

PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES RELATING TO “FACTORING CRITERIA FOR FIREARMS WITH ATTACHED ‘STABILIZING BRACES’”

MAY 17, 2023.—Committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.J. Res. 44]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 44) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives relating to “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces’”, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

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### Purpose and Summary

H.J. Res. 44, introduced by Rep. Andrew Clyde (R-GA), would nullify a final rule of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) titled, “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces,’” and would prevent the ATF from issuing a substantially similar rule in the future.

### Background and Need for the Legislation

On January 31, 2023, the ATF issued a final rule titled, “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces,’” that effectively bans pistol stabilizing braces nationwide.<sup>1</sup> The final rule upsets longstanding reliance interests of law-abiding gun owners without the political accountability or public debate that would ordinarily accompany such a policy change if it were to be imposed by Congress. The final rule provides that pistols equipped with stabilizing braces meet the definition of a firearm under the National Firearms Act, and that “[a]ny weapons with ‘stabilizing braces’ or similar attachments that constitute rifles under the [National Firearms Act] must be registered.”<sup>2</sup> Under the final rule, millions of gun owners will have to remove their stabilizing braces from their pistols so that they cannot be reattached, install longer gun barrels, register their firearms as short-barreled rifles, turn their firearms over to the ATF, or destroy their braced firearms—or face felony charges.<sup>3</sup>

A pistol brace or stabilizing brace “is an accessory that attaches to the rear of [a] gun,” which helps to stabilize it while firing and allows the gun to be used with one hand.<sup>4</sup> Pistol braces were invented by Alex Bosco, a U.S. Marine Corps and Army veteran, to help a friend and disabled combat veteran to better control and safely fire his gun at the shooting range.<sup>5</sup> In November 2012, the ATF advised SB Tactical—Bosco’s company—that its stabilizing brace did not convert a pistol into a short-barreled rifle.<sup>6</sup> In a similar letter dated March 5, 2014, in response to an inquiry from the Greenwood, Colorado, County Police Department, the ATF explained that “certain firearm accessories such as the SIG Stability Brace have not been classified by ATF Firearms Technology Branch as shoulder stocks, and, therefore, using the brace improperly does not constitute a design change.”<sup>7</sup> In the letter, the ATF also stated that “using such an accessory would not change the classification of the weapon per Federal law.”<sup>8</sup> Because a pistol that was operated using a stabilizing brace would remain classified as a pistol, it would not be subject to the registration and taxation

<sup>1</sup> Factoring Criteria for Firearms With Attached “Stabilizing Braces,” 88 Fed. Reg. 6478 (Jan. 31, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Jacki Billings, *Pistol Braces & The ATF: What You Need to Know*, PEW PEW TACTICAL (Feb. 1, 2023), <https://www.pewpewtactical.com/pistol-braces-and-the-atf/>.

<sup>5</sup> See *The Company*, SB TACTICAL, <https://www.sb-tactical.com/about/company/>.

<sup>6</sup> *Id.*

<sup>7</sup> Letter from Earl Griffith, Chief, Firearms Technology Branch, Bureau of Alcohol, Tobacco, Firearms, and Explosives, to Sergeant Joe Bradley (Mar. 5, 2014), available at <https://www.guntrustlawyer.com/files/2015/02/sb15.pdf>.

<sup>8</sup> *Id.*

requirements applicable to short-barreled rifles under the National Firearms Act.<sup>9</sup>

Acting in reliance upon the ATF’s guidance for nearly a decade, Americans have legally purchased and used an estimated ten million to forty million pistol braces.<sup>10</sup> However, in December 2020, the ATF published guidance addressing whether “firearms with an attached stabilizing brace . . . are considered firearms under the National Firearms Act.”<sup>11</sup> The ATF withdrew this guidance less than two weeks later in the wake of heavy criticism.<sup>12</sup> In June 2021, the Biden ATF issued a proposed rule that included a scorecard for use in determining when pistols with attached stabilizing braces might be deemed to be short-barreled rifles subject to the registration and taxation requirements of the National Firearms Act.<sup>13</sup> The ATF’s proposed rule sustained heavy criticism, including from Republicans on the Judiciary Committee.<sup>14</sup> The ATF finalized this rule in January 2023.

