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DON'T LIKE THE RULES? CHANGE THEM!

*Partisanship shapes how gun laws are interpreted.
And when the other side takes over, the fight is on!*



For Police Issues by Julius (Jay) Wachtel. On March 22 a deranged twenty-one year Colorado man burst into a Boulder supermarket and unleashed a fusillade from a [Ruger AR-556 “pistol”](#), killing ten. In [“Two Weeks, Four Massacres”](#) we mentioned that the weapon (pictured above), which features a “stabilizing brace” instead of a stock, was essentially a short-barreled version of the AR-15 rifle. [Permissive ATF rulings](#) dating back to 2012 have classified weapons so configured as “pistols,” allowing gun makers, sellers and buyers to avoid the elaborate registration and transfer process that the [National Firearms Act](#) imposes on selected firearms. These include fully automatic weapons (“machineguns”) and concealable shoulder-fired guns, including rifles with barrels less than sixteen inches in length.

No longer, says President Biden. On June 7 [the Department of Justice announced](#) that a “continuing epidemic of gun violence” had forced its hand. According to [a proposed regulation](#), “stabilizing braces” could no longer facilitate the masquerade:

Because short-barreled rifles are among the firearms considered unusual and dangerous, subjecting them to regulation under the NFA, it is especially important that such weapons be properly classified. Indeed, firearms with “stabilizing braces” have been used in at least two mass shootings [Boulder and, in 2019, [Dayton](#)], with the shooters in both instances reportedly shouldering the “brace” as a stock, demonstrating the efficacy as “short-barreled” rifles of firearms equipped with such “braces.”

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As one might expect, the AG's move brought plaudits from the "Blues" and generated condemnation from the "Reds." Here's how [a key organization](#) that represents the latter camp denounced the proposal:

The agency's goal is clearly to push many firearms that utilize stabilizing braces into the National Firearms Act (NFA), requiring a \$200 tax stamp and registration. FPC believes that the NFA is an unconstitutional infringement of the People's rights and that the ATF should be abolished. Any law or regulation enforcing the NFA is unconstitutional and immoral.

Proposed regulations must offer a period for public comment. And the pro-gun community promptly leaped in. Comments opened June 9, and by the 24th. [more than one-hundred thousand](#) were posted. We arbitrarily selected two-hundred fifty. No surprise: everyone in this (admittedly, non-scientific) sample vigorously opposed the rule. Their most frequent objection was also the broadest: once again, ATF was trying to desecrate the Constitution. Here are two examples:

- "I believe that the BATFs new proposed rule on pistol braces (2021R-08) is a gross infringement [sic] of our constitutional rights and should be struck down immediately."
- "...These proposed factors are a direct infringement of the second amendment, and give the agency far too much power to incriminate whoever they decide to with ease..."

Some commenters also had practical concerns:

- "...I'm a disabled American. I own a AR pistol with a brace. It absolutely helps me shoot with much less fatigue...I understand there are real criminals out there and I think your agency should probably be going after them instead of violating my rights. We all understand that the ATF doesn't mind using violence to violate the rights of Americans..."
- "...A manufacturer's stated intent on the use and function of product is theirs to define, and in no way should we assume that a government agency should be able to usurp that claim based on how a consumer may use that product."

Others questioned the regulation's effectiveness in preventing violence:

- "...If the overall narrative to enact this proposal is to "save lives" then statistically it will save very few, as braced pistols are very rarely used in shootings."

So what about our introductory ghost? On May 7th., just one month before it acted to prohibit stabilizing braces, the Justice Department announced a regulation that would “modernize” how a firearm “[frame or receiver](#)” is defined. As the housing for a weapon’s firing mechanism, this component (either word describes it) is in effect considered as the firearm, and must accordingly bear a unique serial number that allows its redistributive history to be traced.



ATF’s definition of a receiver excludes those it deems “[less than eighty percent](#)” complete. See its graphic (we enlarged some of the text for clarity). As much an object might *look* like a receiver, if it lacks “holes or dimples for the selector, trigger or hammer pins” it’s “Not a firearm.” Problem is, kits are widely available that furnish all the parts, templates and instructions for making functioning, non-serialized “ghost guns” in one’s workshop, or at home. [DOJ’s](#)

[filing](#) indicates that many not-so-nice people took advantage. During 2016-2020 police reportedly recovered nearly *twenty-four thousand* untraceable “ghost guns,” including 325 used in murders and murder attempts. In 2018 [the Los Angeles Times reported](#) that urban gangs were arming themselves with ghost guns. Police officers have also fallen victim. California Highway Patrol officer Andre Moye [was gunned down with a ghost rifle](#) the following year.

