IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

T.J. ROBERTS; ZACHARY COCKRELL; MERIDIAN ORDNANCE LLC; BUCKEYE FIREARMS ASSOCIATION, INC.; CENTER FOR HUMAN LIBERTY; JEWS FOR THE PRESERVATION OF FIREARMS OWNERSHIP; and AMERICAN SUPPRESSOR ASSOCIATION FOUNDATION, INC.,	:	
Plaintiffs,	:	No. 2:26-cv-00091-SCM
v.	:	**ORAL ARGUMENT REQUESTED**
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES; ROBERT CEKADA, in his official capacity as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives;[1] UNITED STATES DEPARTMENT OF JUSTICE; and TODD W. BLANCHE, in his official capacity as Acting Attorney General of the United States,	:	
Defendants.	:	

PLAINTIFFS' COMBINED REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

[1] Under Rule 25(d) of the Federal Rules of Civil Procedure, Robert Cekada, in his official capacity as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, has been automatically substituted as a party in this case after being confirmed as Director on April 29, 2026.

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INTRODUCTION

When Congress passed the National Firearms Act of 1934 ("NFA"), Pub. L. No. 73-474, 48 Stat. 1236 (codified as amended at 26 U.S.C. §§ 5801–5872), it did so based on its power to lay and collect taxes. This is confirmed by the NFA's text, structure, legislative history, comparison with other firearms-related laws, and numerous decisions interpreting the NFA. In fact, during consideration of the NFA, a primary sponsor of the bill expressly disclaimed that the NFA provisions challenged here were premised on any power but the taxing power, explaining that the Act "follows the theory of taxation all the way through." *National Firearms Act: Hearings on H.R. 9066 Before the H. Comm. on Ways & Means*, 73d Cong., 2d Sess. 86 (1934) (statement of Joseph B. Keenan, U.S. Asst. Att'y Gen.) [hereinafter *National Firearms Act Hearings*]. Recently, however, with the enactment of the One Big Beautiful Bill Act ("OBBB"), Pub. L. No. 119-21, 139 Stat. 72 (2025), into law, Congress zeroed out the taxes on certain classes of firearms covered by the NFA. Consequently, the registration and related provisions in the NFA that were enacted in support of the collection of the taxes on those classes of firearms have lost their constitutional tether, cannot be justified based on any other congressional power, and are thus unconstitutional, both facially and as-applied to Plaintiffs.

Faced with this straightforward interpretation supported by text, structure, history, and precedent, the Government attempts to justify the NFA's registration requirements for the zero-tax classes of firearms by arguing that those requirements are in aid of the collection of a different tax in a different part of the Act: the special occupational tax that dealers and manufacturers of NFA firearms must pay in order to engage in their business. But the special occupational tax is a different tax supported by a different registration requirement: the requirement for businesses to register with the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") to sell or manufacture

NFA items. The *firearms registration requirements* challenged here support the collection of the now-zero *firearms taxes*, whereas the *business registration requirements* not at issue here support the collection of the *special occupational tax*. The Court should not accept the Government's tortured interpretation of the NFA that attempts to connect disparate parts of the statute that are plainly different taxes and different registration requirements.

That the challenged NFA provisions can no longer be justified as in aid of Congress's exercise of its taxing power should be the end of this case, but the Government argues that the NFA can be independently justified as an exercise of Congress's Commerce Clause powers. The Government's arguments should fail at the start, however, because this Court should not supply a justification to the NFA that Congress itself never intended, as demonstrated by the NFA's text, structure, and history. But even if the Court does consider whether the challenged NFA provisions are a valid exercise of Congress's Commerce Clause powers, it should determine that they are not.

Wholly apart from the challenged NFA provisions' unconstitutionality in the above respects, they violate the fundamental right to keep and bear arms enshrined in the Second Amendment with respect to suppressors and short-barreled rifles. Under the test articulated in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), the possession and use of suppressors and short-barreled rifles constitutes conduct within the plain text of the Second Amendment's protection of "arms." Thus, the challenged provisions are unconstitutional unless the Government can meet its burden and show either that suppressors and short-barreled rifles are dangerous and unusual weapons or that a comprehensive registration scheme for protected arms is otherwise consistent with the Nation's history of firearm regulation. The Government has done neither. The Government unpersuasively analogizes to inapposite precedent and all but abandons its burden to prove that suppressors and short-barreled rifles are dangerous and unusual and that

there is a historical tradition of regulating them in a manner akin to the NFA provisions challenged here.

The Government, however, argues that the Court need not engage in any historical analysis because, in its view, the NFA is a presumptively constitutional "shall-issue" licensing regime. It is *Plaintiffs*' burden, the Government insists, to show that the challenged NFA provisions have been put toward "abusive ends" to overcome this presumption. But the NFA is not a "shall-issue" licensing regime. It is instead a taxation and registration regime, and there is a distinction between licensing and registration. The Government and the courts that have concluded otherwise have ignored this distinction and placed undue emphasis on a footnote in *Bruen*.

Accordingly, the Court should grant Plaintiffs' motion for summary judgment and deny the Government's motion for summary judgment.

ARGUMENT

I. The Government's Non-Merits Arguments Fail.

A. Plaintiffs Do Not Challenge the NFA's Manufacturing Provisions.

The Government first argues that Plaintiffs do not have Article III standing "to challenge the NFA's requirements or prohibitions insofar as they regulate the manufacturing of short-barreled rifles, short-barreled shotguns, suppressors, or AOWs." Mem. in Opp'n to Pls.' Mot. for Summ. J. & in Supp. of Defs.' Mot. for Summ. J. at 8–9 (May 27, 2026), ECF No. 22 ("Govt. MSJ"). But Plaintiffs do not assert a challenge to the NFA's provisions concerning manufacturing. Plaintiffs have consistently specified that they are challenging, among other provisions, the NFA's provisions concerning *making* NFA firearms, *see* Am. Compl. at 32 (Apr. 24, 2026), ECF No. 16, and where a provision covers both the making and manufacturing of NFA firearms, Plaintiffs have challenged only the application to making, *see, e.g.*, Proposed Order at 2 (Apr. 24, 2026), ECF No. 17-1. The Government's standing argument thus attacks a claim Plaintiffs do not make.

B. The Doctrine of "Claim Splitting" Does Not Apply to ASA Foundation's Claims.

The Government next argues that the Court should dismiss ASA Foundation from this case pursuant to the doctrine of "claim splitting," which purportedly "prohibits a party and its privities from simultaneously litigating multiple lawsuits that involve the same subject matter and the same defendants." Govt. MSJ at 9–10. According to the Government, ASA Foundation is a "wing" of the American Suppressor Association and thus in "privity" with it, so because the American Suppressor Association has already challenged the NFA on constitutional grounds in *Brown v. ATF*, No. 4:25-cv-1162 (E.D. Mo.), ASA Foundation's claims challenging the NFA in this case must be dismissed for "claim splitting." Govt. MSJ at 9–10. The Court should reject this argument.

First, the doctrine of claim splitting does not apply here because the American Suppressor Association and ASA Foundation are *not* the same entity. They may be affiliated, but they are legally distinct entities. American Suppressor Association is a nonprofit corporation organized and existing under the laws of the District of Columbia, whereas ASA Foundation is a nongovernmental corporation organized and existing under the laws of Delaware. ASA Found. Suppl. Decl. ¶¶ 3–4 [Suppl. Appx.001–02]. They file separate tax returns and have different federal employer identification numbers. *Id.* ¶ 5 [Suppl. Appx.002]. They have distinct bylaws, observe their own corporate formalities, maintain their own Boards of Directors (whose members are not identical), and hold their own quarterly board meetings. *Id.* ¶ 6 [Suppl. Appx.002]. Neither American Suppressor Association nor ASA Foundation has parent companies or subsidiaries. *Id.* ¶ 7 [Suppl. Appx.002]; *see also* Corp. Disclosure Statement (Feb. 26, 2026), ECF No. 3; Corp. Disclosure Statement, *Brown v. ATF*, No. 4:25-cv-01162 (E.D. Mo. Aug. 1, 2025), ECF No. 6. Consequently, because American Suppressor Association and ASA Foundation are not the same entity, the two entities' claims are not duplicative between the two cases.

Second, even assuming that claim splitting applies to not only the same party across cases, but also to parties in privity with that party, ASA Foundation is *not* in privity with the American Suppressor Association because a judgment in favor of either would not bind the other. *See, e.g.*, *Sanders Confectionary Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 481 (6th Cir. 1992). The Sixth Circuit defines a party in privity with another as "a successor in interest to the party, one who controlled the earlier action, or one whose interests were adequately represented." *Id.* The only prong that arguably could apply here is the "adequately represented" prong, which the Supreme Court has explained is narrowly construed and applies only in "certain limited circumstances," such as properly conducted class actions and suits brought by trustees, guardians, and other fiduciaries. *Taylor v. Sturgell*, 553 U.S. 880, 894–95 (2008) (quoting *Richards v. Jefferson County*, 517 U.S. 793, 798 (1996)). But ASA Foundation does not qualify as being "adequately represented" by the American Suppressor Association in *Brown*.

In *Brown*, the American Suppressor Association has brought claims on behalf of its members, who are adversely and directly harmed by the Government's enforcement of the NFA. Compl. ¶ 24, *Brown*, No. 4:25-cv-1162 (E.D. Mo. Aug. 1, 2025), ECF No. 1. By contrast, ASA Foundation is asserting *its own* interests in this case: it wants to acquire suppressors in its own right but is burdened by the NFA's requirements. Moreover, as the structural points concerning each entity explained above indicate, there is no fiduciary relationship between the American Suppressor Association and ASA Foundation.

The Court should therefore reject the Government's claim splitting argument.

