



Thursday, January 25, 2018

VIA FAX (202-648-9741) & FEDERAL eRULEMAKING PORTAL
(<http://www.regulations.gov>)

Vivian Chu
Mailstop 6N-518
Office of Regulatory Affairs
Enforcement Programs and Services
Bureau of Alcohol, Tobacco, Firearms, and Explosives ("BATFE")
99 New York Ave. NE
Washington, D.C. 20226

Docket No.: 2017R-22

Docket ID: ATF-2018-0001

Regarding: Advance notice of proposed rulemaking; request for comments re
"Application of the Definition of Machinegun to Bump Fire Stocks
and Other Similar Devices"

Position: STRONGLY OPPOSED

Dear Ms. Chu:

I write you today on behalf of Firearms Policy Coalition ("FPC")—a grassroots, non-partisan, 501(c)4 public benefit organization—and our law-abiding members and supporters across the United States. The purposes and objectives of FPC are to protect and defend the Constitution of the United States and the People's rights, privileges and immunities deeply rooted in this Nation's history and tradition, especially the inalienable, fundamental, and individual right to keep and bear arms; to protect, defend, and advance the means and methods by which the People of the United States may exercise those rights, including, but not limited to, the acquisition, collection, transportation, exhibition, carry, care, use, and disposition of arms for all lawful purposes, including, but not limited to, self-defense, hunting, and

To: Vivian Chu, Bureau of Alcohol, Tobacco, Firearms, and Explosives
Regarding: Docket 2017R-22 (ANPRM re “Application of the Definition of Machinegun to Bump Fire Stocks and Other Similar Devices”)
Position: STRONGLY OPPOSED
Page: 2 of 6

service in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens; to foster and promote the shooting sports and all lawful uses of arms; and to foster and promote awareness of, and public engagement in, all of the above.

Specifically, we write you to express our concerns about and strong opposition to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (hereinafter “BATFE”, the Bureau)’s advance notice of proposed rulemaking (“ANPRM”) regarding the “Application of the Definition of Machinegun to Bump Fire Stocks and Other Similar Devices” (no. 2017R-22, online at <https://www.federalregister.gov/d/2017-27898>). Some FPC members and supporters currently own, or plan to own, devices that would be subject to the proposed rulemaking. Unless otherwise specified, the following comments are responsive to multiple questions presented in the BATFE’s ANPRM.

This troubling ANPRM raises serious constitutional concerns, including the violation of the separation of powers, abdication or improper delegation of authority, violation of fundamental rights guaranteeing citizens due process, protection against discriminatory and arbitrary enforcement of vague laws, and violation of the Takings Clause—not to mention an affront to the fundamental, individual Second Amendment right to keep and bear arms. Should the Department of Justice (“DOJ”) and BATFE pursue this attempt to unlawfully and unconstitutionally exceed their statutory authority through regulatory efforts like this targeting these non-firearm devices, FPC (and almost certainly many others) will be forced to seek judicial relief.

The DOJ and BATFE clearly lack the statutory authority to re-define the targeted devices as “machineguns.” Indeed, as Mr. John R. Spencer (then-Chief of the BATFE’s Firearms Technology Branch) admitted in his letter dated June 7, 2010, “bump-fire” stocks have “no automatically functioning mechanical parts or springs and performs no automatic mechanical function

To: Vivian Chu, Bureau of Alcohol, Tobacco, Firearms, and Explosives
Regarding: Docket 2017R-22 (ANPRM re “Application of the Definition of Machinegun to Bump Fire Stocks and Other Similar Devices”)
Position: **STRONGLY OPPOSED**
Page: 3 of 6

when installed....Accordingly, we find that the ‘bump-stock’ is a firearm part and is not regulated as a firearm under Gun Control Act or the National Firearms Act.” (See BATFE letter 903050:MMK, 3311/2010-434, available online at <http://bit.ly/atf-re-bumpfire-stock>.) BATFE even expressly concedes in the “Requests for Public Input” of this very ANPRM that: The “[BATFE] does not have the authority to regulate firearm parts and accessories...” (See “SUPPLEMENTARY INFORMATION” subsection III, “Requests for Public Input”, online at <http://bit.ly/batfe-anprm-bumpfire-stocks>.)

The Congress, through its enacted legislation, has specifically defined the term “machinegun” to mean a “weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). (While the term also includes “the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person,” those provisions are not relevant here.) And BATFE has adopted a definition of “machine gun” (at 27 C.F.R. § 478.11) that, appropriately, mirrors the statutory definition.