The ATF’s actions illustrate the dangers of an unchecked administrative state that is willing to make policy—policy that will convert lawful gun owners into felons if they do not comply—even when it is not authorized to do so by Congress. The pistol brace rule exceeds the ATF’s statutory authority. Congress has neither criminalized the use of pistol braces under the Gun Control Act nor authorized their regulation under the National Firearms Act.<sup>15</sup> The ATF, in this rule, attempts to do both. The rule contradicts years of ATF guidance, upsetting the long-standing reliance interests of gun owners and manufacturers alike.<sup>16</sup>

In addition to going beyond ATF’s statutory authority, the pistol brace rule will have a detrimental impact on the firearms industry. The ATF itself has estimated the costs of complying with its rule to be between \$242.4 million and \$263.6 million per year.<sup>17</sup> An independent analysis of the financial harm to the firearms industry from a pistol brace ban projected losses to exceed \$1 billion.<sup>18</sup> Millions of law-abiding Americans will have to cease using their guns, comply with onerous registration requirements, or risk felony charges.<sup>19</sup> Disabled persons, including the disabled veterans for whom the pistol brace originally was created, will lose the benefit

<sup>9</sup> See 26 U.S.C. §§ 5811(a) (imposing a \$200 transfer tax on firearms), 5841 (requiring registration of firearms), 5845 (defining “firearm”).

<sup>10</sup> William J. Krouse, IF11763, CONG. RESEARCH SERV., HANDGUNS, STABILIZING BRACES, AND RELATED COMPONENTS 2 (Apr. 19, 2021).

<sup>11</sup> Objective Factors for Classifying Weapons with “Stabilizing Braces,” 85 Fed. Reg. 82,516, 82,516 (Dec. 18, 2020).

<sup>12</sup> Objective Factors for Classifying Weapons With “Stabilizing Braces”; Withdrawal of Guidance, 85 Fed. Reg. 86,948, 86,948 (Dec. 31, 2020).

<sup>13</sup> Factoring Criteria for Firearms With Attached “Stabilizing Braces,” 86 Fed. Reg. 30,826 (June 10, 2021).

<sup>14</sup> Letter from Rep. Jim Jordan, Ranking Member, H. Comm. on the Judiciary et al. to Marvin Richardson, Acting Director, ATF (July 16, 2021), <https://judiciary.house.gov/sites/evo-subsites/rep-publicans-judiciary.house.gov/files/2021-07/2021-07-16-HJC-GOP-to-ATF-re-Pistol-Brace-Notice31.pdf>.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.*; cf. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).

<sup>17</sup> See 88 Fed. Reg. at 6573.

<sup>18</sup> See Jeremy S., *ATF Pistol Brace Crackdown Would Destroy—Is Destroying—Thousands of Jobs and Billions of Dollars*, THE TRUTH ABOUT GUNS (Dec. 20, 2020), <https://www.thetruthaboutguns.com/atf-pistol-brace-crackdown-would-destroy-thousands-of-jobs-and-billions-of-dollars/>.

<sup>19</sup> Gun Owners of America, *supra* note 2.

of this useful tool, and potentially their ability to safely operate certain firearms entirely.<sup>20</sup>

### Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearings were used to develop H.J. Res. 44: “Reining in the Administrative State: Reclaiming Congress’s Legislative Power” a hearing held on March 10, 2023, before the House Judiciary Committee, Subcommittee on the Administrative State, Regulatory Reform, and Antitrust. The Subcommittee heard testimony from the following witnesses:

- Allyson N. Ho, Partner and Co-Chair of Appellate and Constitutional Law, Gibson, Dunn & Crutcher LLP;
- Jonathan Wolfson, Chief Legal Officer and Policy Director, Cicero Institute;
- Ryan Cleckner Co-Founder, Gun University LLC and Owner, Law Office of Ryan M. Cleckner; and
- Emily Hammond, Professor, The George Washington University Law School.

This hearing focused on the ways in which the modern administrative state has usurped Congress’s lawmaking authority. Ryan Cleckner, one of the Republican witnesses and an attorney specializing in federal firearms law and ATF compliance, discussed the ATF’s overreach with respect to rulemaking in the context of the stabilizing brace rule. He pointed out that the ATF previously approved of this pistol brace and the agency’s shifting position on this matter left citizens confused about what is lawful.

The Judiciary Committee also held a hearing titled “ATF’s Assault on the Second Amendment: When Is Enough?” a hearing held on March 23, 2023, before the House Committee on Oversight and Accountability, Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs, and the House Committee on the Judiciary, Subcommittee on Crime and Federal Government Surveillance. The Committee heard testimony from the following witnesses:

- Amy Swearer, Senior Legal Fellow, the Heritage Foundation;
- Alex Bosco, Founder and Inventor of the Stabilizing Brace;
- Matthew Larosiere, Partner, Zermay Larosiere; and
- Rob Wilcox, Federal Legal Director, Everytown for Gun Safety.

The hearing addressed how President Biden’s ATF has abused its rulemaking authority by regulating pistol stabilizing braces attached to stabilizing braces as short-barreled rifles under the National Firearms Act of 1934 and by wrongfully redefining privately made firearm kits—derisively known as so called “ghost guns”—as traditional firearms. Additionally, the hearing addressed President Biden’s June 2021 directive to the Justice Department to adopt a zero-tolerance policy to revoke federal firearms licenses from those who committed “willful” violations of the law.<sup>21</sup> Alex Bosco, founder

<sup>20</sup> *The Company*, *supra* note 4.

