

COUNTERING ARGUMENTS MADE AGAINST THE ATF'S STABILIZING BRACE RULE

The bolded arguments below are paraphrases of arguments/statements made against the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) [Rule 2021R-08F](#) during the House Judiciary Committee markup of [H.J. Res. 44](#) on April 19, 2023 and the House Judiciary Committee Hearing "Oversight of the Bureau of Alcohol, Tobacco, Firearms and Explosives" on April 26, 2023.

"Requiring pistol braces to be registered will not prevent violence. In fact, the pistol braces used in the four shootings were lawfully purchased."

- The "stabilizing brace" rule would improve public safety by ensuring that weapons that should be regulated under the National Firearms Act (NFA), because of their dangerousness, are regulated under the NFA. Firearms equipped with stabilizing braces, which are concealable and able to fire with rifle-like accuracy and firepower, have indeed been used in a number of recent shootings after being purchased lawfully (including the Covenant School in Nashville, TN, Club Q in Colorado Springs, CO, a grocery store in Boulder, CO, and the Oregon District in Dayton, OH), suggesting the ease with which someone can lawfully purchase these dangerous, deadly weapons.
- For nearly 90 years, the [National Firearms Act](#) (NFA) regulatory system has worked: NFA weapons are rarely used in crime. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reports that there were only 12 felony convictions between 2006 and 2014 among lawful NFA weapon owners, and none of those crimes involved the weapon itself. From 2007 to 2017, ATF [recommended only 44 prosecutions per year](#), on average, for crimes involving silencers, which are also regulated under the NFA.
- The "stabilizing brace" rule would appropriately classify firearms with a barrel under 16 inches with attached stabilizing braces that fire with rifle-like accuracy and firepower under the NFA. The NFA was enacted in 1934 to regulate, among other things, short-barreled rifles and shotguns which were deemed to be particularly dangerous to public safety due to their concealability and ability to fire rifle-rounds, a response to the crime-ridden 1930s when citizens and law enforcement were being gunned down at record rates. The NFA imposes an excise tax and registration requirement to possess NFA weapons, requiring that applicants must pass a thorough background check, provide fingerprints and a passport photo, and register their NFA weapon with the ATF. Because of the NFA's transfer tax and registration requirements, firearms regulated under the NFA are [rarely used in crime](#).

“ATF has provided no guidance for the handful of states that prohibit the possession of short-barreled rifles. When the pistol brace rule goes into effect, citizens of these states will no longer be able to own their pistol brace.”

- The rulemaking process itself constituted guidance for the states and other members of the public. As ATF has explained in detail during the rulemaking process, a gun constitutes a short-barreled rifle if it falls within both the [length parameters](#) and definition of the term “rifle” in the NFA. The [law considers a gun to be a “rifle”](#) if it is a gun “designed or redesigned, made or remade, and intended to be fired from the shoulder.”¹ Many high-powered guns with lengths beneath the threshold and attached stabilizing braces are designed or redesigned to be fired from the shoulder. Therefore, under the NFA’s definition of the term “rifle,” these guns constitute short-barreled rifles, even if the industry commonly refers to them as pistols. Consequently, the “stabilizing brace” rule is necessary to properly identify short-barreled rifles and implement the NFA’s requirements, most notably its requirement that short-barreled rifles be registered with ATF.
- As many states have independently chosen to prohibit possession of short-barreled rifles, states may independently determine whether they will prohibit possession of certain firearms equipped with stabilizing braces. States may also independently determine how their citizens should comply with any state decision to prohibit possession of these firearms. Whether a state prohibits certain firearms equipped with stabilizing braces and how a state implements their prohibition is outside the scope of ATF’s role to enforce federal gun laws, so long as states implement the federal regulation.

“Instead of focusing on pistols equipped with braces, this pistol brace rule requires registration of a brace.”

- The “stabilizing brace” rule regulates *firearms* equipped with a stabilizing brace, which may be subject to NFA registration if it is a short-barreled rifle. A firearm equipped with a stabilizing brace is a short-barreled rifle if it is “designed or redesigned, made or remade, and intended to be fired from the shoulder.” An individual in possession of a short-barreled rifle, as defined by the rule, must take the required steps to register their weapon under the NFA, destroy or otherwise dispose of the weapon, attach a longer barrel to the firearm, or remove the brace so that the firearm is no longer an NFA firearm. The rule does not regulate the brace, as the brace is an accessory and ATF does not regulate accessories.

