No. 22-976

IN THE

Supreme Court of the United States

MERRICK B. GARLAND, ATTORNEY GENERAL, ET AL.,

Petitioners,

v.

MICHAEL CARGILL,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring that important federal statutes, like the National Firearms Act, are interpreted in accordance with their text and history, and accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

In 1934, after a string of high-profile shootings, Congress passed the National Firearms Act (NFA) to address "the growing frequency of crimes of violence in which people are killed or injured by the use of dangerous weapons." H.R. Rep. No. 1780, 73d Cong., 2d Sess. 2, 107-08 (1934). Of particular concern was "the machine gun"—the "gangster['s] . . . most dangerous weapon"—because it enabled mass killings with a single pull of a trigger. *Id.*

To address that concern, Congress created a strict taxation and registration system for machine guns—a regime that it has enhanced since 1934 by imposing new restrictions on the weapons and expanding the definition of "machine gun" to ensure coverage of all

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[1] Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

firearms capable of causing mass casualties with minimal human input. Today, a "machinegun" (now spelled in the statute as one word) is defined as "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. § 5845(b). The term "also include[s] . . . any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun." *Id.*

In 2018, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) promulgated a regulation (the Rule) that classified devices known as bump stocks as "machineguns." 83 Fed. Reg. 66,514 (Dec. 26, 2018). Bump stocks attach to semiautomatic firearms and enable them to harness "the recoil energy" of the firearm in a manner that "allows the trigger to reset and continue firing without additional physical manipulation of the trigger by the shooter." *Id.* As the Rule explained, bump stocks are properly classified as machine guns because they allow a shooter to produce automatic fire with a single pull of the trigger, *id.* at 66,515, thus "empower[ing] a single individual to take many lives in a single incident" in the same manner as a fully automatic firearm, *id.* at 66,520.

Respondent challenged the Rule, and both the district court and a unanimous Fifth Circuit panel rejected the challenge. Pet. 9-11; *see* Pet. App. at 73a (concluding that "bump stocks qualify as machine guns under the best interpretation of the statute"). While the en banc Fifth Circuit ultimately reversed, there was no majority view on the best interpretation of the statutory definition. Instead, a majority concluded that lenity principles require interpreting the statutory definition of "machinegun" not to

encompass bump stocks. *Id.* at 12. Because the text and history of the NFA make clear that bump stocks fall within Congress's definition of "machinegun," this Court should reverse.

The key terms in the current statutory definition of "machinegun"—"automatically" and "by a single function of the trigger"—have been in place since the NFA was passed in 1934. Pub. L. No. 73-474, ch. 757, § 1(b), 48 Stat. 1236, 1236. At that time, the term "function" meant "performance," or some "activity," "action," or "doing." *Webster's New International Dictionary* 1019 (2d ed. 1934). And an object acted "automatically" if it could continue to act on its own after the initiation of the action by a person—that is, once set into motion, it could "produce results otherwise done by hand." 1 *Oxford English Dictionary* 574 (1933). Thus, a weapon could shoot "automatically . . . by a single function of the trigger" if it could continue to fire after the shooter's single initial pull of the trigger.

This understanding of the ordinary public meaning of the key language in the NFA is reflected in agency rulings and guidance discussing the statute shortly after its passage, as well as contemporaneous newspaper articles describing the new firearm registration requirements in layman's terms to their readers. And although Congress subsequently amended the NFA, it did not alter these key terms in the definition of "machinegun." In other words, since 1934, Congress has consistently defined the term machine gun as a weapon that shoots "automatically . . . by a single function of the trigger." NFA ch. 757, § 1(b), 48 Stat. at 1236.

The history of the NFA confirms what its text makes clear: the Act applies to any gun that fires continuously after the shooter initially pulls the

trigger. When the NFA was passed in 1934, Congress was deeply concerned about highly publicized incidents of mass gun violence and sought to avoid the carnage made possible by machine guns. To achieve that end, Congress defined "machine gun" broadly with a focus on guns that could shoot continuously once set into motion by the shooter's initial action. As the House Report put it, Congress was using the "usual definition" of a machine gun: "a weapon designed to shoot more than one shot without reloading and by a single pull of the trigger." H.R. Rep. No. 1780, at 108.

