

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 CHICAGO, ELEVEN OTHER CITIES
AND CITY OFFICIALS, AND THE U.S.
CONFERENCE OF MAYORS, AS *AMICI
CURIAE* IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Amici represent American cities working to fight the devastating effects of mass shootings and to keep the most lethal firearms off their streets. *Amici* are Chicago, Illinois; Austin, Texas; Columbus, Ohio; Kansas City, Missouri; Los Angeles, California; Louisville, Kentucky; Minneapolis, Minnesota; New York, New York; Philadelphia, Pennsylvania; Saint Paul, Minnesota; the Mayor of Kansas City, Missouri; the City Attorney of San Diego, California; and the United States Conference of Mayors.

¹ No counsel for any party authored this brief in whole or in part, and no person other than *amici* made a monetary contribution to its preparation or submission.

The cities represented by *amici* have suffered extensive loss of life, threats to public safety, threats to law enforcement, disruption to their economies, and substantial health care costs from mass shootings and other firearms violence. Bump stocks pose a new threat, as they accelerate the rate of fire of semiautomatic weapons to mimic the indiscriminate spray of machine guns, allowing perpetrators of mass shootings to claim more lives. The proliferation of these dangerous devices, if allowed, would exact an even greater toll on the safety and security of the cities represented by *amici*.

Densely populated cities, like many of those represented by *amici*, are particularly vulnerable to mass shootings. With populations in the hundreds of thousands or millions, they are home to numerous public gathering places, like schools, houses of worship, restaurants, nightclubs, theaters, concert halls, sports arenas, public parks, and other large venues. They also host festivals, parades, rallies, and other special events each year. Public spaces like these have become targets for mass shootings.

Some of the cities represented by *amici* are located in states with firearm preemption laws that limit their ability to enact and enforce their own firearm restrictions. Others have passed strict firearm regulations, including bans on bump stocks, but still struggle to keep illegal firearms from flowing into their borders from states with weaker laws. A federal ban on bump stocks is critical to aiding cities in their fight to keep these dangerous devices out of their cities and to prevent deadly mass shootings.

SUMMARY OF ARGUMENT

The federal machine gun ban applies to bump stocks. This conclusion is evident, not just from the plain language of the federal statute, but from its fundamental purpose. The ban helps curb the proliferation of weapons designed for mass shootings and thereby protects civilians engaged in public life and the law enforcement officers who serve them. And the history of the machine gun ban, as well as that of the former federal assault weapon ban, illustrates that federal bans on the most dangerous firearms do this effectively. Applying the machine gun ban to bump stocks will undoubtedly save lives.

Densely populated cities are particularly vulnerable to mass shootings and other violent crime. Federal bans on the most dangerous weapons, like machine guns and bump stocks, provide critical aid to cities in their fight to keep such weapons off their streets and prevent mass shootings. Federal bans provide a means of enforcement for cities preempted by state law from passing their own gun restrictions; and for cities with strict local or state firearm laws, federal bans stop the illegal flow of weapons into their borders from states with weaker laws.

The legislative history of federal machine gun restrictions further illustrates that the rule of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) applying the machine gun ban to bump stocks, *see* 27 C.F.R. § 479.11, is wholly consistent with the fundamental purposes of those restrictions. Congress enacted laws banning machine guns and

conversion devices to curb violent crime and protect law enforcement officers. At the time Congress adopted these laws, machine guns had been the preferred weapons for organized crime syndicates, drug traffickers, domestic terrorists, and other criminal outfits, and they had been used in several highly publicized mass shootings and assassinations that shocked the nation. Bump stocks cause the same type of violence that the ban on machine guns sought to prevent. The Fifth Circuit's ruling flouts this legislative intent and should be reversed.

ARGUMENT

Federal restrictions on extraordinarily dangerous firearms that enable mass carnage are essential to stem the tide of violence in cities across the country. Such weapons terrorize the public, endanger law enforcement, and cause an unimaginable number of deaths in schools, office buildings, houses of worship, shopping centers, restaurants, grocery stores, bowling alleys, night clubs, and movie theaters; at concerts, festivals, and parades; and in public parks and other outdoor gathering spaces. Federal restrictions can, and do, make a difference. Our national experience with the machine gun and assault weapon bans demonstrates this.

This case is about a new threat: bump stocks. Like standard machine guns, these devices enable mass shooters to spray thousands of bullets into a crowd in a matter of minutes. And this is not just a theoretical talking point; it has already happened. In 2017, a gunman wielding a semiautomatic rifle outfitted with

a bump stock opened fire on a crowded concert in Las Vegas, killing 58 people and wounding more than 500, in the deadliest mass shooting in our nation's history. Without the support of a federal ban, cities are hamstrung in their efforts to prevent the proliferation of these deadly devices and the violence they wreak within their borders.

The Fifth Circuit's ruling that bump stocks are not restricted by the machine gun ban is untenable. Indeed, it contravenes the purposes behind the federal ban. Congress has made it abundantly clear that machine guns are military-grade weapons that have no lawful purpose and no place in the hands of civilians. Congress has also made it abundantly clear that gun manufacturers should not be able to circumvent federal law with conversion devices designed to accelerate the rate of fire of semiautomatic weapons to mimic the indiscriminate spray of machine guns. Yet, the Fifth Circuit's ruling opens a gaping loophole that allows perpetrators of mass shootings armed with bump stocks to wreak the same sort of havoc on the American people that Congress has been trying to stamp out for almost a century.

I. Applying The Federal Machine Gun Ban To Bump Stocks Helps Curb The Proliferation Of These Dangerous Devices And Prevent Mass Shootings.

Federal firearm bans work. They prevent mass shootings and aid local efforts to keep deadly firearms

off city streets.² These are the lessons we have learned from the federal ban on machine guns, at issue here, as well as the federal ban on assault weapons, which expired in 2004. Applying these lessons to bump stocks – which already claimed dozens of lives in the Las Vegas shooting – there is no question that a ban on these devices will help thwart similar tragedies.

