



## **Congress Has the Power to Repeal the NFA in Budget Reconciliation**

The Budget Reconciliation process presents a historic opportunity for Congress to remove archaic and arbitrary *National Firearms Act* (NFA) restrictions that have long infringed on the constitutional rights of Americans. Including the *Hearing Protection Act* (HPA) and the *Stop Harassing Owners of Rifles Today Act* (SHORT Act) into a bill which can pass with a simple majority would deliver an amazing victory for this administration and gun owners.

These unconstitutional regulations on suppressors and braced firearms have long been a priority for pro-gun voters to be removed. Delivering these policies would be a massive victory for the administration and Congress—showing commitment to the right to keep and bear arms. According to the most recent polling of GOA members, over 90% of the 16,000+ respondents considered both the HPA and SHORT Act to be priority items to pass this Congress. This would raise morale and favorability before the midterm elections among gun owners, who, as President Trump consistently pointed out on the campaign trail, often do not vote.

### **Why the Hearing Protection Act & SHORT Acts?**

Including the bipartisan Hearing Protection Act language would repeal the unconstitutional \$200 tax and remove the registration requirement on suppressors. These NFA firearms would instead be treated, *de facto*, as firearms subject to a NICS background check at point of sale.

Passing the *SHORT* Act would prevent the weaponization of the National Firearms Act against gun owners. When the Biden administration attempted to ban 40 million pistols equipped with stabilizing braces, they used the 1934 NFA's barrel length restrictions as justification for charging millions of Americans with felonies despite the fact that these accessories were approved by the ATF for over a decade.

### **What is the Senate's Byrd Rule?**

Congress may use a process called budget reconciliation to circumvent the Senate filibuster and adjust federal spending subject to certain restrictions. Because this is such a powerful tool, the Senate restricted reconciliation with the Byrd rule to prevent this budgetary tool's abuse to achieve policy goals.

The Byrd Rule can be found at 2 U.S.C. 644 and is a list of six "points of order" which any Senator may raise to ask the Parliamentarian to strike a specific provision from a reconciliation bill. This means that reconciliation can only be used to make changes which are primarily budgetary (and only incidentally or secondarily policy) and blocks measures which are primarily policy (and only incidentally or secondarily budgetary).

### **Will HPA and SHORT Survive the "Byrd Bath?"**

The NFA is primarily a tax and secondarily a regulation—or so said the Supreme Court in 1937 and every anti-gun federal judge to ever uphold the NFA in court. In order to rule that the HPA and SHORT Act violate the Byrd Rule, the Senate Parliamentarian—who is a nonpartisan bureaucrat—would have to say that the Supreme Court is wrong and that the NFA is primarily a regulation and incidentally a tax.

Therefore, removing these unconstitutional restrictions through the reconciliation process is possible as it is primarily a change to the tax code. Congress' claimed authority to regulate NFA "firearms" has always been a taxation regime. Without the tax, there is no mechanism to impose restrictions on the possession of these firearms. As part of the reconciliation process, it should therefore be possible to remove the \$200 tax stamp and use conforming amendments to remove all documents related to the collection of this tax—like the registration forms.

## Federal Courts on NFA's Primary Function as a Tax

### Supreme Court in *Sonzinsky v. United States* (1937):

- “Every tax is in some measure regulatory. ... But a tax is not any the less a tax because it has a regulatory effect, ... and it has long been established that an Act of Congress which on its face purports to be an exercise of the taxing power is not any the less so because the tax is burdensome or tends to restrict or suppress the thing taxed.”<sup>i</sup>

### Federal Courts:

- “Insofar as the statute is a valid exercise of the taxing power, the fact that it incidentally accomplishes goals other than raising revenue does not undermine its constitutionality.”<sup>ii</sup>
- “And on its face, the NFA is a taxing scheme. The statute collects occupational and excise taxes from businesses and transactions involving listed firearms—which include short-barreled rifles, silencers, and destructive devices. *See* 26 U.S.C. § 5845(a) (defining “firearm”).”<sup>iii</sup>
- “Having required payment of a transfer tax and registration as an aid in collection of that tax, Congress under the taxing power may reasonably impose a penalty on possession of an unregistered firearm.”<sup>iv</sup>
- “Rush recognizes that §5861(d) mandates compliance with the NFA's “taxation and registration” requirements—requirements that have been upheld as a valid exercise of legislative taxing authority.”<sup>v</sup>
- “... it is well-settled that § 5861(d) is constitutional because it is “part of the web of regulation aiding enforcement of the transfer tax provision in § 5811.”<sup>vi</sup>

## Registration & Other Requirements as Ancillary to the NFA Tax

“Following *Sonzinsky*, numerous courts have held that the registration provisions of the NFA, including § 5861(d), are permissible incidents to the legislative taxing power, because registration facilitates the collection of taxes on the making and transfer of firearms.”<sup>vii</sup> The Fifth Circuit explained:<sup>viii</sup>

“The test of validity is whether on its face the tax operates as a revenue generating measure and the attendant regulations are in aid of a revenue purpose.... Section 5861(d) making possession of an unregistered weapon unlawful is part of the web of regulation aiding enforcement of the transfer tax provision in § 5811. Having required payment of a transfer tax and registration as an aid in collection of that tax, Congress under the taxing power may reasonably impose a penalty on possession of unregistered weapons. Such a penalty imposed on transferees ultimately discourages the transferor on whom the tax is levied from transferring a firearm without paying the tax.”<sup>ix</sup>

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<sup>i</sup> *Sonzinsky v. United States*, 300 U.S. 506, 513, 57 S. Ct. 554, 555-56 (1937) (dealing with NFA taxes).

<sup>ii</sup> *United States v. Gresham*, 118 F.3d 258, 262 (5th Cir. 1997).

<sup>iii</sup> *United States v. Cox*, 906 F.3d 1170, 1179 (10th Cir. 2018).

<sup>iv</sup> *United States v. Lim*, 444 F.3d 910, 913 (7th Cir. 2006).

<sup>v</sup> *United States v. Rush*, 130 F.4th 633 (7th Cir. 2025).

<sup>vi</sup> *United States v. Gresham*, 118 F.3d 258, 262 (5th Cir. 1997).

<sup>vii</sup> See, e.g., *United States v. Birmley*, 529 F.2d 103, 106-07 (6th Cir. 1976); *United States v. Dodge*, 61 F.3d 142, 145-46 (2d Cir.), cert. denied, 516 U.S. 969, 133 L. Ed. 2d 343, 116 S. Ct. 428 (1995); *United States v. Ross*, 458 F.2d 1144, 1145 (5th Cir.), cert. denied, 409 U.S. 868, 34 L. Ed. 2d 118, 93 S. Ct. 167 (1972).

<sup>viii</sup> *Ross*, 458 F.2d at 1145 (citations and footnote omitted).

<sup>ix</sup> *United States v. Bournes*, 105 F. Supp. 2d 736, 738-39 (E.D. Mich. 2000).