II. The NFA's Regulation of Untaxed "Firearms" Is Not a Valid Exercise of Congress's Taxing Power.

Congress premised the NFA on its enumerated power to "lay and collect Taxes." U.S. CONST. art. I, § 8, cl. 1. The Supreme Court accordingly upheld the NFA's occupational tax on

dealers and its attendant occupational registration requirement against constitutional challenge, holding that the NFA was "only a taxing measure" and that the occupational registration requirements were "obviously supportable as in aid of a revenue purpose," namely, "the annual tax." *Sonzinsky v. United States*, 300 U.S. 506, 513–14 (1937); *see also NFIB v. Sebelius*, 567 U.S. 519, 567 (2012); *United States v. Thompson*, 361 F.3d 918, 921 (6th Cir. 2004); *United States v. Springer*, 609 F.3d 885, 888 (6th Cir. 2010); *United States v. Hall*, 171 F.3d 1133, 1142 (8th Cir. 1999); *United States v. Cox*, 906 F.3d 1170, 1181 (10th Cir. 2018); *United States v. Ross*, 458 F.2d 1144, 1145 (5th Cir. 1972). But the OBBB zeroed out the NFA's making and transfer taxes on all NFA-defined "firearms" except for machineguns and "destructive device[s]." OBBB § 70436. "Now that the [tax] amount is set at zero," *Texas v. United States*, 945 F.3d 355, 390 (5th Cir. 2019), *rev'd and remanded on other grounds sub nom.*, *California v. Texas*, 593 U.S. 659 (2021), the NFA's firearm registration requirements cannot "be justified under Congress' taxing power," *id.* at 389. Consequently, as Plaintiffs' opening brief explained, *see* Mem. of L. in Supp. of Pls.' Mot. for Summ. J. at 12–15 (Apr. 24, 2026), ECF No. 18 ("Pls.' MSJ"); *contra* Govt. MSJ at 12 n.1, the NFA's registration regime as applied to untaxed firearms is unmoored from any congressionally imposed tax. It therefore cannot be in support of the taxing power, which "is limited to requiring an individual to pay money into the Federal Treasury, no more." *Sebelius*, 567 U.S. at 574; *see also Ream v. U.S. Dep't of Treasury*, 174 F.4th 480, 486 (6th Cir. 2026); *McNutt v. U.S. Dep't of Just.*, 173 F.4th 204, 216 (5th Cir. 2026).

III. The NFA's Regulation of Untaxed "Firearms" Is Not Necessary and Proper to the Exercise of Congress's Taxing Power.

The Government agrees that "Congress's taxing power" was the "constitutional source" for the NFA and that the OBBB "zeroed out the NFA's making and transfer taxes on short-barreled rifles and shotguns, suppressors, and AOWs." Govt. MSJ at 10. But the Government disagrees that

these facts render the challenged NFA provisions unconstitutional, instead arguing that the challenged registration provisions support the collection of a different tax imposed in a different provision of the NFA: the annual special occupational tax on businesses that import, manufacture, or deal in NFA firearms. *Id.* (citing 26 U.S.C. § 5801). In other words, the Government argues that the challenged firearm registration requirements are "necessary and proper" to the collection of the special occupational tax. But the challenged firearm registration requirements are not plainly adapted to (and therefore not necessary to) support the collection of the special occupational tax—they were designed to support the collection of the now-zero taxes on making and transfer of covered firearms. The special occupational tax is instead supported by the NFA's occupational registration requirement. 26 U.S.C. § 5802. Nor is the registration scheme a proper means of supporting the dealer tax. If it were, it would imply that Congress could require the comprehensive registration of the possession of any item through the expedient of taxing dealers in the item.

As the Supreme Court has explained, "Congress's authority under the taxing power is limited to requiring an individual to pay money into the Federal Treasury, no more." *Sebelius*, 567 U.S. at 574. Because "the taxing power does not give Congress the same degree of control over individual behavior [as the commerce power]," *id*. at 573, "it follows that Congress cannot rely on a 'reasonable' or 'rational' connection to an existing tax to regulate *every* individual behavior occurring before that tax obligation becomes effective." *Hobby Distillers Ass'n v. Alcohol & Tobacco Tax & Trade Bureau*, 740 F. Supp. 3d 509, 529 (N.D. Tex. 2024), *aff'd sub nom. McNutt*, 173 F.4th 204 (emphasis in original). Instead, when Congress enacts regulations to support its taxes, the question is whether those regulations are both "necessary" and "proper" to "carry[ ] into Execution," U.S. CONST. art. I, § 8, cl. 18, the tax, *Ream*, 174 F.4th at 486–87; *McNutt*, 173 F.4th at 216–21; *Hobby Distillers*, 740 F. Supp. 3d at 529. "To be necessary . . . a means must be 'plainly

adapted' to a legitimate constitutional end." *Ream*, 174 F.4th at 487 (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819)). Here, the challenged NFA firearm registration requirements are neither "plainly adapted" nor "proper" to effectuating the occupational tax.

First, the challenged NFA firearm registration provisions, *e.g.*, 26 U.S.C. §§ 5812, 5822, 5841, are not plainly adapted to collecting the special occupational tax because they correspond to and are designed to facilitate collection of the firearm transfer and making taxes, *id*. §§ 5811, 5821. The firearm registration requirements ensure that the making and/or transfer taxes are paid whenever a covered making or transfer occurs. By contrast, 26 U.S.C. § 5801(a) requires "every importer, manufacturer, and dealer in firearms" "engaging in business" to pay annually a special occupational tax. Collection of this tax is supported by the occupational registration requirement that mandates "each importer, manufacturer, and dealer in firearms" to "register with" ATF. *Id.* § 5802. *Sonzinsky* held that this occupational registration requirement was "obviously" in aid of the "annual tax," *i.e.*, the special occupational tax. 300 U.S. at 513–14. Indeed, *Sonzinsky* expressly stated that "each tax" in the NFA "is on a different activity and is collectible independently of the other," and thus the Court could limit its focus to the occupational tax and its associated occupational-registration requirement and not "inquire whether the *different* tax levied by section 3"—*i.e.*, the transfer tax—"*and the regulations pertaining to it* are valid." *Id*. at 512 (emphasis added). In other words, the Supreme Court has confirmed what is plain on the face of the NFA—the registration scheme challenged here pertains to the now-nonexistent transfer and making taxes, not to the special occupational tax.

Further separating the registration provisions pertaining to the making and transfer taxes from the provisions relating to the occupational tax, the NFA exempts businesses that pay the occupational tax from paying the making tax and from paying the transfer tax on transfers to other

businesses that pay the occupational tax. 26 U.S.C. § 5852(c), (d); Decl. of Stephen Albro ¶ 25 (May 26, 2026), ECF No. 22-4 ("Albro Decl."); *see also Haynes v. United States*, 390 U.S. 85, 88 (1968).

The NFA's statutory design is thus that the *occupational registration requirements* facilitate the collection of the *occupational tax*, and the *firearm registration requirements* facilitate the collection of the *firearm making and transfer taxes*. Despite this clear statutory design, however, the Government argues that the *firearm making and transfer taxes* facilitate the *occupational tax*. Govt. MSJ at 10. But that interpretation distorts the straightforward statutory scheme and belies logic, since the occupational tax is a flat annual tax that does not depend on the number of firearms made or sold. And each of the cases that the Government cites in support of its position in fact confirms *Plaintiffs'* position that the *firearm registration requirements* are in aid of the *firearm making and transfer taxes*. *See, e.g.*, *United States v. Birmley*, 529 F.2d 103, 106–07 (6th Cir. 1976); *Thompson*, 361 F.3d at 921; *Hunter v. United States*, 73 F.3d 260, 262 (9th Cir. 1996); *United States v. Aiken*, 974 F.2d 446, 448–49 (4th Cir. 1992); *United States v. Jones*, 976 F.2d 176, 183–84 (4th Cir. 1992); *United States v. Carmel*, 548 F.3d 571, 578–79 (7th Cir. 2008); *Hall*, 171 F.3d at 1142; *Ross*, 458 F.2d at 1145; *United States v. Matthews*, 438 F.2d 715, 717 (5th Cir. 1971); *United States v. Dodge*, 61 F.3d 142, 146 (2d Cir. 1995). None of the Government's cases suggest that the *firearm registration requirements* facilitate the collection of the *occupational tax*.

The Government further argues that *United States v. Doremus*, 249 U.S. 86 (1919), and its analysis of the Harrison Anti-Narcotics Control Act of 1914 ("Harrison Act") is "instructive" for how the Court should interpret the NFA. Govt. MSJ at 11. The Harrison Act, as originally enacted and as considered in *Doremus*, imposed an annual tax on businesses that sold drugs and required those businesses to register with the Government and only sell to customers with a certain form

issued by the Government or valid prescriptions. The Supreme Court upheld these requirements as necessary and proper to the valid exercise of Congress's taxing power because "they tend to keep the traffic aboveboard and subject to inspection by those authorized to collect the revenue." *Doremus*, 249 U.S. at 94.

But *Doremus* has no bearing on the proper interpretation of the relationship between the NFA's firearm registration provisions and the special occupational tax. Assuming for the sake of argument that the Harrison Act's order-form requirement could be construed as in support of the $1 occupational tax under the specific text and structure of the Harrison Act as originally adopted, the Harrison Act did not go as far as the NFA in regulating the items it covered because it did not require the registration of all transactions in those items with the government. Moreover, the 5–4 *Doremus* decision upholding the original version of the Harrison Act is at the outer limit of the government's taxing authority under the Supreme Court's cases. The Supreme Court shortly thereafter curtailed and reined in that authority in the *Child Labor Tax Case*, 259 U.S. 20, 36–38 (1922), declaring unconstitutional a "Child Labor Tax" by determining that it was a substantive penalty for violating a regulation, not a tax, despite Congress's use of the "tax" label. *See also id.* at 38 (explaining that Congress cannot constitutionally enact "a detailed measure of complete regulation of [a] subject" and justify it as an exercise of the taxing power merely by "enforc[ing] it by a so-called tax upon departures from it"). By the time Congress passed the NFA in 1934, the Harrison Act had been amended to tax transactions in narcotics and thus, as the Supreme Court held in *Nigro v. United States*, 276 U.S. 332, 353–54 (1928), any "doubt" that the Harrison Act's order-form requirements were a "subterfuge" to enforce a substantive penalty by calling it a tax was "removed by the change whereby what was a nominal tax before was made a substantial one." *Id*. at 353. The NFA was more closely designed after *that* version of the Harrison Act, which did

not rely on dealer taxes alone to support documentation of transactions.

The Government nevertheless insists that the firearm registration requirements help the ATF to ensure that "any qualified manufacturer, distributor, or dealer that is associated with the relevant firearm has paid their special occupational tax" and "provide ATF with necessary information to determine whether an individual should be licensed and paying the special occupational tax." Govt. MSJ at 13; *see also id.* at 29–30 (citing *Ream*, 174 F.4th at 487–89). But, as explained above, the firearm registration provisions *do not correspond* with the occupational tax provision based on the NFA's text and structure.

Further, the Government's theory of anti-circumvention is not plausible. For the Government's theory to work, a person would need to be making and/or transferring large amounts of NFA firearms and lawfully registering those makings and/or transfers but *not* paying the special occupational tax. It blinks reality to suggest that a business taking the necessary steps to register makings and/or transfers would not also pay the special occupational tax if required. Indeed, the NFA was adopted with the understanding that criminals would not comply with its requirements. *See National Firearms Act Hearings* at 10 (statement of Homer Cummings, U.S. Att'y Gen.) (explaining that "the theory of the bill" "assum[ed] . . . that the criminal elements are not going to obtain permits and they are not going to obtain licenses"); *see also id.* at 22.