<sup>21</sup> Press Release, The White House, Biden-Harris Administration Announces Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety (Jun. 23, 2021), *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/factsheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/>.

of the SB Tactical Pistol Brace, testified about the process of the getting approval for the pistol brace from the Obama ATF in 2012, and the devastating financial impact the final rule has had on his company, including his employees.<sup>22</sup> Experts at the hearing also pointed out that both the pistol brace rule and the frame and receiver rule will not stop criminals from accessing firearms, but will only serve to criminalize innocent civilians.<sup>23</sup>

The Judiciary Committee also held a hearing titled “Oversight of the Bureau of Alcohol, Tobacco, Firearms, and Explosives” on April 26, 2023. The Committee heard testimony from the following witnesses:

- The Honorable Steve Dettelbach, Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

The hearing allowed members to ask Director Dettelbach about the agency’s efforts to regulate pistol stabilizing braces and PMFs through the rulemaking process. Additionally, members were able to ask Director Dettelbach about the ATF’s “zero tolerance” policy towards FFLs.

### **Committee Consideration**

On April 19, 2023, the Committee met in open session and ordered the bill, H.J. Res. 44, favorably reported, by a vote of 23 to 15, a quorum being present.

### **Committee Votes**

In compliance with clause 3(b) of House rule XIII, the following roll call votes occurred during the Committee’s consideration of H.J. Res. 44:

1. Vote on Favorably Reporting H.J. Res. 44, passed 23–15.

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<sup>22</sup> *ATF’s Assault on the Second Amendment: When Is Enough?: Joint Hearing Before the H. Comm. on Oversight and Accountability, Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs, and the House Committee on the Judiciary, Subcommittee on Crime and Federal Government Surveillance*, 118th Con. 24–25 (2023) (statement by Alex Bosco).

<sup>23</sup> *Id.* at 158–159 (statement by Amy Swearer).

COMMITTEE ON THE JUDICIARY  
 118<sup>th</sup> CONGRESS  
 25-19  
 ROLL CALL

Date: 4/19/23

Vote on: *Reporting H.J. Res. 44 favorably to the House* Roll Call #: 22

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>	✓			MR. NADLER (NY) <i>Ranking Member</i>			✓
MR. ISSA (CA)	✓			MS. LOFGREN (CA)			✓
MR. BUCK (CO)				MS. JACKSON LEE (TX)			✓
MR. GAETZ (FL)	✓			MR. COHEN (TN)			
MR. JOHNSON (LA)	✓			MR. JOHNSON (GA)			✓
MR. BIGGS (AZ)	✓			MR. SCHIFF (CA)			✓
MR. McCLINTOCK (CA)	✓			MR. CICILLINE (RI)			✓
MR. TIFFANY (WI)	✓			MR. SWALWELL (CA)			✓
MR. MASSIE (KY)	✓			MR. LIEU (CA)			✓
MR. ROY (TX)	✓			MS. JAYAPAL (WA)			✓
MR. BISHOP (NC)	✓			MR. CORREA (CA)			✓
MS. SPARTZ (IN)	✓			MS. SCANLON (PA)			✓
MR. FITZGERALD (WI)	✓			MR. NEGUSE (CO)			✓
MR. BENTZ (OR)	✓			MS. McBATH (GA)			✓
MR. CLINE (VA)	✓			MS. DEAN (PA)			
MR. GOODEN (TX)				MS. ESCOBAR (TX)			✓
MR. VAN DREW (NJ)	✓			MS. ROSS (NC)			
MR. NEHLS (TX)	✓			MS. BUSH (MO)			
MR. MOORE (AL)	✓			MR. IVEY (MD)			✓
MR. KILEY (CA)	✓						
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)	✓						
MS. LEE (FL)	✓						
MR. HUNT (TX)	✓						
MR. FRY (SC)	✓						

Roll Call Totals: ~~X~~ Ayes: 23 Nays: 15 Present: \_\_\_\_\_  
 Passed: \_\_\_\_\_ Failed: \_\_\_\_\_

### **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 rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

### **New Budget Authority and Tax Expenditures**

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the *Congressional Record* upon its receipt by the Committee.

### **Congressional Budget Office Cost Estimate**

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

### **Committee Estimate of Budgetary Effects**

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, 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*.

### **Duplication of Federal Programs**

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.J. Res. 44 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.J. Res. 44 would nullify a final rule of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) titled, "Factoring Criteria for Firearms with Attached 'Stabilizing Braces,'" and would prevent the ATF from issuing a substantially similar rule in the future.

### **Advisory on Earmarks**

In accordance with clause 9 of House rule XXI, H.J. Res. 44 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

### **Federal Mandates Statement**

An estimate of federal mandates prepared by the Director of the Congressional Budget office pursuant to section 423 of the *Unfunded Mandates Reform Act* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

### **Advisory Committee Statement**

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

### **Applicability to Legislative Branch**

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104–1).

