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ATTN: RIN 1140-AB03

ATF Rulemaking Comments

Mail Stop 6N-518, Office of Regulatory Affairs

Enforcement Programs and Services

Bureau of Alcohol, Tobacco, Firearms, and Explosives

99 New York Ave. NE, Washington, DC 20226

RE: RIN 1140-AB03; Revising Definition of "Unlawful User of or Addicted to Controlled Substance," 91 Fed. Reg. 2698 (Jan. 22, 2026).

Dear Bureau of Alcohol, Tobacco, Firearms and Explosives,

Firearms Policy Coalition ("FPC") and FPC Action Foundation ("FPCAF") respectfully submit these comments in response to the Bureau of Alcohol, Tobacco, Firearms and Explosives' ("ATF") Interim Final Rule and Request for Comments revising the definition of "unlawful user of or addicted to a controlled substance." *Revising Definition of "Unlawful User of or Addicted to Controlled Substance"*, 91 Fed. Reg. 2698 (Jan. 22, 2026) ("Interim Final Rule"). The Interim Final Rule appropriately abandons an interpretation of 18 U.S.C. § 922(g)(3) that deprived an untold number of peaceable people of the ability to exercise their constitutionally protected rights based on isolated evidence of drug use. That change represents a significant and necessary step toward bringing ATF's regulations into conformity with the Constitution and should be retained in any final rule.

The Interim Final Rule should not, however, mark the end of the agency's analysis.

Following publication of the Interim Final Rule and Request for Comments, the Supreme Court held in *United States v. Hemani* that the federal government's prosecution of a marijuana user under § 922(g)(3) violated the Second Amendment. *United States v. Hemani*, No. 24-1234, 608 U.S. ___, 2026 WL 1751710, slip op. at *18–19 (2026). In reaching that conclusion, the Supreme Court rejected the government's principal historical justifications for broadly disarming unlawful users of controlled substances, reaffirmed that *Bruen* requires the government to justify modern firearm regulations based on analogous historical firearms regulations, and explained that the historical regulations on which the government relied only addressed individuals whose active or habitual intoxication rendered them subject to a temporary suspension of the ability to exercise their right to keep and bear arms.

Hemani confirms that ATF's prior regulatory interpretation swept well beyond the limits imposed by the Constitution. It likewise demonstrates that, while the Interim Final Rule improves upon the previous regulation, it does not fully resolve the constitutional issues presented by ATF's enforcement of § 922(g)(3).

Accordingly, these comments serve three purposes.

First, they support ATF's decision to abandon a regulatory interpretation that impermissibly burdened the exercise of constitutionally protected rights based upon isolated evidence of use of controlled substances.

Second, they explain why the Constitution and the Supreme Court's decision in *Hemani* require ATF to construe § 922(g)(3) more narrowly than the Interim Final Rule presently provides.

Finally, they preserve an independent constitutional objection that *Hemani* did not address in the majority opinion, but was addressed extensively in Justice Thomas's dissent. Even if § 922(g)(3) could be applied constitutionally in certain circumstances, Congress must identify an enumerated constitutional power authorizing such legislation. The federal government possesses no general police power to categorically disarm peaceable people based upon their status as users of controlled substances.

I. INTEREST OF THE COMMENTERS

Firearms Policy Coalition is a nonprofit membership organization dedicated to defending the People's natural right to keep and bear arms and restoring the full protections guaranteed by the Constitution through strategic litigation, legislative advocacy, education, and scholarship.

FPC Action Foundation is a nonprofit public-interest legal foundation that pursues constitutional litigation, historical research, and legal scholarship dedicated to restoring the right to keep and bear arms and advancing individual liberty.

Together, FPC and FPCAF have participated extensively in litigation involving 18 U.S.C. § 922(g)(3), including *United States v. Hemani*, *United States v. Daniels*, *Cooper v. Garland*, and related matters. These comments reflect years of litigation experience and historical research concerning the Second Amendment's text and history, as well as the Organizations' consistent position that peaceable users of controlled substances retain the same natural and constitutionally protected right to armed self-defense as every other peaceable person.

II. THE INTERIM FINAL RULE CORRECTLY ABANDONS AN UNCONSTITUTIONAL REGULATORY INTERPRETATION

The Interim Final Rule properly recognizes that ATF's previous interpretation of § 922(g)(3) extended beyond the limits of both the statute and the Constitution.

Under the prior regulation, ATF treated isolated evidence of the use of controlled substances—including a single arrest, admission, or positive drug test—as effectively establishing prohibited status for purposes of firearm purchases, even where the government possessed insufficient evidence to prosecute an individual for violating § 922(g)(3). As ATF now acknowledges, that interpretation diverged from prevailing judicial decisions, generated

significant constitutional concerns, and resulted in thousands of firearm denials unsupported by evidence sufficient to establish criminal liability.