Second, the challenged NFA firearm registration provisions are not plainly adapted to collecting the special occupational tax because most NFA transactions involve persons who already are subject to the special occupational tax. As the Government itself explains, 88% to 99% of NFA transactions are made by businesses that already pay the special occupational tax. And despite theorizing that firearm registrations could help ATF determine who must pay the special occupational tax and whether it has been paid, the Government provides no concrete examples of

special occupational tax circumvention or investigations into circumvention.

In an attempt to shore up its argument that ATF identifies individuals who fail to pay the special occupational tax through ATF's review of NFA firearms registration information, the Government states that in 2025, the NFA Division denied 691 transfer applications "because of [special occupational tax] issues, including a transferor's or transferee's failure to properly pay the [special occupational tax]." Albro Decl. ¶ 29. But this purported evidence does not support the Government's position. First, the Government does not identify what *specific* special occupational tax "issues" there were, which means that the statement does nothing to support the Government's argument. The Albro declaration gives no reason to think anything other than that many of these special occupational tax "issues" were simple paperwork errors having nothing to do with special occupational tax payment. Second, Albro's declaration describes only ATF's *historical* practice pre-OBBB, where verification of special occupational taxpayer status was sometimes relevant to the exemption for making and transfer taxes. It does not address the OBBB's changes to the NFA or assert that ATF will follow the same historical practice moving forward. Third, the 691 applications that Albro identifies are less than 1% (specifically, 0.14%) of the 478,709 distinct NFA transfer applications approved in 2025. *Id*. ¶ 36. That minuscule fraction supports Plaintiffs' argument that the challenged NFA firearm registration requirements are not plainly adapted to collecting the special occupational tax. Fourth, even if ATF has used firearms registration data to aid in the collection and enforcement of the special occupational tax—a point Plaintiffs continue to dispute—that state of affairs would not and does not change the fact that the NFA's plain text and structure do not support the interpretation that the firearm registration provisions support the special occupational tax. ATF's after-the-fact use of data generated by the NFA cannot alter the structure and interpretation of the statute as enacted.

Third, the challenged NFA firearm registration provisions are not plainly adapted to collecting the special occupational tax because the NFA prohibits the use of firearms registration information in criminal prosecutions. *See* 26 U.S.C. § 5848(a). Consequently, the NFA itself prohibits the Government from using the firearms registration information for the exact purpose that the Government asserts here, namely, the assessment, collection, and enforcement of the special occupational tax. *Contra* Govt. MSJ at 13–14; *see United States v. Oba*, 448 F.2d 892, 894–95 (9th Cir. 1971); *United States v. Freed*, 401 U.S. 601, 606 (1971).

Fourth, even if the registration scheme was a necessary means of supporting the dealer tax, it is not a proper one. The Government's construction of the NFA would upset the constitutional balance between federal and state power by transferring the states' general police power to the federal government. "In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder." *Bond v. United States*, 572 U.S. 844, 854 (2014). "The States have broad authority to enact legislation for the public good—what [the Supreme Court] ha[s] often called a police power." *Id.* (internal quotation marks omitted). "The Federal Government, by contrast, has no such authority and 'can exercise only the powers granted to it.'" *Id.* (quoting *McCulloch*, 17 U.S. (4 Wheat.) at 405). Congress enacted the NFA's firearm registration requirements in aid of the making and transfer taxes on those firearms. *See Thompson*, 361 F.3d at 921; *Sonzinsky*, 300 U.S. at 513–14. Perhaps, the requirements were an appropriate means of doing so. But even if so, the same is not true with respect to the NFA's dealer tax. Under the Government's reasoning, if Congress imposes a tax on dealers in a certain type of good, the Government could comprehensively regulate the possession of that good by all Americans. For example, if Congress imposed an annual $100 tax on bakeries, everyone in the country could be compelled to register with the Government every time they bake bread for a family dinner or make

a sandwich for a friend, all to ensure that they are not unlawfully engaging in the business of being a bakery without paying the bakery tax. What is more, this registration requirement could be extended to a person making bread for *himself*, as the NFA registration scheme covers making NFA items for personal use. Under this regime, Congress's regulatory power would be virtually unlimited and would defy "the Tenth Amendment and the structure of the Constitution." *Lane v. United States*, 612 F. Supp. 3d 659, 660 (N.D. Tex. 2020); *see also McNutt*, 173 F.4th at 220–21. Congress cannot use its taxing power to support such comprehensive regulation. *See, e.g.*, *Child Labor Tax Case*, 259 U.S. at 36–38. Consequently, the Government's theory cannot prevail and the firearms registration provisions cannot be seen as a "proper" means to effectuating the collection of the special occupational tax.

IV. The NFA's Registration Scheme For Untaxed "Firearms" Cannot Be Justified as an Exercise of Any Other of Congress's Enumerated Powers.

Because the challenged NFA provisions as applied to untaxed NFA firearms cannot be justified under Congress's taxing power, that should be the end of this case. Both the Supreme Court and Congress itself have made clear that the challenged NFA provisions are *solely* an exercise of Congress's taxing power. Pls.' MSJ at 17–19. The Government, however, disagrees, arguing that the challenged NFA provisions not only can be justified as an exercise of Congress's Commerce Clause powers—an argument that Plaintiffs will address in the next section—but that Congress did justify the challenged NFA provisions as an exercise of Congress's Commerce Clause powers. *See* Govt. MSJ at 14–28. The Government is wrong.

First, the Government argues that "neither *Sonzinsky* nor *Haynes* stand for the proposition that the NFA is *solely* an exercise of Congress's taxing power." *Id.* at 24 (emphasis in original). The Supreme Court and the Sixth Circuit disagree. *Sonzinsky* explained that "on its face" the occupational tax and occupational registration provisions of the NFA were "*only* a taxing

measure." 300 U.S. at 513 (emphasis added); *see also Haynes*, 390 U.S. at 98; *Sebelius*, 567 U.S. at 567; *Birmley*, 529 F.2d at 106–07; *Thompson*, 361 F.3d at 921; *Hall*, 171 F.3d at 1141–42; *Ross*, 458 F.2d at 1145 & n.3. Nothing distinguishes the occupational tax from the making and transfer taxes in this respect.

The Government nevertheless argues that in *United States v. Wilson*, 440 F.2d 1068 (6th Cir. 1971) (per curiam), the Sixth Circuit—in one sentence of a short per curiam opinion—determined that the NFA was a valid exercise of Congress's Commerce Clause powers. Govt. MSJ at 24–26. But *Wilson*, which relied primarily on the taxing power to reject the defendant's constitutional arguments, predated the Supreme Court's opinion in *United States v. Lopez*, 514 U.S. 549 (1995), and thus did not engage in the analysis the Supreme Court set forth for courts to analyze the constitutionality of an exercise of Congress's Commerce Clause powers. *Lopez* and subsequent Supreme Court cases reinvigorated the limits on the Commerce Clause. The precedential value of *Wilson*'s Commerce Clause holding has therefore been undermined and this Court is not required to follow it. *See, e.g.*, *United States v. Butts*, 40 F.4th 766, 769 n.3 (6th Cir. 2022); *United States v. Woods*, 61 F.4th 471, 480 (6th Cir. 2023); *Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686, 720–21 (6th Cir. 2016); *United States v. Fields*, 53 F.4th 1027, 1047 (6th Cir. 2022); *United States v. Thomas-Mathews*, 81 F.4th 530, 540 n.3 (6th Cir. 2023); *Smyer v. Kroger Ltd. P'ship I*, No. 22-3692, 2024 WL 1007116, at *8 (6th Cir. Mar. 8, 2024) (Boggs, J., concurring); *Hall v. Eichenlaub*, 559 F. Supp. 2d 777, 782 (E.D. Mich. 2008).

The Government's out-of-circuit citations fare no better. In *United States v. Ardoin*, the Fifth Circuit recognized that the basis for the NFA's requirement of the registration of machineguns was "the taxing power." 19 F.3d 177, 180 (5th Cir. 1994). It then mused, in dicta, that the regulation of machineguns in the NFA "could" also be upheld "under Congress's power to regulate interstate

commerce." *Id.* Not only was this statement dicta, but it pertained only to "the regulation of machineguns." *Id.* The Commerce Clause analysis for machineguns may be different from any purported Commerce Clause analysis for the untaxed NFA firearms at issue here. Congress has banned private possession of machineguns manufactured after 1986. *See* 18 U.S.C. § 922(o). Some courts have therefore determined that the regulation of machineguns in the NFA can be justified under the Commerce Clause as a freeze of the entire national market in machineguns. *See United States v. Kirk*, 105 F.3d 997, 1001 (5th Cir. 1997) (per curiam) (op. of Higginbotham, J.); *id.* at 1014 (op. of Jones, J.). In this way, courts have treated regulation of machineguns as more akin to the regulation of wheat in *Wickard v. Filburn*, 317 U.S. 111 (1942), because both policies regulate the supply and demand of the item, *Kirk*, 105 F.3d at 1013–14 (op. of Jones, J.). This market freeze justification does not apply to the challenged NFA provisions here.

Like *Ardoin*, the Fourth Circuit's opinion in *Jones* concerned machineguns. 976 F.2d at 184. The language in *Jones* concerning the Commerce Clause is also unnecessary to the outcome of the case because the court had already determined that the NFA was a constitutional exercise of Congress's taxing power. *Id.* at 183–84. The Government's two Eighth Circuit cases—*United States v. Pearson*, 8 F.3d 631 (8th Cir. 1993), and *United States v. Hale*, 978 F.2d 1016 (8th Cir. 1992)—both involved machineguns and predated the Supreme Court's decision in *Lopez*, 514 U.S. 549. After *Lopez*, the Eighth Circuit departed from these earlier cases and held that a conviction for the possession of an unregistered suppressor "cannot be sustained under the commerce clause." *Hall*, 171 F.3d at 1140. And the Tenth Circuit's unpublished decision in *United States v. Houston*, 103 F. App'x 346 (10th Cir. 2004), invoked the taxing power in its holding and avoided a definitive ruling on the Commerce Clause.

Second, the Government argues that Congress may legislate under more than one

enumerated power. Govt. MSJ at 24–25. But whether Congress *can* do so is beside the point. The question is *what* enumerated power or powers *did* Congress legislate under in the NFA. And Congress was explicit about invoking solely its authority under the taxing power for the challenged NFA provisions, as evidenced by the text, structure, legislative history, and comparison with other firearms-related laws. *See* Pls.' MSJ at 18–19. Where Congress is "explicit about invoking its authority under" specific constitutional provisions, it "precludes consideration of" other constitutional provisions "as a basis for the" statute. *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627, 642 n.7 (1999); *see also McCulloch*, 17 U.S. (4 Wheat.) at 421, 423; *United States v. Bird*, 124 F.3d 667, 682 n.15 (5th Cir. 1997).

