

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FIREARMS POLICY COALITION, INC.,  
4212 North Freeway Boulevard  
Sacramento, CA 95834,  
*Plaintiff,*

v.

MATTHEW G. WHITAKER, IN HIS  
OFFICIAL CAPACITY,  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530,

U.S. BUREAU OF ALCOHOL,  
TOBACCO, FIREARMS AND  
EXPLOSIVES, AN AGENCY OF THE  
DEPARTMENT OF JUSTICE,  
99 New York Avenue, N.E.  
Washington, DC 20226,

Case No. 18-cv-3083

THOMAS E. BRANDON, IN HIS  
OFFICIAL CAPACITY,  
99 New York Avenue, N.E.  
Washington, DC 20226,

*and*

UNITED STATES OF AMERICA,  
United States Attorney's Office  
555 4th Street, N.W.  
Washington, DC 20530,

*Defendants.*

\* \* \* \* \*

## COMPLAINT

1. Plaintiff Firearms Policy Coalition, Inc. seeks a preliminary injunction under Fed. R. Civ. P. 65(a), a permanent injunction, and declaratory relief under 28 U.S.C. §§ 2201-2202, preventing Matthew G. Whitaker from exercising any authority as Acting Attorney General, and preventing from going into effect a Final Rule, *Bump-Stock-Type Devices*, Docket No. ATF-2017R-22 (Rule) that was issued by Defendants (with a Press Statement by Defendant Matthew G. Whitaker) on Tuesday, December 18, 2018, *available at* <https://bit.ly/2T4wA3I>. As required by law, the Rule was signed by defendant Matthew G. Whitaker in his official capacity as Acting Attorney General. The Rule was published in the Federal Register today, Wednesday, December 26, 2018, and will take effect 90 days from now. *Bump-Stock-Type Devices*, 83 Fed. Reg. 66514 (Dec. 26, 2018) (to be codified at 27 C.F.R. Parts 447, 478, and 479), <http://bit.ly/2ER6BZV>.

2. A preliminary injunction is necessary to prohibit the Rule from taking effect 90 days from now and to prevent Mr. Whitaker from unlawfully exercising authority as Acting Attorney General. Mr. Whitaker's designation as Acting Attorney General violates both the Constitution's Appointments Clause, U.S. Const. art. II, § 2, cl. 2, and the applicable statutes, 28 U.S.C. § 508; 5 U.S.C. §§ 3345 *et seq.* Thus, he was not authorized to sign the Rule, and the Rule cannot go into effect without irreparably harming Plaintiff and its members. Accordingly, the declaratory, injunctive, and other relief requested herein is necessary to prevent the implementation or enforcement of this illegal regulation.

3. Plaintiff brings its causes of action pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 500, *et seq.*, and this Court's equitable jurisdiction to enjoin federal officials from violating federal law, *Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1384 (2015). The Court has authority to issue a declaratory judgment under 28 U.S.C. §§ 2201-2202, and

preliminary and ultimate injunctive relief in its equitable discretion, *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 32 (2008).

### **JURISDICTION**

4. This Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. §§ 702, 704, and 28 U.S.C. § 1331. Venue is appropriate pursuant to 5 U.S.C. § 703 and 28 U.S.C. § 1391.

### **PARTIES**

5. Plaintiff Firearms Policy Coalition, Inc. (FPC) is a 501(c)(4) non-profit organization incorporated under the laws of Delaware. FPC serves its members and the public through direct legislative advocacy, grassroots advocacy, legal efforts, research, education, operation of a Hotline, and other programs. The purposes of FPC include defending the United States Constitution and the People's rights, privileges, and immunities deeply rooted in the Nation's history and tradition, especially the fundamental right to keep and bear arms. On January 25, 2018, FPC submitted comments in response to the Advance Notice of Proposed Rulemaking, concerning the Rule. And on June 19, 2018, FPC submitted comments in response and opposition to the Notice of Proposed Rulemaking concerning the Rule. FPC owns a "bump stock-type device," specifically, a Slide Fire® SSAR-15® SBS Bump Fire stock. FPC represents members and supporters throughout the United States who also own and possess bump-stock-type devices.