A. Federal Bans On Dangerous Weapons Work To Prevent Mass Shootings.

Congress passed the first piece of gun control legislation in 1934 when it enacted the National Firearms Act (“NFA”), which, among other things, heavily taxed machine guns. *See* Pub. L. No. 73-474, 48 Stat. 1236 (1934). Subsequent amendments through the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (1968) (“GCA”), and the Federal Firearm Owners’ Protection Act of 1986, Pub. L. No. 99-308, 100 Stat. 449 (1986) (“FOPA”), led to a ban on the private transfer and possession of machine guns and conversion devices. Machine guns have thus been tightly controlled under federal law for nearly a

² Unless otherwise specified, the term “mass shooting” is defined as “any incident in which four or more people are shot and wounded or killed, excluding the shooter.” *Mass Shootings in the United States*, Everytown for Gun Safety, <https://everytownresearch.org/mass-shootings-in-america/> (last updated Mar. 2023).

century. The result: they “are almost never used in crime” and “don’t turn up in mass shootings.”³

The success of the machine gun ban is remarkable. Machine guns were once rampant in the criminal underworld and for decades dominated the arsenals of organized crime syndicates, drug traffickers, domestic terrorists, and other criminal outfits. Legislation to Modify the 1968 Gun Control Act: Hearings Before the H. Comm. on the Judiciary, 99th Cong., 1st & 2d Sess. 224 (1985-1986) (“FOPA Hearings”) (statement of Stephen E. Higgins, ATF Director). In fact, the Thompson submachine gun, a small portable device favored by mobsters, was so prevalent in Chicago it was nicknamed the “Chicago Typewriter.”⁴ Now, however, machine guns are little more than a footnote in the annals of our nation’s history.

This stands in stark contrast to semiautomatic assault weapons and large-capacity magazines, which have become a constant headline in today’s news. These are increasingly the weapons of choice for perpetrators of mass shootings and are flooding city

³ *Prohibition-Era Gang Violence Spurred Congress to Pass First Gun Law*, NPR (June 30, 2016) (quotation omitted), <https://www.npr.org/2016/06/30/484215890/prohibition-era-gang-violence-spurred-congress-to-pass-first-gun-law>.

⁴ Edward McClelland, *When a Mass Shooting Begat Gun Control*, Chi. Mag. (Aug. 9, 2019), <https://www.chicagomag.com/news/august-2019/when-a-mass-shooting-begat-gun-control/>.

streets in astonishing numbers.⁵ But this was not always the case. Many were subject to a federal ban in 1994. *See* Pub. L. No. 103-322, §§ 110102-03, 108 Stat. 1796, 1996-2000 (1994). While that ban was in effect, the use of assault weapons and large-capacity magazines in mass shootings declined significantly. Mass shooting incidents resulting in six or more deaths dropped 37%, and deaths from those incidents dropped 43%.⁶ Statistics on public mass shootings reveal similar trends. The five-year cumulative number of public mass shooting events as of 1993 was 12; a decade later, the number had dropped to three.⁷ Public health experts have used prediction models to estimate that, when the ban was in effect, public mass

⁵ *Assault Weapons and High-Capacity Magazines*, Everytown for Gun Safety (Mar. 22, 2019), <https://everytownresearch.org/report/assault-weapons-and-high-capacity-magazines/> (last updated May 24, 2023); *see, e.g.*, Peter Nickeas, *More Chicago Gangs Arming Themselves with Rifles as Alliances Spread Conflict*, Chi. Trib. (Dec. 29, 2017), <http://www.chicagotribune.com/news/breaking/ct-met-rifles-gangs-conflict-20171221-story.html>.

⁶ Christopher Ingraham, *It's Time to Bring Back the Assault Weapons Ban, Gun Violence Experts Say*, Wash. Post (Feb. 15, 2018), <https://www.washingtonpost.com/news/wonk/wp/2018/02/15/its-time-to-bring-back-the-assault-weapons-ban-gun-violence-experts-say/>.

⁷ Lori Post et al., *Impact of Firearm Surveillance on Gun Control Policy: Regression Discontinuity Analysis*, JMIR Pub. Health & Surveillance (Apr. 22, 2021), <http://publichealth.jmir.org/2021/4/e26042>.

shooting fatalities were 70% less likely to occur and 11 public mass shootings were avoided.⁸

Despite all its success in averting mass shooting deaths, the federal assault weapon ban expired in 2004 and was not renewed.⁹ The rise in violence attributable to assault weapons in the years that followed speaks volumes about the utility of the nationwide ban. Without the blanket of federal law, regulation of these dangerous weapons devolved into a hodgepodge of state and local laws.¹⁰ Taking advantage of the opening, gun manufacturers began producing assault weapons in mass quantities and heavily marketing them to the American people, and their use in mass shootings grew exponentially.¹¹

After the ban expired in 2004, mass shooting incidents resulting in six or more deaths spiked 183% and total deaths spiked 239%.¹² And between 2004 and 2019, the cumulative number of public mass

⁸ Everytown for Gun Safety, *supra* note 5; Post et al., *supra* note 7.

⁹ Everytown for Gun Safety, *supra* note 5.

¹⁰ Alex Newhall, *Federalism and Firearms: Gun Control Policies and the Intractability of Gun Violence in America*, Chi. Pol'y Rev. (Apr. 24, 2023), <https://chicagopolicyreview.org/2023/04/24/federalism-and-firearms-gun-control-policies-and-the-intractability-of-gun-violence-in-america/>.

¹¹ Todd C. Frankel et al., *The Gun that Divides a Nation*, Wash. Post (Mar. 27, 2023), <https://www.washingtonpost.com/nation/interactive/2023/ar-15-america-gun-culture-politics/>.