Conventional guns bear serial numbers and can be traced back to their first point of sale. Indeed, your writer made a career of using this information to pursue gun traffickers. (For more about that see “[Sources of Crime Guns in Los Angeles, California](#)”) But ghost guns lack serial numbers, so they can’t be traced. That’s a problem the new regulation would address. Forget that eighty-percent stuff. “Blank” receivers (no holes or dimples) would be likely considered full-fledged guns, thus require a serial number and be subject to Federal and State controls. Here’s an extract from DOJ’s discussion about the proposed rule:

...the new definition more broadly describes a “frame or receiver” as one that provides housing or a structure designed to hold or integrate any fire control component. Unlike the prior definitions of “frame or receiver” that were rigidly tied to three specific fire control components (i.e., those necessary for the firearm

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to initiate or complete the firing sequence), the new regulatory definition is intended to be general enough to encompass changes in technology and parts terminology.

One can well imagine how the gun lobby reacted. Summoning gun enthusiasts to “Help us STOP ATF’s unconstitutional and dangerous proposed ‘rule’ that would radically expand their powers and restrict your rights!” [the Firearms Policy Coalition](#) urged everyone to submit comments and spread the word.

Its “call to arms” likely had an effect. Nearly sixty-five thousand comments were posted between May 20 and June 24, 2021. We (non-scientifically) reviewed two-hundred fifty. Each opposed the new regulation. And just like for stabilizing braces, many blasted ATF for defiling the Constitution. Here are two examples:

- “How dare you consider taking more of our second amendment rights. Our rights have already ben infringed upon and we the people will not bow before the usurpers that have corrupted our nation and our constitution.”
- “This regulation does nothing but infringe on the rights of law abiding Americans with constant harassment through numerous background checks for non firearm parts and endlessly putting roadblocks up to free commerce on parts not under the authority of ATF to regulate as they are not a firearm. Stop harassing citizens for exercising their rights...”

Some respondents worried that the rule would constrain making one’s own guns:

- “Since the founding of the Republic, Americans have made firearms at home. In the twenty-first century, steel and wood have given way to aluminum and plastic. This new rule by the ATF attempts to regulate the making of firearms, by private persons who are not FFL holders, and to regulate those guns which are made within a private residence for personal use...”
- “The ATF must immediately withdraw their proposed rules to criminalize so-called "ghost guns." To start, the very phrase "ghost guns" is a politically charged pejorative used to scare Americans and justify the infringement on our right to craft a homemade firearm - a right ancillary to the Second Amendment...”

None believed that the regulation would prevent gun misuse. Quite to the contrary:

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- “...These rules will not prevent or even limit gun violence, they only make more law abiding citizens criminals...”
- “...No proposed gun control law - including the proposed regulation of so-called "ghost guns" - will stop criminals from being able to obtain and use firearms in the commission of crimes.”
- “...There is absolutely no data to back up your false claims that these so called “ghost guns” are being used in any crimes or murders. Maybe focus on stopping criminals who are buying illegal guns off the streets and not go after law abiding citizens who would rather build a firearms vs buying one already assembled...”

To be sure, gun control advocates have also stepped up to the plate. Garen Wintemute, an emergency physician who heads UC Davis’ long-standing [Violence Prevention Research Program](#), came out [strongly in favor](#) of restricting ghost guns. We agree. Police have been recovering lots of “ghosts.” Combatting the scourge of gun trafficking requires that guns carry serial numbers so their redistributive history can be traced. That would certainly rule out assembling guns at home.

As for stabilizing braces, our views are mixed. Yes, short-barreled rifles that take advantage of braces to pose as conventional guns are coming up in crimes. Yet we’re not convinced that these firearms represent a unique threat. Our concern about lethality is far more complex. As we mentioned in [“Going Ballistic”](#) it’s much more about, well, ballistics. Projectiles such as those fired from AR-15 rifles (and the brace-flaunting AR-556 pictured above) can easily defeat the protective vests normally worn by police. Indeed, there’s a good reason why cops have turned to armored vehicles. [“Going Ballistic”](#) and [“Massacre Control”](#) suggest that a point system that takes ballistics, ammunition capacity and such into account could be used to identify firearms that are too dangerous for public consumption.

[The Second Amendment](#) has always carried a clearly ideological subtext. Even so, had its drafters realized that their reference to a “well-regulated militia” would be ignored, and that guns would become exceedingly lethal and widely misused, we’re certain that they would have built in some additional safeguards. But they didn’t, so they didn’t. Thanks to a deeply polarized atmosphere and convoluted, precedent-intensive legal system, fashioning an inoffensive “fix” is inevitably complex. And the product can be mind-boggling.

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Don't believe it? Go ahead, just try to get through the proposed regulations. Be sure to have some aspirin close at hand!