

RESOLUTION CALLING FOR THE SUBMISSION TO THE HOUSE OF REPRESENTATIVES OF CERTAIN INFORMATION REGARDING THE DECISION OF THE PRESIDENT OF THE UNITED STATES TO INSTITUTE THE “GHOST GUN” RULE

DECEMBER 13, 2022.—Referred to the House Calendar and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
 submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H. Res. 1478]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 1478) calling for the submission to the House of Representatives of certain information regarding the decision of the President of the United States to institute the “Ghost Gun” Rule, having considered the same, reports unfavorably thereon with an amendment and recommends that the resolution not be agreed to.

The amendments are as follows:

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Strike all after the resolving clause and insert the following:

That President Biden is requested to furnish to the House of Representatives not later than 14 days after the adoption of this resolution, in a complete and unredacted form, a copy of any documents, records, reports, memos, correspondence, or other communication either generated or received by the office of President Biden

that refers to, or relates to the decision of, or the reasoning used by, President Biden to institute ATF final rule 2021R-05F, entitled “Definition of ‘Frame or Receiver’ and Identification of Firearms”, published at 87 Fed. Reg. 24652 (April 26, 2022), also known as the “Ghost Gun” Rule.

Amend the preamble to read as follows:

Calling for the submission to the House of Representatives of certain information regarding the decision of President Biden to institute the “Ghost Gun” Rule.

Purpose and Summary

H. Res. 1478 is a non-binding resolution of inquiry that requests President Biden provide to the House of Representatives documents relating to the decision of the President to institute Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) final rule 2021R-05F, entitled “Definition of ‘Frame or Receiver’ and Identification of Firearms,” known as the “Ghost Gun” Rule, published at 87 Fed. Reg. 24652 (April 26, 2022). Representative Andrew Clyde (R-GA) introduced the resolution on November 16, 2022. It currently has no co-sponsors.

Background and Need for the Legislation

I. BACKGROUND ON RESOLUTIONS OF INQUIRY

Under the rules and precedents of the House, a resolution of inquiry is used to obtain information from the executive branch. A resolution of inquiry is directed to the President of the United States or the head of a Cabinet-level agency, requesting facts within the control of the executive branch.¹ As a “simple resolution,” designated by “H. Res.,” a resolution of inquiry does not carry the force of law. “Compliance by the executive branch with the House’s request is voluntary, resting largely on a sense of comity between co-equal branches of government and a recognition of the necessity for Congress to be well-informed as it legislates.”²

House Rules afford resolutions of inquiry a privileged parliamentary status. A Member files a resolution of inquiry like any other legislation. The resolution is then referred to the proper committee of jurisdiction and the committee may: (1) report the resolution either favorably or unfavorably; or (2) choose not to report the resolution. If the committee does not report the resolution to the House within 14 legislative days of its introduction, however, a motion to discharge the resolution from committee can be made on the House floor.³

II. NEED FOR THE LEGISLATION

This resolution requests that President Biden furnish to the House of Representatives, not later than 14 days after the adoption of the resolution, in a complete and unredacted form, a copy of any documents, records, reports, memos, correspondence, or other communication either generated or received by the office of President Biden that refers to, or relates to the decision of, or the reasoning used by President Biden to institute ATF final rule 2021R-05F, entitled “Definition of ‘Frame or Receiver’ and Identification of Fire-

¹ Christopher M. Davis, *Resolutions of Inquiry: An Analysis of Their Use in the House, 1947-2011*, CONG. RES. SERV. R40879 (May 15, 2012).

² *Id.* at 2.

³ House rule XIII, clause 7.

arms”, published at 87 Fed. Reg. 24652 (April 26, 2022), also known as the “Ghost Gun” Rule.

Ghost guns are firearms constructed with component parts that can be obtained anonymously, without a background check, and which lack serial numbers. Most ghost guns are assembled from parts or “kits.” These kits, available at in-person stores and online, contain all the parts needed to assemble a firearm, including unfinished receivers, tools, and step-by-step instructions. The kits are widely available and can be purchased by anyone, including prohibited purchasers, dangerous extremists, domestic abusers, and gun traffickers—without a background check. Since ghost guns are devoid of serial numbers and other identifying marks, they are not traceable by law enforcement, making them the perfect weapon for would-be criminals. They have even made their way onto school campuses.

Ghost guns have been linked nationwide to homicides, suicides, mass shootings, robberies, shooting deaths of law enforcement officers, and domestic violence. From January 2016 through December 2021, the ATF received reports of more than 45,000 ghost guns recovered from crime scenes, including nearly 700 from homicide investigations. Without the ability to trace these guns, some crimes go unsolved and the people who committed them may harm our communities again. These firearms are the fastest-growing gun safety problem facing communities across the country.