¹² Ingraham, *supra* note 6.

shootings climbed to 81.¹³ Indeed, in the deadliest mass shootings of our time – those where nine or more people were killed and nine or more wounded – at least 80% involved assault weapons and large-capacity magazines.¹⁴ And for mass shootings with four or more deaths, more than 85% were caused by assault weapons.¹⁵ Public health experts have estimated that, had the ban continued, it would have prevented 30 public mass shootings and 339 deaths and 1,139 injuries from those shootings.¹⁶ These numbers leave no room to doubt that federal firearm bans reduce violence and save lives.

B. Densely Populated Cities Are Particularly Vulnerable To The Proliferation Of Dangerous Weapons.

Time and again, densely populated urban areas bear the brunt of our nation's epidemic of gun violence. Joseph Blocher, *Cities, Preemption, and the Statutory Second Amendment*, 89 U. Chi. L. Rev. 557, 573 (2022). Some cities have been fighting this same battle for decades, experiencing highs and lows along the way as social conditions change, laws are passed

¹³ Post et al., *supra* note 7.

¹⁴ Everytown for Gun Safety, *supra* note 5.

¹⁵ *Assault Weapons*, Giffords Law Center to Prevent Gun Violence, <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/assault-weapons/> (last visited Dec. 20, 2023).

¹⁶ Everytown for Gun Safety, *supra* note 5; Post et al., *supra* note 7.

or repealed, or new weapons are developed.¹⁷ Adding assault weapons, large-capacity magazines, and other lethal weapons into the mix has once again changed the landscape of gun violence, not only exacerbating existing crime, but also posing a far graver threat to the safety of the general public and the law enforcement officers on the front lines.

For starters, densely populated cities are particularly vulnerable to the devastating effects of high-fatality mass shootings. In many urban centers, tall buildings tower over crowded public gathering places that host festivals, concerts, parades, rallies, and other events, enabling shootings like the one in Las Vegas, where an unseen gunman opened fire on a concert from the 32nd floor of a nearby hotel, killing dozens and wounding hundreds more.¹⁸ And securing these events takes a financial toll that has ripple effects across other areas of the city. Many cities do not have the substantial resources needed to

¹⁷ See, e.g., Kyle Bentle et al., *40,000 Homicides: Retracing 63 Years of Murder in Chicago*, Chi. Trib. (Apr. 27, 2021), <https://www.chicagotribune.com/news/breaking/ct-history-of-chicago-homicides-htmlstory.html>.

¹⁸ Also noteworthy, the Las Vegas shooter had reserved two hotel rooms overlooking Lollapalooza – an outdoor concert where 400,000 attendees pack into Chicago’s Grant Park – just two months before he attacked the Las Vegas concert, but he never showed up. The rooms would have given him a clear view of the festival, including the entrance and a major exit across a bridge. Jeremy Gorner, *Las Vegas Gunman Booked Chicago Hotel Rooms Overlooking Lollapalooza*, Chi. Trib. (Oct. 6, 2017), <http://www.chicagotribune.com/news/breaking/ct-las-vegas-gunman-lollapalooza-20171005-story.html>.

adequately secure large events and may wind up depleting resources set aside for routine policing and other law enforcement activities. Decl. of Chicago Police Department Chief Larry Snelling, R. 54-8 ¶ 25, *Herrera v. Raoul*, No. 23-cv-00532 (N.D. Ill. filed Jan. 27, 2023) (“Snelling Decl.”). Nevertheless, even the best safety measures are no match for an attack with an assault weapon equipped with a bump stock at a packed public event. *Id.* ¶¶ 26-30.

While the highly publicized, high-fatality mass shootings at large public events occupy an outsize space in the public consciousness, they are far from the only mass shootings plaguing cities. Chicago, for example, averages just under one mass shooting per week.¹⁹ And where assailants are equipped with assault weapons in such shootings, law enforcement officers who are on the front lines are disproportionately at risk. One in five police officers slain in the line of duty is killed with an assault weapon.²⁰ Most officers do not carry assault weapons, so they will usually have weaker firepower than the

¹⁹ Odette Yousef, *Chicago Leads the Nation in Mass Shootings, Averaging About One Per Week*, WBEZ Chi. (June 17, 2021), <https://www.wbez.org/stories/chicago-leads-the-nation-in-mass-shootings-averaging-about-one-per-week/4bbb8057-71d3-4551-99d2-efc9fd65a17d>.

²⁰ Press Release, Violence Policy Center, *New Data Shows One in Five Law Enforcement Officers Slain in the Line of Duty in 2016 and 2017 Were Felled by an Assault Weapon* (Sept. 25, 2019), <https://vpc.org/press/new-data-shows-one-in-five-law-enforcement-officers-slain-in-the-line-of-duty-in-2016-and-2017-were-felled-by-an-assault-weapon/>.

assailants who do. Snelling Decl. ¶ 16. And even those officers who do carry assault weapons “still feel outgunned and ill-prepared,” as they “struggl[e] to balance demands that they avoid using force against the knowledge that at any moment they could be called to stop a mass killing in progress.”²¹ On top of that, high-velocity bullets fired by assault weapons can easily penetrate an officer’s body armor. Snelling Decl. ¶ 17.²² In fact, in nearly 25% of the incidents in which officers were slain by assault rifles in the line of duty, the bullet penetrated the officer’s body armor.²³ The continued proliferation of the most dangerous of these assault weapons – like bump stocks – will undoubtedly lead to more civilian and police officer deaths and further tax cities in their efforts to secure public places.

C. Federal Bans On Dangerous Weapons Provide Critical Aid To Cities In Their Fight To Prevent Mass Shootings.

Without federal bans on dangerous weapons, like bump stocks, cities are severely hampered in their ability to manage the seemingly intractable problem of gun violence. Some cities are preempted from passing local restrictions, and even those that *have* passed assault weapon bans, including bans on bump

²¹ Robert Klemko, *The Policing Paradox*, Wash. Post (Mar. 27, 2023), <https://www.washingtonpost.com/nation/interactive/2023/police-ar-15-gun-control/>.