In 1968 and 1986, Congress remained concerned about gun violence and mass shootings and expanded the machine gun definition to ensure that all guns capable of producing such mass casualties satisfied the definition and thus could be regulated appropriately. Specifically, in 1968, with the passage of the Gun Control Act (GCA), Congress expanded the NFA's definition of "machine gun" to include parts and components that could transform a weapon that was not a machine gun into a machine gun—just like bump stocks do. Pub. L. No. 90-618, Tit. II, sec. 201, § 5845(b), 82 Stat. 1214, 1231. Congress also—in an apparently non-substantive change—omitted the word "semiautomatically," which had appeared adjacent to "automatically" in the original definition, *see* S. Rep. No. 90-1501, at 45 (1968) (amended first sentence is "existing law"). Finally, in 1986, Congress again amended the statute—this time to eliminate a loophole that had inadvertently exempted from regulation as "machineguns" certain weapons converted into machine guns through the addition of a single part—but it again left untouched the key language defining a "machine gun" as a weapon that shoots "automatically . . . by a single function of the

trigger." *See* Firearms Owners' Protection Act (FOPA), Pub. L. No. 99-308, § 109(a), 100 Stat. 449, 460 (1986).

In short, for nearly a century, Congress has been deeply concerned about gun violence in general and automatic weapons in particular. The ATF Rule at issue here simply implements Congress's judgment, as the text and history of the NFA make clear. This Court should reverse.

ARGUMENT

I. Under the Ordinary Public Meaning of the National Firearms Act, Bump Stocks Are "Machine Guns."

It is a "'fundamental canon of statutory construction' that words generally should be 'interpreted as taking their ordinary, contemporary, common meaning . . . at the time Congress enacted the statute.'" *Wisc. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 78 (2012) ("Words must be given the meaning they had when the text was adopted."). Relying on the meaning of the statutory text at the time of its enactment avoids judicial amendment of legislation "outside the 'single, finely wrought and exhaustively considered, procedure' the Constitution commands." *New Prime v. Oliveira,* 139 S. Ct. 532, 539 (2019) (quoting *INS v. Chadha*, 462 U.S. 919, 951 (1983)).

In this case, the key terms in the current statutory definition of "machinegun"—"automatically" and "by a single function of the trigger," 26 U.S.C. § 5845(b)—were enacted by Congress in 1934, *see* NFA ch. 757, § 1(b), 48 Stat. at 1236. Although Congress amended the definition in other respects in 1968, *see infra* Part

II.C, it left untouched this crucial language. Thus, to determine whether a bump stock qualifies as a "machinegun" under the statutory definition, this Court should interpret the terms "automatically" and "by a single function of the trigger" as they were understood at the time of the NFA's passage in 1934. *See, e.g.*, *Guedes v. ATF*, 45 F.4th 306, 315 n.3 (D.C. Cir. 2022) (making precisely this point); Pet. App. 20a, 28a (plurality opinion) (concluding that bump stocks are not "machineguns" but relying on 1934 definitions for that conclusion).

A. Plain Meaning

At the time the NFA was passed, the term "function" meant "[t]he action of performing," 4 *Oxford English Dictionary* 602 (1933), or some "activity" or "doing," *Webster's New International Dictionary* 1019 (2d ed. 1934); *see id.* ("Action; activity; doing; performance."). At the same time, a machine was understood to operate "automatically" if it had "a self-acting or self-regulating mechanism that perform[ed] a required act at a predetermined point in an operation." *Webster's New International Dictionary* 187 (2d ed. 1934); *see* 1 *Oxford English Dictionary* 574 (1933) ("[s]elf-acting under conditions fixed for it, going of itself"; "[a]pplied esp. to machinery and its movements, which produce results otherwise done by hand, or which simulate human or animal action, as an 'automatic mouse'"). As applied to 26 U.S.C. § 5845(b), these definitions demonstrate that a "machinegun" is a weapon that continues to shoot continuously, through a "self-acting or self-regulating mechanism" "under [the] conditions fixed" after the initial "activity" or "performance" of pulling the trigger.

