Firearms - Definitions

Number: AGO2023-03

Representative Shane Abbott

Florida House of Representatives

908 US Highway 90 West

NWFSC Chautauqua Center

DeFuniak Springs, FL 32433-1436

Dear Representative Abbott:

This office received your letter, dated March 21, 2023, requesting a legal opinion pursuant to Section 16.01(3), Florida Statutes. You ask substantially the following question:

Does the definition of “short-barreled rifle” codified at section 790.001(11), Florida Statutes (2022), include a pistol with a stabilizing brace?

In sum:

Unless and until judicially or legislatively clarified, I conclude that the definition of “short-barreled rifle,” which the Legislature enacted in 1969, does not include a handgun, such as a pistol, to which a person attaches a stabilizing brace, because the use of such an optional accessory does not change the fundamental characteristics of the handgun.

Background

In your letter, you describe a recent rule the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) proposed, in which it set forth "factoring criteria" to "clarify" how it intends to determine whether a firearm's configuration would be subject to certain regulations.[1] You state that ATF estimates that, under the new rule, "99% of pistols equipped with stabilizing braces will now be deemed subject to National Firearms Act controls." You raise both policy and legal concerns regarding the ATF's rule.[2]

Although the ATF's proposed rule and other statements of the federal government concerning specific firearms prompted your request, I understand that your request specifically seeks an opinion concerning the definition of "short-barreled rifle," as codified in section 790.001(11), Florida Statutes (2022). As such, this opinion does not address the federal government's rule or the policy on which it based the rule, but instead analyzes the meaning of "short-barreled rifle" under Florida law.

Analysis

The Legislature based the various provisions of chapter 790 ("Weapons and Firearms") on Article 1, section 8(a) of the Florida Constitution, which states, in part, that "the right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Based on this provision, the Legislature defined "short-barreled rifle" as "a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches."[3] The Legislature then declared it "unlawful for any person to own or have in his or her care, custody, possession, or control any short-barreled rifle … which is, or may readily be made, operable."[4]

When interpreting a statute, courts first consider the entire text of the statute and analyze its plain meaning.[5] Courts consider statutory provisions together when such provisions are part of the same statutory scheme.[6] When necessary, the plain and ordinary meaning of words can be ascertained by reference to a dictionary.[7]

Both the plain language of the terms "short-barreled rifle" and "handgun" and consideration of the terms in pari materia with other terms and provisions of chapter 790 lead to the conclusion that chapter 790 regards a rifle as fundamentally distinct from a handgun, such as a pistol or revolver. A rifle refers to a firearm that has a rifled bore and is intended to be fired from the shoulder.[8] In contrast, the Legislature recently defined "handgun" to mean "a firearm capable of

being carried and used by one hand, such as a pistol or revolver."[9]

The definition of "short-barreled rifle" includes a measurement for the maximum length of the barrel and overall length of the firearm; however, the Legislature broadly defined "handgun" as any firearm that can be carried or used with one hand, regardless of the length of its barrel. The distinction between the two definitions—one of which contains specific measurements and the other of which describes the manner of use—indicates the Legislature regards the terms as mutually exclusive. Analysis of the provisions of chapter 790 verifies that the two terms are not interchangeable: section 790.221, as noted above, prohibits the care, custody, possession, or control any short-barreled rifle; in contrast, a handgun is not prohibited, but the Legislature has established various provisions applicable to its use.[10]

A stabilizing brace is an attachment that, when added as designed to the rear of a firearm, enables a person to fire the firearm from his or her shoulder. Attaching a stabilizing brace to a handgun only affects the manner of use in which the person using the firearm will engage: it does not affect the structural characteristics or integral nature of the handgun as commonly understood. Concluding that the addition of a stabilizing brace to a handgun would alter the fundamental characteristics of the handgun to the extent that it must be recategorized would ignore the purpose for use of a brace, as a brace can only be used with a handgun because it exists to enable a person to continue to use the handgun as the definition contemplates: with one hand. A person's choice to use a brace does not change the fundamental nature of the firearm with which the person uses it; rather, using a brace simply enables a person to hold the handgun with one hand.

Furthermore, concluding that the attachment of a brace results in recategorizing the firearm would disregard the Legislature's clear intent to define "short-barreled rifle" in a specific manner. The Second District Court of Appeal emphasized the specificity of the definition of "short-barreled rifle," and the narrow nature of considering a type of firearm as such a rifle, by holding that the definition does not contemplate "another type of weapon" such as a "common handgun" made "from rifle parts."[11] The court stated that the definition refers to "a weapon which in its essence is an integral, operable rifle, as the term rifle is commonly understood … whether from the shoulder or as a common hand gun."[12] Concluding that a handgun could become a short-barreled rifle by attaching a stabilizing brace would cause us to disregard the essence a rifle, which, in its "integral, operable" form, means a firearm with a rifled bore that is generally fired from a person's shoulder.