²² See also Nickeas, *supra* note 5.

²³ Violence Policy Center, *supra* note 20.

stocks, still must contend with the flow of illegal guns into their borders from states with weaker laws. Federal firearms restrictions help patch the massive holes in the state-to-state regulatory landscape that allow dangerous firearms to proliferate.

1. Federal bans provide a means of enforcement for cities preempted by state law from passing their own firearm restrictions.

More than 40 states have enacted “broad firearm preemption laws that specifically prohibit local governments from adopting reasonable gun laws tailored to local conditions.”²⁴ On top of that, many of those states lack even the most basic gun laws, leaving cities with major gun violence out in the cold.²⁵ Some states even “go so far as to impose criminal or financial liability on local officials who fail to

²⁴ *State Firearm Preemption Laws*, Everytown for Gun Safety (Feb. 20, 2018), <https://everytownresearch.org/report/factsheet-preemption-laws/>.

²⁵ Jennifer L. Pomeranz et al., *State Gun-Control, Gun-Rights, and Preemptive Firearm-Related Laws Across 50 U.S. States for 2009-2018*, *Am. J. Pub. Health* (July 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493146/>; Joseph Blocher, *American Cities Have Always Regulated Guns. Now, Most Can't*, *Wash. Post* (Mar. 25, 2021), https://www.washingtonpost.com/outlook/american-cities-have-always-regulated-guns-now-most-cant/2021/03/25/c346597c-8ce7-11eb-9423-04079921c915_story.html.

comply.”²⁶ For cities in these jurisdictions, federal firearms restrictions are all the more important.

In Philadelphia, for example, “gun violence has reached epidemic levels,” and the rate of gun deaths has been on the rise.²⁷ But Pennsylvania has adopted firearm preemption laws aimed at preventing cities from “enact[ing] or enfor[ing] even simple, well-researched policies that have been repeatedly shown to save lives.”²⁸ At the same time, Pennsylvania “refuses to enact statewide gun safety laws.”²⁹ Consequently, Philadelphia filed a lawsuit, seeking to permanently enjoin enforcement of the preemption laws, so that it and other municipalities “may implement sensible and lawful measures to prevent gun violence.”³⁰ Preemption laws have also frustrated efforts to address gun violence in Columbus, Ohio.³¹

²⁶ Joseph Blocher, *The Biggest Legal Obstacle to Gun Regulation: State Preemption Laws, Not the Second Amendment*, *Am. J. Pub. Health* (July 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8493167/>; see also *Preemption of Local Laws*, Giffords Law Center to Prevent Gun Violence, <http://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/preemption-of-local-laws/> (last visited Dec. 20, 2023).

²⁷ *Taking on Gun Safety Preemption in Pennsylvania*, The Public Interest Law Center (Oct. 7, 2020), <https://pubintl.org/cases-and-projects/taking-on-gun-control-preemption-in-pennsylvania.2/>.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ Nick Evans, *Columbus Fighting Ohio Firearm*

Like Philadelphia, Columbus has sued to overturn preemption laws that prevent it from enforcing its firearm restrictions, including a ban on large-capacity magazines.³²

In some states, sanctions for violating preemption laws have deterred cities from even attempting to adopt firearm laws. Florida, for example, boasts some of the toughest sanctions.³³ Yet, it has also suffered some of the deadliest mass shootings – namely, the Pulse Nightclub shooting in Orlando, in which 49 people were killed and 53 more wounded, and the Marjory Stoneman Douglas High School shooting in Parkland, in which 17 people were killed and 17 more wounded.³⁴ City officials across Florida have proposed assault weapon bans and considered other stringent gun regulations, “only to back down when faced with the consequences of the state’s firearm preemption law,” which threatens officials with hefty personal fines and removal from office. Rachel Simon, *The Firearm Preemption Phenomenon*, 43 *Cardozo L. Rev.* 1441, 1443-44 (2022). Federal restrictions on the most dangerous firearms remain an important law enforcement tool in such cities.

Regulation Preemptions in Court Again, Ohio Capital J. (Sept. 12, 2023), <https://ohiocapitaljournal.com/2023/09/12/columbus-fighting-ohio-firearm-regulation-preemptions-in-court-again/>.

³² *Ibid.*

³³ Everytown for Gun Safety, *supra* note 24.

³⁴ Everytown for Gun Safety, *supra* note 5.

2. Federal bans help cities with strict firearm laws stop the flow of illegal weapons into their borders from states with weaker laws.

Cities that do have their own gun laws on the books likewise struggle to keep the most lethal guns off the streets. And the reason is simple: the loose patchwork of gun laws leaves gaping holes that allow for gun trafficking between states, particularly where states have preempted local regulation and failed to enact any statewide bans.³⁵ In other words, state and local governments that enact their own strict gun laws “nevertheless suffer from elevated gun violence due to spillover effects from adjacent states with weaker laws.”³⁶

Chicago is a prime example of this. It banned assault weapons in 1992, *Journal of Proceedings*, Chicago City Council, at 19196 (July 7, 1992), and large-capacity magazines in 2010, *Journal of Proceedings*, Chicago City Council, at 96247 (July 2, 2010). And Illinois banned these weapons in 2023. Pub. Act No. 102-1116. But only nine other states have similar bans, and they are all clustered on the East and West coasts, making Illinois an island in a

³⁵ *Which States Allow Towns and Cities to Pass Their Own Gun Safety Laws?*, Everytown for Gun Safety, <https://everytownresearch.org/rankings/law/local-gun-laws-allowed/> (last visited Dec. 20, 2023).