This ordinary understanding was reflected in definitions of the terms "automatic firearm" and

"automatic gun" in dictionaries in the 1930s. *See, e.g.*, *Webster's New International Dictionary* 187 (2d ed. 1934) ("automatic gun" defined as "[a] firearm which, after the first round is exploded, by gas pressure or force of recoil automatically extracts and ejects the empty case, loads another round into the chamber, fires, and repeats the above cycle, until the ammunition in the feeding mechanism is exhausted, or pressure on the trigger is released"). Indeed, just the year before the NFA's passage, the *Oxford English Dictionary* added the definition "of a firearm" to its entry for "automatic" and explained that "automatic," as pertains to a firearm, meant "[f]urnished with [a] mechanism for successively and continuously loading, firing, and ejecting a cartridge as long as ammunition is supplied." *Oxford English Dictionary Supplement* 43 (1933). As the *Oxford* dictionary made clear, the key was that no new action was necessary by the person holding the gun after the initial "single function of the trigger"; instead, the gun would repeatedly shoot in a self-regulating manner after that initial function. As *Oxford* put it, "[i]n the modern 'automatic' machine gun the loading, firing, extracting, and ejecting are all performed automatically." *Id.*

Bump stocks operate in precisely this manner: a single push on the front of the barrel with the non-shooting hand, which initiates the trigger-pull by the shooting hand, is sufficient to begin the firing cycle, which continues in an automatic fire-recoil-bump-fire sequence until the pressure on the weapon is released.

It is true that the shooter must continue to apply pressure to the barrel of the gun for it to continue firing, but that does not render the weapon any less "automatic." A weapon can operate through a "self-acting or self-regulating mechanism," *Webster's New*

International Dictionary 187 (2d ed. 1934), even if some human input is required to make that mechanism continue—that is, to maintain the "conditions fixed for it," 1 *Oxford English Dictionary* 574 (1933); *see Guedes*, 45 F.4th at 316 (explaining that "'self-acting' can admit of some human input," and that, in any event, "the word 'automatically' [also] encompasses devices that are 'self-regulating'").

For instance, many blenders require a person to hold down a button for the blender to automatically blend the pitcher's contents. But that human input does not render the blending function any less automatic—it still "produce[s] results otherwise done by hand," 1 *Oxford English Dictionary* 574 (1933), and much more efficiently at that, as anyone who ever tried to make a smoothie without a blender can attest. A fully automatic weapon itself also illustrates the point: for such a firearm to shoot continuously, the shooter must maintain continuous pressure on the trigger, but no one thinks that continuous pressure renders a fully automatic firearm anything less than a "machinegun."

It is also true that after the initial pull of the trigger on a bump stock-equipped firearm, the trigger is reengaged repeatedly by the weapon itself in the fire-recoil-bump-fire sequence. But as the early twentieth-century definitions of "function" make clear, only the initial pull of the trigger is an "activity" or a "performance," *Webster's New International Dictionary* 1019 (2d ed. 1934), in the sense that it is a volitional action giving rise to an automatic sequence. Moreover, that single initial pull of the trigger is what sets a series of automatic events into motion without any new human input—in other words, it constitutes the "single" trigger "function" that causes the gun to "shoot[] automatically more than one shot." 26 U.S.C. § 5845(b); *see* NFA ch. 757, § 1(b), 48 Stat. at 1236

(same). The subsequent movements of the trigger provoked by the recoil are not the single function that sets the automatic shooting sequence into motion; rather, they are part of the automatic sequence itself.

B. Contemporaneous Understandings

Interpretations of the NFA contemporaneous with its passage confirm what the plain text of the statute suggests: the term "machine gun" was understood to apply to guns that shoot continuously after a single pull of the trigger. Indeed, contemporaneous sources routinely used the word "pull" as a synonym for "function," demonstrating the widespread understanding in 1934 that "single function of the trigger" referred to an action performed affirmatively by the shooter, not an autonomous bumping provoked by the weapon's recoil.

