

Bureau of Alcohol, Tobacco, Firearms and Explosives

Office of Public and Governmental Affairs

99 New York Avenue, NE, Room 5S 144

Washington, DC 20226 USA

Dear Sir or Madam:

I am writing you to request that you re-evaluate the legal status of BATFE's current interpretation of 18 USC 922(o) in light of recent court decisions.

Congress, in the creation of BATFE, has delegated a portion of legislative authority in the form of the interpretation of statute and maintenance of regulations to support the legal interpretation of such statutes. Such a process is necessarily dynamic - as the legal and technological

landscape changes agencies must consider intent on multiple levels to protect both the intent of Congress as well as the constitutional rights of the citizens, and as such Congress has delegated relatively broad discretionary authority.

In *Farmer v Higgins*, the court found that it was likely the intent of Congress to change the law to effectively prohibit further trade in machineguns, although the wording of the law is ambiguous and subject to interpretation. It is also impossible to determine how many may have voted for such a clause as a result of the ambiguous language - using it as political cover to play for the votes of both sides.

However, in *US vs Rock Island*, the court has found that the registration and regulation scheme of the NFA was itself intrinsically tied to the government's authority to tax interstate commerce, which was also considered to be the case by the architects of the NFA during its debate and passage. The court found that by refusing to accept the tax payments, USC 922(o) effectively repeals the NFA as applied to post-1986 machineguns by removing the regulatory authority for the registration requirements. Clearly, it was not the intent of the Congress to abolish the applicability of the NFA to machineguns entirely, but the determination from *Farmer v Higgins* would have that result.

In addition, the *Heller* decision in its reference to *Miller* and other cases provides a reasonable presumption that a complete ban on a class of weapons in common use by soldiers and militia equivalents worldwide is constitutionally questionable. *Heller* upheld reasonable restrictions on handguns while prohibiting an effective ban; machineguns are more widely used for militia purposes than handguns and are far less used in criminal activity than the handguns in question in *Heller* – more people die in a day's worth of automobile accidents than in a century's worth of crime with NFA registered machineguns.

As such, it is reasonable to consider that an effective ban on machineguns is just as illegal as a ban on handguns.

Further discussion of the applicability of Heller to the question of machineguns can be found in the addendum to this letter.

USC 922(o)

(o)(1) Except as provided in paragraph (2), it shall be unlawful

for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to -

(A) a transfer to or by, or possession by or under the

authority of, the United States or any department or agency

thereof or a State, or a department, agency, or political

subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before

the date this subsection takes effect.

Given the authority vested in BAFTE to interpret statute into regulation based on the changing legal, social, and technological environment, it is entirely reasonable given recent court decisions to conclude that the approval of Form 1 or Form 4 transfers to civilians preserves the authority of Congress to regulate machineguns pursuant to US vs Rock Island, avoids the effective outright ban of machineguns made questionable in Heller, and best balances the rights of the citizens with “reasonable restrictions” by Congress. Such discretion is a legitimate interpretation of 922(o)(2a), as any such forms are by definition operating under the authority of BATFE.

I am formally asking BAFTE to return to status quo ante – allowing Form 1 / Form 4 transfers for post-86 machineguns after a background check and payment of NFA tax.

Sincerely,