Ghost guns were completely unregulated until May 2021, when the ATF announced that it would seek to update firearms regulations to address the proliferation of ghost guns. On April 11, 2022, Attorney General Merrick Garland signed the final rule. The rule mandates serialization and background checks for certain gun kits and requires the serialization of some existing ghost guns.

Ranking Member Jim Jordan (R-OH) sent a letter to the ATF on November 3, 2022, just over a month ago, seeking various information from the ATF. In part, this letter follows up on a letter sent by Representative Andy Biggs (R-AZ) in August 2021—well over a year ago—which requested information about the ATF’s proposed ghost gun rule after it was announced, but well before it was finalized. Ranking Member Jordan’s recent letter acknowledges that the ATF responded to the 2021 letter, but now states—sixteen months after that first inquiry—that the response was insufficient. The November 3, 2022 letter notes that Ranking Member Jordan intends to follow-up in the 118th Congress.

Given Ranking Member Jordan’s recent contact with the ATF about this issue, after his colleague’s earlier request for information sixteen months ago and timely response, the ATF should be given time to respond to his revived inquiry, and indeed they have already committed to providing a response. If they do not respond, Ranking Member Jordan can follow up in the 118th Congress. In light of these facts, the resolution is unnecessary and therefore the Committee reported the resolution without recommendation.

Hearings

The Committee on the Judiciary held no hearings on H. Res. 1478.

Committee Consideration

On December 7, 2022, the Committee met in open session and ordered the resolution, H. Res. 1478, reported without recommendation with an amendment in the nature of a substitute, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, there were no rollcall votes on the resolution.

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portions of this report.

Committee Estimate of Budgetary Effects

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

New Budget Authority and Tax Expenditures

Neither clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, nor clause (3)(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, are applicable because this legislation does not provide new budgetary authority or incur costs.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H. Res. 1478 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H. Res. 1478 requests President Biden furnish to the House of Representatives documents relating to the decision of, or the reasoning used by President Biden to institute ATF final rule 2021R-05F, entitled “Definition of ‘Frame or Receiver’ and Identification of Firearms”, published at 87 Fed. Reg. 24652 (April 26, 2022), also known as the “Ghost Gun” Rule.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H. Res. 1478 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the resolution as reported by the Committee.

H. Res. 1478, a non-binding resolution of inquiry, requests President Biden furnish to the House of Representatives, no later than 14 days after the adoption of the resolution, complete and unredacted copies of any documents, records, reports, memos, correspondence, or other communication either generated or received by the office of President Biden that refers to, or relates to the decision of, or the reasoning used by President Biden to institute ATF final rule 2021R-05F, entitled “Definition of ‘Frame or Receiver’ and Identification of Firearms”, published at 87 Fed. Reg. 24652 (April 26, 2022), also known as the “Ghost Gun” Rule.

Minority Views

H. Res. 1478 requests the President to provide the House of Representatives with documents generated or received by the President that refer to or relate to the Bureau of Alcohol, Tobacco, Firearms, and Explosives’s (ATF) final rule 2021R-05F, entitled “Definition of ‘Frame or Receiver’ and Identification of Firearms”.

On May 21, 2021, ATF published a notice in the *Federal Register* for this rule.¹ On August 24, 2022, the Department of Justice announced that the rule went into effect.² The Department stated that “the new rule modernizes the definition of a firearm and makes clear that parts kits that are readily convertible to functional weapons, or function as ‘frames’ or ‘receivers’ of weapons, are subject to the same regulations as traditional firearms.”³ The rule expanded the definitions of several terms associated with firearms because the current regulations allegedly failed to capture the full meaning of those terms. The rule also imposed additional marking and record-keeping requirements necessary to implement the new definitions.⁴

ATF’s rule goes well beyond the authority granted to the agency in any applicable federal statutes. The rule expands the definition of “frame or receiver” to include any part of a firearm that can house even one mechanism of the firing process.⁵ ATF concedes that its “new definition would more broadly define the term ‘frame or receiver’ than the current definition.”⁶ Moreover, the rule expands the definition of a firearm beyond the intent of Congress. The rule expands the definition of a firearm to include “a *weapon parts kit* that is designed to or may readily be *assembled, completed, converted, or restored.*”⁷ However, the Gun Control Act of 1968 (GCA) clearly defines a “firearm” in statute as:

(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a pro-

¹ Alcohol, Tobacco, Firearms, and Explosives Bureau, Definition of “Frame or Receiver” and Identification of Firearms, 86 Fed. Reg. 27,720 (May 21, 2021).

