

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**MODERN SPORTSMAN, LLC, RW ARMS, LTD.,
MARK MAXWELL, MICHAEL STEWART,**
Plaintiffs-Appellants

v.

UNITED STATES,
Defendant-Appellee

2020-1107

Appeal from the United States Court of Federal Claims
in No. 1:19-cv-00449-LAS, Senior Judge Loren A. Smith.

Decided: October 1, 2021

JENNIFER GELMAN, Flint Law Firm LLC, Edwardsville,
IL, argued for plaintiffs-appellants. Also represented by
ADAM MICHAEL RILEY.

KENNETH DINTZER, Commercial Litigation Branch,
Civil Division, United States Department of Justice, Wash-
ington, DC, argued for defendant-appellee. Also repre-
sented by JEFFREY B. CLARK, ROBERT EDWARD KIRSCHMAN,
JR., LOREN MISHA PREHEIM, NATHANAEL YALE.

MARK W. PENNAK, Law Offices of Mark W. Pennak, Chevy Chase, MD, for amicus curiae Maryland Shall Issue, Inc.

PRAATIKA PRASAD, Gibson, Dunn & Crutcher LLP, New York, NY, for amici curiae Paul Baumbach, Vic Bencomo, Jim Berzowski, Matthew DeFalco, Scarlett Flores, David Fitz, Peter Gurfein, Megan Harper, George Higgins, Bob Mokos, Mike Meyers, Jim Pederson, Matt Pierce, Conner Siegel, Whitney Toutenhoofd. Also represented by SCOTT EDELMAN, Los Angeles, CA; VIVEK R. GOPALAN, San Francisco, CA; HANNAH SHEARER, Giffords Law Center to Prevent Gun Violence, San Francisco, CA.

Before TARANTO, WALLACH,* and CHEN, *Circuit Judges*.

Opinion for the court filed by *Circuit Judge* TARANTO.

Opinion concurring in the result filed by *Circuit Judge* WALLACH.

TARANTO, *Circuit Judge*.

The Modern Sportsman, LLC, RW Arms, Ltd., Mark Maxwell, and Michael Stewart (collectively, Modern Sportsman) sued the United States in the Court of Federal Claims (Claims Court), alleging that the Bureau of Alcohol, Tobacco, Firearms, and Explosives had, through promulgation of Bump-Stock-Type Devices, 83 Fed. Reg. 66,514 (Dec. 26, 2018) (Final Rule), taken its bump stocks in violation of the Fifth Amendment. J.A. 37–44 (Amended Complaint).

The government moved to dismiss Modern Sportsman’s amended complaint for failure to state a claim on which relief can be granted. The Claims Court granted the

* Circuit Judge Evan J. Wallach assumed senior status on May 31, 2021.

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government's motion and dismissed Modern Sportsman's amended complaint. *Modern Sportsman, LLC v. United States*, 145 Fed. Cl. 575 (2019); J.A. 10 (Judgment).

Modern Sportsman timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(3). We heard oral argument in this and a related case, *McCutchen v. United States*, No. 2020-1188, as the cases present materially identical issues. *See* Fed. R. App. P. 3(b). For the same reasons we today affirm the Claims Court's judgment in the *McCutchen* case, we affirm the Claims Court's judgment in the present case.

The parties shall bear their own costs.

AFFIRMED

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WALLACH, *Circuit Judge*, concurring in the result.

This appeal is related to *McCutchen v. United States*, No. 2020-1188 (Fed. Cir. 2021), decided concurrently. For all reasons stated in my concurrence in *McCutchen*, I concur in affirming the Court of Federal Claims' decision in *Modern Sportsman, LLC v. United States*, 145 Fed. Cl. 575 (2019). See *McCutchen*, No. 2020-1188 (Wallach, E., concurring).