For text, the NFA's introductory preamble specifies that it is an act "to tax the sale or other disposal of" "certain firearms and machineguns." Pub. L. No. 73-474, 48 Stat. 1236. In line with that purpose, the challenged NFA provisions impose requirements on those who "receive," "possess," or "transfer[ ]" covered firearms, 26 U.S.C. §§ 5812, 5841, to facilitate "a tax" on "each firearm transferred," *id.* § 5811(a); *accord Birmley*, 529 F.2d at 106–07. Similarly, the challenged NFA provisions impose requirements on those who "make a firearm," 26 U.S.C. § 5822, to facilitate "a tax" on "the making of a firearm," *id.* § 5821(a).

For structure, the NFA sets up a system whereby the *firearm registration requirements* correspond with the *firearm making and transfer* taxes. In other parts of the NFA, Congress did explicitly reference activities in foreign or interstate commerce. *See id.* § 5861(j), (k). But rather than support the Government's contention that the entire NFA must therefore be concerned with such commerce, these provisions demonstrate that Congress knew how to invoke its Commerce Clause powers and "act[ed] intentionally and purposely" when it "omit[ted]" such an invocation in other provisions "of the same Act." *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S.

161, 169 (2014) (quoting *Dean v. United States*, 556 U.S. 568, 573 (2009)).

For legislative history, Congress's deliberations on the bill that would become the NFA were generally focused on its nature as a tax. *See* Pls.' MSJ at 13–14. Although the Government points to a few statements concerning a prior version of the bill that referenced the Commerce Clause, *see* Govt. MSJ at 26, the bill was later amended to rely exclusively on Congress's taxing power in relevant part. *See, e.g.*, *National Firearms Act Hearings* at 86 (statement of Joseph B. Keenan, U.S. Asst. Att'y Gen.) (explaining that "the bill as originally drafted exercised two powers, one under the taxation clause and the other under the commerce clause," but "[u]nder the bill as now submitted, *it follows the theory of taxation all the way through*" (emphasis added)). There are two minor exceptions to that general focus on the taxing power. Congress "employ[ed] the interstate and foreign commerce power to regulate interstate shipment of firearms and to prohibit and regulate the shipment of firearms into the United States." S. Rep. No. 73-1444, at 2 (1934), ECF No. 22-3; *see* 26 U.S.C. § 5861(j), (k). Again, those provisions support Plaintiffs' arguments. "If Congress had wanted to" employ the Commerce Clause in support of the challenged NFA provisions, "it knew exactly how to do so." *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364 (2018). Outside of those two provisions, however, the NFA was premised on the taxing power.

For comparison with other firearms-related laws, the fact that Congress enacted entirely separate laws to seek to regulate commerce in firearms, first the Federal Firearms Act of 1938 ("FFA") and subsequently its descendent the Gun Control Act of 1968 ("GCA"), further supports the conclusion that the NFA is a taxing measure. Unlike the NFA, every substantive provision of the FFA contained an interstate commerce hook. *See* Pub. L. No. 75-785, § 2(a), 52 Stat. 1250 (1938) (prohibiting activities "in interstate or foreign commerce"). And in 1968, Congress "enlarged and extended" the FFA with the GCA, *see Barrett v. United States*, 423 U.S. 212, 220

(1976), while leaving the tax-based NFA separate. As the Fifth Circuit has explained, the GCA "has no roots or antecedent in the National Firearms Act" and "is in no way related or tied to taxation or any character of registration or reporting" required by the NFA. *United States v. Lopez*, 2 F.3d 1342, 1349 (5th Cir. 1993), *aff'd*, 514 U.S. 549 (1995). Consequently, any attempt by the Government to use the history and development of the GCA to inform the basis for the NFA is meritless. *Contra* Govt. MSJ at 16. Comparing the GCA with the NFA confirms what should be obvious—it is the GCA, and not the NFA, that represents Congress's exercise of its purported Commerce Clause authority with respect to firearms.

Third, the Government argues that "Congress need [not] expressly state in the NFA that it was exercising its authority under the Commerce Clause for the Court to uphold it on those grounds." Govt. MSJ at 25. While that may be true, it is irrelevant. As the Government concedes, "[a] court must be able to discern a basis for Congress's exercise of an enumerated power." *Id.* (quoting *United States v. Park*, 938 F.3d 354, 363 (D.C. Cir. 2019)). And as just explained, the NFA's text, structure, and legislative history and a comparison with other firearms-related laws make clear that Congress's taxing power is the only discernible constitutional basis for the challenged NFA provisions. This Court should thus not "ascribe to Congress an attempt, under the guise of taxation, to exercise another power." *Sonzinsky*, 300 U.S. at 514.

V. The NFA's Regulation of Untaxed "Firearms" Exceeds Congress's Commerce Clause Powers.

Even if the Court considers the Government's Commerce Clause arguments, they each fail. First, Plaintiffs need not show that all of the conduct regulated by the NFA could not be reached by Congress under the Commerce Clause. *Contra* Govt. MSJ at 16. Second, under the proper analytical framework per *Lopez*, the challenged NFA firearms registration requirements are not a regulation of the instrumentalities of interstate commerce. *Contra id.* at 14–18. Third, the

challenged NFA requirements are not a regulation of activities that substantially affect interstate commerce. *Contra id.* at 18–24. And fourth, the challenged NFA provisions cannot be justified as "necessary and proper" to the execution of Congress's Commerce Clause powers.

A. *Salerno* Does Not Defeat Plaintiffs' Commerce Clause Challenge.

The Government asserts that Plaintiffs lodge only a facial Commerce Clause challenge, and it says that means Plaintiffs must establish that the challenged NFA provisions exceed Congress's power in all their applications. *Id.* at 17–18 (citing, *inter alia*, *United States v. Salerno*, 481 U.S. 739, 745 (1987)). It further contends that, at least some of the time, the NFA regulates "persons and things in interstate commerce." *Id*. at 17. According to the Government, *these* applications of the challenged requirements are unquestionably valid, which dooms Plaintiffs' (supposedly) facial-only Commerce Clause challenge. For several reasons, that is wrong.

To begin, Plaintiffs challenge specific NFA requirements as applied to specific firearms, and they expressly challenge those requirements both facially and as applied. Am. Compl. ¶ 85. For example, Plaintiffs challenge the application of the NFA to actions that expressly do not involve commerce, such as "making" a short-barreled rifle by reconfiguring a firearm with a short barrel or "making" a suppressor for personal use. *Id.* ¶¶ 18–19.

Further, the distinction between facial and as-applied challenges cannot do the work the Government asks of it. To be sure, in *Salerno* the Court said that statutes generally are not facially unconstitutional if they have constitutional applications, but the Government has not established that the challenged provisions of the NFA have any constitutional applications. Indeed, if this Court were to uphold the challenged requirements on the ground that some activity within the scope of the statute could be reached by valid Commerce Clause legislation, it would directly contravene the Supreme Court's decision in *Lopez*.

Lopez involved a Commerce-Clause challenge to the Gun-Free School Zones Act, which

prohibited any individual from knowingly possessing any firearm in a school zone. 514 U.S. at 551. The Court held that the Act was "invalid" because it exceeded Congress's power under the Commerce Clause. *See id*. at 552. Importantly, the Court noted that the Act would have been constitutional if Congress had limited its application to firearms that "have an explicit connection with or effect on interstate commerce." *Id*. at 562; *see also, e.g.*, *United States v. Danks*, 221 F.3d 1037, 1039 (8th Cir. 1999) (upholding the Act after Congress limited its reach to firearms bearing some connection with interstate commerce). Many of the firearms that are sold in the United States are imported or sold outside their state of manufacture, *see, e.g.*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, FIREARMS COMMERCE IN THE UNITED STATES: ANNUAL STATISTICAL UPDATE 2024 at 5–7 (2024), https://perma.cc/DJC5-VBJZ [App'x to Pls.' MSJ at Appx.112–14 (Apr. 24, 2026), ECF No. 18-1 ("Pls.' App'x")], which means Congress potentially had the power to reach at least some of the conduct regulated by the Act. If the Government's logic were right, the Court should not have held that the Act was invalid.

Yet that is exactly what the Court did. *See Lopez*, 514 U.S. at 552. By doing so, the Court made clear the relevant fact was that the original Gun-Free School Zones Act prohibited possession of *all* firearms within a school zone, regardless of whether they bore a connection to interstate commerce. For that reason, the Act itself was not a valid exercise of Congress's Commerce Clause authority, even though some or much of the conduct it regulated could have been reached by valid Commerce Clause legislation. *See* Peter A. Patterson, *Facial Confusion: Lower Court Misapplication of the Facial/As-Applied Distinction in Second Amendment Cases* at 4–5, HARV. J.L. & PUB. POL'Y PER CURIAM (Oct. 27, 2025).

Lopez's approach was grounded in well over a century of precedent. For example, in *In re Trade-Mark Cases*, the Court invalidated a conviction under a law that regulated trademarks

regardless of their connection to interstate or foreign commerce on the ground that the legislation exceeded Congress's authority. *See In re Trade-Mark Cases*, 100 U.S. 82, 91–92 (1879). The Attorney General argued that the Commerce Clause at least empowered Congress to establish and regulate trademarks used in commerce with foreign nations and among the several States and therefore the trademark legislation should have been "held valid in that class of cases, if no further." *Id*. at 98. The Court disagreed. It acknowledged that, "when one part of a statute is valid and constitutional, and another part is unconstitutional and void, the court may enforce the valid part where they are distinctly separable so that each can stand alone." *Id*. But the statute at issue did not distinguish between trademarks connected to interstate or foreign commerce and those used purely intrastate. To apply the statute to only some trademarks, the Court reasoned, would be to rewrite it. And it held that it had no power to do that. *Id*. at 99.

These cases establish the principle that, in a facial challenge to Congress's authority under the Commerce Clause, the question is not whether the law could conceivably sweep in some conduct that Congress has the power to regulate. The question is instead whether a discrete and segregable part of the law regulates conduct that Congress has the power to regulate. The challenged NFA provisions plainly are not so limited—they apply indiscriminately to firearms that have or have not traveled in interstate commerce, with nothing in the statute to distinguish one from the other. That means the Government's objection to Plaintiffs' "facial" challenge fails.

Even if all that were wrong, it would not "be the end" of Plaintiffs' Commerce Clause challenge. *Contra* Govt. MSJ at 17. That is because, as explained, Plaintiffs expressly challenge the pertinent NFA requirements as applied, including as applied to their purely intrastate conduct. Am. Compl. ¶ 85. *Salerno* certainly has nothing to say about *that* aspect of Plaintiffs' challenge.