³⁶ Newhall, *supra* note 10.

sea of states with weak gun laws.³⁷ One of the largest sources of illegal guns in Chicago is neighboring Indiana, which does not even require background checks or waiting periods, let alone ban the most lethal firearms.³⁸ Illegal guns have also been recovered from more distant states like Georgia, Alabama, Texas, and Mississippi, all of which lack background checks, waiting periods, and many other foundational gun laws.³⁹ The protection afforded by federal firearm bans is clear.

3. Applying the machine gun ban to bump stocks will help save lives.

There is no doubt that bump stocks make semiautomatic weapons more dangerous. Bump stocks accelerate the rate of fire of semiautomatic firearms, allowing them to spray bullets at a continuous rate of several hundred rounds per minute with a single pull of the trigger. Bump-Stock-Type Devices, 83 Fed. Reg. 66,514, 66,516 (Dec. 26, 2018).

³⁷ *Prohibit Assault Weapons*, Everytown for Gun Safety, <https://www.everytown.org/solutions/assault-weapons/> (last visited Dec. 20, 2023).

³⁸ *Gun Trace Report*, City of Chicago, Office of the Mayor, Chicago Police Department 8 (2017), <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/October/GTR2017.pdf>; *Gun Safety Policies Save Lives*, Everytown for Gun Safety, <https://everytownresearch.org/rankings/> (last updated Jan. 12, 2023)

³⁹ Newhall, *supra* note 10; Everytown for Gun Safety, *supra* note 38.

The accelerated rate of fire allows perpetrators of mass shootings to inflict more carnage in a much shorter amount of time. The Las Vegas gunman, with the aid of a bump stock, fired 90 rounds in ten seconds, or 540 rounds per minute, striking nearly 600 people.⁴⁰ By contrast, the Orlando gunman, using a semiautomatic rifle, fired 24 shots in nine seconds, or 160 rounds per minute, striking approximately 100 people.⁴¹

Moreover, it stands to reason that bump stocks will resurface in future mass shootings. The Las Vegas shooting has received – and still is receiving – significant media attention, specifically in regard to the high number of fatalities and the use of bump stocks. And studies show that highly publicized mass shootings inspire copycats.⁴² It is also likely that, without a federal ban, bump stocks will continue to proliferate. Already in 2018, when ATF announced it would be proposing new regulations, sales of bump stocks spiked.⁴³ That follows the same pattern that

⁴⁰ Larry Buchanan et al., *What Is a Bump Stock and How Does It Work?*, N.Y. Times, <https://www.nytimes.com/interactive/2017/10/04/us/bump-stock-las-vegas-gun.html> (last updated Mar. 28, 2019).

⁴¹ *Ibid.*

⁴² Rhitu Chatterjee, *Mass Shootings Can Be Contagious, Research Shows*, WBEZ Chi. (Jan. 24, 2023), <https://www.npr.org/sections/health-shots/2019/08/06/748767807/mass-shootings-can-be-contagious-research-shows>.

⁴³ Jonathan Berr, *Bump Stock Prices Soar Ahead of Potential Federal Ban*, CBS News (Feb. 22, 2018), <https://www.cb>

the AR-15 did; the AR-15 did not gain the interest of gun enthusiasts until the federal assault weapon ban expired, at which time sales skyrocketed.⁴⁴ And so has the frequency of using AR-15s in mass shootings.⁴⁵ A ban on bump stocks is therefore necessary to prevent mass shootings and save lives.

II. The ATF Rule Furthers The Purposes Of The Federal Firearm Laws.

Congress enacted the federal laws banning machine guns and conversion devices to curb violent crime and protect law enforcement officers. ATF's rule clarifying that bump stocks are banned under existing federal law serves these purposes in spades. It will prevent mass shooters from claiming even more innocent victims with the continuous, rapid machine-gun-like spray that bump stocks create. And it will also save the lives of law enforcement officers who put themselves on the front lines during active shooter situations, as well as in the everyday policing of our city streets. The Fifth Circuit's decision, on the other

snews.com/news/bump-stock-prices-soar-ahead-of-potential-federal-ban/.

⁴⁴ Frankel, *supra* note 11.

⁴⁵ Press Release, Everytown for Gun Safety, *The AR-15 Is the Weapon of Choice for Mass Shooters. It's Time to Reinstate the Bipartisan Congressional Assault Weapons Ban* (May 12, 2023), <https://www.everytown.org/press/the-ar-15-is-the-weapon-of-choice-for-mass-shooters-its-time-to-reinstate-the-bipartisan-congressional-assault-weapons-ban/>; *see also* Everytown for Gun Safety, *supra* note 2.

hand, creates gaping loopholes in the law that Congress plainly did not intend.

A. Congress Enacted Federal Firearm Legislation To Curb Violent Crime And Protect Law Enforcement Officers.

1. National Firearms Act of 1934.

Enacted in 1934, the NFA imposed a tax on the making and transfer of certain firearms defined under the Act, as well as a special tax on individuals and entities engaged in the business of importing, manufacturing, and dealing in NFA firearms. ATF, U.S. Dep't of Justice, *National Firearms Act Handbook* 1 (rev. Apr. 2009) ("*NFA Handbook*"). The Act also required individuals transferring or possessing NFA firearms to register them with the Secretary of the Treasury. *Ibid.* Machine guns were included in the definition of firearms and were defined as "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." Pub. L. No. 73-474, § 1(b), 48 Stat. 1236. While Congress adopted the NFA under its taxing authority, the Act's underlying purpose was to curb violent crime by imposing a tax so severe that it would effectively eliminate firearms frequently used in criminal activity. *NFA Handbook*, at 1.