For instance, in 1934, shortly after the NFA was passed, the Treasury Department issued a letter ruling stating that a "machine gun" is a weapon that "shoots automatically, that is, one capable of discharging the entire capacity of its magazine with one pull of the trigger." Rev. Rul. XIII-38-7035, S.T. 772, 13-2 C.B. 433-34 (Jul.-Dec. 1934). This "ruling is probative of the original public meaning of the Act." *Guedes v. ATF*, 66 F.4th 1018, 1026 n.2 (D.C. Cir. 2023) (Henderson, J., dissenting from the denial of rehearing en banc).

Implementation of the NFA also required internal revenue collectors in each state to oversee the registration of firearms for the first time, and as part of their duties, many put out statements explaining the scope of the Act. In explaining which weapons qualified as machine guns, these tax collectors also repeatedly used the word "pull" instead of the word "function," indicating that a machine gun was a

weapon which could shoot a continuous stream of bullets with only a single volitional pulling of the trigger by the shooter. In Arkansas, the internal revenue collector explained that "if a pistol is converted into one which shoots automatically, that is, one capable of discharging the entire capacity of its magazine by one pull on the trigger, it ceases to be a pistol and becomes a 'machine gun.'" *New Firearms Law Ignored, Says Adkins*, Helena World (Helena, Ark.), Oct. 16, 1934, at 3.

Similarly, other collectors distinguished between covered "pistols and revolvers that have been altered so that one pull of the trigger discharges the entire magazine capacity" and commercially manufactured weapons that "require a separate pull on the trigger for each discharge and are therefore not . . . machine guns under the National Firearms [A]ct." *Governmental Problems*, St. Cloud Times (Saint Cloud, Minn.), Sept. 14, 1934, at 8; *see also Firearm Owners Urged to Register Weapons with U.S.*, The Wichita Eagle (Wichita, Kan.), Jan. 12, 1935, at 8 ("An automatic pistol, which will discharge the entire capacity of its magazine with one pull of the trigger is classed as a 'machine gun' and must be registered."); *Data On Guns Registration*, The Whittier News (Whittier, Cal.), Sept. 14, 1934, at 4 ("All . . . firearms which can be carried on the person must be registered only in case they automatically discharge more than one shot with one pull of the trigger.").

This understanding was reflected in contemporary commentary about the NFA, as newspaper accounts repeatedly made clear that a machine gun was one that fires continuously after an initial pull of the trigger without any new action by the person holding the firearm. *See, e.g.*, *New Firearms Law Ignored, Says Adkins*, Helena World (Helena, Ark.), Oct. 16,

1934, at 3 ("[I]f a pistol is converted into one which shoots automatically, that is, one capable of discharging the entire capacity of its magazine by one pull on the trigger," it is a machine gun.); *Must Register Your Firearms*, Star Valley Independent (Afton, Wyo.), Jan. 17, 1935, at 1 ("[A] weapon which shoots automatically, that is, one capable of discharging the entire contents of its magazine with one pull of the trigger," is a machine gun.); *Machine Gun Type of Weapons Must Be Put on Record*, Appeal-Democrat (Marysville, Cal.), Nov. 20, 1934, at 4 ("A pistol which is discharged entirely with one pull on the trigger comes under the scope of the act . . . ."); *Some Guns Must Be Registered Soon*, Elsinore Leader-Press (Lake Elsinore, Cal.), Sept. 13, 1934, at 3 ("[F]irearms which can be carried on the person must be registered only in case they automatically discharge more than one shot with one pull of the trigger. [Other firearms] which reload automatically but discharge only one shot with each pull of the trigger, do not have to be registered.").