### **Section-by-Section Analysis**

*Title:* Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives relating to “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces.’”

*Resolving Clause:* This joint resolution nullifies the ATF’s “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces’” and would prevent the ATF from issuing a substantially similar rule in the future.

### **Dissenting Views**

On March 27, 2023, six people—including three children—were killed in a mass shooting at a school in Nashville. It was the 19th school shooting just this year. The Majority had originally scheduled a markup of this legislation—a bill to allow continued, unfettered access to stabilizing braces—for the following day. When it was reported that the shooter in Nashville used a stabilizing brace—like the mass shooters in Dayton, Boulder, and Colorado Springs—the Majority postponed the markup, only to put it back on the calendar a few weeks later.

It is no coincidence that three recent mass shootings have involved stabilizing braces. These braces can be attached to a pistol, allowing it to be fired from the shoulder, transforming it into a concealable yet deadly short-barreled rifle. In 1934, Congress passed the National Firearms Act (NFA), creating additional requirements to own certain especially dangerous firearms, like short-barreled rifles, which were widely used by violent criminals. Congress included short-barreled rifles because they combine the firepower of

a rifle with the conceal ability of a smaller gun. In recent years, the gun industry has marketed stabilizing braces as a way to circumvent the NFA—a way to create a short-barreled rifle without having to go through any of the procedures it requires to prevent especially dangerous firearms from falling into the wrong hands. Following the intent of Congress in 1934, and exercising its valid rulemaking authority, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) sought to close this loophole and prevent circumvention of the NFA by issuing guidance, and later, this rule to regulate firearms with stabilizing braces.

Under ATF’s rule, would-be mass shooters will have a harder time obtaining a short-barreled rifle since they will no longer be able to get one by simply attaching a stabilizing brace to a pistol without satisfying the requirements of the NFA. At the same time, law-abiding owners of stabilizing braces attached to firearms with a barrel under 16 inches have many options for complying with the rule, such as replacing the short barrel with a longer one, removing the brace, registering the firearm as set forth by the NFA (and the \$200 fee normally required for NFA weapons is waived if they register by May 31, 2023), or forfeiting or destroying the firearm.

Though the Majority has repeatedly stated that this resolution is about protecting individuals with disabilities who they claim need these braces, the facts are not on their side. A firearm with a stabilizing brace that is designed, made, and intended to be fired from the forearm—as the brace was originally designed, and as might be helpful for certain people with disabilities—is not subject to the NFA as a result of the rule. This rule only affects stabilizing braces that are “designed, made, and intended to be fired from the shoulder” when they are attached to a firearm with a barrel less than 16 inches because this creates a short-barreled rifle. Thousands of firearms and accessories on the market are not subject to the NFA and can be used by people with disabilities. If this regulation was a real problem for the disabled community, those organizations would be backing the Majority on this resolution—but none have endorsed it.

For these reasons and those explained below, I urge my colleagues to oppose this resolution.

#### I. BACKGROUND

H.J. Res. 44 is a one-sentence resolution, introduced on March 17, 2023, by Rep. Andrew S. Clyde (R-GA), along with 188 Republican cosponsors. The resolution provides that Congress disapproves of the rule submitted by the ATF relating to “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces’” (ATF final rule 2021R-08F), and that such rule shall have no force or effect.

On January 31, 2023, ATF published final rule 2021R-08F, “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces.’” ATF’s stabilizing brace rule is intended to close a loophole by which people can use a stabilizing brace—which its inventor claims is primarily meant to be used by people with disabilities—to convert a pistol into a short-barreled rifle and evade the stringent restrictions placed on short-barreled rifles under the NFA. Once again, with this bill, which would declare the rule to have no force or effect, the Republicans continue to prioritize guns over public safety.

The device that Republicans want gun owners to continue having nearly unfettered access to was used in four mass shootings since 2019 alone.

## II. CONCERNS

### A. *This resolution undermines ATF's valid use of its rulemaking authority*

ATF, which has existed in some form since 1886 (initially as part of the Department of the Treasury), was established as a separate component within the Department of Justice pursuant to Title XI of the Homeland Security Act of 2002.<sup>1</sup> As it relates to firearms, ATF protects the public from crimes involving firearms, particularly violent crime and the illegal use and trafficking of firearms; regulates lawful commerce in firearms; and provides worldwide support to law enforcement, public safety, and industry partners. For the purposes of this resolution, the major functions of ATF are to:

- Reduce the risk to public safety caused by illegal firearms trafficking.
- Reduce the risk to public safety caused by criminal possession and use of firearms.
- Reduce the risk to public safety caused by criminal organizations and gangs.
- Improve public safety by increasing compliance with federal laws and regulations by firearms industry members.