B. The NFA's Regulation of Untaxed "Firearms" Cannot Be Justified as a Regulation of the Instrumentalities of Interstate Commerce.

Viewed under this proper analytical framework per *Lopez*, without an interstate commerce hook, the challenged NFA firearms registration requirements are not a regulation of the instrumentalities of interstate commerce. *Contra* Govt. MSJ at 14–18. Again, the NFA applies to possession, transfers, and makings, without regard to whether those activities occur interstate. *See United States v. Hemani*, No. 24-1234, 2026 WL 1751710, at *13 (U.S. June 18, 2026) (Thomas, J., concurring). Consequently, the Government's insistence that the NFA regulates the "persons" and the "things" in the interstate NFA firearms market is simply incorrect and must be rejected.

C. The NFA's Regulation of Untaxed "Firearms" Cannot Be Justified as a Regulation of Activities that Substantially Affect Interstate Commerce.

The challenged NFA provisions cannot be justified as a regulation of intrastate commerce that substantially affects interstate commerce. First, the challenged NFA provisions were not designed to regulate interstate commerce, so they cannot be justified as a regulation of intrastate conduct that substantially affects interstate commerce. *See Fla. Prepaid*, 527 U.S. at 642 n.7; *McCulloch*, 17 U.S. (4 Wheat.) at 421, 423; *Bird*, 124 F.3d at 682 n.15. Second, the challenged NFA provisions are not part of a "comprehensive regulatory regime" of "quintessentially economic" activity. *See Gonzalez v. Raich*, 545 U.S. 1, 25, 27 (2005); *see also United States v. Bowers*, 594 F.3d 522, 527–29 (6th Cir. 2010); *United States v. Kebodeaux*, 687 F.3d 232, 251–52 (5th Cir. 2012) (en banc), *rev'd on other grounds*, 570 U.S. 387 (2013). The Government's arguments to the contrary fail.

1. The Challenged NFA Provisions Were Not Designed To Regulate Interstate Commerce.

When Congress regulates interstate commerce pursuant to its Commerce Clause powers, its reasons for doing so are "matters for the legislative judgment . . . over which the courts are given no control." *United States v. Darby*, 312 U.S. 100, 115 (1941). But where Congress regulates purely *intra*state activity because of its effect on interstate commerce, the purpose of the regulation

must be to regulate *interstate commerce*. *See* Pls.' MSJ at 21–22. Otherwise, Congress would not be exercising an enumerated power under the Constitution, but a generalized police power that "the Founders denied the National Government and reposed in the States." *See United States v. Morrison*, 529 U.S. 598, 618 & n.8 (2000); *Hemani*, 2026 WL 1751710, at *12 (Thomas, J., concurring). The regulation of intrastate commerce not as a means of regulating or affecting interstate commerce is not an "end . . . within the scope of the constitution." *McCulloch*, 17 U.S. (4 Wheat.) at 421. If a court were to attribute to Congress a different end, *i.e.*, a different "motive and purpose," it would intrude upon "matters for the legislative judgment . . . over which the courts are given no control." *Darby*, 312 U.S. at 115; *see also Bird*, 124 F.3d at 682 n.15.

The possession, making, and transfer of NFA firearms are not inherently commercial activities, so Congress's design in enacting the challenged NFA provisions must have been to regulate interstate commerce if the NFA is to be constitutional on this basis. Pls.' MSJ at 22. But the Supreme Court and Congress itself have made clear that the challenged NFA provisions are *solely* an exercise of Congress's taxing power, so it cannot be the case that Congress designed them to regulate interstate commerce. *See* Part V, *supra*. Instead, Congress's purpose was to enact a tax. Further buttressing this conclusion is that Congress made no findings regarding the effects of possession, transfer, and making of NFA firearms upon interstate commerce, *see Hall*, 171 F.3d at 1139–40; *contra* Govt. MSJ at 28, and that the NFA does not contain an interstate jurisdictional hook, *see Lopez*, 514 U.S. at 561; *Hall*, 171 F.3d at 1138–39; *contra* Govt. MSJ at 28. Plaintiffs do not contend that these two factors are dispositive, *contra id.*, but simply that they reinforce the conclusion that Congress's purpose in the NFA and the challenged NFA provisions was to enact a tax, not to regulate interstate commerce.

2. The Challenged NFA Provisions Are Not Part of a Comprehensive Regulation of Quintessentially Economic Activity.

In *Raich*, the Supreme Court upheld the marijuana-possession provisions of the Controlled Substances Act as a regulation of intrastate commerce that substantially affects interstate commerce on the ground that those provisions were part of a "comprehensive regulatory regime" of "quintessentially economic" activity. 545 U.S. at 25, 27; *Bowers*, 594 F.3d at 527–29; *Kebodeaux*, 687 F.3d at 251–52. The challenged NFA provisions are not themselves, nor a part of, a comprehensive regulation of quintessentially economic activity, so they cannot be upheld as a valid exercise of Congress's Commerce Clause powers on this basis. *See* Pls.' MSJ at 23–25; *see also Hemani*, 2026 WL 1751710, at *13–14 & n.* (Thomas, J., concurring).

In response, the Government essentially concedes Plaintiffs' argument, claiming that the NFA generally seeks "to curtail armed crime," Govt. MSJ at 3, to "stem the criminal misuse of [NFA] weapons," *id.* at 4, and to avoid the "diversion" of "weapons which are peculiarly susceptible of criminal use" "into illicit channels," *id.* at 20. These goals have nothing to do with interstate commerce, and without the making and transfer taxes, the challenged NFA provisions form "a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise." *Lopez*, 514 U.S. at 561.

The Government nevertheless insists that the challenged NFA provisions regulate firearms, and firearms are part of a market. Govt. MSJ at 18–22. But again, the NFA is not a *market* regulation but rather a *tax* scheme. The registration scheme does not seek to regulate the market but rather to track who possesses covered firearms for purposes of facilitating the making and transfer taxes. Consequently, challenged NFA provisions cannot be justified as a regulation of activity that "substantially affects interstate commerce." *Morrison*, 529 U.S. at 609.

Raich and *Wickard* illustrate why. In *Raich*, the Supreme Court determined that the Controlled Substances Act was constitutional as applied to the intrastate manufacture, distribution,

or possession of marijuana because the Act sought "to control the supply and demand of controlled substances in both lawful and unlawful drug markets" by "eliminating commercial transactions in the interstate market in their entirety." *Raich*, 545 U.S. at 19. Regulating purely intrastate growing of marijuana was necessary to accomplish that goal because "leaving home-consumed marijuana outside federal control" would "affect price and market conditions" and thus exert "a substantial effect on supply and demand in the national market for" marijuana. *Id.* Likewise, in *Wickard*, the Supreme Court declared constitutional Congress's effort "to increase the market price of wheat and to that end to limit the volume thereof that could affect the market." 317 U.S. at 128. That effort required intrastate regulation because, as the Supreme Court observed, "[i]t can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions." *Id.*

The challenged NFA provisions are nothing like the statutes at issue in *Raich* and *Wickard* because they are not regulations of the market in NFA firearms. Instead, the challenged provisions regulate the firearms *themselves*, requiring registration when they are made, 26 U.S.C. §§ 5841(a)–(c), 5842, 5861(f), transferred, *id.* §§ 5812, 5861(e), or possessed, *id.* §§ 5841(e), 5812(b), 5861(b)–(d). The challenged provisions do not seek to alter the NFA firearms' price, restrict their supply, or otherwise change any "market conditions." *Raich*, 545 U.S. at 19. Rather, at bottom they seek to track who currently *possesses* an NFA firearm, which may make sense in the context of tracking whether the possessor has paid necessary taxes, but which is disconnected from any regulation of the market in firearms.

The distinction between regulating a commodity itself versus the market in that commodity is a critical distinction under *Raich* and *Wickard*. Under the Commerce Clause, Congress is limited to the "regulation of the interstate market in [a] commodity." *Id.* at 18. Congress does not have the

power to regulate commodities themselves. In *Wickard* and *Raich*, Congress was not endeavoring to regulate wheat or marijuana themselves, but the markets for those items, restricting their supply to reach desired market outcomes (a specific market price in *Wickard* and the elimination of the market altogether in *Raich*). Without regulation of an interstate market, the challenged NFA provisions cannot "substantially affect interstate commerce." *Lopez*, 514 U.S. at 559.

This is the point the court made in *Hobby Distillers* when it explained that congressional regulation of intrastate activity is constitutional only where it "serves a comprehensive market regulation and is needed to make that regulation effective." 740 F. Supp. 3d at 532; *contra* Govt. MSJ at 27–28 (quibbling with the use of the term "comprehensive"). The statutes at issue in *Hobby Distillers* affected many "facet[s] of the interstate alcohol market," including by requiring business permits and imposing labeling requirements. *Hobby Distillers*, 740 F. Supp. 3d at 533 (emphasis omitted). But the statutory scheme was not a comprehensive regulation of the underlying market itself because it did not "directly regulate the supply and demand of alcohol" or seek to "promote or eliminate a national marketplace for alcohol." *Id.* The court observed that there was no "degree of control over the 'production, distribution, and consumption' of alcohol as there was for wheat in *Wickard* or controlled substances in *Raich*." *Id.* The same reasoning applies with equal force to the challenged NFA provisions. The Sixth Circuit's recent decision in *Ream* is not to the contrary because it did not address the Commerce Clause. 174 F.4th 480.

The Government argues that "failing to regulate the *intrastate*" making, transfer, and possession of NFA firearms "'would leave a gaping hole' in the NFA by creating an unregulated sub-market in unregistered NFA firearms" that could be "diver[ted] into illicit channels." Govt. MSJ at 20 (quoting *Raich*, 545 U.S. at 22). But this argument assumes that the NFA is a market regulation in the first place which, as explained, it is not. Indeed, invalidating the challenged

provisions of the NFA with respect to the untaxed items would not leave a hole in the commercial regulation of the affected items, because the GCA would continue to perform that function.

The Government points to a single sentence in the legislative history of the GCA as supposed evidence that the NFA was designed to regulate interstate commerce, but not only did the GCA postdate the NFA by over 30 years, but the Government also mischaracterizes the sentence. *Contra id*. The committee report states that the NFA "has long been the vehicle for removing from commerce weapons which are peculiarly susceptible to criminal use." S. Rep. No. 90-1097, at 180 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2305. But that was to distinguish the tax-based NFA from the FFA's "regulation of commerce in firearms." *Id.* The NFA's means of "removing from commerce" NFA firearms was its now-zero firearms tax. *See Mock v. Garland*, 75 F.4th 563, 569 (5th Cir. 2023) (explaining that "when the NFA was enacted, the tax was explicitly intended to tax these weapons out of existence"). Without the tax, the challenged NFA registration provisions do not remove any firearms from commerce; they instead impose registration requirements unmoored from any comprehensive market regulation.

