATALOG OF REMINGTON FIREARMS* 111-112 (Kindle ed. 2008). Indeed, some of the most well-known firearms of the pre-WWII era utilized split-receiver design, including the fully automatic Thompson 1928 submachine-gun (popularly known as the “Tommy gun”). DK SMITHSONIAN at 212-13. *See also* Ashley Hlebinsky, *Testimony before the U.S. Senate Subcommittee on the Constitution, Committee on the Judiciary* at pp. 9-11 (May 11, 2021), available at <https://www.judiciary.senate.gov/imo/media/doc/Ashley%20Hlebinsky%20Written%20Testimony%20Final.pdf> (summarizing the prevalence of split-receiver firearms prior to 1968).

Thus, the dawn of the modern era of firearms was characterized by the proliferation of more intricate firearms, possessing new capabilities and utilizing mass-produced interchangeable parts. Complete firearms were certainly common for sale, but, with less centralized designs and interchangeable parts, firearms also became more customizable. The first federal systems of firearms regulation came about against this backdrop, accounting for these developments while recognizing the continued appeal of privately assembling firearms.

### III. Federal Regulation Of Firearms And The Gun Control Act

The development of the modern firearm in the early 1900s was followed by the development of modern firearm regulations in the 1930s. The first example of a federal firearm law was the National Firearms Act of 1934 (“NFA”), which remains in force nearly a century later. Pub. L. No. 73-474, 48 Stat. 1236. Responding to isolated—but high-profile—instances of civilians misusing weapons like the fully automatic “Tommy gun,” Congress enacted the NFA to severely curtail private ownership of certain classes of firearms. *See* Sean J. Kealy, *The Second Amendment as Interpreted by Congress and the Court*, 3 N.E.U. L.J. 225, 253-261 (2011) (summarizing the legislative history of the NFA). As such, the NFA did not regulate most firearms, and only applied to: (1) “a shotgun or rifle having a barrel of less than eighteen inches in length”; (2) “any other weapon, except a pistol or revolver . . . capable of being concealed on the person”; or (3) “a machine gun,” defined separately as a “weapon . . . which shoots or is designed to shoot . . . more than one shot, without manual reloading, by a single function of the trigger.” *Id.* § 1(a)-(b), 48 Stat. 1236. Possessing any such firearm was prohibited unless the firearm was first

registered with the Treasury Department, *id.* §§ 3(a), 5(a). More importantly, all future transfers of covered firearms required paying a \$200 tax—a prohibitively expensive amount, roughly equivalent to \$40,551 in 2021 dollars.<sup>1</sup>

Four years later, Congress followed these severe restrictions on narrow classes of weapons with a broader set of more permissive policies in the Federal Firearms Act (“FFA”). Pub. L. No. 75-785, 52 Stat. 1250. This law adopted a broader definition of “firearm”: “any weapon . . . which is designed to expel a projectile or projectiles by the action of an explosive . . . or any part or parts of such weapon.” *Id.* § 1(3). Despite this broader definition, however, the restrictions imposed by the FFA were nowhere as severe as those in the NFA. Firearms regulated under the FFA could be transferred and possessed freely by anyone who was not a fugitive or violent criminal. *Id.* § (d)-(e). Additionally, while firearm “parts” were regulated as firearms, manufacturing or assembling a gun for personal use was left unregulated; the FFA only required registration to manufacture firearms for sale, or otherwise to “engage[] in the business of selling firearms” or shipping firearms in interstate commerce. *Id.* §§ 1(4)-(5), 2(a)-(b), 3(a). And while the FFA required firearms dealers to keep records of their transactions and penalized removing a manufacturer’s serial number from a firearm, *id.* §§ 2(i), 3(d), it did not require firearms to be registered or serialized.

Nonetheless, the FFA proved too restrictive in some ways and too permissive in others, and was therefore replaced by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968 (“Crime Control Act”). Pub. L. No 90-351, 82. Stat. 197. Title IV was in turn reenacted with minor modifications as the Gun Control Act of 1968 (“GCA”). Pub. L. No 90-618, 82 Stat. 1213.<sup>2</sup> These provisions made several changes to the definition of “firearm,” creating the definition that remains in force today:

The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device.

Pub. L. No. 90-618 §102, 82 Stat. 1214; (enacting 18 U.S.C. § 921(a)(3)).

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<sup>1</sup> See *CPI Inflation Calculator*, U.S. BUREAU OF LABOR STATISTICS, [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited Aug. 18, 2021).

<sup>2</sup> The Proposed Rule describes the GCA as part of the Omnibus Crime Act. 86 Fed. Reg. at 27,720. Yet the Crime Control Act repealed the FFA and enacted most major provisions of what is now known as the GCA—including, as relevant to these comments, a new definition of “firearm” and regulations on manufacturers. See Pub. L. No. 90-351 §§ 902, 906, 82 Stat. 227 231-33, 234. The GCA, however, was enacted later in 1968 and also contained these provisions, while making additional modifications to firearms law. See H. Rep. No. 90-1577 at 7, 10 (describing GCA as making “additions” to Crime Control Act, and as using the definition of firearm that “is in the present law”).

