

# United States Senate

WASHINGTON, DC 20510-0609

September 21, 2023

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Attorney General Garland:

We write in strong opposition to the proposed rule “Definition of ‘Engaged in the Business’ as a Dealer in Firearms.”

This latest action by the Biden administration is yet another step in their campaign to attack law-abiding gun owners. The administration has stated its intent to “move the U.S. as close to universal background checks as possible without additional legislation.”<sup>1</sup> But Congress has not authorized universal background checks, and the administration does not have the authority to impose this policy unilaterally.

Under this newly proposed rule, common, innocent, and lawful behavior can lead to a person being presumed to be “engaged in the business” of dealing in firearms or to be selling firearms with the “intent to predominantly earn a profit.” Nowhere, however, has Congress expressed any intention to enact these far-reaching presumptions, nor are they legitimate categorical inferences from any statutory text Congress has enacted.

This proposed rule is designed to circumvent the U.S. Congress and to chill perfectly lawful and constitutionally protected conduct with vague threats of “administrative action.” Meanwhile, the criminals who Congress intended to hold accountable will be unaffected, as the proposal – incredibly – disclaims any intent to have these presumptions apply in criminal proceedings. This is all but an admission on ATF’s part that the presumptions are overbroad and unenforceable before a court of law. Gun owners selling their personal firearm collections have never been, nor are they now, “engaged in the business” of dealing in firearms. Yet this rule would interfere with that protected activity and discourage its exercise.

In 2022, Congress passed the *Bipartisan Safer Communities Act*, which made a small textual change to the statutory definition of “engaged in the business.” The legislation removed language requiring an individual’s behavior to be “with the principal objective of livelihood and profit,” changing it to require the conduct be “to predominantly earn a profit.”<sup>2</sup> The altered “engaged in the business” definition maintains language making clear that a “course” of “repetitive” buying and reselling of firearms is still required to meet the definition of “engaged in the business.” Moreover, the definition still makes clear that the “term shall not include a person who makes occasional sales, exchanges, or purchases of firearms

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<sup>1</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/14/fact-sheet-president-biden-announces-new-actions-to-reduce-gun-violence-and-make-our-communities-safer/#:~:text=The%20Executive%20Order%20directs%20the,as%20possible%20without%20additional%20legislation.>

<sup>2</sup> <https://www.congress.gov/bill/117th-congress/senate-bill/2938/text?s=4&r=2&q=%7B%22search%22%3A%5B%22bipartisan%22%2C%22safer%22%2C%22communities%22%2C%22act%22%5D%7D>

for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.”

The essence of the change was simply that illegal firearm sales need not amount to a person’s “livelihood” for that activity to be criminally actionable. It was never intended to give the administration a blank check to comprehensively rewrite settled law or understandings about private firearm sales for lawful purposes or for the enhancement or liquidation of personal firearm collections.

ATF’s proposed rule is illogical, overreaching, and unauthorized. We urge its immediate withdrawal.

Sincerely,




Roger Marshall, M.D.  
United States Senator



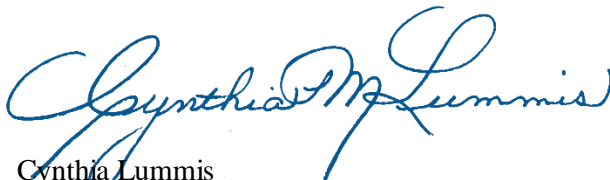
John Barrasso  
United States Senator



Rick Scott  
United States Senator



Steve Daines  
United States Senator



Cynthia Lummis  
United States Senator



Eric Schmitt  
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Cindy Hyde-Smith  
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