ATF's regulatory strategy is vital to achieving its core mission of protecting the public from violent crime. The agency has sole federal regulatory authority over federal firearms licensees (FFLs) authorized to engage in the business of manufacturing, importing, or selling firearms in the U.S. It conducts licensing qualification investigations on those who seek to engage in the business of firearm manufacturing and dealing; issues FFLs; and administers and, through the inspection process, enforces regulations applicable to FFLs, including recordkeeping requirements for the acquisition and disposition of each firearm. ATF's inspection of firearms licensees is focused not only on ensuring regulatory compliance, but also identifying criminals who illegally purchase firearms and detecting diversion from lawful commerce by those who supply guns to criminals through straw purchases.

Historically, the gun industry has attempted to evade national gun laws through the creation of supplemental and unregulated devices to augment firing capabilities. Such devices can turn a regular sporting firearm into one that is as deadly as a military grade weapon. ATF has issued several regulations to ban some of these devices (such as bump stocks) or to subject them to the regulatory requirements of the NFA.

Pursuant to statutory authority granted by Congress, ATF, like other federal agencies, has the power to issue rules to implement and clarify statutory terms and requirements within its jurisdiction—including the interpretation of terms within the NFA.<sup>2</sup> Rules, which are regulations created through a process known as rule-making, generally explain how an agency intends to carry out a

<sup>1</sup>Public Law 107–296 (January 17, 2003).

<sup>2</sup>See 5 U.S.C. §§ 551–559 (the Administrative Procedure Act).

law. Proposed rules drafted by ATF are not—contrary to Republican claims—unilateral decisions made by a lone wolf actor at ATF, with no oversight. Proposed rules are reviewed by the Office of Information and Regulatory Affairs (OIRA) of the Office and Management and Budget (OMB), before a notice of proposed rule-making is published in the Federal Register, pursuant to the Administrative Procedure Act (APA). After a public comment period of at least 30 days, ATF reviews the comments and the final rule. If the final rule is approved by OIRA, it is published in the Federal Register and implemented on its effective date. These agency rules are executive branch actions that are subject to alteration or rescission by a future Administration (in compliance with the APA).

In recent years, ATF has exercised its authority under the APA to interpret the NFA (and the Gun Control Act of 1968) to regulate devices, including bump stocks and ghost guns, designed to evade its regulatory scheme.<sup>3</sup> Republicans have consistently opposed ATF’s actions and have even called for its defunding and abolishment. In January 2023, Rep. Matt Gaetz (R–FL) introduced H.R. 374, the Abolish the ATF Act.

While the Majority has repeatedly asserted that ATF has gone beyond its authority in promulgating the stabilizing brace rule, they have not identified any way in which the ATF failed to adhere to the APA or exceeded the authority given to it by Congress.

*B. This resolution undermines the intent of Congress to regulate short-barreled rifles under the National Firearms Act*

Short-barreled rifles have been subject to regulation under the NFA codified at 26 U.S.C. § 5801, et seq., since the NFA was enacted in 1934. Under the NFA, short-barreled rifles must be registered and are subject to a \$200 tax stamp, an enhanced background check, and the submission of fingerprints, as they are considered more dangerous than other firearms.<sup>4</sup> The NFA defines a “rifle” as “a weapon *designed or redesigned, made or remade, and intended to be fired from the shoulder* and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire affixed cartridge.”<sup>5</sup> A short-barreled rifle is defined as a rifle with a barrel of less than 16 inches in length, or a weapon made from a rifle if the weapon has an overall length of under 26 inches.<sup>6</sup>

Short-barreled rifles are effectively portable assault weapons that are easily concealable and maneuverable. An individual purchasing a pistol or handgun, however, is not subject to the NFA’s height-

<sup>3</sup>See *Bump Stock-Type Devices* (Final Rule), 83 Fed. Reg. 66,514–01, <https://www.federalregister.gov/documents/2022/04/26/2022-08026/definition-of-frame-or-receiver-and-identification-of-firearms>; see also *Definition of “Frame or Receiver” and Identification of Firearms*, 87 Fed. Reg. 24652, <https://www.federalregister.gov/documents/2022/04/26/2022-08026/definition-of-frame-or-receiver-and-identification-of-firearms>. Both of these rules are subject to ongoing litigation.

<sup>4</sup>88 Fed. Reg. 6478, 6482 <https://www.federalregister.gov/documents/2023/01/31/2023-01001/factoring-criteria-for-firearms-with-attached-stabilizing-braces> (“Final Rule”).

<sup>5</sup>18 U.S.C. § 5845(c) (Emphasis added).

