

To: Paul Valone, President, Grass Roots North Carolina (GRNC)
From: Ed Green, GRNC Director of Legal Affairs
Date: August 20, 2026
Re: Weapons of Mass Death and Destruction and NFA Registration

Mr. Valone,

North Carolina law bans the “[m]anufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon[s] of mass death and destruction.”¹ That class of weapons is statutorily defined to include any explosive or incendiary; any firearm (other than a shotgun) greater than .50 cal; fully automatic firearms (machine guns); short barrel shotguns (SBS); short barrel rifles (SBR); any silencer; and any combination of parts from which any such weapon may readily be assembled.

The law includes limited exceptions to this blanket ban, including for licensed importers and manufacturers, US or NC contractors, and inventors or designers conducting research. In 2011, largely pursuant to GRNC lobbying efforts, another exception was added for “[p]ersons who lawfully possess or own [such a] weapon in compliance with”² a federal firearms registration scheme pursuant to the National Firearms Act (NFA),³ as now administered by Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). NFA registration generally requires submission to the ATF of a \$200 transfer tax, photograph, and fingerprints, and passing an FBI background check. Each individual NFA firearm must be separately registered. The NFA is a *tax* law, and was passed in 1934 solely pursuant to Congress’s taxing power.⁴

In 2025, Congress passed, and President Trump signed, the One Big Beautiful Bill Act (OBBBA),⁵ most tax provisions of which took effect January 1, 2026. The OBBBA reduced the NFA transfer and making tax from \$200 to \$0 for silencers, SBSs, SBRs, and AOWs. On August 5, 2026, a federal judge in the Northern District of Texas ruled that the NFA registration scheme, as applied to the firearms for which the tax was reduced to \$0, exceeds Congress’s taxing authority and is hence unconstitutional.⁶ An injunction in the Final Order,

¹ NC Gen. Stats. § 14-288.8 (2026).

² S.L. 2011-268, s. 8; codified at NC Gen. Stats. § 14-288.8(b)(5) (2026).

³ 26 U.S.C. Chapter 53, §§ 5801-5871 (2026). The term “firearm” is a term of art in the NFA. It is specifically defined to include fully automatic weapons, SBSs, SBRs, silencers, and Any Other Weapon (AOW – a catch-all classification for disguised or improvised weapons, e.g., pen, knife, wallet, or cane guns). This definition applies only to provisions of the NFA.

⁴ U.S. Const., art. I, § 8, cl. 1 (“The Congress shall have power to lay and collect taxes”).

⁵ Public Law 119-21 (July 4, 2025).

⁶ *Silencer Shop Foundation, et al. v. ATF*, No. 6:25-CV-056-H (Hon. James Wesley Hendrix). The case consolidated two similar challenges – one by the *Silencer Shop* plaintiffs, and another by a group of plaintiffs collectively referred to as *Jensen*. The

barring enforcement of the NFA registration scheme against the plaintiffs and their members, as applied to untaxed firearms, was stayed for seven days. The government did not appeal the decision, and hence the injunction became active on August 13, 2026. In short, NFA registration (and its \$200 tax) is no longer required for the plaintiffs to transfer, make, or possess silencers, SBSs, or SBRs, or AOWs. Indeed, such registration is no longer *possible*, as the ATF is enjoined from enforcing the NFA and accompanying regulations.

The court characterized both challenges to the constitutionality of the NFA registration scheme on untaxed firearms as “facial” – meaning the laws and regulations are unconstitutional “on their face,” and can never be enforced. A more limited form of challenge to a law is that it is only unconstitutional “as applied” to the plaintiff(s) under particular facts and circumstances. The court characterized both challenges as “facial” rather than “as applied,” meaning the court believes the NFA regulation of untaxed firearms can *never* be constitutionally applied to *anyone*. However, under recent Supreme Court precedent, federal courts cannot issue national injunctions.⁷ As the court explained:

