

June 7, 2023

The Honorable Kevin McCarthy
Speaker of the House

The Honorable Chuck Schumer
Majority Leader of the Senate

The Honorable Mitch McConnell
Minority Leader of the Senate

The Honorable Hakeem Jeffries
Minority Leader of the House

The Honorable Steve Scalise
Majority Leader of the House

Dear Speaker McCarthy, Leaders Schumer and McConnell, and Leaders Jeffries and Scalise:

We, the undersigned veteran and military serving organizations, endorse immediate passage of House Joint Resolution 44 (H. J. Res. 44) and Senate Joint Resolution 20 (S. J. Res. 20). Congress must execute its oversight powers under the *Congressional Review Act* to rein in this unconstitutional and discriminatory overreach of Executive Branch powers by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to wrongfully limit the use of “pistol braces,” and should follow up such Resolutions with more permanent legislation to reclaim this unconstitutional delegation of legislative powers by Congress to the Executive Branch and limit the ability of Executive Branch to engage in such Administrative assumption of Congress’ enumerated legislative powers.

ATF is exercising extreme Executive Branch powers overreach in unilaterally declaring pistol braces as the equivalent of short-barreled rifles. They are not. Instead, pistol braces are compensatory accommodation devices for disabled U.S. citizens to exercise their fundamental natural “right to keep and bear arms” safely and securely by stabilizing the use of a handgun where they would not otherwise have full use of both hands.

The inventor of the first stabilizing brace for pistols was Alex Bosco of SB Tactical, who designed and intended his device to accommodate a friend and wounded veteran. Bosco testified to the House Judiciary and Oversight and Accountability Committees:

One day at the range, an over-eager range officer told one of my range buddies, a wounded veteran, that he was not carefully firing his weapon. The range officer said that because (in his opinion) my friend was firing erratically, he had to bench his pistol from the seated position. Because of the wounds my friend had received in service of his country, the range officer’s suggestion made me angry, first because I did not agree that my friend was shooting in a dangerous manner, and second, because I thought it unconscionable that he or anyone like him should be denied the opportunity to safely use a firearm due to wounds received in service of the United States. This experience led to the invention of the pistol stabilizing brace.¹

The first pistol brace design was approved by ATF in 2012, and so SB Tactical began marketing them to other disabled veterans.² In the years following, millions of stabilizing brace-equipped pistols were sold legally across the country. That interpretive guidance stood for almost 10 years and was first made when now President Biden was Vice President of the United States. But then, with less than four months of legal sanctuary for the millions of disabled firearm owners who relied on that decade of regulatory precedent, The ATF implemented its draconian, unnecessary, poorly developed, and unconstitutional gun-

¹ Bosco, Alex, 2023. “[Statement of Alex Bosco Hearing on ‘ATF’s Assault on the Second Amendment: When is Enough Enough?’](#)”. House Committee on the Judiciary and Committee on Oversight and Accountability. March 23rd, 2023. 3. <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/bosco-congressional-statement>.

² *Ibid.* 8.

grab making millions of these law-abiding citizens, including hundreds of thousands of military service veterans disabled in the service of their country to defend exactly these rights, criminals as of May 31st, 2023.

Now is the time for Congress to act to preserve these fundamental rights and stop this unconstitutional assumption of legislative powers by the Executive Branch. Because, despite that incredibly short legal grace period, if a disabled veteran brings such a pistol brace to a legally operating gun range as of June 1st, 2023, and is acting in a legal manner in all other respects, they are subject to arrest by the ATF, a criminal fine of \$250,000, and incarceration in federal prison for 10 years—all because they wished to more safely and securely exercise their inalienable rights to keep and bear arms.³

And while ATF lamely claims there are adequate safeguards for “legitimate” use of pistol braces, those safeguards contained in ATF’s Final Rule ATF 2021R-08F, are wholly inadequate and barely conceal ATF’s apparent underlying desire simply to outlaw pistol braces without so blatantly doing so. In fact, those “accommodations” only apply if a veteran has not turned their pistol over to the ATF, registered their firearm with the federal government, destroyed their lawfully acquired pistol, or rebuilt their firearm such that it is no longer handicap accessible.⁴

Instead of complying with this rule, many gun owners and organizations opted to fight for the right to have these handicap-accessible firearms. Now, veterans who did not comply with ATF’s rule and who are current members of the organization who sued the federal government in *State of Texas and Gun Owners of America v. Garland*, *Mock v. Garland*, *SAF v. ATF*, or *Britto v. ATF* are protected from this Rule because four federal courts ruled that these plaintiffs are likely to succeed in their lawsuits and have enjoined the ATF from punishing the plaintiffs for not rebuilding, registering, destroying, or turning in their pistols.