<sup>6</sup>18 U.S.C. § 921(a)(8).

ened regulations.<sup>7</sup> An AR-style pistol is almost identical in design and functionality to an AR-style short-barreled rifle, but it does not include a stock to press against the shooter’s shoulder. Until recently, ATF has classified AR-style pistols as handguns because of their lack of a shoulder stock and their ability to be fired with one hand, thereby not requiring owners to comply with heightened ATF regulations.

A pistol stabilizing brace (sometimes referred to as an “arm brace”) is a firearm attachment that is often used to convert large-format “pistols,” including AR–15 and AK–47 pistols, into short-barreled rifles (SBRs). Some stabilizing braces allow large-format pistols to be stabilized and fired from the shoulder, like a rifle. Stabilizing braces also can be used to strap a gun to the user’s forearm, allowing a shooter to fire a weapon one-handed.

Large-format pistols like AR–15 and AK47 pistols, which fire rifle-caliber ammunition, are more powerful and lethal than traditional handguns or pistols, and with a stabilizing brace attached as a shoulder stock, they are more accurate and easier to use. They are also easier to maneuver in tight spaces (such as in the Club Q mass shooting in Colorado Springs), and they are more concealable than full-length rifles, making them more dangerous and deadly outside a sport shooting application.

Although Republicans claim that stabilizing braces do not make pistols more dangerous because they do not increase the capacity of a pistol’s magazine, or the velocity with which a bullet travels through the barrel, it is beyond dispute that stabilizing braces increase the shooting accuracy of the large-format pistols with which they are used, as they make it easier for the shooter to control the now-stabilized weapon. This means that when fired from the shoulder, pistols with stabilizing braces combine the high-caliber firepower of a rifle with the concealability and maneuverability of a pistol—a particularly lethal combination in criminal hands. Approximately 3–7 million stabilizing braces are currently in circulation in the United States.<sup>8</sup>

Large-format pistols equipped with stabilizing braces have been used in a recent series of high-profile mass shootings. In Dayton, Ohio in 2019, a shooter used an Anderson Manufacturing AR–15 pistol equipped with a Shockwave Technologies stabilizing brace to kill nine people and injure 17 others. In 2021 in Boulder, Colorado, a shooter used a Ruger 556 pistol with an SB Tactical SBA3 stabilizing brace to kill 10 people, including a police officer, in a King Soopers market. An SB Tactical stabilizing brace was also used by the shooter who killed 5 people and injured 19 others at Club Q in Colorado Springs in November 2022. On March 27, 2023—on the day before the Committee initially planned to mark up this resolution—a shooter used an AR-style pistol equipped with a stabilizing brace in the shooting that killed 3 children and 3 adults in a school in Nashville, Tennessee. At the eleventh hour, the Majority decided to postpone the markup in the wake of the Nashville shooting.

On January 31, 2023, ATF published final rule 2021R–08F, “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces,’”

<sup>7</sup> *Comment Letter on the Notice of Proposed Rulemaking on Factoring Criteria for Firearms with Attached “Stabilizing Braces” (Docket ID ATF–2021–0002–0001)*, Every town for Gun Safety (Sept. 8, 2021), <https://www.regulations.gov/comment/ATF-2021-0002-201512>.

<sup>8</sup> *Id.*

clarifying that the phrase “designed, redesigned, made or remade, and intended to be fired from the shoulder” under the NFA includes a weapon that is equipped with an accessory, component, or other rearward attachment (e.g., a “stabilizing brace”) that provides surface area that allows the weapon to be fired from the shoulder, provided that other factors, as listed in the definition, indicated that the weapon is designed, made, and intended to be fired from the shoulder.<sup>9</sup> The rule sets forth six “other factors” which indicate that a weapon is designed, made, or intended to be fired from the shoulder, including whether the weapon is equipped with sights or an eye scope that require the weapon to be fired from the shoulder in order to be used as designed.<sup>10</sup> A manufacturer’s direct and indirect marketing and promotional materials indicating the intended use of the weapon, as well as information demonstrating the likely use of the weapon in the general community, are also considered.<sup>11</sup>

This rule went into effect on January 31, 2023, the date it was published in the Federal Register. Any weapons with stabilizing braces or similar attachments that meet the definition of a “rifle” under the NFA must be registered no later than May 31, 2023. The rule provides five options for compliance for owners of brace-equipped firearms that would fall within the purview of the rule: (1) remove the short barrel (under 16 inches in length) from the firearm and replace it with a barrel that is 16 inches or longer; (2) register the firearm with ATF (like any other short-barreled rifle);<sup>12</sup> (3) remove the stabilizing brace from the firearm so that it cannot be reattached; (4) turn in the brace-equipped firearm to the ATF; or (5) destroy the firearm. Moreover, a brace that is not designed, made, or intended to be fired from the shoulder is not a “rifle” as defined in the NFA and therefore is not subject to NFA controls.<sup>13</sup>