Congress enacted the NFA against the backdrop of a particularly violent era in American history. In 1919, Congress ratified the Eighteenth Amendment, which prohibited the production, distribution, and

transportation of alcohol.⁴⁶ Organized crime syndicates in major cities capitalized on the illegal alcohol market with complex bootlegging operations.⁴⁷ As organized crime grew throughout the 1920s, turf wars between rival syndicates erupted, transforming city streets into “virtual war zone[s].”⁴⁸ By the mid-1920s, in Chicago alone, “an estimated 1,300 gangs had spread like a deadly virus.”⁴⁹ Armed with submachine guns, they took down rival gang members on city streets and in other public places, with little regard to bystanders.⁵⁰ They also “outgunned” police officers, who “were hobbled by the lack of modern tools and training,” and they were able to evade capture by fleeing with their weapons across state borders.⁵¹ The Prohibition Era violence came to a head on February 14, 1929, when seven men were assassinated with a machine gun by rival gang members in a garage in Chicago’s Lincoln Park neighborhood.⁵² Dubbed the

⁴⁶ Gregory Marose, *Prohibition and the Rise of the American Gangster*, National Archives, Pieces of History Blog (Jan. 17, 2012), <https://prologue.blogs.archives.gov/2012/01/17/prohibition-and-the-rise-of-the-american-gangster/>.

⁴⁷ *Ibid.*

⁴⁸ *The FBI and the American Gangster, 1924-1938*, Fed. Bureau of Investigation, History, <https://www.fbi.gov/history/brief-history/the-fbi-and-the-american-gangster> (last visited Dec. 20, 2023).

⁴⁹ *Ibid.*

⁵⁰ NPR, *supra* note 3.

⁵¹ Fed. Bureau of Investigation, *supra* note 48.

⁵² McClelland, *supra* note 4.

“St. Valentine’s Day Massacre,” this violent incident shocked and outraged the American public and galvanized lawmakers.⁵³

In response, the U.S. Department of Justice proposed a bill designed to address what had become “a very serious national emergency” that was “far beyond the power of control of merely local authorities,” National Firearms Act: Hearings Before the H. Comm. on Ways & Means, 73d Cong., 2d Sess. 4 (1934) (“NFA Hearings”) (statement of Homer S. Cummings, Attorney General of the United States), namely the deadly violence inflicted by “the armed underworld,” *id.* at 5, *i.e.*, men like John Dillinger and Al Capone, who crossed state lines with their vast arsenals of dangerous weapons, *id.* at 7, 9, 22; *see also* 78 Cong. Rec. 11400 (1934) (statement of Rep. Robert Lee Doughton). While the bill targeted a number of firearms, the Department of Justice singled out machine guns, as they are particularly deadly, were the weapon of choice for organized crime, and serve no lawful purpose whatsoever. Attorney General Cummings testified that, if the nation is “going to be successful in this effort to suppress crime,” it must “take these machine guns out of the hands of the criminal class.” NFA Hearings, at 6.

Other witnesses likewise testified about how machine guns contributed to the epidemic of violent crime, and stressed the need to keep machine guns out of the hands of private individuals. Assistant Attorney General Joseph B. Keenan testified that firearms are

⁵³ *Ibid.*

“causing a great deal of destruction and death in our land,” NFA Hearings, at 92, and agreed that machine guns are “more dangerous” than other firearms “to have in the hands of a gangster,” *id.* at 100, “do the most damage,” *ibid.*, and have no use except “to kill some being,” *id.* at 101. W. B. Ryan, President of the Auto Ordnance Company, testified about the need for legislation that “will materially aid in the disarming of the criminal,” NFA Hearings, at 66, and agreed that the proposed bill “will aid in keeping machine guns out of the hands of gangsters,” *id.* at 67. John Thomas Taylor, lobbyist for the American Legion, testified “that the possession of machine guns, submachine guns, and lethal weapons” should be “restricted to the organized military forces and law enforcement authorities.” *Id.* at 80. J. Weston Allen, Chairman of the National Crime Commission, testified about the dangers to law enforcement officers when they confront perpetrators of violent crime who “are armed with machine guns.” *Id.* at 106. And Charles V. Imlay, member of the National Conference of Commissioners on Uniform Laws, agreed that machine guns are “instruments of such a serious destructive nature . . . to human life,” *id.* at 149, and serve “no good purpose” in the hands of private citizens, *id.* at 150.

In fact, so critical was the need to eliminate machine gun violence that the definition of “machine gun” originally proposed was broadened to target a larger class of automatic weapons, at the request of Karl T. Frederick, President of the National Rifle Association, who believed the original definition was “wholly inadequate and unsatisfactory.” NFA Hearings, at 39. As originally proposed, the bill

defined “machine gun” as any weapon designed to shoot “*twelve* or more shots without reloading.” *Id.* at 1 (emphasis added). Frederick opposed that limitation because, he explained, an automatic rifle that discharges *fewer* than twelve shots “is in fact a machine gun and should be so classified.” *Id.* at 39. As he explained, “[t]he number of shots which [machine guns] may discharge is dependent solely on the size or the content of the magazine,” *ibid.*, and “[t]he distinguishing feature of a machine gun is that by a single pull of the trigger the gun continues to fire as long as there is any ammunition in the belt or in the magazine,” *id.* at 40. He, thus, proposed to amend the definition to encompass any weapon “which shoots automatically more than one shot without manual reloading, by a single function of the trigger,” *ibid.*, and assured the committee that this proposed amendment would “aid in suppressing violations by such men as Dillinger and others,” *id.* at 42. Congress adopted Frederick’s definition, with the addition of the language “or is designed to shoot.” *See* Pub. L. No. 73-474, § 1(b), 48 Stat. 1236.