With this language Congress, learning from its previous regulatory efforts, made clear which devices qualify as a “firearm”—and which do not. As relevant here, definition (A) is a capability-based definition, focused on what the device in question is able to do. It includes both devices that are able to and that “may readily be converted to expel a projectile by the action of an explosive,” such as starter pistols designed to fire blank rounds which can be converted to fire live ammunition. *Id.* Definition (B) describes the subcategory of parts that are regulated, as opposed to the NFA’s “any part or parts” formulation. It is a functional definition, based on whether a part provides housing for the firing mechanism.

The more narrow approach to regulating parts reflects Congress’s finding that it was “impractical to have controls over each small part of a firearm,” S. Rep. No. 90-1097 at 111. The Act did, however, create language regulating “parts” of some specific firearms: machine guns. The GCA regulated machine guns and explosives as “destructive devices,” defined to include “parts . . . used to assemble destructive devices.” Pub. L. No. 90-618 § 102 (enacting 18 U.S.C. § 921(a)(4)(C)), 82 Stat. 1215. Additionally, both the Crime Control Act and the GCA required firearm manufacturers to begin marking the frame or receiver of each firearm with a serial number. *Id.* at 1223 (enacting 18 U.S.C. § 923(i)).

Since the enactment of the current definition of “firearm,” federal regulations have defined “receiver” consistent with that term’s statutory meaning as the component that provides unified housing for a firearm’s fire control mechanisms: “That part of a firearm which provides housing for the hammer, bolt or breechblock, *and* firing mechanism, and which is usually threaded at its forward portion to receive the barrel.” 27 C.F.R. § 478.11 (emphasis added). And in that time, individuals and firms have continued producing firearm parts, including parts of receivers, without registering as “manufacturers” of firearms.

#### **IV. The Proposed Rule’s Modified Definition Of “Firearm”**

Now, over fifty years after Congress enacted the relevant statutory framework, ATF is proposing a monumental shift in the landscape of firearms regulation. The proposal is premised on solving two purported problems: *First*, ATF points to several recent cases in which courts have ruled that under the current definition of “receiver,” ATF is unable to prosecute individuals who possess parts of firearm receivers only, rather than completed receivers. 86 Fed. Reg. at 27,722 (citing *United States v. Rowold*, 429 F. Supp. 3d 469, 475-77 (N.D. Ohio 2019); *United States v. Jimenez*, 191 F. Supp. 3d 1038, 1041 (N.D. Cal. 2016)). *Second*, ATF claims that a series of “[t]echnological advances have made it easier for unlicensed persons to make firearms at home from standalone parts.” 86 Fed. Reg. at 27,722.

Neither of these circumstances violate the GCA—there is nothing surprising about not being able to regulate certain conduct where Congress deliberately chose definitions that do not encompass every aspect of firearm parts manufacturing. Apparently disagreeing with this policy choice, however, ATF proposes a sweeping range of changes designed to crack down on these activities by expanding the universe of regulated firearm parts. Rather than regulate the unified



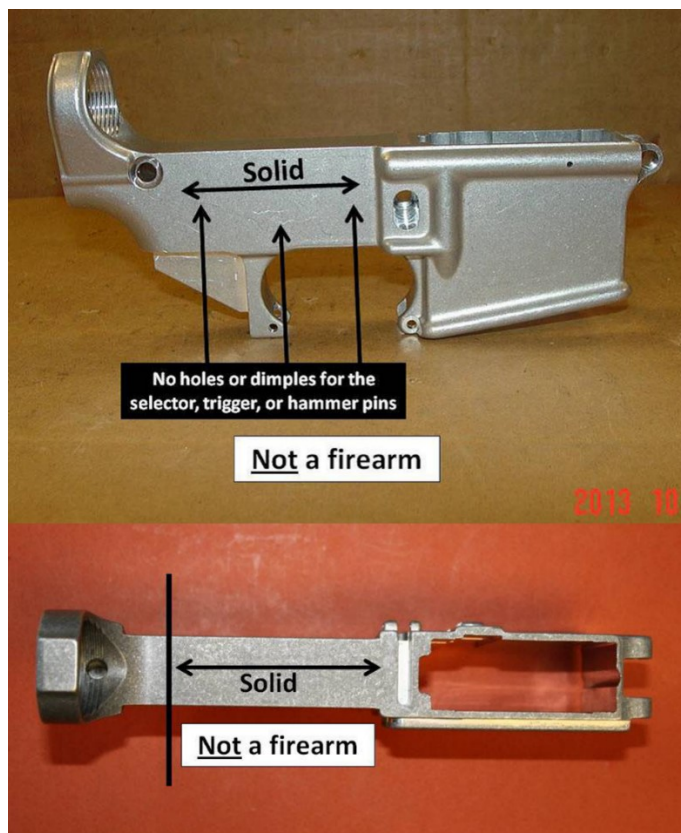
Honorable Marvin Richardson

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housing of a complete firing system as a “receiver,” as that term has traditionally been understood, ATF proposes to regulate as a receiver any firearm part that “provides housing or structure for *any* fire control component.” 86 Fed. Reg. 27,727 (emphasis added). Similarly, the proposed rule would regulate unassembled firearms “parts kits” as firearms—rather than confining this treatment to the sole firearm part, the receiver that the GCA regulates.