Still, other veterans who have sued the federal government in different lawsuits have not been granted an injunction yet. Rick Cicero, who “lost two limbs while serving his country in Afghanistan” and “cannot fire certain pistols without a stabilizing brace” has yet to receive a ruling from the Eighth Circuit as to whether he is protected from the Biden Administration’s new rule.⁵ No one should *have* to join an organization or file a lawsuit to have their firearm ownership rights protected from a federal overreach, and so therefore now is the time for Congress to act to restore these protections to all Americans.

Indeed ATF’s actions disproportionately impact disabled veterans, as 27 percent of those veterans, and 41 percent of post-9/11 veterans, suffer under at least one service-connected disability.⁶ And with almost half of the country’s 19 million veterans owning firearms⁷ (as compared to 30 percent gun ownership by the general population),⁸ the ATF’s action disproportionately and discriminatorily impacts disabled veterans, which ATF did not adequately investigate nor consider in its Final Rule. Fortunately, Congress has the power to reclaim its Constitutionally enumerated legislative powers from this Executive Branch overreach.

³ Bureau of Alcohol, Tobacco, Firearms, and Explosives. [What are the consequences if I choose not to register my firearm with a “stabilizing brace,” which is a short-barreled rifle \(SBR\), and keep it?](#), Accessed March 23, 2023.

⁴ Bureau of Alcohol, Tobacco, Firearms, and Explosives. [Affected Parties and their Options Under the Stabilizing Brace Final Rule.](#) <https://www.atf.gov/rules-and-regulations/docs/undefined/stabilizingbracefinalrule-sec508-v2pdf/download>, accessed March 23, 2023.

⁵ *Firearms Regulatory Accountability Coalition, Inc. v. Garland*, 1:23-cv-00003, (D.N.D.), <https://www.courtlistener.com/docket/66700926/firearms-regulatory-accountability-coalition-inc-v-garland/>, accessed 5 June 2023.

⁶ Bureau of Labor Statistics. [“Employment Situation of Veterans - 2022”](#). *U.S. Department of Labor*. March 21, 2023, p. 1, <https://www.bls.gov/news.release/pdf/vet.pdf>.

⁷ Cleveland, Emily C., et al, “Firearm ownership among American veterans: findings from the 2015 National Firearm Survey,” *Injury Epidemiology* 4, vol. 33 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5735043/pdf/40621_2017_Article_130.pdf.

⁸ Van Green, Ted, “Wide Differences on Most Gun Policies Between Gun Owners and Non-Owners, but Also Some Agreement,” Pew Research Center: Washington, DC. <https://www.pewresearch.org/short-reads/2021/08/04/wide-differences-on-most-gun-policies-between-gun-owners-and-non-owners-but-also-some-agreement/>.

And while such proscriptive restriction of ATF is supported by the federal courts, those courts do not have sufficient power to prevent Executive Branch overreach. Yes, the Supreme Court did decide in *District of Columbia v. Heller* the individual right to have a pistol at home.⁹ And, a Seventh Circuit Court affirmed that banning pistols equipped with stabilizing braces violates the Constitutional protections against undue restrictions of that individual right to keep and bear arms because:

braces are needed by certain individuals with disabilities to operate a firearm. Thus, arm braces are an integral part of the meaningful exercise of Second Amendment rights for such individuals and can also be considered an “arm.”...[because i]t is uncontroverted that law-abiding members of society, including the elderly, infirmed, and disabled, have the constitutional right to arm themselves for self-defense.¹⁰

But those Court decisions are insufficient to protect these gun rights for disabled veterans because they still allow ATF to exercise arbitrary and capricious Executive Branch power to define the specifics of a crime (which is clearly a Legislative power), prosecute it on their own recognizance based upon those non-legislatively defined crimes, and then, effectively adjudicate what constitutes a deprivation of fundamental liberties and property without due process by a judicial court. Only Congress can restrain this unconstitutional Executive Branch power grab, and that is why the immediate passage of *Congressional Review Act* resolutions to strike down these impertinent actions is needed.

We stand ready to assist you in its House and Senate passage and to engage the Biden Administration as to why this is not the time to veto a resolution which so clearly protects disabled veterans’ rights. You may contact Bob Carey of National Defense Committee at Director@NationalDefenseCommittee.com.

Very Respectfully,

National Defense Committee
The Ranger Leadership and Policy Center
Arizona Veterans
US Army Ranger Association
Naval Enlisted Reserve Association
Worldwide Army Rangers
Sea Service Family, Foundation
The 75th Ranger Regiment Association
The Gallant Few
American GI Forum
Three Rangers Foundation

⁹ *District of Columbia v. Heller*, 554 U.S. 570 (2008). <https://supreme.justia.com/cases/federal/us/554/570/>.

¹⁰ *Federal Firearms Licensees of Illinois et al. v. Pritzker et al.*, S.D. Ill. (2023). 19-20, 27. <https://law.justia.com/cases/federal/district-courts/illinois/ilsdce/3:2023cv00215/94470/42/>.