¹26 U.S.C. § 5845(c).

“Disabled veterans use pistol braces as a mental health tool. [Taking them away] will contribute to an increased suicide risk.”

- Although some pistol braces are the result of legitimate efforts to support people with disabilities and do not fall under the NFA, the ATF’s rule specifically regulates the types of pistol braces that, when used with certain firearms, represent an attempt to design around the NFA’s regulations for short-barreled rifles. Because of the danger short-barreled rifles represent, the gun industry should not be able to market and sell these weapons designed to avoid the NFA.
- ATF has explained that the “rule does not affect “stabilizing braces” that are objectively designed and intended as a “stabilizing brace” for use by individuals with disabilities, and not for shouldering the weapon as a rifle. Such stabilizing braces are designed to conform to the arm and not as a buttstock.”

“The pistol brace rule will make 40 million Americans felons on June 1, 2023.”

- ATF has provided law-abiding owners of stabilizing braces attached to firearms with a barrel under 16 inches many options to comply with the rule, including: 1) replacing the short barrel with a barrel 16 inches or longer, 2) permanently removing the brace, 3) registering the firearm as set forth by the National Firearms Act with the \$200 fee normally required for NFA weapons waived if registration occurs before May 31, 2023, 4) forfeiting the firearm, or 5) destroying the firearm.
- ATF has taken steps to ensure the American public is aware of the rule and their options for compliance. ATF has provided through its website a [plain English description of the rule](#), detailed [questions and answers](#) regarding stabilizing braces, [detailed instructions for affected parties](#) on their options for complying with the rule, access to a [PowerPoint](#) on the new rule, detailed [step-by-step instructions](#) for registering an NFA weapon, and guidance (with pictures) on [commercially available firearms](#) equipped with a stabilizing brace and [common weapon platforms](#) with attached stabilizing brace designs that are short-barreled rifles. ATF has taken steps to ensure Americans in possession of stabilizing braces are in compliance by the deadline.
- Congress can also help ensure their constituents comply with the rule by funding ATF so that ATF can effectively and efficiently implement the NFA’s requirements and sharing the resources ATF provides with their constituents.

“ATF is acting outside of its authority to declare lawful products as no longer lawful or classify them under an enhanced regulatory scheme.”

- Short-barreled rifles have been regulated under the National Firearms Act for decades due to the danger they present to the public. The NFA does not make products unlawful—it just requires them to be registered. For decades, the gun industry has been asking ATF which products are subject to the NFA because that decision is within ATF’s power to make. The recently finalized rule by ATF sets a clear standard in line with the NFA, and states that stabilizing braces cannot be designed to circumvent the NFA’s provisions regarding short-barreled rifles. Regulating this type of firearm is ATF’s job, as the industry knows. But the gun industry keeps looking for loopholes so it can profit off evading the law. By finalizing this rule, ATF not only made Americans safer, it also closed a nonsensical loophole in its regulations and set a clear standard so that the gun industry can create products moving forward without evading the law.

“The stabilizing brace rule infringes on law abiding citizens’ Second Amendment rights.”

- The Second Amendment guarantees a right to keep and bear arms for self-defense. The stabilizing brace rule does not infringe on a law abiding citizen’s Second Amendment right to keep and bear arms for self-defense. Indeed, the stabilizing brace rule simply requires one of two things: for stabilizing braces to be detached from firearms with a barrel under 16 inches or for owners of firearms equipped with stabilizing braces to register their weapons with ATF. In order to comply with the first option, the stabilizing brace can be removed, the stabilizing brace can be removed and reattached to another firearm with a barrel 16 inches or longer, or a barrel under 16 inches can be switched out of a firearm for a longer barrel. Only, in a narrow set of circumstances, where an owner cannot remove the brace from the firearm and remain the firearms integrity, *and* the owner refuses to register the firearm with ATF, must the owner dispose of the firearm to law enforcement or destroy the firearm.

ABOUT GIFFORDS

Giffords is a nonprofit organization dedicated to saving lives from gun violence. Led by former Congresswoman Gabrielle Giffords, Giffords shifts culture, changes policies, and challenges injustice, inspiring Americans across the country to fight gun violence.