

In the Supreme Court of the United States

ROY LYNN MCCUTCHEN, PADUCAH SHOOTER'S SUPPLY, INC., INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY SITUATED,

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**

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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 Roy Lynn McCutchen and Paducah Shooter’s Supply, Inc., individually and on behalf of all others similarly situated, 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 Roy Lynn McCutchen and Paducah Shooter’s Supply Inc. are former owners of lawfully acquired bump-fire type rifle stocks. App. A at 12. On December 26, 2018, in response to the Las Vegas mass shooting of October 1, 2017, 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.* at 10. Applicants complied with the Rule and dispossessed themselves of their lawfully acquired and possessed bump stocks. *Id.* at 12.

2. On December 26, 2018, 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.* On September 23, 2019, the Claims Court granted the federal government’s motion to dismiss. *Id.* The court held that the Rule did not constitute a taking for public use because ATF was acting “pursuant to its police power.” *Id.* The court went on to conclude that the Rule did not constitute a physical taking because the term “take[]” does not encompass a regulation requiring dispossession of property by destruction or surrender to the government. *Id.* Finally, the court rejected Applicants’ claim for total elimination of value because personal property, as opposed to real property, is “subject to pervasive government regulation.” *Id.*

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.* at 13. First, 18 U.S.C. §922(o) bans the possession of “machineguns.” *Id.* at 17. Second, 18 U.S.C. §5845(b) grants the Attorney General authority to implement §922(o)’s machinegun ban. *Id.* Taken together, according to the panel majority, Applicants took possession of their bump stocks, which were acquired while these laws were on the books, with an inherent limitation on title given the Attorney General’s authority to issue regulations defining the term “machinegun.” *Id.*

Judge Wallach concurred in the result and would have affirmed the Claims Court's reasoning in full. Judge Wallach argued that the taking was within the federal government's police powers and thus did not require just compensation. *Id.* at 27.

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.