6. Defendant U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is the federal government agency responsible for promulgating and enforcing regulations for the Firearms Industry under the statutory provisions of the Gun Control Act and the National Firearms Act on which ATF has relied as the ostensible basis for its authority to issue the Final Rule.

7. Defendant Matthew G. Whitaker is the former Chief of Staff to U.S. Attorney General Jefferson B. Sessions III, a position that does not require Senate confirmation. Among other

things, the Attorney General is responsible for implementation and enforcement of the Rule. Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, 2277 (transferring the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General), <http://bit.ly/2AjB6V3>; *see* 26 U.S.C. §§ 7801(a)(2), 7805; 28 U.S.C. § 599A(c)(1). Mr. Whitaker was unlawfully designated Acting Attorney General on November 8, 2018, and signed the Rule which was entered in the Federal Register today.

### **FACTUAL ALLEGATIONS**

8. On December 26, 2017, ATF published the Advance Notice of Proposed Rulemaking in the Federal Register and on [federalregister.gov](http://federalregister.gov), seeking public input concerning its proposed new treatment of “bump-stock-type” devices under the Final Rule. 82 Fed. Reg. at 60929; <http://bit.ly/2EFyuUk>.

9. In the Advance Notice of Proposed Rulemaking, ATF sought certain information pertaining to bump stocks including, but not limited to: calendar years produced; economic impact of ATF classifying bump stocks as machine guns; use(s) for which the device was marketed; number of bump stocks sold; and purposes bump stocks are used for.

10. On January 25, 2018, FPC submitted comments to the Advance Notice of Proposed Rulemaking opposing the Rule. (Docket No. 2017R-22, Docket ID ATF2018-0001.) 82 Fed. Reg. at 60929.

11. On March 29, 2018, ATF published its Notice of Proposed Rulemaking concerning the Rule in the Federal Register and on [federalregister.gov](http://federalregister.gov). 83 Fed. Reg. at 13442; <http://bit.ly/2PPIQ6d>. Comments were required to be submitted on or before June 27, 2018. Fed. Reg. at 13446.

12. FPC submitted its comment opposing the Rule on June 19, 2018. This comment was posted publicly on Regulations.gov on June 26, 2018. *See* <http://bit.ly/2EIUYom>. In its Comment, FPC documented numerous deficiencies regarding ATF's Notice of Proposed Rulemaking.

13. On December 18, 2018, Mr. Whitaker personally executed the Rule, thereby purportedly making the Rule effective, RIN 1140-AA52, Docket No 2018R-22F.

14. The Rule, executed by Mr. Whitaker, was published and otherwise made available online on December 18, 2018, at <https://www.justice.gov/opa/pr/department-justice-announces-bump-stock-type-devices-final-rule>,<sup>1</sup> and [www.atf.gov/rules-and-regulations/bump-stocks](http://www.atf.gov/rules-and-regulations/bump-stocks),<sup>2</sup> and FPC obtained and reviewed the Rule on that date. On December 21, 2018, a link to the Rule was published on the Federal Register website. *See* <http://bit.ly/2rQdt1N>.

15. The Rule was published in the Federal Register today, Wednesday, December 26, 2018. Bump-Stock-Type Devices, 83 Fed. Reg. 66514 (Dec. 26, 2018) (to be codified at 27 C.F.R. Parts 447, 478, and 479), <http://bit.ly/2ER6BZV>.

16. The Rule, spanning 41 pages, implements changes to 27 C.F.R. §§ 447.11, 478.11, 479.11, almost identical to the proposed changes in the Notice of Proposed Rulemaking.

17. For the reasons set forth in the Motion for Preliminary Injunction, or, in the Alternative, Permanent Injunction and Declaratory Relief and memorandum in support, the designation of Mr. Whitaker as Acting Attorney General violates the Appointments Clause of the Constitution, U.S. Const. art. II, § 2, cl. 2, and is not authorized by the Vacancies Act, 5 U.S.C. § 3345 *et seq.* FPC

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<sup>1</sup> On DOJ's website, it declares: "Today, Acting Attorney General Matthew Whitaker announced that the Department of Justice has amended the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), clarifying that bump stocks fall within the definition of 'machinegun' under federal law, as such devices allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger."

