



Four Reasons A Federal Court Found ATF's "Engaged In The Business" Rule To Be Illegal

Just a few hours before ATF's tyrannical new rule was scheduled to go into effect on Monday, May 20th—Gun Owners of America and Texas Attorney General Ken Paxton won a temporary restraining order against ATF in federal court.ⁱ Eventually, GOA secured a preliminary injunction preventing ATF from enforcing its new "Definition of 'Engaged in the Business' as a Dealer in Firearms" or ATF 2022R-17 against Texans, Louisianans, Mississippians, and Utahns and nationwide for GOA members as well as members of the Tennessee Firearms Association and Virginia Citizens Defense League.ⁱⁱ

Now, GOA members are able to exercise their right to buy and sell firearms in private sales without infringement by this new rule. While the rule does not apply to everyone, enforcement of this rule would certainly be a nightmare for ATF, who now has to discern if an individual is protected by GOA's preliminary injunction before enforcing the new rule against someone.

What Did the Judge Say About ATF's Rule?

Judge Kacsmaryk's decision means he believes GOA is likely to succeed on the merits of our case and that ATF's rule is likely illegal. The judge noted four specific faults with ATF's rule in his TRO:

1. [ATF falsely] asserts that there is no "minimum number of firearms to actually be sold to be 'engaged in the business'" for the purposes of the licensing requirement. "[A] single firearm transaction" — or even a mere offer to engage in a transaction — may suffice.ⁱⁱⁱ
2. [ATF falsely] suggests that "actual profit is not a requirement of the statute — it is only the predominant intent to earn a profit through the repetitive purchase and resale of firearms that is required." In other words, "a person may repeatedly advertise and display firearms for sale, and therefore demonstrate a predominant intent to earn a profit from repeatedly reselling the firearms purchased, but never actually find a buyer."^{iv}
3. [ATF] arbitrarily eviscerates Section 921(a)(21)(C)'s safe harbor provision... Nothing in the foregoing text suggests that the term "personal collection" does not include firearms accumulated primarily for personal protection — yet that is exactly what the Final Rule asserts.^v
4. [ATF has] flip[ped] the statute on its head by requiring that firearm owners prove innocence rather than the government prove guilt.^{vi}

This final flaw that Judge Kacsmaryk identified might just be the most outrageous of all. **ATF created a new gun control out of thin air for Joe Biden, and it literally made gun owners GUILTY until proven innocent.** The judge also went on to characterize ATF's legal briefings to have said "in other words, 'just trust us.'" Thankfully, the judge did not leave gun owners at the mercy of Biden's tyrannical ATF. The question is, will Congress?

Congress Must Act

Congress cannot let this limited injunction by a federal judge be the final say on this ATF rule. **It shouldn't be up to Gun Owners of America and the court system to save the American People from this tyranny.**

Congress got gun owners into this mess by passing the Bipartisan Safer Communities Act and unnecessarily changing the definition of what it means to be a gun dealer. Now, Congress needs to use its oversight to block the rule and cut back funding from these rogue bureaucrats.

Thankfully, Congressman Andrew Clyde and Senator John Cornyn have introduced Joint Resolutions of Disapproval, H. J. Res. 144 and S. J. Res. 83 respectively, to block the ATF rule and prevent ATF from ever issuing a similar rule.

If your office has not yet cosponsored this bill, it is imperative that you do so as soon as possible. It has already been reported favorably from the House Judiciary Committee. Congress must take a vote on this new ATF rule and protect all Americans as soon as possible.

Gun owners shouldn't have more freedoms just because they pay membership dues to an organization that files lawsuits. Congress must halt this rule from affecting gun owners nationwide.

ⁱ Gun Owners of America and State of Texas v. Bureau of Alcohol, Tobacco, Firearms, and Explosives in the Northern District Court of Texas (Hereafter GOA & Texas v. ATF). Case 2:24-cv-00089-Z. Document 44 Filed 05/19/24.

<https://www.gunowners.org/wp-content/uploads/Partial-TRO-Granted-GOA-GOF-TX-LA-UT-MS-v.-ATF.pdf>.

ⁱⁱ GOA & Texas v. ATF. Case 2:24-cv-00089-Z. Document 70 Filed 06/11/24.

https://foundation.gunowners.org/files/legal/show_temp.pl_0.pdf.

ⁱⁱⁱ GOA & Texas v. ATF. Case 2:24-cv-00089-Z. Document 44 Filed 05/19/24. <https://www.gunowners.org/wp-content/uploads/Partial-TRO-Granted-GOA-GOF-TX-LA-UT-MS-v.-ATF.pdf>. Page 15.

^{iv} *Ibid.* Page 16.

^v *Ibid.* Page 17.

^{vi} *Ibid.* Page 18.