2. Gun Control Act of 1968.

Congress enacted the GCA “to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence.” Pub. L. No. 90-618, § 101, 82 Stat. 1213. The GCA, like its predecessor, responded to soaring rates of firearm violence and the inability of state and local authorities to manage the problem without federal support. The bill’s sponsor, Senator Thomas J. Dodd, explained that “the proposed legislation is the product of a long

history of hopelessly inadequate legislation,” of the nation’s “spiraling crimes rates in the postwar period,” and “of the particularly appalling increase in crimes of violence involving guns.” 114 Cong. Rec. 26715 (1968). In addition to noting the “scores of thousands of Americans” who have been “killed by firearms” – 795,000 between 1900 and 1966, *ibid.* – Senator Dodd emphasized the threat firearms pose to law enforcement officers, *id.* at 26718. He described how 400 police officers had been “shot and killed in the line of duty since 1960,” and how thousands more had been “wounded, maimed, or otherwise physically impaired.” *Ibid.* For this reason, the proposed legislation was “endorsed” by “almost all of [the country’s] law-enforcement authorities at every level.” *Id.* at 26715.

Moreover, in the same way the St. Valentine’s Day Massacre prompted a legislative response to the escalating firearms violence of the 1920s, several high-profile shootings in the 1960s prompted a renewed effort to strengthen gun control measures – namely, the assassinations of President John F. Kennedy, Dr. Martin Luther King, Jr., and Senator Robert Kennedy, and the University of Texas sniper shooting, 114 Cong. Rec. 26715-16, which took the lives of 16 people and injured 30 others, Denis Binder, *Can We Secure the Hallowed Halls of Academe?*, 28 Regent U. L. Rev. 253, 254 n.9 (2016). These and other events led to an “increasing concern” about a “new breed of killer from the rooftop.” 114 Cong. Rec. 26716 (statement of Sen. Christopher J. Dodd).

Finally, while Congress sought to address firearms violence generally, it continued the NFA's particular focus on machine guns, which it found "are primarily weapons of war which have no appropriate use as instruments of sport, recreation, or personal defense." 114 Cong. Rec. 26446. To that end, the GCA amended the NFA's definition of machine gun in two critical ways. First, it added the language "or can be readily restored to shoot." Pub. L. No. 90-618, § 201, 82 Stat. 1231. Second, it added a provision covering "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." *Ibid.* These provisions closed gaps in the NFA's definition of machine gun that allowed individuals to circumvent the restrictions of the Act.

3. Firearm Owners' Protection Act of 1986.

Congress enacted the FOPA in 1986, as a "comprehensive redraft of the federal firearm laws." David T. Hardy, *The Firearm Owners' Protection Act: A Historical and Legal Perspective*, 17 *Cumb. L. Rev.* 585, 585 (1987). Among other changes, it amended the GCA to prohibit the private transfer or possession of any machine gun not already lawfully possessed before the effective date of the Act. *NFA Handbook*, at 2; Pub. L. No. 99-308, § 102(9), 100 Stat. 453. The FOPA also amended the NFA's definition of machine gun to add "any *part* designed and intended solely and exclusively . . . for use in converting a weapon into a

machinegun,” Pub. L. No. 99-308, § 109(a), 100 Stat. 460 (emphasis added), which clarified that the Act does not just ban conversion kits, but also individual parts of conversion kits. Like the federal firearm laws that preceded it, the FOPA explicitly targeted the weapons preferred by perpetrators of violent crime – most notably, machine guns – to protect public safety and save the lives of the law enforcement officers on the front lines of crime control and prevention.

An early version of the bill did not include the language limiting the transfer and possession of machine guns or expanding the definition of machine gun. That bill received considerable resistance from members of Congress and the law enforcement community. It was viewed as a “downright dangerous antipolice bill,” 132 Cong. Rec. 1800 (1986) (statement of Rep. Barbara A. Mikulski), that would “increase the number of guns on the street, and consequently, the chances of cops – and citizens – getting killed,” *ibid.* (statement of Cornelius J. Behan, Chief of Police, Baltimore County, Maryland). The House Judiciary Committee conducted a series of hearings and took extensive testimony on the bill’s impact on law enforcement, and the response was nearly unanimous:

[a]t every hearing law enforcement officers and representatives of law enforcement organizations discussed problems they would face if either S. 49 or H.R. 945 were enacted, and the need for more effective protection of law enforcement officers from the proliferation of machine guns and high-powered “assault-type”

weapons that are increasingly being used by criminals.

H.R. Rep. No. 495, 99th Cong., 2d Sess. 7 (1986).

As for machine guns, in particular, witnesses testified about how these weapons are a “growing problem for law enforcement,” FOPA Hearings, at 44, and a “clear and present danger to the American public” and “the law enforcement community,” *id.* at 1004.⁵⁴ They further testified that machine guns are the preferred weapon of drug traffickers, domestic terrorists, gangs, and other criminal groups, *id.* at 13, 44, 109, 224, 793, 980, 1058, and have become “more and more powerful,” *id.* at 80, more “heavy-duty,” *id.* at 81, and more militaristic, *id.* at 80, 81.⁵⁵ As they explained, machine guns have no value for sporting or other lawful uses, *id.* at 59, 109, are “made for war,” *id.* at 983, and are “good for one thing and one thing only” – “to kill people in large numbers,” *id.* at 797.⁵⁶ And perpetrators of violent crime use machine guns

⁵⁴ These statements were made by Cornelius J. Behan, Chief of Police, Balt. Cnty., Md. et al; and Lyman H. Shaffer, former Special Agent in Charge, Firearms Enforcement Branch, ATF.

⁵⁵ These statements were made by Col. Clinton Pagano, Superintendent, N.J. State Police; Behan; Mayor Thomas H. Cooke, Jr., East Orange, N.J.; Stephen H. Higgins, Dir. of ATF; Rep. Robert G. Torricelli; John J. Norton, Dir. of Pub. Safety, Pittsburgh, Pa.; Hon. Leland Lazarus, Sup. Ct. of Cal.; and Comm’r Benjamin Ward, City of N.Y. Police Dep’t.

⁵⁶ These statements were made by Behan, Cooke, and Torricelli.