Indeed, some 1930s newspaper discussions made it particularly clear that the phrase "single function of the trigger" referred to a single "pull" of the trigger, using those terms interchangeably in their discussion of the new law. *See, e.g.*, *Must Register Their Firearms*, Petaluma Argus-Courier (Petaluma, Cal.), Oct. 26, 1934, at 4 (using the statute's text "single function of the trigger" and then immediately interpreting it to mean that "any . . . full automatic capable of discharging the entire capacity of its magazine with one pull of the trigger, ceases to be a pistol and is subject to provisions of the national firearms act"); *Register Your Guns in Latest Federal Order*, The Press Democrat (Santa Rosa, Cal.), Oct. 26, 1934, at 15 (explaining the term machine gun in the

Act as a firearm that operates automatically by "a single function of the trigger" and in the next sentence, defining a machine gun under the Act as a weapon "capable of discharging the entire capacity of its magazine with one pull of the trigger").

In sum, in 1934, "machine guns" were widely understood to include weapons that fired continuously after a shooter applied pressure to the firing mechanism, and that is exactly what bump stocks enable a weapon to do. The fact that, as Respondent argues, bump stocks achieve this effect because the force of the gun's recoil automatically bumps the shooter's finger into the trigger is irrelevant under the language of the NFA, as contemporaneous sources from the time of the Act's passage make clear.

II. The History of the National Firearms Act Confirms that the Act Applies to Any Firearm that Shoots Continuously After an Initial Pull of the Trigger by the Shooter, Just Like a Weapon Equipped with a Bump Stock Does.

The history of the NFA confirms what its text makes clear: the phrase "automatically . . . by a single function of the trigger" describes a firearm that continuously fires bullets after the shooter pulls the trigger without the shooter performing any new action.

A. At the time the NFA was passed, the nation was deeply concerned with "the growing frequency of crimes of violence in which people [were] injured by the use of dangerous weapons." H.R. Rep. No. 1780, at 107-08. The violence perpetuated by organized crime through their use of machineguns was of particular concern. *See, e.g.*, Hearings Before the H. Comm. on Ways and Means on H.R. 9066, 73d Cong., 2d Sess. 42 (1934) (hereinafter "NFA Hearings") ("The question in

my mind and I think in the majority of the committee is what we can do to aid in suppressing violations by such men as [infamous gangster John] Dillinger and others"). To address this concern, Congress concluded that "[t]he gangster as a law violator must be deprived of his most dangerous weapon, the machinegun." H.R. Rep. No. 1780, at 107-08.

Congress viewed machine guns as the "most dangerous weapon" because they could shoot continuously after a single initiating action by the shooter, thus threatening to do much more damage than other types of firearms. *See, e.g.*, NFA Hearings, *supra*, at 149 (Rep. Treadway) (the central issue was the "serious destructive nature" of a machine gun "to human life"); *id.* at 101 (Assistant Attorney General Keenan) (warning that machine guns must be more strictly regulated because they "kill . . . more effectively" than revolvers and pistols); 78 Cong. Rec. 8508 (1934) (Sen. Reynolds) (citing national concern about machine guns enabling "wholesale murder").

As originally proposed, the term "machine gun" was defined to include "any weapon designed to shoot automatically, or semi-automatically, 12 or more shots without reloading," but there were concerns that this definition was not sufficiently expansive. NFA Hearings, *supra*, at 6. Karl Frederick, then-president of the National Rifle Association (NRA), worried that a firearm could fire 11 shots with a single pull of the trigger, but not be classified as a machine gun. *Id.* at 39-41. To address that concern, he proposed amendments to the NFA's definition of "machine gun" that successfully closed this inadvertent loophole and ensured that weapons that could fire *any* number of continuous shots set into motion by a single trigger pull would be subject to heightened regulation.

B. As ultimately passed in 1934, the NFA provided that "[t]he term 'machine gun' means any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger." NFA ch. 757, § 1(b), 48 Stat. at 1236. Notwithstanding the inclusion of the term "semiautomatically," the legislative record demonstrates that Congress was single-mindedly focused on weapons that fire multiple rounds with a single pull of the trigger because those weapons did the most harm. The precise mechanism by which the weapon did so was not at issue. As a House Report put it, the term "machine gun" was defined broadly to encompass "the usual definition of machine gun as a weapon designed to shoot more than one shot without reloading and by a single pull of the trigger." H.R. Rep. No. 1780, at 108.[2]