If the government lacks sufficient evidence to establish that an individual violates § 922(g)(3), it cannot rely upon that same evidence to deprive the individual of the ability to exercise a natural, fundamental, constitutionally protected right. Constitutional guarantees cannot depend upon evidentiary presumptions that the government itself declines to rely upon when criminal liability is at issue. The Interim Final Rule correctly eliminates those presumptions.

III. THE CONSTITUTION AND *HEMANI* REQUIRE A FURTHER NARROWING OF § 922(g)(3)

The Supreme Court's decision in *United States v. Hemani* substantially alters the framework governing § 922(g)(3), appropriately recognizing an even more limited constitutional requirement.

The Second Amendment protects “the right of the people to keep and bear Arms.” U.S. CONST. amend. II. The right of a peaceable individual to possess a firearm falls squarely within that constitutional guarantee. *See Woford v. Lopez*, No. 24-1046, 609 U.S. ___, 2026 WL 1825723, slip op. at *7 (2026) (explaining that the plain-text inquiry asks whether the challenged law applies to “the people,” concerns “Arms,” and restricts the “keep[ing]” or “bear[ing]” of arms). Once that threshold is satisfied, the government bears the burden of demonstrating that any restriction upon that right is consistent with this Nation’s historical tradition of firearm regulation. *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022); *see also Woford*, slip op. at *7–8.

The government's principal defense of § 922(g)(3) in *Hemani* rested upon supposed historical analogies to laws regulating habitual drunkards. The Supreme Court correctly rejected that argument because those historical regulations do not support a broad categorical prohibition.

As *Hemani* makes clear, the relevant historical tradition only applies to individuals who are so habitually impaired as to be physically unable to manage their own affairs. *See Hemani*, slip op. at *8 (“Around the time of the founding and for decades following it, a habitual drunkard was, as one court put it, someone who ‘for any considerable part of his time [was] intoxicated to such a degree as to deprive him of his ordinary reasoning faculties.’”) (citing *In re Tracy*, 1 Paige Ch. 580, 582–583 (N. Y. Ch. 1829)). It does not apply to, or in any way implicate, those who consume intoxicating substances, even if they do so regularly or to excess. *See id.* (“A regular or even frequent drinker did not usually fit the bill. A ‘man who [was] intoxicated or drunk one-half his time’ was more like it.”) (citing *Ludwick v. Commonwealth*, 18 Pa. 172, 175 (1851)). The historical laws identified by the government addressed individuals whose habitual intoxication rendered them incapable of managing their affairs or otherwise demonstrated profound incapacity. They did not disarm peaceable citizens merely because they consumed intoxicating substances.

Accordingly, the relevant historical inquiry is not whether the Founding generation regulated some interactions between intoxicants and arms—it unquestionably did; the

question is whether the historical tradition supports categorical disarmament based solely upon an individual's status as a *user* of controlled substances—it does not.

Beyond the habitual drunkard laws, the historical record reflects that the only relevant historical regulations were narrowly focused on addressing the actual misuse of firearms by individuals who posed an immediate danger because of their active intoxication. *See Brief of The National Rifle Association of America, FPC Action Foundation, and Independence Institute as Amici Curiae in Support of Respondent, United States v. Hemani*, at *5–12, available at <https://bit.ly/4p08S90>. Those regulations also do not establish a tradition of broadly depriving peaceable citizens of the ability to keep and bear arms based upon their use of intoxicants.

The Interim Final Rule properly abandons the prior single-use presumption, but the Constitution, as evidenced by *Hemani*, requires more than that. The constitutional inquiry requires that the government demonstrate that history supports the particular restriction it seeks to impose, not whether an individual uses a controlled substance once or repeatedly. *Hemani* also confirms that the government cannot satisfy that burden merely by asserting an argument that unlawful users of controlled substances are categorically dangerous.

The final rule should therefore more clearly recognize the constitutional significance of demonstrated incapacity, active intoxication, and individualized dangerousness while avoiding language suggesting that regular use of intoxicants or controlled substances, standing alone, provides a constitutionally sufficient basis for categorical disarmament.

IV. THE CONSTITUTION REQUIRES A NARROWER CONSTRUCTION OF § 922(g)(3)'S INCORPORATION OF THE CONTROLLED SUBSTANCES ACT

Although the Interim Final Rule substantially improves upon the prior regulation, it does not fully resolve the constitutional concerns associated with § 922(g)(3). The Court's reasoning in *Hemani* also exposes a broader constitutional concern with § 922(g)(3): its reliance upon classifications established under the Controlled Substances Act.