“Bump fire” stocks and similar subject devices are not “firearms” or “machineguns” under the law. And the regulatory definition cannot be expanded to include such devices without prior authorizing legislation similarly expanding the definition of “machinegun” under the statutes. *Util. Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2445 (2014) (quoting *National Assn. of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 665 (2007) (“An agency has no power to ‘tailor’ legislation to bureaucratic policy goals by rewriting unambiguous statutory terms. Agencies exercise discretion only in the interstices created by statutory silence or ambiguity; they must always ‘give effect to the unambiguously expressed intent of Congress.’”); *Wyeth v.*

To: Vivian Chu, Bureau of Alcohol, Tobacco, Firearms, and Explosives
Regarding: Docket 2017R-22 (ANPRM re “Application of the Definition of Machinegun to Bump Fire Stocks and Other Similar Devices”)
Position: **STRONGLY OPPOSED**
Page: 4 of 6

Levine, 555 U.S. 555, 588 (2009) (conc. opn. of Breyer, J.) (citations omitted)(“[A] federal agency may pre-empt state law only when and if it is acting within the scope of its congressionally delegated authority . . . [for] an agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it.”).

That is the end of the analysis, and this proposed rulemaking (no. 2017R-22) should be abandoned or withdrawn accordingly.

However, we also address some of the questions in the ANPRM. Specifically, as to question 21 (“In your experience, where have you seen these devices for sale and which of these has been the most common outlet from which consumers have purchased these devices (e.g., brick and mortar retail stores; online vendors; gun shows or similar events; or private sales between individuals)?”), we comment as follows:

FPC has knowledge of “bump stock” devices being sold or offered for sale at “brick and mortar” licensed firearm retailers, gun shows, by private sellers, and on the Internet. On information and belief, FPC believes that Internet sales are the primary channel for sales of subject devices.

Regarding question 22 (“Based on your experience or observations, what is (or has been) the price range for these devices?”), we comment as follows:

FPC has knowledge of subject devices having a price range of \$150-350 per device. However, due to recent market conditions (i.e., demand exceeding supply), FPC has seen and received recent reports of subject devices being offered for sale and/or fetching over \$1,000 per device.

To: Vivian Chu, Bureau of Alcohol, Tobacco, Firearms, and Explosives
Regarding: Docket 2017R-22 (ANPRM re “Application of the Definition of Machinegun to Bump Fire Stocks and Other Similar Devices”)
Position: **STRONGLY OPPOSED**
Page: 5 of 6

Regarding question 23 (“For what purposes are the bump stock devices used or advertised?”), we comment as follows:

FPC has knowledge of subject devices being used and advertised for lawful purposes throughout the United States, including self-defense, except where they may be prohibited under state or local laws.

* * *

This proposed rulemaking would provide no public benefit (indeed, the proposed rulemaking articulates none), and yet it would certainly come at great societal and individual costs.

These costs would necessarily include likely millions of dollars in BATFE implementation and enforcement costs, in addition to potentially millions of dollars in fending off the inevitable litigation arising from the serious constitutional and statutory violations engendered by this regulatory process. Moreover, American taxpayers would also likely be stuck with the bill for the plaintiffs’ attorneys fees and costs should the government fail in attempting to defend this illegal and unconstitutional action.

And the extraordinary costs to American fundamental principles – stemming from the illegal aggrandizement of the executive branch by regulatory fiat that would deprive untold citizens of essential constitutional protections – is impossible to completely measure.

But, perhaps as a silver lining, an illegal rulemaking (such as is proposed here) would provide an excellent vehicle for the Supreme Court to revisit and eliminate the made-up judicial construct of agency deference under *Auer*, *Chevron*, and *Encino Motorcars*. See *Auer v. Robbins*, 519 U.S. 452 (1997); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467

To: Vivian Chu, Bureau of Alcohol, Tobacco, Firearms, and Explosives
Regarding: Docket 2017R-22 (ANPRM re “Application of the Definition of Machinegun to Bump Fire Stocks and Other Similar Devices”)
Position: **STRONGLY OPPOSED**
Page: 6 of 6

U.S. 837 (1984); *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117 (2016) (“As in other areas of our jurisprudence concerning administrative agencies, [] we seem to be straying further and further from the Constitution without so much as pausing to ask why. We should stop to consider that document before blithely giving the force of law to any other agency ‘interpretations’ of federal statutes.” *Michigan v. Environmental Protection Agency*, 576 U. S. ____ (2015) (Thomas, J., concurring) (internal citation omitted)).

If the Congress wishes to re-define “machineguns” to include the targeted devices, it may attempt to do so through legislation—but not without incurring political and financial costs. And some members’ cynical efforts to lay these costs at the feet of the BATFE (and law-abiding people) for their own political convenience should be rejected.

For these and other reasons too numerous to list here, we urge the DOJ and BATFE to immediately abandon the proposed rulemaking on “bump fire” stocks and similar devices.

Please do not hesitate to contact us at policy@fpchq.org or 4212 North Freeway Boulevard, Suite 6, Sacramento, California, 95834, if we can be of any further assistance.

Sincerely,



Brandon Combs
President