

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Jennifer VanDerStok; Michael G. Andren; Tactical
Machining, L.L.C., a limited liability company;
Firearms Policy Coalition, Incorporated, a nonprofit
corporation,

Plaintiffs-Appellees,

v.

Merrick Garland, U.S. Attorney General; United
States Department of Justice; Steven Dettelbach,
in his official capacity as Director of the Bureau
of Alcohol, Tobacco, Firearms and Explosives;
Bureau of Alcohol, Tobacco, Firearms, and
Explosives,

Defendants-Appellants.

No. 22-11071

Blackhawk Manufacturing Group, Incorporated,
doing business as 80 Percent Arms,

Intervenor Plaintiff-Appellee,

v.

Merrick Garland, U.S. Attorney General; United
States Department of Justice; Steven Dettelbach,
in his official capacity as Director of the Bureau
of Alcohol, Tobacco, Firearms and Explosives;
Bureau of Alcohol, Tobacco, Firearms, and
Explosives,

Defendants-Appellants.

No. 22-11086

MOTION TO CONSOLIDATE

Pursuant to Federal Rule of Appellate Procedure 27, the government

respectfully moves to have the above-captioned cases consolidated. Plaintiffs, the appellees in No. 22-11071, do not oppose. Intervenor-plaintiff, the appellee in No. 22-11086, also does not oppose this motion.

1. Through the Gun Control Act of 1968, *codified as amended*, 18 U.S.C. § 921 *et seq.*, Congress has enacted requirements for persons who import, manufacture, or deal in “firearms,” *id.* §§ 922-923. The statutory scheme hinges on the definition of “firearm.” Congress defined that term to include “any weapon” that “will or is designed to or may readily be converted to expel a projectile by the action of an explosive” as well as “the frame or receiver of any such weapon.” 18 U.S.C. § 921(a)(3).

In April 2022, the Bureau of Alcohol, Tobacco, Firearms and Explosives promulgated the rule at issue in these appeals. As relevant here, the Rule clarifies that the term “firearm” in the Gun Control Act includes (1) a kit or aggregation of parts that enables a purchaser to readily assemble an operational firearm and (2) a partially complete firearm frame or receiver, including a parts kit, that enables a purchaser to readily assemble a functional frame or receiver. *See* Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24,652, 24,652 (Apr. 26, 2022).

Following the Rule’s promulgation, four plaintiffs—Jennifer VanDerStok and Michael Andren, two individual firearm owners; Tactical Machining LLC, a company that manufactures and sells firearms and parts that individuals may use to build

operational firearms; and Firearms Policy Coalition, a nonprofit organization—brought suit in district court. They claim that certain provisions of the Rule are invalid, and they sought a preliminary injunction on that basis.

In two orders, the district court concluded that three of those original plaintiffs—VanDerStok, Andren, and Tactical Machining—were entitled to a preliminary injunction prohibiting the implementation of two challenged provisions of the Rule, and the court further concluded that the injunction should extend to most of Tactical Machining’s customers. *See* ROA.772, 1188-98, 1207-08. The government has appealed those two orders, and that appeal is docketed as No. 22-11071.

After the district court granted its original preliminary injunction, BlackHawk Manufacturing Group, another entity that manufactures and sells firearms and parts that individuals may use to build their own firearms, moved to intervene in the litigation for purposes of seeking the same preliminary injunction as the original plaintiffs had received. The district court granted that motion to intervene and subsequently granted BlackHawk’s motion for a preliminary injunction. ROA.1320-29, 1651-62. In granting that preliminary injunction, the district court generally “incorporat[ed] by reference the reasoning” in its previous opinion addressing the original plaintiffs’ motion for a preliminary injunction. ROA.1654-55. The government then appealed that preliminary injunction, and that appeal is docketed as

No. 22-11086.

2. These two appeals, No. 22-11071 and No. 22-11086, are related cases. They involve the same appellants, two similarly situated appellees (Tactical Machining and BlackHawk), and substantially similarly legal issues. Indeed, in entering the order on appeal in No. 22-11086, the district court generally incorporated by reference the analysis articulated in the earlier orders now on appeal in No. 22-11071. *See* ROA.1654-55.

The government thus respectfully requests that the two cases be consolidated. In these circumstances, consolidation will promote judicial economy, avoid burdening the Court with duplicative briefing, and ameliorate any risk that the panels hearing the two appeals might reach different conclusions on the same legal issues. *Cf. Forkner v. Fisher*, 678 F. App'x 210, 211 (5th Cir. 2017) (per curiam). In addition, if the Court consolidates the appeals, the government is prepared to file its consolidated opening brief by December 20, 2022, the earlier of the deadlines established in the briefing schedules in the two appeals. Thus, consolidation will not result in any improper delay.

3. Plaintiffs, appellees in No. 22-11071, do not oppose this motion. Intervenor-plaintiff, the appellee in No. 22-11086, also does not oppose this motion.

Respectfully submitted,

ABBY C. WRIGHT

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 657 words, according to the count of Microsoft Word.

/s/ Sean R. Janda

Sean R. Janda