Discussion during congressional debates about the NFA's definition of "machine gun" repeatedly confirmed that a "machine gun" was a gun that could continuously shoot without reloading or other new, affirmative action on the part of the shooter after the initial pull of the trigger. For example, then-NRA President Frederick defined a machine gun as "a gun

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[2] *Amicus* has not identified any evidence suggesting that Congress included the term "semiautomatically" in the 1934 NFA to encompass weapons known today as "semiautomatics," *i.e.*, those that automatically reload but require multiple trigger pulls to shoot more than one bullet. Indeed, as the colloquies during hearings on the NFA described herein make clear, Congress's focus was on weapons that could shoot continuously after a single pull of the trigger. It thus seems that Congress was using the broad language "automatically or semiautomatically" to ensure coverage of all weapons that produced a stream of bullets with little action required on the part of the shooter, with the ultimate goal of limiting the serious harm caused by those weapons.

. . . which is capable of firing more than one shot by a single pull of the trigger, a single function of the trigger." NFA Hearings at 40; *see also id.* at 41 (Rep. Hill) (using the terms "one operation of the trigger" and "one function of the trigger" interchangeably with "pull of the trigger"). Frederick went on to contrast a machine gun with an automatically reloading pistol, explaining that the latter "is not properly a machine gun" because it requires multiple affirmative pulls and is "much less effective" compared to "[a gun] which pours out a stream of bullets with a single pull and as a perfect stream." *Id.* Asked by a member of Congress to clarify whether, under his proposed definition of "machine gun," a "Colt automatic pistol [would] be a machine gun," he explained that it would not because it "requires a separate pull of the trigger for every shot fired." *Id.* The point was clear: "machine guns" were different than other guns because they did not require repeated human action.

Similarly, in his questioning of Assistant Attorney General Joseph Keenan, Representative Samuel Hill explained that "an automatic gun is one that fires without pulling the trigger more than once," as opposed to a non-automatic gun where the shooter must "pull the trigger each time." *Id.* at 97. Keenan agreed, replying that "a machine gun is one that shoots more than one shot without manual reloading, by a single function of the trigger." *Id.* Hill pressed further, asking Keenan to confirm whether "small rifles, when you fire by pulling the trigger they reload automatically, but they do not automatically fire again unless you pull the trigger" are "machine gun[s] under this definition." *Id.* Keenan agreed with Hill that they were not "machine guns" within the meaning of the statute because they did not continue firing after the shooter's initial pull of the trigger. *Id.*

In short, the NFA's drafters understood an automatic firearm to be one that continues firing upon the shooter's single affirmative pull of the trigger, just like a firearm equipped with a bump stock.

C. When Congress amended the NFA in 1968 through the GCA, it made two changes to the definition of "machinegun" (other than switching to a single word for the defined term). First, it deleted the word "semiautomatically," so the first sentence of the definition would read, as it does now, that "[t]he term 'machinegun' means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." GCA Tit. II, sec. 201, § 5845(b), 82 Stat. at 1231. Congress evidently did not consider this to be a substantive change—the Senate Report merely stated that "[t]his subsection defines the term 'machinegun' and the first sentence is existing law." S. Rep. No. 90-1501, at 45 (1968) (section-by-section analysis of the bill); *see also* Federal Firearms Legislation, Hearings Before the S. Judiciary Comm., Juvenile Delinquency Subcomm., 90th Cong. 135 (1968) ("This subsection defines the term 'machine gun' and the first sentence is existing law." (quoting section-by-section analysis submitted to Congress by Hon. Sheldon S. Cohen, Commissioner of Internal Revenue)); *supra* note 2.

Second, Congress added a second sentence to the definition of "machinegun" that provided that the term "shall also include the frame or receiver of any such weapon, any combination of parts designed and intended for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person." GCA Tit. II, sec. 201, § 5845(b), 82 Stat. at 1231. With these

changes, Congress finetuned the provision's focus on guns that shoot multiple rounds with a single trigger pull, ensuring that all such guns and the components that can be used to make them qualify as "machineguns." Thus, the 1968 amendment was an *expansion* of the definition of "machinegun."

