AUSTIN KNUDSEN

STATE OF MONTANA

August 27, 2026

To: Montana Prosecutors, County Sheriffs, and Chiefs of Police

Re: *Silencer Shop v. ATF* federal court ruling and Montana law

Dear Colleagues:

Silencer Shop Found. v. Bureau of Alcohol, No. 6:25-CV-056-H, 2026 WL 2255460 (N.D. Tex. Aug. 5, 2026), is a federal lawsuit in which several individuals, advocacy groups, firearms industry trade associations, and State plaintiffs challenged certain provisions of the National Firearms Act of 1934 ("NFA") as unconstitutional. The U.S. District Court recently sided with the plaintiffs, struck down the challenged provisions of the NFA, and issued a permanent injunction blocking the enforcement of these provisions. The effect is that the covered plaintiffs no longer require a federal Form 4 "tax stamp" to possess, manufacture, or transfer firearm silencers/suppressors ("silencers"), short-barreled rifles ("SBRs") and short-barreled shotguns ("SBSs). This creates certain issues under current Montana law.

Background

On July 4, 2025, President Trump signed into law the Big Beautiful Bill Act. In this legislation, the Congress removed the previous, long-standing $200 per item federal tax on the possession, manufacture, and transfer of silencers, SBRs and SBSs.[1] Almost immediately, the various plaintiffs filed suit in various federal courts against the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") challenging the constitutionality of these NFA provisions requiring tax, heavy background investigation, and individual federal registration of silencers, SBRs and SBSs, as well as the subsequent serious criminal noncompliance penalties. Two of these suits were combined into one suit in the U.S. District Court for the Northern District of Texas, before Judge James Wesley Hendrix.

On August 5, 2026, Judge Hendrix issued a Memorandum, Opinion and Order ("Order") granting summary judgment and issuing a permanent injunction in favor of the plaintiffs. In broad terms, the Order ruled the provisions of the NFA regulating the possession, manufacture and transfer of silencers, SBRs, SBSs, and "all other weapons" (a legal term of art under the NFA) unconstitutional. Judge Hendrix

[1] Congress, however, *did not* remove similar taxes on certain other NFA-regulated items, such as machine guns.

DEPARTMENT OF JUSTICE

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determined that, since the NFA was: 1) expressly enacted by the federal Congress pursuant to the Congress' constitutional Article I, § 8 taxation power; and 2) upheld as constitutional under that same congressional taxation power by the United States Supreme Court in *Sonzinsky v. United States*, 300 U.S. 506 (1937), the challenged provisions of the NFA could no longer withstand constitutional scrutiny now that the tax on the subject items no longer exists. The Court then issued a permanent injunction against the ATF from enforcing these taxation, registration, and resulting penalty provisions of the NFA against the plaintiffs.

Put simply, the Court ruled that for *these plaintiffs* there is no longer a federal tax on firearm silencers, short-barreled rifles and short-barreled shotguns, and no more federal penalty for possessing, manufacturing, and/or transferring any of these items. It is important to note that this is NOT a nationwide, blanket injunction covering all U.S. citizens and businesses seeking to possess, manufacture, and/or transfer these items; the injunction ONLY applies to the individual plaintiffs, the plaintiff trade organizations, current and future members of the plaintiff advocacy groups (such as Gun Owners of America), and agents of the plaintiff state governments and their political subdivisions. Montanans who wish to become members of Gun Owners of America may do so for $25.[2]

Judge Hendrix gave the ATF until midnight, August 12, 2026, to seek a stay on his Order. ATF elected not to seek such a stay. Hence, Judge Hendrix's Order has gone into full effect for all eligible plaintiffs (see above paragraph) across the nation. ATF has approximately 60 days to decide whether or not to appeal Judge Hendrix's ruling to the U.S. Court of Appeals for the Fifth Circuit. At the time of this writing, ATF has given no definitive answer as to whether it intends to pursue such an appeal.

It is also important to note that this litigation is subject to rapid change. The State of Montana and other plaintiffs are currently discussing the breadth of the injunction with the government and how ATF intends to comply with it. The parties may also seek clarification from Judge Hendrix on these ambiguities.

I. Effects of the Order under Montana Law

For the average Montana citizen, the effect of this appears to be that the federal government via the ATF is permanently enjoined from enforcing any of the NFA's registration and resultant penalties for possessing, manufacturing, or transferring silencers, SBRs, and SBSs against individual Montana citizens who are current members of any one of the plaintiff trade organizations, or any current or future member of the plaintiff advocacy groups: Gun Owners of America, Inc., Firearms Regulatory Accountability Coalition, Inc., Gun Owners Foundation, Texas State Rifle Association, FPC Action Foundation, and Citizens Committee for the Right To Keep and Bear Arms. The Judge's Injunction also applies to the State of Montana as a Plaintiff, but only insofar as agents or employees of the State or its political subdivisions- not every Montana resident.

[2] Visit https://shop.gunowners.org/memberships/ for more information.