For example, the rule seeks to regulate incomplete portions of a “lower receiver” used in the ArmaLite AR-15 rifle design, sometimes called “80% lowers” or “receiver blanks.” See 86 Fed. Reg. 27,279 n.54. The lower receiver in such rifles ordinarily provides housing for the trigger and hammer pins, but an 80% lower has not yet had the requisite holes drilled in it for these components to be mounted. Moreover, even when complete a lower receiver does not provide housing for the firing bolt or breech block. Thus, ATF has long maintained that unfinished receivers were not firearms.



*Are “80%” or “unfinished” receivers illegal?*, U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, <https://www.atf.gov/firearms/qa/are-%E2%80%9C80%E2%80%9D-or-%E2%80%9Cunfinished%E2%80%9D-receivers-illegal> (last visited Aug. 18, 2021).

ATF estimates that its expanded definitions will impact at least 35 firearm parts manufacturers, and that these businesses are likely to cease operation if the proposed rule is adopted. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, DEFINITION OF FRAME OR

RECEIVER AND IDENTIFICATION OF FIREARMS: PRELIMINARY REGULATORY ANALYSIS AND INITIAL REGULATORY FLEXIBILITY ANALYSIS 26-28 (Apr. 2021), *available at* <https://downloads.regulations.gov/ATF-2021-0001-0002/content.pdf>. According to the proposal, however, it appears that ATF has conducted no analysis on the estimated employment impacts, nor what impact the loss of these 35 providers would have on the market for firearm parts. *Id.*

## DISCUSSION

### I. ATF's Broadened Definition Of "Firearm" Cannot Be Reconciled With The Text And Purpose Of The GCA.

The proposed rule significantly expands the regulation of firearm parts beyond what Congress permitted. Congress authorized ATF to regulate complete firearms and complete receivers—not disassembled firearms or incomplete receivers. The proposed rule is unlawful because it transgresses both of these limits.

*A. An agency rule that exceeds a clear statutory limit is unlawful.*

Where “Congress has directly spoken to the precise question at issue,” an agency construing a statute it administers “must give effect to the unambiguously expressed intent of Congress.” *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). Courts have ruled against agencies that have attempted to promulgate regulations that broaden the definition of statutory terms beyond the scope of Congress’s intent. In *FDA v. Brown and Williamson Tobacco Corp.*, the Supreme Court held that the FDA exceeded its grant of authority when it issued a regulation on tobacco products because Congress did not intend to make such a grant of authority when allowing the FDA to regulate “drugs” and “devices” under the Federal Food, Drug, and Cosmetic Act. 529 U.S. 120, 131-32 (2000). The FDA’s determination that “nicotine is a ‘drug’ and cigarettes and smokeless tobacco are ‘drug delivery devices’” that underpinned “the FDAs claim to jurisdiction contravene[d] the clear intent of Congress.” *Id.* at 132. The Court ruled that the FDA’s determination was inconsistent with “the FDCA as a whole” and so “Congress has not given the FDA the authority that it seeks to exercise here.” *Id.* at 132.

Similarly, the D.C. Circuit disallowed an SEC rule that redefined the statutory term “clients” for the purposes of advisor registration requirements to include investors in a hedge fund. *Goldstein v. SEC*, 451 F.3d 873 (D.C. Cir. 2006). Regardless of any similarities hedge fund investors may have had to clients of an investment adviser according to the SEC, the court recognized that these are in fact not the same thing, and so the SEC was unable to use its altered definition to force its registration regulations on hedge fund advisers. *Id.* at 878, 881 (“At best it is counterintuitive to characterize the investors in a hedge fund as ‘clients’ of the adviser.”). And the Fifth Circuit rejected the National Marine Fisheries Service’s attempt to expand the definition of fishing—along with the agency’s own regulatory reach—under the Magnuson-Stevens Fishery Conservation and Management Act to include all “‘aquaculture,’ or fish farming.” *Gulf Fishermens Ass’n v. Nat’l Marine Fishers Service*, 968 F.3d 454, 456 (5th Cir. 2020). The act defined fishing as “catching, taking, or harvesting of fish,” 16 U.S.C. § 1802(16), and the agency impermissibly attempted to expand upon the word “harvesting” to include aquaculture when “the

Act made no reference to aquaculture or fish farming.” 968 F.3d at 458. “The agency interprets this silence as an invitation, but our precedent says the opposite: Congress does not delegate authority merely by not withholding it.” *Id.* at 456.

Congress has spoken through its definition of “firearm” in the GCA to include a “frame or receiver,” yet the proposed definition of “frame or receiver” includes objects that are not even frames or receivers, much less firearms. As explained below, the proposed rule exceeds two important textual limits in the GCA’s definitions of “firearm.” For both of these reasons, the proposed rule is unlawful.

