

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

**STATE OF TEXAS, STATE OF  
LOUISIANA, STATE OF MISSISSIPPI,  
STATE OF UTAH, JEFFREY W.  
TORMEY, GUN OWNERS OF  
AMERICA, INC., GUN OWNERS  
FOUNDATION, TENNESSEE  
FIREARMS ASSOCIATION, *and*  
VIRGINIA CITIZENS DEFENSE  
LEAGUE,**  
*Plaintiffs,*

v.

**BUREAU OF ALCOHOL, TOBACCO,  
FIREARMS AND EXPLOSIVES,  
UNITED STATES DEPARTMENT OF  
JUSTICE, MERRICK GARLAND, in  
his official capacity as Attorney General  
of the United States, *and* STEVEN M.  
DETTELBACH, in his official capacity  
as Director of ATF,**  
*Defendants.*

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Civil Action No. \_\_\_\_\_

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DECLARATION OF PHILIP VAN CLEAVE

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1. My name is Philip Van Cleave. I am a U.S. citizen and resident of Virginia. I make this declaration in support of Plaintiffs’ Complaint for Declaratory and Injunctive Relief. Unless otherwise stated, I make this declaration based on personal knowledge. If called as a witness, I can testify to the truth of the statements contained herein.

2. I am the President of Virginia Citizens Defense League (“VCDL”).

3. In that capacity, I supervise all VCDL business and affairs, and am in daily contact with VCDL members and supporters regarding their concerns, questions, requests, and suggestions on how VCDL can best represent their interests.

4. VCDL is a Virginia non-stock corporation with its principal place of business in Newington, Virginia. VCDL is organized and operated as a nonprofit civic league and is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code. VCDL has tens of thousands of members and supporters, including within the jurisdiction of this Court, and operates as a nonpartisan, grassroots organization dedicated to advancing the enumerated right to keep and bear arms as guaranteed by the Second Amendment to the U.S. Constitution and Article I, § 13 of the Virginia Constitution.

5. Since ATF's Notice of Proposed Rulemaking ("NPRM") was announced in 2023, a material concern of a significant number of VCDL's members and supporters has been that this Rule will be used to mandate (or threaten) that ordinary gun owners engaged in lawful hobbyist activity nevertheless must become licensed as Federal Firearm Licensees ("FFL"), attendant with all the warrantless inspections, paperwork requirements, and expenses that come along with obtaining and maintaining an FFL, simply to sell their privately owned firearms in an entirely personal and non-business capacity.

6. Moreover, because Virginia law continues to define being "engaged in the business" as a dealer in firearms as "devot[ing] time, attention, and labor to dealing in firearms as a regular course of trade or business *with the principal objective of livelihood and profit* through repetitive purchase or resale of firearms," Va. Code § 54.1-4200 (emphasis added), the Final Rule will expose VCDL members to unprecedented federal regulatory obligations not currently required under Virginia law.

7. Traditionally, law-abiding Americans have been able to buy and sell personal firearms from their collections without the fear of being labeled as a “dealer” that is “engaged in the business” of dealing in firearms, and largely without government oversight.

8. VCDL’s members and supporters desire and overwhelmingly support VCDL’s involvement in litigation to protect their right to acquire and transfer firearms easily and unimpeded by government, rights that are being unconstitutionally infringed by ATF’s Final Rule.

9. VCDL hears from members and supporters on various topics, including such topics as the Final Rule, which allows us to direct our resources (including to litigation) where they are needed most. By way of example only, VCDL is actively involved in litigation in Virginia to protect the right to keep and bear arms from local infringement. *See, e.g., Va. Citizens Def. League v. City of Roanoke*, No. CL 24-0074 (Roanoke Cir. Ct.). VCDL also supports Second Amendment-related litigation nationwide, having served as an *amicus curiae* in numerous federal courts, including the U.S. Supreme Court. *See, e.g., Brief Amicus Curiae of Gun Owners of America, Inc. et al., Md. Shall Issue, Inc. v. Moore*, No. 21-2017 (4th Cir. Mar. 1, 2024);<sup>1</sup> *Brief Amicus Curiae of Gun Owners of America, Inc. et al., Garland v. Cargill*, No. 22-976 (U.S. Jan. 29, 2024).<sup>2</sup> VCDL also brought a challenge to ATF’s final rule banning firearm accessories known as “bump stocks.” *Gun Owners of America v. Garland*, 18-cv-1429 (W.D. Mi.) (stayed pending Supreme Court resolution of *Cargill*).