Whether Congress may regulate controlled substances under one constitutional provision does not answer whether it may burden the exercise of an entirely different constitutional right by incorporating those classifications into the Gun Control Act. Controlled substances may be added to or removed from the federal schedules as scientific understanding evolves, but constitutional rights do not fluctuate with legislative or administrative judgments regarding drug policy. The scope of the Second Amendment cannot depend upon the contents of the federal drug schedules.

Nor may the government withdraw constitutional protections based upon generalized assumptions about future dangerousness. The Constitution protects individual rights. It does not permit the government to deprive an entire class of citizens of those rights based upon predictive judgments unsupported by historical tradition.

Accordingly, the final rule should expressly recognize that the relevant constitutional inquiry is not whether an individual regularly uses a controlled substance, but whether the

historical tradition supports depriving that individual of the ability to exercise their right to keep and bear arms.

V. INDEPENDENT CONSTITUTIONAL LIMITS REQUIRE A NARROWER CONSTRUCTION OF § 922(g)(3)

The constitutional concerns surrounding § 922(g)(3) are not limited to the Second Amendment. Even if a narrower application of the statute could satisfy the historical inquiry required by *Bruen*, *Wolford*, and *Hemani*, Congress must still identify an enumerated constitutional power authorizing such legislation. The federal government possesses no general police power. That authority was deliberately withheld by the Constitution and reserved principally to the States.

This structural limitation protects individual liberty no less than the Bill of Rights itself. Congress may exercise only those powers delegated by the Constitution. Congress may not regulate conduct simply because doing so would advance its policy goals.

The government has generally relied upon the Commerce Clause to support § 922(g)(3). That reliance, however, is misplaced. *See Hemani*, slip op. at *24 (Thomas, J., concurring) (“As a matter of both original meaning and this Court’s precedents, §922(g)(3) appears to exceed Congress’s enumerated power to regulate interstate commerce.”). Regulating interstate commerce is fundamentally different from exercising a general authority to disarm peaceable Americans based upon their personal conduct or status. *See Id.* at *27 (citing Brief for Firearms Policy Coalition as *Amicus Curiae* at 12).

The Supreme Court declined to resolve this structural constitutional question in *Hemani*. Nevertheless, this issue reinforces the wisdom of adopting the narrowest constitutionally permissible interpretation of § 922(g)(3). Where a statute raises substantial constitutional concerns under multiple provisions of the Constitution, an administrative agency should avoid unnecessarily expansive interpretations that increase the likelihood of constitutional conflict.

ATF has already taken an important step by abandoning its previous regulatory definition. The agency should complete that process by adopting the narrowest interpretation consistent with the Constitution.

VI. RECOMMENDED REVISIONS

For the foregoing reasons, FPC and FPCAF respectfully urge ATF to adopt the Interim Final Rule while making several additional revisions to ensure that the final regulation fully reflects the Constitution and the Supreme Court's decision in *United States v. Hemani*.

Specifically, the final rule should:

1. Expressly recognize the constitutional distinction between demonstrated incapacity due to habitual intoxication/active intoxication and mere status as a user of a controlled substance.

2. Clarify that evidence of regular use of controlled substances, standing alone, does not justify categorical disarmament.
3. Affirmatively reject future interpretations or enforcement guidance that effectively recreate the single-use presumptions eliminated by the Interim Final Rule.
4. Construe any regulation surrounding enforcement of § 922(g)(3) as narrowly as constitutionally permissible in light of the Second Amendment, *Hemani*, and the federal government's limited, constitutionally enumerated powers.

VII. CONCLUSION

The Interim Final Rule represents the beginning of an important constitutional correction. By abandoning a regulatory interpretation that deprived peaceable people of the ability to exercise their constitutionally protected rights based upon isolated evidence of use of controlled substances, ATF has taken a meaningful step toward bringing its regulations into conformity with the Constitution.

That step should not be the last.

The Supreme Court's decision in *United States v. Hemani* confirms that the government's principal historical justification for broadly disarming unlawful users of controlled substances cannot withstand constitutional scrutiny. The historical tradition, at most, only supports regulations directed toward demonstrated incapacity due to habitual intoxication, active intoxication, and demonstrably dangerous conduct. It does not support categorical prohibitions based solely upon an individual's status as a user of controlled substances, even a repeated user.

Independent structural constitutional principles reinforce that conclusion. The federal government possesses only those powers delegated by the Constitution. It may not exercise the broad police power reserved to the states, nor may it define the scope of an enumerated constitutional right through statutory classifications created for unrelated regulatory purposes.

For these reasons, FPC and FPCAF respectfully urge ATF to adopt the Interim Final Rule only after further narrowing its interpretation of § 922(g)(3) to ensure that the final regulation faithfully reflects the Constitution's text, our Nation's historical tradition of firearm regulation, and the federal government's limited constitutional authority.

Respectfully submitted,



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