*B. The proposed rule exceeds the GCA’s limits by adding language to Section 921(a)(3)(A)’s capability-based definition of “firearm.”*

The capability-focused definition of “firearm” extends to devices that are “designed to” function as a firearm, and devices that can “readily be converted” to that function. 18 U.S.C. § 921(a)(3)(A). Properly understood, this classification does not extend beyond completed devices. ATF’s proposed rule makes numerous additions to this definition that would sweep in firearms “parts kits” that “are designed to or may readily be *assembled, completed, converted, or restored*” to expel a projectile. 86 Fed. Reg. at 27,726 (emphasis added).

Of those terms, only “converted” appears in the statute. And the plain meaning of “converted” does not encompass the other three. To “complete” something is to “make [it] whole or entire,” or “to bring to an end.” *Complete*, Oxford English Dictionary vol. III p. 612 (2d ed.). Similarly, to “assemble” means “to put together (the separately manufactured parts of a composite machine or mechanical appliance).” *Assemble*, Oxford English Dictionary vol. I p. 705 (2d ed.). Each of these terms capture the notion of bringing an unfinished device to its intended method or purpose of operation. Similarly, to “restore” something is “[t]o bring [it] back to the original state,” or “to improve, repair, or retouch (a thing) so as to bring it back to its *original condition*.” *Restore*, Oxford English Dictionary vol. XIII p. 756 (2d ed.) (emphasis added).

Rather than realizing a device’s original purpose, to “convert” a device is to repurpose it— “[t]o turn or change in character, nature, form, or function.” *Convert*, Oxford English Dictionary vol. III p. 872 (2d ed.). The GCA provides an example of what this concept means in practice. The GCA includes “starter gun[s]” as an example in Section 921(a)(3)(A)’s capability-based definition of “firearm” because, although starter guns are designed to and capable of firing blanks, they can be *converted* to expel a projectile by means of an explosive. Pub. L. No. 90-618 § 102 (enacting 18 U.S.C. § 921(a)(3), 82 Stat. 1215). Making such alterations to an already-complete starter gun, such that it gains a firearm’s functions and capabilities, is a far cry from assembling an incomplete firearm following its original design.

Other provisions of the Crime Control Act and the GCA show that Congress not only understood the distinction between making or completing a device and converting it into something else, but expressly chose not to regulate the former by excluding regulation of disassembled firearms. For example, the GCA provisions that define “destructive devices”—*i.e.*,

machine guns and ordinance—immediately follow the definition of “firearm” and actually contain the language ATF proposes to add to § 921(a)(3)(A). There, Congress expressly provided for the regulation of “any combination of parts” used to “convert a device into a destructive device,” as well as those “from which a destructive device *may readily be assembled*.” Pub. L. No. 90-618 § 102 (enacting 18 U.S.C. § 921(a)(4)(C)), 82 Stat. 1215 (emphasis added). Similarly, other provisions of the Crime Control Act regulate devices that could be “readily converted or restored” to function as a machine gun.” S. Rep. No. 90-1097 at 280 (discussing Pub. L. No. 90-351 § 911). These descriptions of “conversion” follow the plain meaning of the term, “convert[ing] a weapon, other than a machinegun, into a machinegun.” *Id.*

“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (quotations omitted; alterations in original). Had Congress intended Section 921(a)(3)(A) to include firearms yet to be “assembled,” 86 Fed. Reg. at 27,726, then “it presumably would have done so expressly as it did in the immediately following subsection.” *Russello*, 464 U.S. at 23. By not including this language in Section 921(a)(3)(3), Congress clearly indicated that “any combination of parts . . . from which a [firearm] may readily be assembled,” 18 U.S.C. § 921(a)(4)(C), are not *per se* “firearms” under the GCA.

Nor can firearms parts, in their disassembled state, be understood as falling within the “designed to” definition of “firearm” as ATF also suggests. *See* 86 Fed. Reg. at 27,726. True, the various components contained in a firearm parts kit may each have been “designed to” play a role in the expulsion of a projectile—but that is as true of a firearm frame or receiver as it is of any other component of a parts kit. Therefore, granting such a broad scope to that term would render the component-based definition of “firearm” wholly unnecessary—a receiver would already be a firearm by virtue of being part of a firearm design. Such a reading would “violate the canon against interpreting any statutory provision in a manner that would render another provision superfluous.” *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010) (citing *Corley v. United States*, 556 U.S. 303, 314 (2009)). “[S]peculation as to the subjective intent of various legislators” does not overcome this presumption, *id.*, but even so it bears emphasis that the congressional record indicates members were aware of the concept of “parts kits,” yet chose not to regulate them in the context of firearms. Congress made clear that it was aware of firearm parts being shipped in “kits” “designed or intended for use in converting” devices into destructive devices. *See* S. Rept. 90-1097 at 110-11, 280. And—tellingly—it is in *that* context that Congress enacted the language ATF now reads into the firearms context. *See* Pub. L. No. 90-618 § 102 (enacting 18 U.S.C. § 921(a)(4)(C)), 82 Stat. 1215.