The Government again cites cases involving machineguns, *e.g.*, *United States v. Beuckelaere*, 91 F.3d 781 (6th Cir. 1996), or provisions of the Gun Control Act, *e.g.*, *United States v. Rose*, 522 F.3d 710 (6th Cir. 2008), as purported support for its position, Govt. MSJ at 21–22. But as explained, machineguns are regulated differently than the untaxed NFA firearms. Congress has "froze[n] in place the market in machineguns." *Kirk*, 105 F.3d at 1001 (op. of Higginbotham, J.). Consequently, machinegun regulation perhaps is akin to the comprehensive market regulations in *Raich* and *Wickard*. The machinegun ban is "a demand-side measure to lessen the stimulus that prospective acquisition would have on the commerce in machine guns" that "effectuate[s]" the total market "freez[e]" on "the number of legally possessed machine guns." *United States v.*

Knutson, 113 F.3d 27, 30 (5th Cir. 1997). Congress has thus regulated the market for machineguns by "directly regulat[ing] the supply and demand" as "part of a federal directive to" freeze in place "a national marketplace for" machineguns. *Hobby Distillers*, 740 F. Supp. 3d at 533. Congress has done nothing of the sort for the untaxed NFA firearms. The Government's other machinegun cases fare no better. *See, e.g.*, *United States v. Kenney*, 91 F.3d 884, 890 (7th Cir. 1996); *United States v. Rybar*, 103 F.3d 273, 283 (3d Cir. 1996); *United States v. Luna*, 165 F.3d 316, 319–22 (5th Cir. 1999). And for cases involving provisions of the Gun Control Act, *e.g.*, *Rose*, 522 F.3d 710, their conclusions do not apply to the NFA because firearms covered by the Gun Control Act, unlike firearms covered by the NFA, generally must have been involved in interstate commerce.

D. The Challenged NFA Provisions Are Not Necessary and Proper to the Execution of Congress's Commerce Clause Powers.

For these same reasons, the challenged NFA provisions cannot be justified as "necessary and proper" to the effectuation of Congress's Commerce Clause powers. The challenged provisions are not "plainly adapted" to executing Congress's power to regulate interstate commerce because they apply to the affected firearms regardless of any connection with commerce. And by regulating activity that would not itself be covered by Congress's Commerce Clause powers, Congress would be "improperly" invading the reserved police and regulatory powers of the states. *See McNutt*, 173 F.4th at 216–21.

VI. The NFA's Regulation of Suppressors and Short-Barreled Rifles Violates the Second Amendment.

In addition to exceeding Congress's regulatory authority, the challenged NFA provisions also constitute an unconstitutional regulatory scheme as applied to suppressors and short-barreled rifles under the Second Amendment. The Government fails to satisfy its burden to demonstrate that the NFA's registration scheme is consistent with this Nation's history of firearm regulation, presenting four unpersuasive arguments that can be easily rejected.

A. Suppressors and Short-Barreled Rifles Are Covered by the Second Amendment's Plain Text.

There is no dispute between the parties that the plain text of the Second Amendment covers possession of suppressors and short-barreled rifles. Pls.' MSJ at 26–27; *see* Govt. MSJ at 30–37; *see also* First Am. Compl. ¶ 34, *United States v. District of Columbia*, No. 1:25-cv-04458-APM (D.D.C. May 14, 2026), ECF No. 28 ("D.D.C. First. Am. Compl."); *United States v. Comeaux*, No. 24-30307, 2026 WL 1758170, at *3–4 (5th Cir. June 18, 2026) (determining that suppressors are "Arms"). Indeed, the Government has argued that banning suppressors violates the Second Amendment. *See* D.D.C. First. Am. Compl. ¶ 34. Consequently, the challenged NFA registration scheme implicates the plain text of the Second Amendment, and the Government, "[t]o justify its regulation, . . . must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17.

B. Suppressors and Short-Barreled Rifles Are Not "Dangerous and Unusual Weapons."

The Government has failed to satisfy its burden to demonstrate that the NFA's registration requirements as applied to suppressors and short-barreled rifles are consistent with this Nation's history of firearm regulation. The sole historical tradition that the Court has reasoned may remove an arm from the Second Amendment's protection is the tradition of restricting the use of dangerous and usual weapons. *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008); *Bruen*, 597 U.S. at 46–48. But suppressors and short-barreled rifles are not "*both* dangerous *and* unusual." *Caetano v. Massachusetts*, 577 U.S. 411, 417 (2016) (Alito, J., concurring in the judgment) (emphases in original), and the Government's weak arguments to the contrary fail to persuade.

Plaintiffs presented significant evidence that suppressors and short-barreled rifles are in common use today, with hundreds of thousands of Americans lawfully possessing short-barreled rifles and millions of Americans lawfully possessing suppressors. Pls.' MSJ at 31–34; *see also*

D.D.C. First Am. Compl. ¶ 4 (arguing that suppressors are "in common use by law-abiding Americans").[1] Plaintiffs also demonstrated that suppressors and short-barreled rifles are not "dangerous" in the proper sense of dangerous compared to other protected firearms (*e.g.*, handguns). Pls.' MSJ at 34–40. In response, the Government contends that suppressors and short-barreled rifles *are* dangerous, but essentially the only reasoning it provides is that suppressors and short-barreled rifles are purportedly "uniquely susceptible to criminal misuse." Govt. MSJ at 34–36. Plaintiffs have already established why the Government is wrong on this dangerousness point—the overwhelming evidence is that suppressors are safe, effective, and commonly used devices that decrease the noise level of a gunshot and are recommended by numerous professional organizations for the safest use of firearms; short-barreled rifles are simply firearms that are larger than pistols, yet more accurate, but shorter than rifles, yet less accurate; and neither suppressors nor short-barreled rifles are commonly used by criminals. *See* D.D.C. First Am. Compl. ¶ 33 ("The idea that suppressors are in any way widely associated with criminal activity is a myth."). Regardless, the Government presents *no* argument to contradict Plaintiffs' point that suppressors and short-barreled rifles are in common use today. Indeed, the Government's reasoning runs headlong into *Heller*'s reasoning about handguns, which are overwhelmingly the firearm used by criminals, yet were held to be fully protected under the Second Amendment and not dangerous and unusual weapons. In other words, if *any* type of firearm could be characterized as particularly susceptible to criminal misuse, it would be handguns, and yet the Supreme Court in *Heller* held that they are protected by the Second Amendment because they are in common use for lawful

[1] Indeed, since Plaintiffs filed their motion for summary judgment, the number of registered suppressors and short-barreled rifles has grown. *Current Processing Times*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, https://perma.cc/396C-SPBG (last updated June 8, 2026) (6,439,813 registered suppressors and 1,178,348 registered short-barreled rifles).

purposes. *Cf. Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244, 1290 (D.C. Cir. 2011) (Kavanaugh, J., dissenting). And any claim that suppressors are dangerous and unusual weapons runs headlong into the Government's lawsuit seeking to invalidate the District of Columbia's suppressor ban as violating the Second Amendment.

The Government claims that *United States v. Miller*, 307 U.S. 174 (1939), and *Heller* foreclose Plaintiffs' Second Amendment claim as it pertains to short-barreled rifles. Govt. MSJ at 30–31. According to the Government, *Miller* "upheld the NFA's regulation of short-barreled shotguns," *Heller* did not disturb that holding, and this holding "applies equally to short-barreled rifles," because they are not "materially distinguishable from the short-barreled shotguns addressed in *Miller* and *Heller*." *Id.* at 31. The Government presents no evidence that short-barreled shotguns and short-barreled rifles are materially indistinguishable, and such a contention defies reality. Short-barreled shotguns and short-barreled rifles are plainly different types of firearms, and no amount of *ipse dixit* handwaving by the Government can change that fact. The NFA itself distinguishes between them and sets different minimum barrel lengths for each. 26 U.S.C. § 5845(a). Even if there were some reason to treat short-barreled smooth-bore firearms differently than non-short-barreled smooth-bore firearms—and the Government does not identify a reason—that reasoning would not apply to treating short-barreled rifled-bore firearms (like short-barreled rifles) because handguns (a short-barreled rifled-bore firearm) are not only constitutionally protected under *Heller*, but are the "*quintessential* self-defense weapon." *See District of Columbia v. Heller*, 554 U.S. 570, 629 (2008) (emphasis added).

Furthermore, the *Miller* Court did not definitively hold that short-barreled shotguns are unprotected by the Second Amendment but simply determined that "it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to

the common defense." 307 U.S. at 178. In other words, neither Miller, who did not file a brief or appear at oral argument, *Heller*, 554 U.S. at 623, nor the Government provided a robust historical discussion of short-barreled shotguns and their commonality or dangerousness upon which the Court could determine that short-barreled shotguns were protected. This is why *Heller* cautioned lower courts on *Miller*'s limited scope: "[i]t is particularly wrongheaded to read *Miller* for more than what it said." *Id.*

And even if *Miller* (in 1939) foreclosed protection for short-barreled shotguns (and it did not), and even if *Miller*'s reasoning extended to short-barreled rifles (and it also does not), that would not resolve this case. For, as *Bruen* makes clear, the relevant question is whether short-barreled rifles are "in common use *today*." 597 U.S. at 47 (emphasis added). Thus, it does not matter whether short-barreled rifles were in common use in 1939 any more than it mattered in *Bruen* whether handguns were in common use in the Seventeenth Century. *See id*. The focus must be on the present. To hold otherwise and deny that modern weapons can become popular among modern Americans would leave Second Amendment rights "trapped in amber" and "would be as mistaken as applying the protections of the right only to muskets and sabers." *United States v. Rahimi*, 602 U.S. 680, 691–92 (2024).

C. There Is No Historical Tradition Supporting the Challenged NFA Provisions' Registration Requirements for Protected Arms.

There is no historical tradition that would support the NFA's registration scheme for suppressors, short-barreled rifles, or any other protected arm. Pls.' MSJ at 40–42. It is the Government's burden to identify a "well-established and representative historical analogue," *Bruen*, 597 U.S. at 30 (emphasis omitted), but it has failed to do so.

The Government's first purported historical analogue is that "American legislatures have long prohibited the carrying of dangerous and unusual weapons." Govt. MSJ at 34 (cleaned up).

But those regulations have no relevance here. As Plaintiffs have explained, suppressors and short-barreled rifles are not dangerous and unusual.