A. Possession of a non-federally registered silencer is a felony offense under Montana law.

Montana Code Annotated § 45-8-336(1) (2025) states that "[a] person commits the offense of possession of a silencer if the person possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense." Mont. Code Ann. § 45-8-337 (2025) states unequivocally that possession of a silencer that is not federally registered under the NFA is prima facie evidence of a purpose under 45-8-336(1) to use that silencer - or silencers - to commit an offense. Mont. Code Ann. § 45-8-336(2) states that a violation of this code is a state prison term for "not less than 5 years or more than 30 years or by a fine of not less than $1,000 or more than $20,000, or both."

The result is that a prospective Montana resident who is a member of any of the plaintiff industry or advocacy groups and is able to possess, manufacture, or transfer a silencer without federal ATF regulation under Judge Hendrix's Order, could still be subject to felony prosecution under Montana law for possessing, manufacturing, or transferring that same silencer.

B. Possession of a non-federally registered short-barreled rifle and/or short barreled shotgun is illegal under Montana law.

Nowhere in Montana Code do the federal NFA-defined terms "short-barreled rifle" or "short-barreled shotgun" appear. Instead, Montana Code uses and defines the term "sawed-off firearm" at Mont. Code Ann. § 45-8-340(1)(a) through (c). For the purposes of this memo, assume that the Montana term "sawed-off firearm" is interchangeable with the federal terms "short-barreled rifle" or "short-barreled shotgun." Mont. Code Ann. § 45-8-340 (1) (2025) states:

> [a] person commits the offense of possession of a sawed-off firearm if the person knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:
> (a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or
> (b) 18 inches or more and an overall length of 26 inches or more in the case of a shotgun; and
> (c) the firearm has been modified in a manner so that the barrel length, overall length, or both, are less than specified in subsection (1)(a) or (1)(b).

Montana Code Annotated § 45-8-340(2)(f) provides an exception if the sawed-off firearm is possessed "by a person who has a valid federal tax stamp for the firearm issued by…" the ATF. This state law exception references the very federal NFA regulatory tax stamp (the ATF sends you a paper form with a literal "stamp" on it that indicates you have paid the federal NFA tax) that has now been permanently enjoined by Judge Hendrix. Possession of a sawed-off firearm in Montana is

punishable with a first offense misdemeanor (fine of $200-$500 and/or county jail imprisonment 5 days to 6 months) and a subsequent offense felony (fine of not less than $1,000 and/or state imprisonment for a term not to exceed 5 years). Mont. Code Ann. § 45-8-340(4) (2025).

Again, the result is that a prospective Montana resident who is a member of any of the plaintiff industry or advocacy groups and is able to possess, manufacture, or transfer a SBR or SBS without federal ATF regulation under Judge Hendrix's Order, could still be a subject to misdemeanor and/or felony prosecution under Montana law for possessing, manufacturing, or transferring that same SBR or SBS.

C. Hunting with a suppressor is illegal under Montana law unless the device is "registered with" ATF

Montana Code Annotated § 87-6-401(1)(c) provides that a person may not "while hunting, use any device or mechanism devised to silence, muffle, or minimize the report of any firearm, whether the device or mechanism is operated from or attached to any firearm" unless the device or mechanism is "registered with the bureau of alcohol, tobacco, firearms and explosives to silence, muffle, or minimize the report of a firearm when hunting wildlife." The best interpretation of the registration requirement under § 87-6-401(1)(c) is compliance with the NFA's registration requirements. Thus, Montana law still requires NFA registration to hunt with a suppressor.

Conclusion

The Montana Department of Justice does not want to see otherwise law-abiding Montana citizens criminally prosecuted at the state or municipal level for possessing, manufacturing, and/or transferring items that are now, at least for the time being, federally legal under Judge Hendrix's Order. As discussed above, there is still much uncertainty surrounding this matter. Judge Hendrix may issue additional guidance on the scope of his injunction. ATF may still decide to appeal the Order to the U.S. Court of Appeals for the Fifth Circuit. It is certainly possible the case is appealed all the way to the U.S. Supreme Court. Regardless, ATF elected not to seek a stay of Judge Hendrix's Order; therefore his Order is still in effect and has the force of law until a higher court says otherwise. The 2027 Montana Legislature convenes in January 2027, and there is already legislation introduced to alter or remove from Montana Code the above-referenced state criminal penalties for possessing, manufacturing, and/or transferring silencers, SBRs and SBSs.

Montana law enforcement is respectfully advised that criminal investigations regarding the possession, manufacture, and/or possession of silencers, SBRs, SBSs, or sawed-off firearms under Mont. Code Ann. §§ 45-8-336, 45-8-337, and/or 45-8-340 (2025) may be tenuous given the current legal environment.

City and County Attorneys, or their respective deputies/associates, presented with any criminal investigations for prosecution involving Mont. Code Ann. §§ 45-8-336, 45-8-337, 45-8-340, and/or 87-6-401(1)(c) (2025) are respectfully requested to submit such cases to the Montana Department of

Justice Prosecution Services Bureau for review and advisement before any charges under the same statutes are formally filed in any Montana Court.

Thank you for your time and your service to Montana.

Respectfully,

Austin Knudsen
Montana Attorney General