<sup>2</sup> On ATF's website, it specifies: "On December 18, 2018, Acting Attorney General Matthew Whitaker announced that the Department of Justice has amended the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), clarifying that bump stocks fall within the definition of 'machinegun' under federal law, as such devices allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger."

and its members are injured because Mr. Whitaker's designation violates the Appointments Clause, and he took direct action that affects FPC and its members personally.

**CLAIM I: PRELIMINARY INJUNCTION PREVENTING  
THE RULE FROM TAKING EFFECT**

18. Plaintiff realleges and incorporates herein by reference every allegation and paragraph set forth above.

19. For the reasons alleged here and set forth in the memorandum of law accompanying plaintiff's motion, plaintiff is entitled to injunctive relief preventing the Rule from taking effect, if at all, for 90 days after the exhaustion of all appeals in this matter. FPC has established that it is likely to prevail on the merits; "is likely to suffer irreparable harm in the absence of preliminary relief"; and the "balance of equities" and "public interest" overwhelmingly favor enjoining the Rule because it was unlawfully signed by Mr. Whitaker. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

20. For the reasons given in the supporting memorandum, FPC is substantially likely to prevail on the merits: Mr. Whitaker's designation as Acting Attorney General violates both the Constitution's Appointments Clause, U.S. Const. art. II, § 2, cl. 2, and the applicable statutes, 28 U.S.C. § 508; 5 U.S.C. §§ 3345 *et seq.* Thus, he was not authorized to sign the Rule, and the Rule thus violates the APA.

21. FPC has standing to bring this action and to seek injunctive relief. To date, the federal government has not prohibited the possession, transfer, and sale of bump stock devices. The Rule for the first time defines "bump-stock-type devices" as illegal machineguns under federal law. FPC owns such a device and also is a membership organization with members who own such devices. *See* Appendix B to Motion for Preliminary Injunction, or, in the Alternative, Permanent Injunction and Declaratory Judgment (Declaration of Brandon Combs, President of Firearms

Policy Coalition, Inc.). The Rule requires that those devices be destroyed to avoid criminal prosecution.

22. Injunctive relief is warranted. The window prior to the Rule's effective date is the only period in which any owner of a bump stock may dispose of it to avoid prosecution. The Department of Justice has represented: "persons in possession of bump-stock-type devices must divest themselves of the devices before the effective date of the final rule." Department of Justice, *Department of Justice Announces Bump-Stock-Type Devices Final Rule* (Dec. 18, 2018), <https://bit.ly/2EAjkzY>.

23. Injunctive relief is the only means both to protect the interests of FPC and its members from irreparable injury, and also to ensure that the lawfulness of the Rule can be determined in this Court and on appeal before its effective date. Publication is an official act taken in violation of the Appointments Clause. It makes no difference if another official would make the same decision. *See Landry v. FDIC*, 204 F.3d 1125, 1130-32 (D.C. Cir. 2000) (collecting authorities). The violation of FPC's constitutional rights cannot be vindicated by later money damages.

24. Moreover, even the pendency of the Rule effectively eliminates the property right of FPC and its members to transfer or sell their bump-stock devices; no reasonable person would accept or buy a device that it will be a crime to possess.

25. Further, while a court challenge is pending, FPC and its members understandably will be left in a state of great uncertainty regarding whether to take steps to destroy the devices. Any act to do so "must render the device incapable of being readily restored to its intended function." Department of Justice, *Department of Justice Announces Bump-Stock-Type Devices Final Rule* (Dec. 18, 2018), <https://bit.ly/2EAjkzY>. If the courts then ultimately sustain the Rule close to its effective date—or if the rules are invalidated at that time, but reissued in a valid manner without

another delayed effective date—FPC and its members risk being subjected to criminal prosecution because they cannot sufficiently dispose of the devices in time.