This analysis is also consistent with the Supreme Court of Florida's analytical model in Florida v. Weeks, in which the court concluded that determining whether a firearm was a "replica" of an "antique firearm" under section 790.001 depends on the characteristics and functioning of the type of firing system.[13] The court emphasized that understanding the firing system was critical because the system is the distinctive feature of the firearm. In this regard, the court's analysis is consistent with the Second District Court of Appeal's focus on the integral, operable nature of the firearm as being critical to determining its essence. Here, the distinctive features of the essence of a handgun and a short-barreled rifle are simple: a handgun, by definition, can be fired with only one hand and, in contrast, a rifle is designed with the intention that a person will fire it from his or her shoulder, due to the length of its stock. Opting to use a stabilizing brace with a handgun does not change its fundamental characteristics.

Conclusion

Based on the foregoing, unless and until judicially or legislatively clarified, I conclude that neither section 790.001 nor section 790.221, Florida Statutes, prohibit a person from using a handgun with a stabilizing brace. The various definitions of distinct types of firearms codified at section 790.001, Florida Statutes, are based on the fundamental design and operational characteristics of each firearm. Therefore, attaching such a brace does not result in a redesign of the firearm and does not result in a different type of functionality of the firearm; instead, it only assists with the use of the firearm.

Sincerely,

Ashley Moody

Attorney General

[1] Factoring Criteria for Firearms with Attached "Stabilizing Braces," 88 Fed. Reg. 6,478 (Jan. 31, 2023).

[2] In your request, you note this Office's participation in litigation challenging the ATF's rule. *See Firearms Regulatory Accountability Coalition, Inc. and States of West Virginia, North Dakota, et al. v. Merrick B. Garland, et al.*, No. 1:23-cv-00024 (D.N.D. filed Feb. 9, 2023).

[3] § 790.001(11), Fla. Stat. (2022). In 2023, the Legislature enacted and the Governor signed H.B. 543, which resulted in the renumbering of definitions in section 790.001, such that the definition of "short-barreled rifle" has since been codified as subsection (16) of section 790.001.

[4]§ 790.221(1), Fla. Stat. (2022). The statute does not apply to antique firearms or firearms that are lawfully owned and possessed under provisions of federal law. Id.

[5] *Lopez v. Hall*, 233 So.3d 451, 453 (Fla. 2018).

[6] *Bank of New York Mellon v. Glenville*, 252 So.3d 1120, 1128 (Fla. 2018) (considering two statutes together because "they are *in pari materia*, 'in the same matter'" and citing *Fla. State Racing Comm'n v. McLaughlin*, 102 So.2d 574, 575-76 (Fla. 1958)).

[7] *Seagrave v. State*, 802 So.2d 281, 286 (Fla. 2001).

[8] Webster's Third New International Dictionary 1954 (Philip B. Gove ed., 2002). A person generally must use a rifle against his or her shoulder because the rifle has a buttstock, which is the stock of a firearm in the rear of the breech mechanism. Id. at 306. A stock is "the portion of the weapon behind the trigger and firing mechanism and extends rearward towards the shooter." *Gun Owners of America, Inc. v. Garland*, 19 F.4th 890, 897 n.1 (6th Cir. 2021).

[9] § 790.001(10), Fla. Stat. (West 2023) (as amended by 2023 Fla. Sess. Law Serv. Ch. 2023-17 (West) (hereinafter, "H.B. 543")). The Legislature's distinct definition of "short-barreled shotgun" also supports the conclusion that the Legislature carefully categorizes the weapons to which chapter 790 applies: section 790.001(17) (West 2023) defines "short-barreled shotgun" as "a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun … if such weapon as modified has an overall length of less than 26 inches."

[10] *See* §§ 790.06(12)(a), 790.25(2)(m), Fla. Stat. (West 2023) (as amended by H.B. 543).

[11] *State of Florida v. Astore*, 258 So.2d 33, 34 (2d DCA 1972) (noting that the word "parts" does not appear in the definition and that the definition does not include "weapons made from individual, non-integrated rifle parts, if such weapons are not otherwise rifles.").

[12] *Id.*

[13] 202 So.3d 1 (Fla. 2016).