The Government next contends that the NFA's registration requirements fit into the purported historical tradition that "many states have long regulated the size of firearms." *Id.* But bans or taxes on "pocket pistols" are not analogous to requiring the registration of protected arms and punishing the failure to do so with felony criminal penalties. The Founders did not require registration of privately owned arms. As then-Judge Kavanaugh explained in *Heller II*, "registration of lawfully possessed guns is not 'longstanding.' Registration . . . has not been traditionally required in the United States and, indeed, remains highly unusual today." 670 F.3d at 1291 (Kavanaugh, J., dissenting). Indeed, "registration requirements are often seen as half-a-loaf measures aimed at deterring gun ownership," *id.*, and they facilitate the ability of governments to confiscate arms. Further, the fact that the Supreme Court held that handguns are fully protected by the Second Amendment belies any notion that this Nation has a historical tradition of being able to regulate firearms based on whether they are easily concealable.

Baltimore—not the Government to satisfy its burden—raises several other purported historical analogues. Since the Government does not rely on these purported analogues, the Court should not consider them. But even if it does, they fail to carry the Government's burden. First, Baltimore contends that laws regulating the length of militia members' firearms are relevant to justifying the NFA's registration scheme for suppressors, short-barreled rifles, or any other protected arm. Br. of City of Baltimore et al. as *Amici Curiae* in Supp. of Defs. at 23 (June 5, 2026), ECF No. 30 ("Balt. Amicus"). But these laws are not "relevantly similar," *Bruen*, 597 U.S. at 29; *Hemani*, 2026 WL 1751710, at *5–6, because they applied specifically to militia members, not to the general public like the NFA.

Second, Baltimore contends that Founding-era militia musters—which required able-bodied men to appear bearing arms, *see Heller*, 554 U.S. at 624–25—support the NFA's registration provisions, Balt. Amicus at 23–24, but that analogy fails. Militia inspections were episodic, localized, and concerned with readiness, not control. Musters did not require individuals to register all of their personal arms with a centralized authority, provide invasive personally identifying biometric data, submit to background checks, await approval, or face criminal penalties for prior possession of uninspected weapons. *See* David B. Kopel & Joseph G.S. Greenlee, *The "Sensitive Places" Doctrine*, 13 CHARLESTON L. REV. 205, 232–34 (2018) (explaining that Founding-era laws assumed lawful private possession and did not authorize government preapproval). Militia inspections presupposed a preexisting right to privately possess arms—they were not a mechanism for gatekeeping ownership or disarmament. The challenged NFA registration provisions, by contrast, are a tool of exclusion and criminal enforcement, backed by severe felony penalties. No Founding-era law imposed comparable burdens or conditions.

Third, that States may have purportedly imposed taxes on personally held firearms, restricted where and to whom individuals could sell firearms, enacted surety laws to prevent firearm use for violence, or prohibited firearm use in certain areas does not support the challenged NFA *registration* provisions. *Contra* Balt. Amicus at 24–25. Baltimore does not explain how any of these supposed historical analogues have anything to do with the NFA's requirement to register the possession, transfer, or making of every firearm that it covers.

Having no meritorious fact-based counterargument to Plaintiffs' overwhelming evidence, the Government turns to relying on courts that have found that suppressors and short-barreled rifles are dangerous and unusual weapons. Govt. MSJ at 34–37. But contrary to *Bruen*'s textual and historical framework, these courts cited by the Government interest-balanced suppressors and

short-barreled rifles out of the Second Amendment's scope, appealing to amorphous notions of "dangerousness" and deciding what firearms the "people" ought to prefer. *See, e.g.*, *United States v. Rush*, 130 F.4th 633, 637 (7th Cir. 2025); *United States v. Robinson*, No. 23-12551, 2025 WL 870981, at *2–5 (11th Cir. Mar. 20, 2025); *Cox*, 906 F.3d at 1185; *Second Amend. Found., Inc. v. ATF*, 702 F. Supp. 3d 513, 536–37 (N.D. Tex. 2023); *United States v. Miller*, No. 3:23-cr-41-S, 2023 WL 6300581, at *1–4 (N.D. Tex. Sep. 27, 2023). These decisions therefore engage in the same sort of "judge-empowering interest-balancing" analysis that *Heller* and *Bruen* repudiated. *Bruen*, 597 U.S. at 22 (cleaned up).

D. The NFA is Not a "Shall-Issue" Licensing Regime and Shall-Issue Licensing Regimes Are Not Presumptively Constitutional.

The Government attempts to sidestep *Bruen*'s historical analysis by arguing that because, in the Government's view, the NFA is a presumptively constitutional "shall-issue" licensing regime, it is *Plaintiffs*' burden to show that the challenged NFA provisions have been put toward "abusive ends" to overcome this presumption and establish a Second Amendment violation. Govt. MSJ at 31–33 (citing *United States v. Peterson*, 161 F.4th 331 (5th Cir. 2025); *United States v. Speed*, 175 F.4th 272 (4th Cir. 2025)); *see also United States v. DeBorba*, No. 24-3304, 2026 WL 1587553, at *4–5 (9th Cir. June 3, 2026). The Government's argument fails.

First, the NFA is not a "shall-issue" licensing regime—it is not a licensing regime at all. It is instead a taxation and registration regime. There is a distinction between licensing and registration. *Heller II*, 670 F.3d at 1270 (Kavanaugh, J., dissenting). "Licensing requirements" might "advance gun safety by ensuring that owners understand how to handle guns safely, particularly before guns are carried in public," *id.* at 1291, or "ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens,'" *Bruen*, 597 U.S. at 38 n.9 (quoting *Heller*, 554 U.S. at 635). But "[r]egistration requirements . . . require registration of

individual guns and do not meaningfully serve the purpose of ensuring that owners know how to operate guns safely in the way certain licensing requirements can," so they "are often seen as half-a-loaf measures aimed at deterring gun ownership." *Heller II*, 670 F.3d at 1291 (Kavanaugh, J., dissenting). The NFA falls into the latter, registration category, not the former, licensing category. Consequently, treating the nondiscretionary aspect of the NFA as the key feature for purposes of the constitutional analysis would erase the distinction between licensing and registration.

The erasure of that distinction is inconsistent with the Supreme Court's precedents, which have treated registration differently than licensing by expressing serious doubt about the constitutionality of the former. In *Miller*, the Court affirmed a prosecution for possessing an unregistered short-barreled shotgun because the Court was not presented with "any evidence tending to show" that short-barreled shotguns were protected and declined to take judicial notice that they were. 307 U.S. at 178. But "if registration could be required for all guns, [*Miller*] could have just said so and ended its analysis; there would have been no need to go to the trouble of considering whether the gun in question was the kind protected under the Second Amendment." *Heller II*, 670 F.3d at 1294 (Kavanaugh, J., dissenting). And in *Heller*, the Court suggested that the NFA's "restrictions on machineguns . . . might be unconstitutional" if machineguns were protected arms. 554 U.S. at 624. By contrast, footnote nine of *Bruen* suggested that licensing might be constitutionally applied to protected arms. *See* 597 U.S. at 38 n.9.

Second, and consequently, the further question of whether "shall-issue" licensing regimes are presumptively constitutional is academic here because the NFA is not a "shall-issue" licensing regime. But even putting that dispositive point to the side, "shall-issue" licensing regimes are not presumptively constitutional. *See Speed*, 175 F.4th at 290–91 (Richardson, J., concurring). The position that all shall-issue licensing regimes are presumptively constitutional has no limiting

principle. All that would be required for the Government to be presumptively free to track lawful firearm ownership, complete with sensitive personal identifying information about the owner of any specific firearm, would be for the regime to deny the Government discretion to prohibit the possession of the firearm.

Furthermore, this position would upend who bears the burden of establishing constitutionality under *Bruen*. If the Second Amendment covers an individual's conduct the "*government* must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24 (emphasis added). *Bruen*'s "Footnote Nine" did not "presumptively immunize" any licensing regime "from constitutional challenge absent special circumstances." *Md. Shall Issue v. Moore*, 116 F.4th 211, 240–41 (4th Cir. 2024) (Richardson, J., dissenting). Instead, the footnote "limited the Court's holding to the particular kind of licensing regime at issue in *Bruen* while leaving open constitutional challenges to other kinds of licensing regimes." *Id.* at 241. Footnote nine "merely clarified that shall-issue licensing regimes are not necessarily unconstitutional just because may-issue regimes are." *Id.* at 242. Reading footnote nine to do anything more "would elevate implications from dicta over the mandatory text-and-history test established in *Bruen*." *Id.* at 241. Consequently, "text, history, and Supreme Court precedent establish that any regulation of protected conduct, if unjustified, infringes the Second Amendment right." *Id.* at 245. Any shall-issue licensing regime that regulates protected conduct under the Second Amendment's plain text, therefore, must be justified according to history and tradition. *Id.*; *see also Speed*, 175 F.4th at 290–91 (Richardson, J., concurring).

Third, to the extent the Court determines the NFA to be at least in part a shall-issue licensing regime, the Government has applied the NFA "toward abusive ends" by leveraging the Act to establish a registry of protected arms. As Plaintiffs explained above, registration of protected arms

is unsupportable as a matter of the Second Amendment's text and this Nation's historical tradition.

VII. This Court Should Grant Plaintiffs All The Relief That They Request.

Plaintiffs seek a remedy tailored to redress their injuries: an injunction prohibiting the enforcement of the challenged NFA regulations against: (i) Roberts, Cockrell, Meridian Ordnance, CHL, and ASA Foundation; (ii) Meridian Ordnance's customers; and (iii) the members of BFA, CHL, and JPFO, as applicable. The Government argues that no Plaintiff has shown irreparable harm from the challenged regulations insofar as they apply to the manufacturing of NFA firearms and that CHL and ASA Foundation have not shown irreparable from the challenged regulations insofar as they apply to short-barreled rifles, short-barreled shotguns, or AOWs. Govt. MSJ at 37–38. As explained above, however, Plaintiffs are not challenging the NFA's regulations on manufacturing. And CHL and ASA Foundation challenge, on their own behalf, only the NFA's regulations on suppressors, so they need not demonstrate irreparable harm from the NFA's regulation of other covered firearms.

The Government takes issue with Plaintiffs' proposed injunction on several additional grounds, but none persuades.

A. This Court May Enjoin Enforcement Against Meridian Ordnance's Customers.

The Government says that this court cannot enjoin enforcement of the challenged NFA provisions against Meridian Ordnance's customers. On the Government's telling, Meridian Ordnance has not demonstrated that the application of these requirements to its customers causes it irreparable harm. *See* Govt. MSJ at 38–40. But Meridian Ordnance has explained the registration requirements cost it sales because they deter its customers from purchasing NFA firearms. *See* Pls.' MSJ at 10–11. That is an irreparable harm. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 464 (2017); *Herschfus v. City of Oak Park*, 150 F.4th 489, 496 (6th Cir. 2025); *Consumers' Rsch.*

v. FCC, 109 F.4th 743, 753 (5th Cir. 2024), *rev'd on other grounds*, 606 U.S. 656 (2025).

