

United States Senate  
WASHINGTON, DC 20510

September 14, 2023

**VIA ELECTRONIC TRANSMISSION**

President Biden  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Dear President Biden:

I continue to be concerned about your administration's executive overreach and its impact on bipartisan efforts. Your administration's proposed rule expanding the scope of individuals who must apply for a Federal Firearms License (FFL) is just the latest example of the executive branch exceeding its authority. The role of the president is to enforce our laws, not write them. The power to legislate belongs to Congress, a body designed to capture the entire country's diverse views and interests, not just the preferences of the majority party. This legislative process is intentionally burdensome. Its hurdles are safeguards that protect the will of the people from the will of an individual. This process ensures laws are constitutional and benefit the nation as a whole.

Your attempts to discard the legislative process have risen to an unconstitutional level and forced court intervention. For example, in June 2023, the Supreme Court determined that your administration's debt cancellation program lacked legislative authorization.<sup>1</sup> The opinion quoted then-Speaker Pelosi's unheeded warning, "People think that the President of the United States has the power for debt forgiveness. He does not."<sup>2</sup> If your administration had any confusion about limits of its authority, the Supreme Court reemphasized the line forbidding the executive branch from fundamentally changing legislative schemes.

I, and my Republican colleagues, cautioned your administration about the dangers of breaching this separation of powers.

In February, I told Attorney General Garland that his memorandum instructing prosecutors to disregard existing criminal laws breached trust and halted bipartisan negotiations aimed at changing the law.<sup>3</sup> Instead of heeding my warning, AG Garland and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) doubled-down on executive overreach by unilaterally expanding the statutory definition of a rifle to include a brace designed so disabled persons could fire heavy pistols safely.

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<sup>1</sup> *Biden v. Nebraska*, 143 S. Ct. 2355, 2375 (2023).

<sup>2</sup> *Id.* at 2374.


<sup>3</sup> Press Release, Grassley Questions Attorney General at DOJ Oversight Hearing (Mar. 1, 2023), <https://www.grassley.senate.gov/news/news-releases/grassley-questions-attorney-general-at-doj-oversight-hearing>.

Even after the Fifth Circuit called the rule a “monumental error,”<sup>4</sup> AG Garland and ATF proposed a new rule vastly expanding the number of individuals who must register for a Federal Firearms License (FFL). This new rule appears to capture any law-abiding citizen who sells a single firearm online and subjects them to qualification and compliance inspections by ATF Industry Operations Investigators.<sup>5</sup> Suppose this individual transacts the sale from his home. As a potential ill-conceived consequence of the rule, certain areas of the individual’s home may now be subject to warrantless “inspections” for the duration of the individual’s FFL license.<sup>6</sup> This produces a bizarre result in which law-abiding gun owners receive fewer constitutional protections than those enjoyed by fentanyl dealers distributing drugs from their homes. After all, the federal government must secure a search warrant before inspecting any area of the fentanyl dealer’s home. This result is at odds with a system of governance in which “every individual of the community at large has an equal right to the protection of government,” including the protection of the Constitution.<sup>7</sup>

These efforts to circumvent the legislative process have stemmed from contrived readings of bipartisan legislation.

As a former senator, you are well aware bipartisan agreements require trust and the understanding that neither party will breathe unintended meaning into the resulting legislation. Your political experience has no doubt taught you that the only constant rule of governance is that power dynamics change. Those holding the majority one day can quickly find themselves governing from the minority the next. The bipartisan process ensures equal representation for the entire country, including the half that does not identify as Democrats.<sup>8</sup> We all benefit from the tenets of bipartisanship. You and your administration must honor them and allow the legislative process to play out. Sweeping gun regulations have failed to pass Congress, reflecting divided national opinions on the issue. The debate belongs to the people through their representatives in Congress. You need to respect their constitutional rights and withdraw your proposed rule.

Sincerely,



Charles E. Grassley

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<sup>4</sup> *Mock v. Garland*, 75 F.4th 563, 586 (5th Cir. 2023).

<sup>5</sup> Definition of “Engaged in the Business” as a Dealer in Firearms, 88 Fed. Reg. 61993, 62013 (proposed Sept. 8, 2023) (to be codified at 27 C.F.R. pt. 478) (“In addition to processing Form 7 applications, ATF Industry Operations Investigators (“IOIs”) would need to perform qualification and compliance inspections. The qualification inspection occurs once during the application process . . . there is a reoccurring compliance inspection after the person becomes a licensee.”)

<sup>6</sup> *Id.* at 62017 (“Such persons would need to file a Form 7 application, pay a licensing fee, undergo a qualification inspection, maintain Form 4473 and A&D records for every firearm transaction and undergo periodic compliance inspections.”)

<sup>7</sup> Alexander Hamilton, Speech at Constitutional Convention (June 29, 1787).

<sup>8</sup> Alison Durkee, *Americans Split Between Republicans and Democrats For First Time in Decade, Poll Finds—Because More Are Identifying as GOP*, FORBES (Jan. 12, 2023), <https://www.forbes.com/sites/alisondurkee/2023/01/12/americans-split-between-republicans-and-democrats-for-first-time-in-decade-poll-finds-because-more-are-identifying-as-gop/?sh=7968e4827bf7>.