As the record makes clear, Congress made these changes to the law because it remained deeply concerned about the deadly nature of automatic gunfire and sought to ensure that the NFA's restrictions could not be evaded through innovation or new technologies. Throughout hearings on the bills in which the amendments to the definition of "machine gun" originated, there was widespread consensus that machine guns were different than other guns because of their ability to "kill scores of people in a short time," and that an amendment to the NFA's definition was needed "to modernize [its] coverage" to extend to certain "destructive devices and firearms, which were not contemplated or in existence in 1934 when the act was passed." 114 Cong. Rec. at 13,637 (1968) (statement of Sen. Brooke); *see also id.* at 10,858 (modification of the definition is necessary to prevent "so-called conversion kits" because "under existing law, there is no effective way to control the manufacture and transfer of such kits"); Bills to Assist State and Local Governments in Reducing the Incidence of Crime, To Increase the Effectiveness, Fairness, and Coordination of Law Enforcement and Criminal Justice Systems at All Levels of Government, and for Other Purposes: Hearing Subcomm. No. 5 of the H. Comm. on the Judiciary, 90th Cong. 779 (1967) (statement of Rep. James F. Battin, R. Mont.) (distinguishing "machineguns" that are "only . . . destructive devices" from "sporting and defensive guns"); *id.* at 666 (statement of John M. Schooley,

Chairman, Legislative Committee, NRA) (agreeing that the regulation of machine guns did not concern him because "[m]achine guns . . . hav[e] no place in the sporting world").[3]

In other words, Congress was just as concerned in 1968 as it was in 1934 with the types of weapons that could cause massive destruction because of their ability to shoot continuously based on a single pull of a trigger. And while Congress did not materially change the existing definition of "machine gun," it did broaden it, creating three additional categories of "machine guns" to "overcome problems encountered in the administration and enforcement of existing law." *See* S. Rep. No. 90-1501, at 45-46 (discussing the accessibility of "conversion kits" that could be used to simulate automatic fire). These changes addressed Congress's concern that the preexisting definition of "machine gun" could be evaded by combining weapons that by themselves did not qualify as "machine guns" with "conversion kits" to create weapons that could "shoot automatically . . . by a single function of the trigger."

D. In 1986, Congress again amended the statutory definition of "machinegun," this time to include "any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun." FOPA § 109(a), 100 Stat. at 460. With this change from the plural "parts" to the singular "part," Congress eliminated a loophole that had

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[3] These bills ultimately became the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, while the proposed amendments to the NFA's "machine gun" definition were moved to the GCA, which passed less than four months later.

exempted isolated parts that could, on their own, convert a lawful weapon into an unlawful machine gun. S. Rep. No. 97-476, at 49 (1982).

And once again in making this change, Congress focused on the uniquely lethal nature of machine guns. In testimony to the House Judiciary Committee's Subcommittee on Crime, the Director of the ATF emphasized the need to prevent guns from being used as "tools of crime and violence," including the use of the "fully automatic" Mac-10 machine gun as "a favorite weapon of narcotraffickers because of its small size and high firepower." *See* Firearms Enforcement Efforts of the Bureau of Alcohol, Tobacco and Firearms: Hearing Before the Subcomm. on Crime of the H. Comm. on the Judiciary, 96th Cong. 32-33 (1980). A written statement that the Director submitted to the Subcommittee further emphasized the danger of "weapons *converted* to fire fully automatic" in the hands of drug traffickers. *Id*. at 76 (emphasis added).

* * *

When Congress passed the NFA in 1934 and subsequently amended it in 1968 and 1986, it was trying to stop mass shootings and prevent precisely the sort of gamesmanship employed by bump stock manufacturers today. To do that, Congress adopted a broad definition of "machine gun": any weapon which shoots "automatically . . . more than one shot, without manual reloading, by a single function of the trigger." A firearm equipped with a bump stock unambiguously falls within this definition, as the ordinary public meaning of its key terms makes clear. This Court should rule accordingly.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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