Viewed in context with the statute as a whole, the relationship between “converted” and “designed” is clear. The two terms work in tandem to capture the full range of completed devices that may be used as firearms—those intended for such use, and those not intended for that use but capable of it nonetheless. Neither term is or needs to be amenable to capturing firearm parts; Congress made clear its desire to not regulate most firearm parts and directed that the “frame or

receiver” definition is how the GCA regulates the core component of a firearm. The fact that ATF thinks Congress should have regulated *more* parts cannot escape the reality that its delegated powers are more limited.

C. *The proposed rule exceeds the GCA’s limits by adding language to Section 921(a)(3)(B)’s functional definition of “firearm.”*

ATF has proffered changes to the definition of “frame or receiver” that it claims are necessary to encompass regulation of “partially complete [or] disassembled” receivers, and “split or modular frame receivers.” 86 Fed. Reg. at 27,728-29. There is minimal functional difference between these changes, as both seek to regulate components of receivers before they become capable of actually functioning as a receiver—whether through additional machining or through combination with other parts of a receiver.

As a threshold matter, these elements of the proposed rule compound the errors ATF committed when attempting to extend the GCA to incomplete firearms. The regulation of each component of a split-frame receiver, like much of the rest of the proposed rule, is offered in service of ATF’s goal of regulating parts of firearms rather than completed firearms—contrary to the intent of Congress, *see supra* Part I.A. And the proposed rule’s definition of incomplete receivers is premised on reading the same language into the statute as the proposed rule’s definition of incomplete firearms. *Compare* 86 Fed. Reg. at 27,729 (defining a “receiver” as that which “may readily be completed, assembled, converted, or restored to a functional state”) *with id.* at 27,726 (defining “firearm parts kit” using these terms). But while Section 921(a)(3)(A) at least included one of these modifiers in the capability-based definition of “firearm,” subsection (a)(3)(B) applies *none* of these modifiers to “frame or receiver.” Omitting that language makes it all the more clear that Congress did not intend to regulate items that could be “readily converted” to serve as firearm receivers. *Russello*, 464 U.S. at 23.

Extending these errors into the realm of receivers would also quickly lead to absurd results. The rule classifies any firearm part that “provides housing or structure for *any* fire control component” as a receiver. 86 Fed. Reg. 27,727 (emphasis added). Given the intricacy and variation of modern firearms, adopting this interpretation would require serialization and regulation of large numbers of firearm parts. For example, the barrel extension in the Browning Auto 5 houses the breechblock, while side plates and the receiver itself each provide housing for the trigger mechanisms. *See supra* p. 5. Accordingly, each would need to bear a serial number regardless of how small—or in the case of the barrel extender, regardless of being wholly internal to the firearm. ATF appears to recognize the risk of creating such an unmanageable system, and thus grants itself the discretion to ultimately determine which part or parts falling within the definition of receiver will be treated as such. *Id.* at 27,728. And one element in ATF’s proposed test includes a consideration of whether it is even possible to “permanently, conspicuously, and legibly” serialize a firearm part. *Id.* This inquiry is difficult to square with Congress’s directive that every firearm receiver bear a serial number. *See* 18 U.S.C. § 923(i). Congress would not have imposed such a sweeping and unqualified mandate if it also conceptualized “receivers” as something that might be impossible to legibly serialize in the first place. A “construction of the

law” that “would involve the requirement of an impossibility” is “unreasonable.” *Union Pac. R. Co. v. Hall*, 91 U.S. 343, 347 (1875).

ATF offers two justifications for these changes, but neither are availing. *First*, ATF claims that this modification is necessary because without it many modern firearms would not have “a specific part” that falls within the current regulatory definition of frame or receiver. 86 Fed. Reg. at 27,727. But this is a red herring. Lacking “a specific part” that falls within the definition of “receiver” does not suggest that these firearms escape regulation under the GCA; once complete and assembled such a firearm “will . . . expel a projectile by means of an explosive,” 18 U.S.C. § 921(a)(3), and thus will still be regulated under the GCA *regardless* of whether it has “a specific part,” 86 Fed. Reg. at 27,727, that serves as the frame or receiver. Violent criminals, those with serious mental illnesses, and other prohibited persons may not possess completed firearms irrespective of configuration. 18 U.S.C. § 922(g). Moreover, the act of assembling such a firearm necessarily involves creating a complete receiver—without providing a unified housing for a firearm’s trigger, hammer, and breechblock, a firearm cannot operate. Although it may not be “a specific part,” 86 Fed. Reg. 27,727, any complete firearm still has “a receiver” which a manufacturer can serialize as the GCA requires.<sup>3</sup> *See* 18 U.S.C. 923(i) (requiring a manufacturer to place a serial number on “the frame or receiver” of any firearm it manufactures).

*Second*, ATF offers the justification that modern developments have changed its understanding of what a firearm is, specifically that split-receiver firearms became “prevalent for civilian use” after the GCA was enacted. 86 Fed. Reg. at 27,721. But this argument is at odds with both history and law.