² Press Release, U.S. Dep’t of Justice, Frame and Receiver Rule Goes into Effect, <https://www.justice.gov/opa/pr/frame-and-receiver-rule-goes-effect> (Aug. 24, 2022).

³ *Id.*

⁴ Definition of “Frame or Receiver” and Identification of Firearms, *supra* note 1 at 27,727.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 27,741 (emphasis added).

jectile by the action of an explosive; (B) the frame or receiver of any such weapon. . . .⁸

When passing the GCA, Congress did not include a “weapon parts kit[s]” and ATF took it upon itself to include *assembled* and *completed* in the rule where Congress explicitly left those actions out of the governing statute. In fact, ATF unilaterally inserted a new definition using language from the Federal Firearms Act (FFA) of 1938,⁹ which Congress affirmatively repealed when passing the GCA in 1968.¹⁰ ATF has resurrected the FFA’s language through its new regulatory definition of “the frame or receiver” so that a single weapon might be comprised of multiple “frames” and “receivers.”¹¹ Any of these “parts” in ATF’s interpretation would be considered a firearm so long as the Director decreed any “specific part or parts of a weapon is the frame or receiver.”¹² By doing so, ATF disregards its controlling statutory language in the GCA and ignores Congress’s clear legislative intent in repealing the FFA.

Moreover, ATF’s rule creates a new definition to regulate privately made firearms without any statutory authorization from Congress to do so. ATF erroneously asserts that the GCA “required all firearms to be serialized,”¹³ and that to do so, ATF must require federal firearms licensees to serialize and record any privately made firearms they come across. This new mandate will greatly expand the statutory requirement that only “manufacturers” and “importers” must mark guns they manufacture or import.¹⁴ To enforce the serialization requirement, ATF seeks to create a new federal crime of obliterating the serial number on a privately made firearm and to establish a new category of “dealer-gunsmith” who must serialize and record privately made firearms.¹⁵

ATF’s rule also requires federal firearm licensees (FFLs) to retain firearm transaction records in perpetuity or until they go out of business. The GCA requires FFLs to maintain certain records and authorizes the ATF to inspect these FFL records for the purpose of tracing firearms used in crimes.¹⁶ The ATF’s new requirement is a stark turn from existing regulations, which allow FFLs to destroy firearm transaction records after 20 years.¹⁷ Firearms trace data published on ATF’s website show that the average time to crime is 7.01 years from the point of purchasing a firearm.¹⁸ This data seems to undermine any justification for the ATF’s rule requiring firearm records be kept in perpetuity.

On August 10, 2021, Committee Republicans wrote to then-ATF Acting Director Marvin Richardson concerning ATF’s proposed rule

⁸ 18 U.S.C. § 921(a)(3).

⁹ Pub. L. 75–785.

¹⁰ Pub. L. 90–618.

¹¹ Definition of “Frame or Receiver” and Identification of Firearms, *supra* note 1 at 27,722.

¹² Definition of “Frame or Receiver” and Identification of Firearms, *supra* note 1 at 27,743.

¹³ See 18 U.S.C. § 923(i); 27 C.F.R. § 478.92(a)(1).

¹⁴ Definition of “Frame or Receiver” and Identification of Firearms, *supra* note 1 at 27,732.

¹⁵ Definition of “Frame or Receiver” and Identification of Firearms, *supra* note 1 at 27,731–32. (ATF claims in the body of the proposed regulation that “this proposed provision is necessary to allow ATF to trace all firearms. . . .”)

¹⁶ 18 U.S.C. § 923(g)(1)(B).

¹⁷ 27 C.F.R. § 478.129.

¹⁸ Alcohol, Tobacco, Firearms, and Explosives Bureau, Firearms Trace Data, Time-to-Crime-Firearms Recovered and Traced in the United States and Territories, <https://www.atf.gov/resource-center/firearms-trace-data-2020> (last visited Dec. 3, 2022).

to expand definitions of several terms associated with firearms.¹⁹ On September 1, 2021, ATF responded with a half-page letter, but the agency did not produce any of the requested documents or information. Committee Republicans sent follow-up letters on November 3, 2022, and on November 28, 2022, reiterating the outstanding requests and reminding ATF that the Committee may be forced to resort to compulsory process to obtain the requested materials if they are not produced in a timely manner. Committee Republicans will continue to press the Biden Administration for answers about this rulemaking.

JIM JORDAN,
Ranking Member.

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¹⁹Letter from Andy Biggs et al, to Marvin Richardson, Acting Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (Aug. 10, 2021).