

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

STATE OF TEXAS, )  
GUN OWNERS OF AMERICA, INC., )  
GUN OWNERS FOUNDATION, and )  
BRADY BROWN, )

Plaintiffs, )

v. )

BUREAU OF ALCOHOL, TOBACCO, )  
FIREARMS AND EXPLOSIVES, UNITED )  
STATES DEPARTMENT OF JUSTICE, and )  
STEVEN M. DETTELBAACH in his official )  
capacity as the Director of ATF, )

Defendants. )

Case No. 6:23-cv-00013

**PLAINTIFFS’ NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs respectfully notify this Court of the Fifth Circuit’s recent order in *Mock v. Garland*, No. 23-10319 (5th Cir. May 23, 2023) (attached as Exhibit 1), which confirms that Plaintiffs’ motion for preliminary injunction should be granted. A motions panel of the Fifth Circuit granted an injunction pending appeal against ATF’s same rule challenged in this case, but it limited the scope of that injunction to the parties to that case. Nevertheless, the Fifth Circuit’s order necessarily means that Plaintiffs are likely to succeed on the merits of their challenge to ATF’s rule and, as Plaintiffs have shown, they too will suffer irreparable harm if the rule is not enjoined as to them as well.

On March 30, 2023, the district court in *Mock v. Garland* denied a preliminary injunction. This Court then asked for supplemental briefing on the impact of that denial

on Plaintiffs' motion for preliminary injunction. ECF #26. Plaintiffs explained in that briefing that the *Mock* plaintiffs raised only some of the arguments Plaintiffs are raising here, and that the *Mock* court incorrectly addressed them. ECF #34 at 2-9. Plaintiffs also explained that they are raising *additional* arguments here why the rule should be preliminarily enjoined that the *Mock* court did not address. *Id.* at 2.

On March 30, 2023, the *Mock* plaintiffs noticed an appeal. Because the amnesty/registration period in ATF's rule is scheduled to expire on May 31, the *Mock* plaintiffs filed a motion for injunction pending appeal on May 17, 2023. Plaintiffs here then filed an amicus brief in support of the *Mock* plaintiffs' motion, emphasizing why the *Mock* plaintiffs were correct about the arguments they presented that overlapped with those Plaintiffs have presented here. Amicus Br. in Supp. of Injunction Pending Appeal at 4-6. Plaintiffs additionally explained to the Fifth Circuit in that amicus brief that there are other unique arguments (that Plaintiffs have also presented here) why ATF's rule is unlawful. *Id.* at 7-10.

On May 23, 2023, the Fifth Circuit issued an injunction pending appeal in *Mock*. That injunction necessarily means that the *Mock* plaintiffs showed a strong likelihood of success on the merits. *See Whole Woman's Health v. Jackson*, 13 F.4th 434, 441 (5th Cir. 2021). Because the *Mock* plaintiffs briefed materially the same arguments in their motion that Plaintiffs have briefed here,<sup>1</sup> that means Plaintiffs here have likewise showed a strong

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<sup>1</sup> Compare *Mock* Plaintiffs' Mot. for Injunction Pending Appeal at 8-13 (Second Amendment argument) with ECF #16 at 12-13 & ECF # 29 at 13-26 (same); compare also *Mock* Plaintiffs' Mot. for Injunction Pending Appeal at 13-18 (rule of lenity argument) with ECF # at 9-12 (same).

likelihood of success on the merits warranting a preliminary injunction. Indeed, the *Mock* plaintiffs' reply in support of their motion for injunction pending appeal repeatedly cited the amicus brief as support for core merits arguments. *See, e.g., Mock Plaintiffs' Reply in Supp. of Injunction Pending Appeal* at 5 (citing "Texas Br." for "voluminous historical evidence" supporting Second Amendment argument); *id.* at 6 n.5 (citing "Texas Br." for point that ATF has "ignore[d] [its] own long-held position" about stabilizing braces).

In addition, the *Mock* injunction necessarily means that ATF's rule will cause irreparable harm if not enjoined. *See Whole Woman's Health*, 13 F.4th at 441. The Fifth Circuit's order, however, enjoins the rule only as to the parties in that case. This Court should grant a preliminary injunction that extends, at a minimum, to the parties *here* (including the members and supporters of the organizational plaintiffs), because they will likewise experience irreparable harm if the rule is not enjoined. Specifically, just like the *Mock* plaintiffs, the Plaintiffs here have an individual member who is himself directly subject to the rule. *See* ECF #1 at ¶4. The other Plaintiffs here likewise will suffer irreparable harm absent an injunction, as explained in the preliminary injunction papers. ECF #16 at 22-24; ECF #29 at 29-32. Indeed, the *Mock* plaintiffs extensively cited to Plaintiffs' briefing to explain why the ATF rule would cause irreparable harm. *See Mock Plaintiffs' Reply in Supp. of Mot. for Injunction Pending Appeal* at 8-10. The Fifth Circuit may well have accepted the *Mock* plaintiffs' irreparable harm arguments for the exact same reasons Plaintiffs have explained that they will likewise experience irreparable harm. At a

minimum, the *Mock* injunction pending appeal strongly suggests that Plaintiffs' parallel and overlapping arguments on irreparable harm here are meritorious.

In sum, the *Mock* injunction pending appeal underscores why a preliminary injunction is warranted here. And the *Mock* injunction pending appeal makes a preliminary injunction necessary because the *Mock* injunction extends only to the parties in that case.

Dated May 23, 2023.

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**CERTIFICATE OF SERVICE**

I certify that on May 23, 2023, I filed this motion through the Court's CM/ECF system, which automatically served it upon all counsel of record.

/s/ Charles K. Eldred