“against innocent citizens, some of them children,” *id.* at 167, and “against large numbers of people in crowds,” *id.* at 794.⁵⁷

Witnesses further discussed the threats to law enforcement, noting that “[n]ever before has law enforcement rallied behind an issue the way they have rallied behind this one,” FOPA Hearings, at 30, and that the proposed bill “would do nothing but disastrous harm to citizens and to the police officers throughout the country,” *id.* at 59.⁵⁸ They testified about the threat firearms pose to law enforcement officers more generally, *id.* at 61, 73, 77; how machine guns pose a particularly grave threat, as officers are increasingly being outgunned by assailants with machine guns, *id.* at 793, 795; and how officers “cannot defend themselves carrying out routine stops when suspects are carrying fully automatic weapons,” *id.* at 1086.⁵⁹

Finally, witnesses testified about the threat of conversion devices and the concern that machine gun restrictions could be circumvented with parts designed to simulate the continuous, rapid spray of

⁵⁷ These statements were made by Joseph Greensher, M.D., Chairman, Comm. on Accident & Poison Prevention, Am. Acad. of Pediatrics, and Torricelli.

⁵⁸ These statements were made by Behan, and Sgt. Louis Parisi, President, State Troopers NCO Ass’n of N.J.

⁵⁹ These statements were made by Ward; Behan; Parisi; Torricelli; Capt. Thomas Pierson, Fort Lee, N.J. Police Dep’t; and Capt. C. Lee Thompson, Mo. State Highway Patrol.

automatic fire. As they explained, conversion devices have become prevalent, FOPA Hearings at 793, 1058; a “great majority of machineguns coming into ATF custody” are those that have been converted, *id.* at 223; and unlawful conversions are “an increasing nationwide problem,” *ibid.*⁶⁰ They further explained that these devices are inexpensive and easy to obtain, *id.* at 44, 751, 793, 1086, and the “modifications” to convert a weapon to automatic fire “are simple, require little skill, and often entail only minor modifications and parts,” *id.* at 223.⁶¹ Finally, witnesses warned that conversion devices “pose a serious threat to [the] public and law enforcement officials,” *id.* at 793, and are “a source of peril to the Nation’s police,” who are “outgunned by the criminal element in our society,” *id.* at 1058.⁶²

In response to law enforcement concerns, Rep. William J. Hughes proposed an amendment with greater protections for law enforcement, including the expanded definition of machine gun, 132 Cong. Rec. 6837, 6868, 6876, and the ban on private transfer and possession of machine guns and conversion devices, *id.* at 7084-85. All of the major law enforcement organizations endorsed the amendment. *Id.* at 6854. And members of Congress spoke favorably of the bill’s protections for police officers, noting that the bill “respond[s] to the needs of law enforcement personnel

⁶⁰ These statements were made by Torricelli, Lazarus, Judge, and Higgins.

⁶¹ These statements were made by Behan, Rep. G. William Whitehurst, Torricelli, Thompson, and Higgins.

⁶² These statements were made by Torricelli and Lazarus.

who are at the front lines in protecting the public,” *ibid.* (statement of Rep. Cecil Heftel); will “honor the memory of the 700 police officers who have given their lives for us,” *id.* at 6855 (statement of Rep. Thomas J. Downey); will “protect the lives and safety of our citizens and our law enforcement officers,” *id.* at 6888 (statement of Rep. James A. Traficant, Jr.); and “gives our police the legal tools they need to protect themselves and us from machineguns,” *id.* at 7081 (statement of Rep. John Miller). The amended bill was passed into law. Hardy, *supra*, at 625.

B. Bump Stocks Cause The Same Type Of Violence And Threat To Law Enforcement That The Federal Firearm Laws Were Intended To Prevent.

Bump stocks enable the perpetrators of mass shootings to spray bullets at a rate of several hundred rounds per minute into a crowd of people with a single pull of the trigger, with devastating consequences. This is exactly the type of violence Congress intended to prevent when it heavily taxed and then banned machine guns and conversion devices. Congress banned these weapons because they were used by organized crime syndicates, drug traffickers, domestic terrorists, and all of the other criminal outfits that perpetrated the deadliest crimes of their day, and because machine guns serve only one purpose – to kill in large numbers. Bump stocks are no different. They serve no purpose other than to enable shooters to kill in large numbers.

In fact, mass shootings in the nature of the Las Vegas shooting – targeting, at random, innocent victims in crowded public places to achieve as much carnage as possible – are in a league of their own compared to the violence that motivated Congress in the previous century. The St. Valentine’s Day Massacre – the fatal shooting of seven rival gangsters in a garage – pales in comparison to modern-day mass shootings. It was nevertheless a massacre so shocking it motivated Congress to ban the very weapon used to perpetrate it. Surely, Congress would not have created a loophole in the legislation that would allow bump stocks, used to kill 58 people at an outdoor concert, to remain lawful. Nor would Congress have intended to leave on the market any device that could be used to kill in seconds school children, college students, worshipers, parade attendees, and families enjoying a night out at a bowling alley or movie theater, or any of the other innocent people randomly targeted in our shared public gathering places.

Moreover, Congress enacted the machine gun ban, first and foremost, to protect law enforcement officers. Banning bump stocks furthers that purpose, as well. As we discuss in Part I, assault rifles, like AR-15s, already pose a grave threat to law enforcement officers; they are more powerful than the weapons law enforcement officers typically carry, and the high-velocity bullets can pierce traditional body armor. Bump stocks only increase the risk to police. And assault rifles enable shooters to attack from rooftops or the upper floors of high rises, making it extremely difficult for law enforcement officers securing public events to know where an active shooter is located. For

all these reasons, officers are already dying in the line of duty at unconscionable rates from assault rifles. Add into the mix a device that enables semiautomatic firearms to produce machine-gun spray and the threat only becomes graver. There is simply no reading of the legislative history that would suggest Congress intended to exclude from the definition of machine gun any device that would pose such a deadly threat to law enforcement.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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