26. Injunctive relief is also in the public interest, a fact that even supporters of the Rule should recognize. This Court’s expedited disposition of the Motion for Preliminary Injunction will allow the case to be reviewed through the appeals process without the Rule taking effect. If the Rule is sustained, then it can take effect 90 days after all appeals are exhausted. If the Rule is invalidated, then a properly appointed Acting Attorney General can determine whether to reissue it.

**CLAIM II: PERMANENT INJUNCTION PREVENTING  
THE RULE FROM TAKING EFFECT**

27. Plaintiff realleges and incorporates herein by reference every allegation and paragraph set forth above.

28. For the same reasons as those outlined above, FPC is entitled to a permanent injunction against the Rule. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 32 (2008) (only difference between factors for preliminary and permanent injunction is that for preliminary relief, plaintiff need only show a “likelihood of success,” and for permanent relief, plaintiff must succeed on the merits).

**CLAIM III: INJUNCTION UNDER *ARMSTRONG* AGAINST MATTHEW WHITAKER  
FROM EXERCISING AUTHORITY AS THE ACTING ATTORNEY GENERAL**

29. Plaintiff realleges and incorporates herein by reference every allegation and paragraph set forth above.

30. FPC has standing to bring this action challenging Mr. Whitaker’s authority. Mr. Whitaker executed the Rule, divesting FPC and its members of their right to possess, transfer, and sell bump stock-type devices. FPC owns such a device and also is a membership organization with members who own such devices. Mr. Whitaker thus took a direct action that injures FPC and its members, and FPC has the right to challenge his authority to do so under *Landry v. FDIC*, 204 F.3d 1125,



1130 (D.C. Cir. 2000) (standing to challenge decision of officer exercising authority in violation of Appointments Clause, whether a different, lawful officer would make same decision).

31. The Court has authority to enjoin “violations of federal law by federal officials.” *Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1384 (2015). Thus, the Court should enjoin Mr. Whitaker from exercising authority as the Acting Attorney General.

#### **CLAIM IV: DECLARATORY JUDGMENT**

32. Plaintiff realleges and incorporates herein by reference every allegation and paragraph set forth above.

33. Plaintiff is entitled to a declaration that the Rule is invalid as signed by Mr. Whitaker and that Mr. Whitaker’s designation violates the Constitutional and federal law, such that he is not lawfully the Acting Attorney General. *See* 28 U.S.C. §§ 2201-2202.

#### **REQUEST FOR RELIEF**

For the foregoing reasons, as well as those set forth in the motion and memorandum for injunction and declaratory relief, plaintiff respectfully requests that the Court enter an ORDER that:

- (a) ENJOINS the Rule, Bump-Stock-Type Devices, 83 Fed. Reg. 66514 (Dec. 26, 2018), from going into effect, if at all, for at least 90 days after resolution of this action and all appeals;
- (b) ENJOINS Matthew G. Whitaker from exercising any authority as Acting Attorney General, in this or any other matter;
- (c) DECLARES that the Rule is invalid as signed by Matthew G. Whitaker;
- (d) DECLARES that Matthew G. Whitaker’s designation as the Acting Attorney General violates the Appointments Clause and 28 U.S.C. § 508; and
- (e) DECLARES that Matthew G. Whitaker is not the Acting Attorney General.

Date: December 26, 2018

Respectfully submitted,

By: /s/ Thomas C. Goldstein

Thomas C. Goldstein (Bar No. 458365)  
TGoldstein@goldsteinrussell.com  
GOLDSTEIN & RUSSELL, P.C.  
7475 Wisconsin Avenue  
Suite 850  
Bethesda, MD 20814  
(202) 362-0636

*Attorney for Plaintiff Firearms Policy  
Coalition, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on December 26, 2018, I caused a copy of the foregoing and all attachments filed thereto to be deposited with a third-party commercial carrier for overnight delivery, postage prepaid, addressed to the following defendants:

MATTHEW G. WHITAKER  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES  
99 New York Avenue, N.E.  
Washington, DC 20226