10. Since both the NPRM was announced and the Final Rule published, VCDL has heard from scores of members and supporters who will be impacted because they have in the past bought and resold firearms, and wish to do so in the future without being improperly labeled as a “dealer” in

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<sup>1</sup> <https://tinyurl.com/8xrrx978>.

<sup>2</sup> <https://tinyurl.com/aj54pajn>.

firearms. Such persons are afraid the ATF will consider them to be “engaged in the business” of dealing in firearms without a license, and thus they will be at risk to have civil actions brought against them, or even be criminally charged or raided by federal officials.<sup>3</sup>

11. And once licensed as dealers, VCDL’s members and supporters will be subject to ATF warrantless inspections of their homes and privately owned firearms, on the theory that their entirely private activity somehow makes them part of a “highly regulated industry,” thus violating their Fourth Amendment rights.

12. Even worse, for many of these people who live in areas where zoning restricts home-based business activity, they will be required to either otherwise obtained a separate premises where purported “business” can be conducted, or forgo their non-commercial activity for which they are unable to obtain an FFL, due to the looming threat of criminal enforcement should their entirely private buying, selling, and trading of firearms for personal use be misapprehended by the government.

13. And once licensed as dealers, VCDL’s members and supporters will be subject to ATF’s license revocation policies and procedures under the bureau’s relatively new “zero-tolerance” policy.

14. This “zero-tolerance” policy was announced on June 23, 2021 by President Biden as part of a purported “Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety.” Part of that “strategy” was “establishing zero tolerance for rogue gun dealers that willfully violate the law,” described as “a new policy to underscore zero tolerance for willful violations of

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<sup>3</sup> See, e.g., Benjamin Hardy et al., *Illegal Guns Sales Led to Fatal ATF Raid on Airport Director Malinowski’s Home, Affidavit Says*, Ark. Times (Mar. 21, 2024), <https://tinyurl.com/sddfxjm2> (reporting on ATF’s fatal dawn raid of the home of an Arkansas airport executive accused of “engaging in the business”).

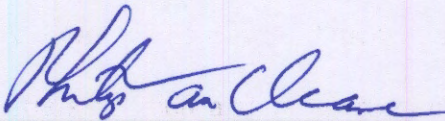
the law by federally licensed firearms dealers that put public safety at risk.” This “zero-tolerance” policy has had a profound and negative effect on the firearms community, leading to massive increases in the number of FFLs who are seeing their licenses revoked for a variety of inconsequential misunderstandings and technical paperwork violations.

15. The harms threatened by the Final Rule, and reasonably feared by many VCDL members, are far from speculative. Rather, they are a certainty if the Final Rule is allowed to take effect. The harms created by the Final Rule, which will have a ubiquitous and negative effect on the firearms community, are still yet to be fully realized, as the Final Rule has yet to be fully implemented.

16. Protection of the rights and interests advanced in this litigation is germane to VCDL’s mission, which includes the effort to preserve and protect the Second Amendment and the rights of Virginians and VCDL members and supporters to keep and bear arms, including against overreach by unelected and unaccountable anti-gun bureaucrats. VCDL is capable of fully and faithfully representing the interests of its members and supporters without participation by each of the individuals and entities.

I, Philip Van Cleave, declare under penalty of perjury that the foregoing is true and correct.

4/30/2024  
DATE

  
PHILIP VAN CLEAVE