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October 9, 2026

VIA FEDEX

Hon. Josh Kaul, Attorney General
Office of the Attorney General
Risser Justice Center
17 W Main St
Madison, WI 53703

RE: Impact of Federal Injunction on State Firearms Laws

Dear Attorney General Kaul:

We write on behalf of our client, Firearms Policy Coalition (“FPC”), regarding recent federal court developments with significant and immediate implications for firearms law in your State. In *Silencer Shop Foundation v. ATF*, No. 6:26-CV-056 (N.D. Tex. Aug. 5, 2026) (consolidated with the FPC-backed *Jensen v. ATF*, No. 6:26-CV-227), the U.S. District Court for the Northern District of Texas held that various provisions of the National Firearms Act (“NFA”) are unconstitutional because they no longer comport with Congress’s taxing power. This decision has created an urgent legal question for law-abiding firearms owners, firearms manufacturers, and law enforcement officials and legal officers in states, including yours, with laws that condition the legality of certain firearms on compliance with the NFA: Must state residents still comply with unconstitutional, enjoined federal regulations to exercise their right to keep and bear the arms under state law? In order to protect your citizens’ rights, we respectfully request your Office’s attention and offer FPC’s partnership in crafting a prompt resolution.

Background

The NFA, enacted in 1934, imposed a tax on the transfer and making of certain regulated firearms—including silencers, short-barreled rifles, short-barreled shotguns, and “any other weapons.” To facilitate collection of this tax, Congress erected a regulatory framework requiring registration in the National Firearms Registration and Transfer Record, submission of applications with fingerprints and photographs, local law enforcement notification, and prior ATF approval. *See* 26 U.S.C. §§ 5812(a)–(b), 5822, 5841(a)–(c), (e), 5842(b), 5861(b)–(f), (i); 27 C.F.R. §§ 479.62(a)–(d), 479.84(a)–(d).



On July 4, 2025, Congress enacted the One Big Beautiful Bill Act, Pub. L. 119-21, 139 Stat. 72 (2025), which, effective January 1, 2026, reduced the federal transfer and making taxes to \$0 for silencers, short-barreled rifles, short-barreled shotguns, and “any other weapons.”¹ Critically, Congress left the NFA’s entire regulatory apparatus—registration, application, approval, and recordkeeping—fully intact despite eliminating the revenue.

On August 5, 2026, the U.S. District Court for the Northern District of Texas held that the challenged NFA regulatory provisions are unconstitutional. Because a \$0 tax raises no revenue—the “essential feature of any tax”—the regulatory provisions can no longer be sustained under Congress’s taxing power, the sole constitutional basis on which the NFA was enacted. The court entered a party-specific injunction barring the ATF and DOJ from enforcing the challenged provisions (26 U.S.C. §§ 5812(a)–(b), 5822, 5841(a)–(c), (e), 5842(b), 5861(b)–(f), (i); 27 C.F.R. §§ 479.62(a)–(d), 479.84(a)–(d)) against untaxed firearms held by the plaintiffs. Additional challenges are progressing in other circuits. *See, e.g.*, the FPC-backed cases of *Brown v. ATF*, No. 4:25-CV-1162 (E.D. Mo.) and *Roberts v. ATF*, No. 2:24-CV-091 (E.D. Ky.).

The Problem

This creates a problem for many states, such as yours, that have enacted firearms statutes that condition the lawful possession, transfer, and/or making of NFA-regulated items on compliance with the federal NFA registration requirements. These provisions make it lawful for a person to possess NFA-regulated items only if that person has complied with the NFA’s registration, application, and approval requirements.

The *Silencer Shop Foundation/Jensen* decision has fundamentally disrupted this framework. The federal government is prohibited from enforcing the NFA’s registration, application, and approval requirements as to the covered plaintiffs. And the court held that those provisions are *facially unconstitutional*. Yet your State’s law still requires compliance with those facially unconstitutional federal procedures as a prerequisite to lawful possession under State law.

The Department of Justice recently notified Congress that it does not intend to appeal the decision. Letter from D. John Sauer, Solicitor General, to Sen. Charles Grassley, Chairman, Sen. J. Comm. (Sept. 24, 2026), *Silencer Shop Foundation*, No. 6:26-CV-056

¹ Machine guns and destructive devices remain subject to the \$200 tax.



(ECF No. 145-1). And the trend of litigation nationally suggests other challenges, *see Brown*, No. 4:25-CV-1162; *Roberts*, No. 2:24-CV-091, will reach the same or a substantially similar result. Accordingly, this issue is likely to persist until state legislatures act.

The result is an untenable legal limbo. Through no fault of their own, law-abiding citizens face state criminal exposure for possessing items they have a constitutionally protected right to possess and that the federal government is barred from regulating under the current statutory framework. Such uncertainty will chill law-abiding citizens' rights to keep and bear arms. And worse, it will also inevitably lead to confusion for state and local law enforcement officials who must determine whether to enforce state laws that incorporate unconstitutional federal registration, application, and approval requirements. This would not only put peaceable people at risk, but it would also inevitably lead to the expense of litigating challenges to your State's laws in civil and criminal cases. Thus, FPC encourages your Office to take action now to begin addressing this critical issue.

Proposed Solutions

FPC respectfully proposes the following two urgent, prioritized solutions to protect citizens' constitutionally protected rights, liberty, and property:

1. Immediate Non-Enforcement Guidance. We request that your Office immediately cease enforcement of applicable State laws and issue a formal statement, opinion, or memorandum to State and local law enforcement and prosecutors directing them to not enforce your State's NFA-tethered provisions for possession, making, or transfer of untaxed NFA items—silencers, short-barreled rifles, short-barreled shotguns, and “any other weapons”—without federal registration and approval under the unconstitutional provisions. Such guidance would safeguard citizens' constitutionally protected rights, provide clarity for law enforcement, avoid the expenditure of State resources on prosecutions premised on State laws tied to unconstitutional federal requirements, reduce your State's legal exposure, and serve as a prudent interim measure while the State legislature acts.

2. Permanent Legislative Fix. We further urge your Office to develop an appropriate legislative proposal and work with your State's Legislature to permanently untether lawful acquisition, possession, use, and disposition of affected arms from the unconstitutional, enjoined federal registration requirements. A full repeal of such State requirements is encouraged to show your State's commitment to its citizens' constitutionally protected rights.

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FPC and its counsel stand ready to serve as resources and partners to your Office to address this issue, including analyzing the impact of the unconstitutionality of the NFA's provisions on your State's firearms law and providing model statutory language for permanent legislative solutions. Thank you for your time and consideration. We look forward to your response and to working together in service of the people of your State.

Respectfully,



David Johnson



Daniel Bruce*

* Admitted in Virginia only. Not admitted in the District of Columbia. Practicing under supervision of partners who are members of the District of Columbia bar.