THOMAS E. BRANDON  
U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives  
99 New York Avenue, N.E.  
Washington, DC 20226

UNITED STATES OF AMERICA  
United States Attorney's Office  
555 4th Street, N.W.  
Washington, DC 20530

/s/ Thomas C. Goldstein  
Thomas C. Goldstein

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

<p><b>I. (a) PLAINTIFFS</b> FIREARMS POLICY COALITION, INC.</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Thomas C. Goldstein, Goldstein &amp; Russell, P.C., 7475 Wisconsin Ave., Suite 850, Bethesda, MD 20814 (202) 362-0636</p>	<p><b>DEFENDANTS</b> MATTHEW G. WHITAKER, in his official capacity; BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES; THOMAS E. BRANDON, in his official capacity; UNITED STATES OF AMERICA</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p><small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p> <p>ATTORNEYS (IF KNOWN) Cesar A. Lopez-Morales, U.S. Dep't of Justice, 1100 L St., NW, Washington, DC 20530 (202) 305-8550; and Hashim M. Mooppan, U.S. Dep't of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530 (202) 307-5906</p>																								
<p><b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant</p> <p><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b></p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<p><input type="radio"/> <b>A. Antitrust</b></p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> <b>B. Personal Injury/Malpractice</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input type="radio"/> <b>C. Administrative Agency Review</b></p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security</u></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input checked="" type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b></p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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**E. General Civil (Other)** OR  **F. Pro Se General Civil**

<p><u>Real Property</u></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><u>Bankruptcy</u></p> <p><input type="checkbox"/> 422 Appeal 27 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u></p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Conditions</p> <p><input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement</p> <p><u>Property Rights</u></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent – Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p>	<p><u>Federal Tax Suits</u></p> <p><input type="checkbox"/> 870 Taxes (US plaintiff or defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p> <p><u>Forfeiture/Penalty</u></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks &amp; Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p>	<p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p> <p><input type="checkbox"/> 470 Racketeer Influenced &amp; Corrupt Organization</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>
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<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge  
  8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 5 U.S.C. §§ 702, 704; 28 U.S.C. §§ 2201-2202; implied equitable claim under 135 S. Ct. 1378 (2015).

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form

DATE: <u>Dec. 26, 2018</u>	SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Thomas C. Goldstein</u>
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

FIREARMS POLICY COALITION, INC.

Plaintiff(s)

v.

MATTHEW G. WHITAKER, et al.

Defendant(s)

Civil Action No. 18-cv-3083

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MATTHEW G. WHITAKER
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

THOMAS C. GOLDSTEIN
Goldstein & Russell, P.C.
7475 Wisconsin Avenue, Suite 850
Bethesda, MD 20814

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

FIREARMS POLICY COALITION, INC.

Plaintiff(s)

v.

MATTHEW G. WHITAKER, et al.

Defendant(s)

Civil Action No. 18-cv-3083

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) U.S. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
99 New York Avenue, N.E.
Washington, DC 20226

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

THOMAS C. GOLDSTEIN
Goldstein & Russell, P.C.
7475 Wisconsin Avenue, Suite 850
Bethesda, MD 20814

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

FIREARMS POLICY COALITION, INC.

Plaintiff(s)

v.

MATTHEW G. WHITAKER, et al.

Defendant(s)

Civil Action No. 18-cv-3083

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) THOMAS E. BRANDON
U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, N.E.
Washington, DC 20226

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: THOMAS C. GOLDSTEIN
Goldstein & Russell, P.C.
7475 Wisconsin Avenue, Suite 850
Bethesda, MD 20814

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk



AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

FIREARMS POLICY COALITION, INC.

Plaintiff(s)

v.

MATTHEW G. WHITAKER, et al.

Defendant(s)

Civil Action No. 18-cv-3083

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) UNITED STATES OF AMERICA
United States Attorney's Office
555 4th Street, N.W.
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: THOMAS C. GOLDSTEIN
Goldstein & Russell, P.C.
7475 Wisconsin Avenue, Suite 850
Bethesda, MD 20814

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk