

In the Supreme Court of the United States

MODERN SPORTSMAN, LLC, RW ARMS, LTD., MARK MAXWELL, MICHAEL STEWART,

Applicants,

v.

UNITED STATES,

Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR
WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE
FEDERAL CIRCUIT**

Adam M. Riley
Jennifer H. Gelman
FLINT LAW FIRM, LLC
222 East Park Street, Suite 500
Post Office Box 189
Edwardsville, Illinois 62025
(618) 288-4777
ariley@flintlaw.com
jgelman@flintlaw.com

Patrick Strawbridge
Counsel of Record
CONSOVOY MCCARTHY PLLC
Ten Post Office Square
8th Floor South PMB #706
Boston, MA 02109
(703) 243-9423
patrick@consovoymccarthy.com

Daniel Shapiro
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
daniel@consovoymccarthy.com

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**To the Honorable John G. Roberts, Jr., Chief Justice of the United States
and Circuit Justice for the Federal Circuit:**

Pursuant to 28 U.S.C. §2101(c) and Supreme Court Rules 13.5, 22, and 30.3, Applicants Modern Sportsman, LLC, RW Arms, LTD., Mark Maxwell, and Michael Stewart, respectfully request that the time to file a petition for a writ of certiorari in this case be extended 60 days to July 5, 2022. The Federal Circuit issued its opinion on October 1, 2021, and the court denied a timely petition for rehearing en banc on February 2, 2022. *See* Apps. A & B. Absent an extension of time, the petition for certiorari would be due on May 3, 2022. Applicants are filing this application at least ten days before that date. *See* Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. §1254.

Background

This case raises the question of what constitutes a compensable taking for purposes of the Fifth Amendment to the United States Constitution.

1. Applicants Modern Sportsman, LLC, RW Arms, LTD., Mark Maxwell, and Michael Stewart are former owners of lawfully acquired bump-fire type rifle stocks. App. A at 2. On December 26, 2018, the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) issued a legislative rule that banned bump-stocks and required anyone who had legally purchased and possessed a bump-stock prior to the issuance of the Rule to surrender the bump-stock to the federal government or destroy it. *Id.* Applicants complied with the Rule and dispossessed themselves of their lawfully acquired and possessed bump-stocks. *Id.*

2. Applicants sued the federal government in the United States Court of Federal Claims seeking just compensation for the bump-stocks that were dispossessed in compliance with the Rule. *Id.* The Claims Court granted the federal government's motion to dismiss. *Id.* at 3.

3. The Federal Circuit affirmed the Claims Court's dismissal of Applicants' claims on different grounds. The panel majority held that Applicants never acquired a property interest in their bump-stocks because two federal statutes prevented proper acquisition of title. *Id.* Applicants filed a timely petition for rehearing en banc, which was denied on February 2, 2022. App. B.

Reasons for Granting an Extension of Time

The time to file a petition for a writ of certiorari should be extended by 60 days, to July 5, 2022, for several reasons.

1. The forthcoming petition will present an important question of federal law that this Court should resolve. Most fundamentally, the panel's holding means that all tangible personal property that can at some point be the subject of an exercise of federal legislative rulemaking authority is subject to an inherent limitation on title. Because nearly all personal property is potentially subject to federal rulemaking power, the panel's holding unsettles the title to nearly every piece of tangible personal property in the nation. This petition presents several other important questions of federal law. First, can an ambiguous statute that is implemented by a legislative rule create a background restraint on title if the purchase occurred prior to promulgation of the legislative rule? Second, does the possibility that an agency may issue a

legislative rule in the future banning possession of a type of property constitute an inherent restriction on the title of such property at the time of purchase? Third, can an agency interpretation upheld at *Chevron* Step Two constitute an inherent limitation on property's title? Fourth, can an ambiguous statute given meaning after the time of purchase by a legislative rule give rise to a background restriction on title at the time of purchase? Fifth, does ATF's interpretation constitute a retroactively applicable legislative rule in violation of the rule enunciated in *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988)?

2. This is Applicant's first request for an extension of time, and no prejudice will result to Respondent if this extension is granted.

Conclusion

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended by 60 days, to July 5, 2022.