*C. In pursuing this resolution, the Majority has inaccurately portrayed ATF’s prior actions relating to stabilizing braces, the gun industry’s misrepresentation of the ATF’s rulings in pursuit of profits from these devices, and Republican efforts to intimidate the Trump ATF when it issued guidance on stabilizing braces*

The first stabilizing brace was submitted to ATF for evaluation by SB Tactical in 2012. The brace was developed by Alex Bosco, the inventor of the brace and founder of SB Tactical, who claims that he developed the brace after he witnessed a range officer tell a disabled veteran that he was not carefully firing his weapon.<sup>14</sup> ATF concluded that the initial model was not subject to NFA controls as a rifle, finding that, based on the information Bosco provided, the particular brace “provided the shooter with additional support

<sup>9</sup> Final Rule, *supra*.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> The Rule provides a 120-day amnesty period waiving the usual \$200 tax stamp required for registration.

<sup>13</sup> Final Rule at 6480.

<sup>14</sup> Statement of Alex Bosco before the Committee on Oversight and Accountability, Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs, and Committee on the Judiciary, Subcommittee on Crime and Federal Government Surveillance, March 23, 2023, <http://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/bosco-congressional-statement-final.pdf>.

of a firearm while it is still held and operated with one hand,” and that “it was not designed or intended to fire a weapon from the shoulder”.<sup>15</sup> The original brace design that SB Tactical submitted to ATF never made it to the market. However, over the next several years, SB Tactical manufactured additional, different models of stabilizing braces, and other companies began manufacturing the braces as well.

In the years that followed, many gun manufacturers, retailers, and firearms advocates recognized that stabilizing braces could be used as shoulder stocks to allow a shooter to fire a pistol as a rifle (with two hands) and consistently exploited this functionality to allow firearms owners to turn pistols into short-barreled rifles while avoiding the NFA requirements. SB Tactical posted an article on its website in December 2014 in which it stated, “It’s no secret that Bosco’s brace can also be used as a shoulder stock by people with two good arms. With Bosco’s brace, all Americans are able to modify an AR-15-style pistol into what’s effectively [a short-barreled rifle]—without additional ATF infringement on their gun rights.”<sup>16</sup>

ATF continued to evaluate different brace models, resulting in what it now recognizes were “inconsistent classifications” of certain firearms and inconsistent advice regarding how the use of a stabilizing brace affected its classification.<sup>17</sup> ATF has since acknowledged that this was because they were dealing with a new and emerging technology, with designs changing all the time.

But as the ATF saw, gun manufacturers continued to advertise stabilizing braces for use as shoulder stocks, with increasing frequency. The images below are from SB Tactical’s marketing materials in 2016:<sup>18</sup>



<sup>15</sup> Final Rule at 6479.

<sup>16</sup> *Id.* at 6503.

<sup>17</sup> *Id.* at 6484 n. 26; 6555.

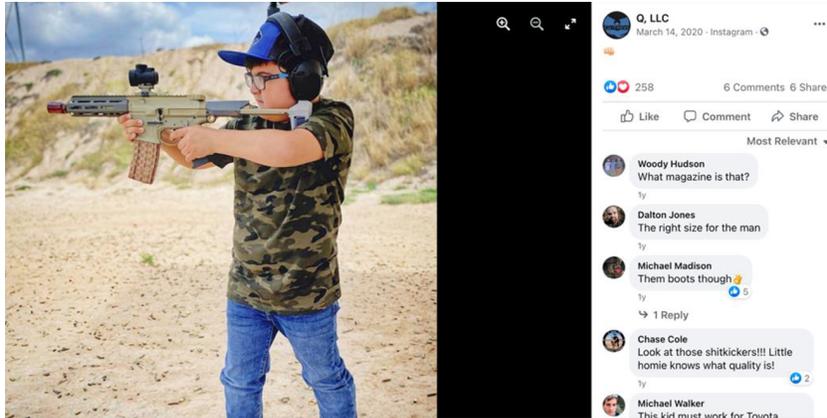
<sup>18</sup> Final Rule at 6504–05.

Mr. Bosco himself acknowledged in 2017 that “many who bought braces . . . did so to avoid NFA registration.”<sup>19</sup>

By July 2018, ATF had observed that SB Tactical had been marketing many of its brace models as “ATF compliant,” with the false statement that “The Bureau of Alcohol, Tobacco, Firearms, and Explosives” has stated that the SB Tactical™ Pistol Stabilizing Brace is “legal to own, legal to purchase and legal to install on a pistol.”<sup>20</sup> ATF also noted that many of the other models sold by SB Tactical, which ATF had not evaluated, were being advertised as based on shoulder stock designs.<sup>21</sup> Because SB Tactical had submitted only 2 of its approximately 20 brace models to ATF for classification, and those were the only two models that ATF had concluded were not designed or intended to be used as shouldering devices, ATF sent a cease-and-desist letter to SB Tactical on July 18, 2018, demanding that SB Tactical cease false advertisement of products as “ATF-approved.”<sup>22</sup>

The manufacture, marketing, and use of stabilizing braces as shoulder stocks designed to circumvent NFA controls on rifles continued unabated. In addition to promotional materials from manufacturers, users posted countless videos and social media posts in which they used different models of stabilizing braces to convert pistols into rifles, firing them from the shoulder.