So the claims in *Jensen*, like those in *Silencer Shop*, are properly construed as facial challenges. . . . The plaintiffs’ claims are ‘as applied’ in that they only address untaxed firearms. But they are ultimately ‘facial’—like most enumerated-powers challenges—because they seek relief that extends beyond the plaintiffs’ specific activities. . . . In sum, the plaintiffs attack the NFA’s regulation of untaxed firearms facially, not as applied to their particular activities. So they must show that no set of circumstances exists under which the challenged NFA provisions would be valid. But the effect of that requirement is muted where, as here, the Court must limit relief, even for a successful facial challenge, to the parties before it. [citing *CASA*]⁸

Accordingly, at this time, the injunction against federal registration of silencers, SBSs, and SBRs only directly benefits the plaintiffs in this case, and their members and customers. The court recognized that, as a practical matter, such selective enforcement is virtually impossible, but concluded “if there are practical difficulties with enforcing a party-specific injunction, that is the National Government’s problem, not the Court’s.”⁹ It is exceedingly unlikely that the ATF will continue the NFA registry and its associated regulatory scheme for untaxed firearms against most Americans, exempting only an unknown (and unknowable) number of GOA members, future customers of particular gun dealers, family members of named plaintiffs, and the like. This is particularly true in light of the court’s unqualified statements that the laws and regulations are facially unconstitutional – as applied to everyone – but its injunction is limited to the parties only due to legal precedent limiting its authority. However, until Congress or the ATF acts, only members and customers of plaintiff parties

injunctions issued in the two cases overlap substantially, but differ in that only *Jensen* plaintiffs have an injunction regarding AOWs.

⁷ *Trump v. CASA, Inc.* No. 24A884, 606 U.S. __ (2025).

⁸ *Silencer Shop* at 22-24 (internal quotations and citations omitted).

⁹ *Id.*, at 60 (internal quotations and substitution omitted).

enjoy the injunction, and it would be prudent for everyone else to continue to submit NFA registration applications (Form 4) prior to transferring the covered firearms.

An unintended consequence of this development in federal law and regulation may be to strip away from NC gun owner their exception to the blanket ban on silencers, SBSs, and SBRs under *state* law.

The NC ban on these weapons does not apply to “[p]ersons who lawfully possess or own [these weapons] in compliance with” the ATF registration scheme.¹⁰ The Final Order permanently enjoined the ATF from enforcing (against the plaintiffs), *inter alia*, 26 U.S.C. § 5812(a)–(b). Section (a) establishes the NFA registry,¹¹ and section (b) mandates that each NFA firearm transferred shall be registered. Hence, even if a covered buyer submits a Form 4 for the purchase of a silencer, SBS, or SBR, the ATF *cannot* register the item. Is *not registering* an item under a federal regulation that now *precludes* its registration, an act “in compliance with” the regulation?

At this point, the only definitive thing that can be said about NC law regarding unregistered silencers, SBSs, and SBRs is there is an ambiguity.¹² The rule of lenity states that ambiguities in criminal law are decided in favor of the defendant. However, that is an equitable doctrine for the court, and not a constraint on arrest or prosecution.

Guidance from the NC Department of Justice is urgently needed so NC gun owners and gun store owners can have some certainty about their risk of criminal liability for an acts may now (or soon) be perfectly legal in 49 states, but remain banned in NC. Longer term, GRNC should propose and lobby for legislation amending § 14-288.8 to address that risk. Meanwhile, prudence cautions that NC gun owners and businesses – even if members of a plaintiff party and unquestionably included in the court’s limited injunction – should continue to go through the NFA registration process to secure the exemption from criminal liability for possession of these firearms under state law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward H. Green, III". The signature is fluid and cursive, with a large initial "E" and a stylized "G".

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¹⁰ N.C. Gen. Stats. § 14-288.8(b)(5) (2026).

¹¹ the National Firearms Registration and Transfer Record (NFRTR).

¹² NC residents who own or wish to purchase fully automatic rifles must continue to comply with the laws and regulations operating the NFRTR, and they continue to enjoy the exemption of N.C. Gen. Stats. § 14-288.8(b)(5).