This premise of this argument is not historically accurate, as split-receiver firearms were well-known and popular by 1968. ATF documents acknowledged these designs and analyzed the applicability of the GCA to them over 50 years ago. CC:ATF-12,736, Subject: M-16 Receivers, Internal Revenue Service, Department of the Treasury (March 1, 1971). Civilian use of split-receiver firearms dates back to the Remington Auto 5, the Remington Auto 8, and the Winchester 1903—each of which were patented split-frame receivers over sixty years before the GCA’s enactment. *See supra* pp. 4-6. Indeed, it was the widely publicized civilian use of a famous split-receiver weapon—the Thompson submachine gun—that prompted enactment of the National

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<sup>3</sup> ATF suggests that even a complete striker-fired firearm, such as Glock pistol, never contains a component that satisfies the current definition of “receiver” because ATF interprets these firearms as “not utilize[ing] a hammer.” 86 Fed. Reg. 27,722. It may be debated whether the term “hammer” encompasses any component used to ignite a percussion cap, including firing pins linked directly to trigger mechanisms. *See, e.g.*, U.S. Patent No. 4,539,889 (Sept. 10, 1985) (original patent for Glock pistol design, describing its “firing bolt” as a “hammer”). But accepting the premise that this is a problem, it is one ATF can solve by clarifying the definition of “hammer”—not by regulating incomplete receivers or receiver parts.

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Firearms Act over 30 years prior to the enactment of the GCA. *See* Kealy, 3 N.E.U. L.J. at 253-261.

Accurate or not, the premise is ultimately irrelevant. Even assuming Congress did believe split-receiver firearms had predominately military applications, it did not draw that distinction in the Crime Control Act or the GCA. Indeed, the Crime Control Act expressly discussed civilian use of military-grade weaponry as a problem. Pub. L. No. 90-351 § 901 (7)-(8), 82 Stat. 226. And Congress certainly would have been aware of split-receiver firearms in this context—at the time the GCA was before Congress, nearly half of then-sitting Senators had served in World War II<sup>4</sup> and would have had firsthand experience with split-receiver service weapons like the M1911A1 pistol.<sup>5</sup>

Taken together, there is no reason to believe Congress viewed it necessary to regulate each part of a firearm or receiver, or that it did not understand that a firearm receiver may be assembled from multiple parts. ATF's justification turns on the idea that Congress *should* regulate consistent with new technological and manufacturing developments, or that Congress should have delegated ATF power to do so instead. Yet the language Congress chose makes clear that it did neither. Thus, in seeking to expand ATF's regulatory purview beyond complete firearms and complete receivers, the proposed rule violates the GCA.

## **II. ATF's Modifications To The Gun Control Act Would Render The Act Constitutionally And Legally Infirm.**

ATF's proposed interpretation of the GCA purports to resolve a “core challenge” with applying the statute—addressing “when an object becomes a frame or receiver.” 86 Fed. Reg. at 27,729. As explained above, the GCA sets clear lines for what its provisions regulate: completed firearms and completed receivers. So understood, implementing the GCA requires little in the way of administrative interpretation—the definitions turn on objective questions like capabilities, features, and functions.

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<sup>4</sup> *See United States Senators Known to have Served in World War II*, U.S. SENATE, [https://www.senate.gov/senators/WWII\\_Veterans.htm](https://www.senate.gov/senators/WWII_Veterans.htm) (last visited Aug. 18, 2021).

<sup>5</sup> Even this service pistol, popular among civilians in its own right, had several civilian predecessors of similar design produced at the beginning of the 20th Century, which undermines ATF's arguments about the M1911A1's military use. *See* 86 Fed. Reg. 27,721; *Testimony of Ashley Hlebinksy* at 11 (“The Colt 1911 was adopted for the military but was based on the Models 1900, 1903, and 1905s, which were all commercial guns well before the government tested them. And after the adoption, the 1911 was prevalent in both the military and civilian market.”); FOWLER ET AL at 62 (“The FN Browning M1900 was one of the most commercially successful semi-automatic pistols produced before World War I. It was widely used by police forces and bodyguards.”).

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Once ATF steels itself to going beyond the limits of the GCA and regulating “readily [] assembled [or] completed” receiver parts, 86 Fed. Reg. at 27,730, it soon finds itself mired in unconstrained and subjective inquiries with no congressional guideposts—further reinforcing Congress’s belief that regulating firearm parts would be impractical, *see* S. Rep. No. 90-1097 at 111. The proposed rule purports to bring clarity to the issue by interpreting the term “readily” as encompassing an eight-factor non-exhaustive test, turning on various interdependent factors like difficulty, time, expertise, and requisite tools. *Id.* Similarly, ATF acknowledges that under their proposed rule firearms “may have more than part that falls within the definition of ‘frame or receiver,’” but then claims the authority to unilaterally determine which such parts require a serial number. *Id.* at 27,778.