The images below, which show shooters firing from the shoulder, were posted on social media in 2020 by two different gun manufacturers:<sup>23</sup>



<sup>19</sup>The Firearm Blog, *TFB Innovators Friday: Alessandro Bosc—CEO SB Tactical* (Nov. 10, 2017), <https://www.thefirearmblog.com/blog/2017/11/10/bosco-ceo-sb-tactical/>.

<sup>20</sup>*Id.* at 6492.

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*

<sup>23</sup>*Comment Letter on the Notice of Proposed Rulemaking on Factoring Criteria for Firearms with Attached “Stabilizing Braces”* (Docket ID ATF-2021-0002-0001), Everytown for Gun Safety (Sept. 8, 2021), <https://www.regulations.gov/comment/ATF-2021-0002-201512>.



In March 2020, during the Trump administration, SB Tactical submitted a firearm equipped with brace model SBA3 to ATF for classification. ATF determined that it was subject to the NFA as a short-barreled rifle, because “all of the objective design features are consistent with weapons designed to be fired from the shoulder.”<sup>24</sup> ATF examined a firearm with a different model SB Tactical brace and reached the opposite conclusion.

By late 2020, still during the Trump administration, ATF concluded that there was a need to provide clarity to the firearms industry and the American public on how ATF evaluates firearms equipped with stabilizing braces, and that manufacturers were adding to the confusion by falsely labeling braces as “ATF compliant” when ATF had not evaluated them. ATF determined that for these reasons, and due to the extensive use of these firearms to create short-barreled rifles without following NFA requirements, it was necessary to issue public guidance. On December 18, 2020, ATF published a notice in the Federal Register entitled “Objective Factors for Classifying Weapons with Stabilizing Braces,” with factors similar to those in the Final Rule at issue in this markup.<sup>25</sup>

Four days later, on December 22, 2020, 90 Republican members of the House of Representatives wrote a letter to ATF complaining that the proposed guidance would “take away a disabled veteran’s ability to enjoy his constitutionally protected right,” and that “the ATF seems committed to attacking the constitutionally protected rights of all law-abiding citizens.”<sup>26</sup> On December 23, 2020, at the direction of Acting Attorney General Jeffrey Rosen, ATF issued a notice of intent to withdraw the public guidance, and the withdrawal was published on December 30, 2020.<sup>27</sup> Just three months later, a shooter in Boulder, Colorado used a Ruger AR 556 pistol equipped with an SB Tactical SBA3 stabilizing brace to kill 10 people, including a police officer, in a supermarket.

On June 10, 2021, ATF published the proposed rule that formed the basis for the January 2023 Final Rule. Although Republicans have claimed that the Final Rule was an abrupt change in policy and a politically motivated ploy by the Biden administration, ATF

<sup>24</sup> Final Rule at 6493.

<sup>25</sup> 85 Fed. Reg. 52516.

<sup>26</sup> December 22, 2020 letter, [https://arrington.house.gov/UploadedFiles/ARRINGTON\\_ATF.pdf](https://arrington.house.gov/UploadedFiles/ARRINGTON_ATF.pdf)

<sup>27</sup> 85 Fed. Reg. 86948.

was simply continuing the work that began under the Trump administration when it sought to crack down on those who were using stabilizing braces as short-barreled rifles to evade the NFA, sometimes by their own admission.

### III. CONCLUSION

Gun violence continues to kill more than 100 Americans every day. In bringing forth this resolution, the Majority seeks to undo the lawful work of the ATF while putting lives at risk by pumping more guns and gun accessories on the street without commonsense public safety protections. Stabilizing braces were used to kill 9 people in a mass shooting outside a bar in Dayton, Ohio in 2019; 10 people in a mass shooting at the King Soopers grocery store in Boulder, CO in 2021; 5 people in an LGBTQ nightclub in Colorado Springs, CO in 2022; and 6 people in a mass shooting at a school in Nashville, TN this year. The Majority's resolution seeks to allow continued unfettered access to short-barreled rifles made with stabilizing braces, without any commonsense safety protections, even though Congress identified short-barreled rifles as especially dangerous almost 90 years ago when it passed the NFA. In promulgating the stabilizing brace rule, ATF simply closed a loophole created by the gun industry to subvert the will of Congress to strictly regulate short-barreled rifles. Invalidating that rule nullifies this important work. For these reasons, I oppose this resolution.

JERROLD NADLER,  
*Ranking Member.*

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