The Government does not dispute that an unrecoverable monetary harm is irreparable, but it nonetheless contends that Meridian Ordnance's irreparable harm argument fails. The Government first asserts that Meridian Ordnance's declaration is conclusory. *See* Govt. MSJ at 38–39 & n.10. Yet it does not explain what else Meridian Ordnance needed to say to establish that the challenged NFA provisions cost it sales. And while the Government notes that the declaration is comparable to the declarations of other firearms dealers in other cases, *see id*., that is hardly remarkable because the challenged provisions affect all NFA firearms dealers in the same way.

The Government next argues that Meridian Ordnance's theory fails because the challenged provisions do not *directly* foreclose sales of NFA firearms. Its theory runs like this: Meridian Ordnance's customers can purchase NFA firearms as long as they comply with the registration requirements. That means the requirements do not cost Meridian Ordnance any sales—only the "independent choices" of Meridian Ordnance's customers to refrain from purchasing NFA firearms in light of those requirements. *See id.* at 39.

This theory cannot be squared with Supreme Court precedent. In *Department of Commerce v. New York*, 588 U.S. 752, 766–67 (2019), the Court considered the question whether States could obtain an injunction requiring the government to remove a citizenship question from the census. The States asserted that the question would deter noncitizens from responding to the census, which would injure the States by diminishing their political representation and causing them to lose federal funds. *Id*. at 766. The Court acknowledged that this harm depended on "the independent action of third parties," *id*. at 767, but it nonetheless held that the harm was cognizable. It did so because the harm did not "rest on mere speculation about the decisions of third parties" but rather "on the predictable effect of Government action" on those decisions. *Id*. at 768.

While that was a case about standing, there is no basis for concluding that the causation standard is any different in the context of determining whether a plaintiff has suffered irreparable harm. And Meridian Ordnance's theory of irreparable harm likewise rests "on the predictable effect of Government action on the decisions of third parties." *Id*. The NFA requires individuals to spend time and money disclosing intrusive information to the government before purchasing an NFA firearm. It then requires them to wait for government approval before they may consummate a purchase. *See* Am. Compl. ¶¶ 15–16. Common sense makes clear that these requirements cause individuals to refrain from purchasing NFA firearms, including from Meridian Ordnance. If there were any doubt, it would be erased by the individual plaintiffs' declarations. *See* Pls.' App'x at Appx.001–08 (Plaintiffs Roberts and Cockrell have declined to purchase NFA firearms because of the NFA's registration requirements). That means this case is the irreparable-harm equivalent to *Department of Commerce v. New York*; the dealers' harm is caused by the registration requirements.

The Government cites many cases in support of its far-fetched theory, but nearly all of them stand for a proposition that Plaintiffs do not contest: that irreparable harm cannot be established on the basis of sheer speculation. Consider *Market Synergy Group, Inc. v. Department of Labor*, No. 16-cv-4083-DDC-KGS, 2016 WL 6948061 (D. Kan. Nov. 28, 2016). That case involved a rule that prohibited insurance companies from compensating independent agents for selling certain of their products unless they opted into a new program with more stringent requirements. *See id*. at *3–4. The plaintiff—a company that served as a liaison between insurance companies and independent agents—alleged that its business model depended on independent agents receiving compensation from insurance companies, and that the rule would therefore cause its revenues to fall by nearly 80%. *Id*. at *29. The court dismissed this allegation as conjecture. It explained that, if insurance companies opted into the new program, the rule would not harm the plaintiff's business

at all. *See id* at *29–30. And the plaintiff could only speculate about whether insurance companies would do so. *Id*. at *30. For that reason, the court rejected the plaintiff's theory. *Id*. at *30–31.

But as explained, Plaintiffs' assertions of irreparable harm are not speculative. And courts have found irreparable harm in cases involving non-speculative indirect effects. Consider *United States Association of Reptile Keepers, Inc. v. Jewell*, 103 F. Supp. 3d 133 (D.D.C. 2015). There, the plaintiff sought an injunction against an agency rule that banned the interstate transportation of certain reptiles. *Id*. at 138. It alleged that the rule caused its members irreparable economic harm by foreclosing them from selling reptiles across state lines. *Id*. The Government argued—citing many of the same cases that it cites here—that the members' harms were speculative and indirect because they were caused by the independent decisions of persons in the keepers' States not to buy reptiles. *See id*. at 162. The court rejected that argument because the asserted harms, though indirect, were not speculative. It explained that members asserted that the rule had *already* cost them sales at the time of the suit, and that economic logic supported these assertions. *See id*.

So too here. Meridian Ordnance has stated that the registration requirements have already cost it sales. Pls. MSJ at 10. And that assertion is supported by economic logic, because imposing burdensome regulations on the purchase of a good will reduce sales of that good. That means Meridian Ordnance's theory is not speculative at all. It has therefore established irreparable harm.

B. This Court Should Grant Relief To All Of BFA's, CHL's, and JPFO's Members.

The Government finally contends that this Court should grant relief only to "the organizational plaintiffs' members that the organizations have chosen to identify and who have standing to challenge the NFA's regulations." Govt. MSJ at 40. On its telling, an injunction granting relief to all of BFA's, CHL's, and JPFO's members would "end-run" three limits on the scope of permissible relief. *Id*. The Government is wrong on each score.

First, the Government contends that the proposed injunction would flout "associational standing requirements." *Id*. at 40–41. But the Government does not (and could not) dispute that BFA, CHL, and JPFO satisfy the requirements for associational standing. Instead, it argues that, although BFA, CHL, and JPFO have established associational standing, they may seek relief only on behalf of its members who have separately established standing in their own right. The Supreme Court's associational standing doctrine, however, "permits [an] association to seek relief for its *entire membership*" if even "a single member" has suffered an injury. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 399 (2024) (Thomas, J., concurring) (emphasis added). That means each of the association's members need not establish standing to obtain the benefit of the relief. Indeed, in explaining that injunctive relief granted to organizations satisfies Article III's redressability requirement, the Court has simply assumed—*i.e.*, has not demanded proof—that the relief "will inure to the benefit of those members of the association actually injured." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977) (quotation marks omitted; emphasis added). Moreover, an association has standing to sue on behalf of its members only if "the relief requested" does not "require[ ] the participation of individual members in the lawsuit." *Id.* Yet to obtain relief under the Government's rule, the association's individual members would have to establish standing. In other words, they would have to participate in the lawsuit. That cannot be right.

The Government claims that *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583 (8th Cir. 2022), supports its position. *See* Govt. MSJ at 40–41.[2] But *Religious Sisters* has nothing to do with

[2] While the Government also cites *Association of American Physicians & Surgeons v. FDA*, 13 F.4th 531 (6th Cir. 2021), in support of its position, in that case the Sixth Circuit simply noted, in its view, certain "tensions" with associational standing and the Supreme Court's more recent decisions on Article III redressability rules. However, the Court acknowledged that the associational standing test was still-binding "directly on-point precedent" and proceeded to apply it. *Id.* at 542.

the appropriate scope of relief. In that case, a group of plaintiffs, including the Catholic Benefits Association ("CBA"), challenged a rule that required all entities who operated a health program receiving federal funds to cover gender-transition surgeries. *See Religious Sisters of Mercy v. Azar*, 513 F. Supp. 3d 1113, 1136 (D.N.D. 2021). The CBA did not operate a covered program, so the district court held that it could not challenge the rule on its own behalf. *See id*. at 1136–37. But the CBA represented that it had unspecified members who did operate covered programs, so the district court held that it had associational standing. *See id*. at 1137–39. The Eighth Circuit disagreed. It explained that, to establish associational standing, an organization must identify at least one specific member who has suffered the requisite harm. *Religious Sisters*, 55 F.4th at 601–02. The CBA did not do that. It merely asserted that the rule harmed an unspecified set of its members, which was not enough. *Id*. at 602. *Religious Sisters* is irrelevant because the Government does not contest BFA's, CHL's, and JPFO's standing. Instead, the Government argues that, even if a plaintiff establishes associational standing, it may obtain relief only for those members that it identifies in the lawsuit. Neither *Religious Sisters* nor any other case supports that proposed rule.

Second, the Government contends that the proposed injunction would run afoul of the Supreme Court's decision in *CASA*. *See* Govt. MSJ at 40–41. But *Trump v. CASA* held only that courts may not grant so-called "universal injunctions" in specific circumstances. *See* 606 U.S. 831, 845–47 (2025). BFA, CHL, and JPFO do not seek a universal injunction but only one prohibiting enforcement of the challenged requirements against their own members. *CASA* did not disturb the many cases holding that this kind of relief is permissible. *See, e.g.*, *Hunt*, 432 U.S. at 342.

Third, the Government contends that the proposed injunction would undermine the requirements for class certification set forth in Rule 23 of the Federal Rules of Civil Procedure. Govt. MSJ at 40–41. But in *UAW v. Brock*, 477 U.S. 274 (1986), the Supreme Court made clear

that associational suits are an *alternative* to class certification. In that case, a union sought relief for its members from the government's narrow interpretation of a statute that provided benefits for workers adversely affected by imports. *See id*. at 277. The government, resisting the union's request, argued that "members of an association who wish to litigate common questions of law or fact against the same defendant be permitted to proceed only pursuant to the class-action provisions of Federal Rule of Civil Procedure 23." *Id*. at 288. The Court rejected this argument and "reaffirm[ed]" the viability of associational suits. *Id*. at 290. It observed that associational suits are "advantageous both to the individuals represented and to the judicial system as a whole." *Id*. at 289. And it rejected the government's argument that Rule 23's safeguards were necessary to safeguard plaintiffs' interests. Associations, the Court explained, are generally equipped to "represent adequately the interests of all their injured members." *Id*. at 290. In light of *Brock*, the Government's argument that associational suits undermine Rule 23 is untenable. Indeed, the Court recently affirmatively applied its associational standing precedents without suggesting that they are somehow suspect. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199–201 (2023).

Against all that, the Government asserts that it would make some practical sense to limit the injunction to identified members. *See* Govt. MSJ at 41. But the Supreme Court has adopted no such limit, and the Government's contention that a rule makes sense is no basis for disregarding binding precedent. This Court should therefore grant Plaintiffs all the relief they request.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for summary judgment and deny the Government's motion.

Dated: June 24, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

On June 24, 2026, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Eastern District of Kentucky, using the Court's electronic case filing system. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ David H. Thompson
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