It is a “principle universally recognized as vital to the integrity and maintenance” of our constitutional system that Congress “cannot delegate legislative power.” *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1982). Statutes that grant executive agencies the discretion to make “unbounded policy choices” violate this principle, enabling Congress to “merely announce vague aspirations and then assign others the responsibility of adopting legislation to realize its goals.” *Gundy v. United States*, 139 S. Ct. 2116, 2133 (2019) (Gorsuch, J., dissenting) (citation omitted). Yet because “Congress simply cannot do its job absent an ability to delegate power under broad general directives,” the Constitution permits agency delegation so long as Congress provides “specific restrictions” that “meaningfully constrain[]” the agency’s scope of authority. *Mistretta v. United States*, 488 U.S. 361, 372 (1989); *Touby v. United States*, 500 U.S. 160, 166-67 (1991). The people’s representatives must make the “fundamental policy decisions” and “the hard choices” that determine policy, while agencies can be left the work of “filling in of the blanks.” *Indus. Union Dep’t, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 687 (1980) (Rehnquist, J., concurring in the judgment).

The ATF’s proposed rule runs afoul of this important limitation. Properly understood, the GCA does not pose a delegation problem—it defines all receivers as “firearms” subject to federal regulation, and is unambiguous that all firearms must bear a serial number. 18 U.S.C. §§921, 923(i). It left the practical details of how this marking is to be done to ATF, but nothing grants ATF or any other agency the discretion to modify this command. *Id.* Compare this to the proposed rule’s system, under which “more than one part of a firearm [may] fall[] within the definition of ‘frame or receiver,’” but ATF nonetheless has the final discretion to allow a manufacturer to “only mark a specific part . . . rather than all qualifying parts.” 86 Fed. Reg. at 27,728.

As explained above, *supra* Part I.B, this agency-driven approach is necessary to escape the absurd result of requiring serialization on parts which could not practically accommodate it. But in opening this escape valve, ATF has instead opened a floodgate of policymaking discretion that the GCA does not and cannot grant to it. By allowing ATF to decide for itself which firearms it will regulate, unconstrained by Congress’s guidance, the proposed rule is unconstitutional.



### **III. The Proposed Rule Disregards The Reliance Interests Engendered By The Existing Definition.**

The proposed rule's justifications are lackluster as a general matter, but the question is all the more important here because ATF is proposing to change a longstanding policy on which many people and businesses rely. As explained in ATF's regulatory impact analysis, there are at least 35 firms that have production of unregulated firearm parts as their core business. PRELIMINARY REGULATORY ANALYSIS at 26-28. And ATF anticipates, if not outright concedes, that these firms will cease operation or significantly scale down their activities under the newly proposed rule. The loss of these businesses, alone, far exceeds the \$1.1 million ATF presents as its estimated total cost of the proposed rule. 86 Fed. Reg. at 27,736. And multiple firearms businesses, including some of the 113,204 FFLs ATF acknowledges will be affected by the change, have already submitted comments detailing the economic costs and other burdens the proposed rule would impose beyond the manufacturers ATF would outright shutter.<sup>6</sup> ATF provides a surface acknowledgement that the proposed rule will have a "significant impact on a substantial number of small entities," but does not provide sufficient reasoned analysis or anything close to a plausible cost estimate of the proposed rule on these numerous small businesses. 86 Fed. Reg. at 27,739. Further, this negative economic impact will flow to the States, which will see decreased tax revenue as profits decrease, jobs are cut, and companies cease operations due to the proposed rule's ill-conceived burdens.

Agencies revisiting prior policy must "assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Department of Homeland Security v. Regents of the University of California* ("DHS v. Regents"), 140 S.Ct. 1891, 1915 (2020). See also *Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117 (2016) (recognizing reliance interests where an agency rescinded "decades-old" guidance and, as a result, exposed certain private parties to new and costly liability. *Encino*, 136 S. Ct. at 2123-24, 2126). ATF's treatment of the reliance interests that the proposed rule would upset both is incomplete and raises troubling implications. It is incomplete because it "makes no accounting" of the costs that will be borne by the businesses it purports to shutter, much less the communities these businesses help support by providing jobs and tax revenue. Thus it is impossible to weigh those costs against the "competing policy concerns," *Regents*, 140 S.Ct. at 1915, that motivated the change.

It is especially important to show such justification here, where there are serious questions about the efficacy and necessity of ATF's proposed rule. ATF proffers that the rule is necessary because "the number of [privately made firearms] recovered from crime scenes throughout the

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<sup>6</sup> See, e.g., *Comment of Dark Storm Industries LLC*, Comment ID ATF-2021-0001-92830 (Jul. 26, 2021) (detailing the likely delays in classification decisions, industry-wide costs of engraving estimated at \$400 million per year, and other burdens); *Comment of Chris K Cockrum, Accuforge (FFL-07)*, Comment ID ATF-2021-0001-120028 (Aug. 9, 2021); *Comment of John K Crawford, KC's Kustom Creations, LLC*, Comment ID ATF-2021-0001-137988 (Aug. 11, 2021); *Comment of Dorin Adika, National Firearm Sales Inc*, Comment ID ATF-2021-0001-123222 (Aug. 10, 2021).

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country has increased,” and claims over 8,700 such firearms were recovered from crime scenes in 2020. 86 Fed. Reg. at 27,722-23. This figure is drawn from the number of queries made to ATF’s electronic tracing database (“eTrace”), 86 Fed. Reg. at 27,723 n.18, and is missing important context: eTrace processes over 450,000 firearms per year. See U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, ETRACE FACT SHEET 2 (June 2020), *available at* <https://www.atf.gov/resource-center/docs/undefined/etrace-fact-sheet-june-2020/download>.

Moreover, ATF acknowledges that it does not know whether the queried firearms were in fact recovered from crime scenes, “as opposed to one recovered by [law enforcement] that was stolen or otherwise not from [] the scene of a crime.” 86 Fed. Reg. at 27,723 n.18.

Moreover, simply pointing to the presence of privately made firearms at crime scenes implicitly assumes that criminals themselves assemble their own firearms. But the opposite is true. In 2016, the Department of Justice surveyed incarcerated criminals to determine their preferred sources for obtaining firearms, and did not even receive enough reports of self-assembled firearms to warrant its own category. U.S. DEPT. OF JUSTICE, SOURCE AND USE OF FIREARMS INVOLVED IN CRIMES: SURVEY OF PRISON INMATES, 2016 7 (Jan. 2019), *available at* <https://bjs.ojp.gov/redirect-legacy/content/pub/pdf/suficspi16.pdf>. “Other” sources, which would include self-assembled firearms along with online purchases and “obtained from a friend by an unknown method,” account for 5.9% of guns used in crimes. *Id.* The largest source by far was black market sales, *id.*, and ATF has already acknowledged that “guns are brought to the black market in two main ways: gun store burglaries and straw purchasers.” Nate Gartrell, *The California Pipeline: How Thousands of Illegal Guns End up in the Bay Area*, MERCURY NEWS (Sept. 16, 2019), <https://www.mercurynews.com/2019/09/15/the-nevada-california-pipeline-how-thousands-of-illegal-guns-end-up-in-the-bay-area/>; see also U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, CONGRESSIONAL BUDGET SUBMISSION: FISCAL YEAR 2018 12 (May 2017), *available at* <https://www.justice.gov/file/968946/download> (“FFL burglaries are a significant source of illegally trafficked firearms.”). Similarly, 38.6% of criminals either steal firearms themselves (whether from a victim or elsewhere) or obtain them from friends or family members in significant proportions. SOURCE AND USE OF FIREARMS at 7. To the extent that privately assembled firearms are becoming more common, they would account for a larger share of firearms making their way to crime scenes through established channels rather than illustrating that criminals are specifically gravitating towards such firearms or making them themselves.

Even looking beyond these problems with the premise of ATF’s proposed rule, there are also reasons to doubt it would effectively respond to the problems it purports to solve. Expanding the background check requirement only deters prohibited persons from obtaining firearm parts, but not all individuals who go on to commit crimes were prohibited persons at the time they obtained their firearm. Indeed, more criminals reported undergoing a background check when obtaining their firearm than reported building their own. SOURCE AND USE OF FIREARMS at 7-8. Similarly, individuals who desire an “untraceable” firearm have the option of removing a serial number from an existing firearm—a process that requires none of the precision drilling or complex assembly involved in completing an “80% receiver.” *Testimony of Ashley Hlebinksy* at 7-8. Other purported benefits of the proposed rule are merely redundancies. The law already prohibits

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individuals with the tools and ability to privately manufacture firearms and then engage in the business of selling them without appropriate federal licensure and record keeping compliance. 18 U.S.C. § 923(a). While ATF references such activities in support of the Proposed Rule, it simultaneously demonstrates that the Department of Justice has already found success prosecuting “numerous Federal criminal cases” involving “illegal trafficking in unserialized home-completed and assembled weapons, and possession of such weapons by prohibited persons.” 86 Fed. Reg. at 27,723. This activity is thus already illegal and the federal government has already engaged in the enforcement of existing laws to combat it.

The proposed rule’s overstated benefits coupled with its non-analysis of reliance interests is troubling because ATF suggests that it is changing these regulations *specifically because* individuals have come to rely on the existing definition. ATF expressly states that the proposed rule is motivated by the “proliferation of [privately made firearms],” and that its changes are “needed to deter the increased sale” of the firearms parts in question. 86 Fed. Reg. at 27,729. Were reliance interests being properly considered in ATF’s analysis, the proliferation of an activity ATF has long deemed legal would counsel *against* changing its position—at least without more serious consideration of the factors on both sides of the scale. Reliance interests can certainly be overcome in appropriate cases, but it would turn the doctrine on its head to use widespread reliance on a rule or policy as reason itself for change.

\* \* \*

We appreciate the opportunity to provide input on these crucial issues. As the chief legal officers of our States, we share ATF’s mission of preserving and protecting human life and public safety. We look forward to your continued attention to the questions raised in this proceeding. Resolving these concerns is the first step towards developing policies that crack down on crime while giving proper respect to the Constitution, the Gun Control Act, and the legacy of the American firearm.

Sincerely,



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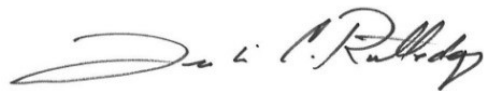


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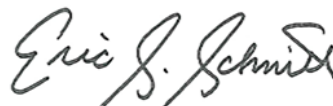
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