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 *AMICUS CURIAE* FPC ACTION FOUNDATION IN SUPPORT OF RESPONDENT

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FPC Action Foundation (FPCAF) is a nonprofit organization dedicated to preserving the rights and liberties protected by the Constitution. FPCAF focuses on research, education, and legal efforts to inform the public about the importance of constitutional rights—why they were enshrined in the Constitution and their continuing significance. FPCAF is determined to ensure that the freedoms guaranteed by the Constitution are secured for future generations.

FPCAF is one of the Plaintiff/Appellants in *Guedes v. ATF*, No. 21-05045 (D.C. Cir.), another case challenging ATF's bump stock rule and currently awaiting decision by the D.C. Circuit Court of Appeals.

SUMMARY OF ARGUMENT

Amicus agrees with Respondent that, on the merits, the Final Rule should fall. *Amicus* writes separately to present this Court with the same two points that it presented to the Fifth Circuit, sitting *en banc*.

First, this brief provides additional information about the process of bump firing to highlight the absurdity of the Final Rule's definition of "machinegun." Bump firing can be done even without a bump stock. Any semiautomatic weapon can be

[1] No counsel for any party authored this brief in any part. No person or entity other than *Amicus* funded its preparation or submission.

bump fired by itself or with a multitude of commonly available materials that can make the process marginally easier. Given that the physics of such techniques are intrinsic to virtually any semiautomatic weapon, ATF's definitions of "automatically" and of "single function of the trigger" would render *every* semiautomatic weapon a machinegun—an absurd result that cannot be squared with other statutory sections recognizing that semiautomatic weapons are a distinct and less-regulated category of weapons than machineguns.

Second, *Amicus* addresses the government's Orwellian assertion that "the 'trigger' of a firearm is whatever is used to initiate the firing sequence"—and thus something other than the universally understood mechanism that typically interacts with the human finger to release the hammer when depressed, bumped, or "pulled," and then, on a semiautomatic weapon, resets the firing mechanism when released. Reclassifying, for example, the forebody of a weapon as the trigger because forward pressure on the forebody causes the actual trigger to interact with a trigger finger held immobile both defies the common public meaning of the language of the statute and leads to absurd results.

Because ATF's redefinition of various terms within the definition of machinegun defies any cogent public understanding of those terms and leads to absurd results, it should be rejected and the opinion of the *en banc* Fifth Circuit should be upheld.

ARGUMENT

I. The Final Rule ignores the intrinsic physics of bump firing.

Bump stocks do not magically enable semiautomatic weapons to bump fire and do not turn them into machineguns. Rather, every semiautomatic weapon can be bump fired.

"Bump firing" is simply a technique for sequentially causing the trigger to move back and forth through its range of motion by "bumping" the trigger into the trigger finger to depress it, then using the recoil energy of one shot to assist in moving the trigger *away* from a stationary finger, thus releasing the trigger and allowing it to reset and be ready for a subsequent operation or function of the trigger to fire the next shot. That the recoil from firing virtually any semiautomatic weapon tends to push the body of the weapon—and hence the trigger housing—backwards is simply a matter of intrinsic physics; and if the trigger finger is kept stationary relative to the forebody of the weapon, such recoil will disengage the trigger from the trigger finger thus allowing the trigger to reset. But a subsequent shot will not be fired unless the trigger is manually caused to bump the trigger finger anew, leading to a second or subsequent function of the trigger and a second or subsequent shot being fired. Separating the movement of the trigger finger (or lack thereof) from the movement of the forebody of the firearm is just a matter of technique and can be accomplished with or without mechanical assistance.

ATF itself recognizes that skilled shooters can use this technique with nearly *any* semiautomatic firearm, with or without a bump stock. ATF, *Bump-Stock-Type Devices*, 83 Fed. Reg. 66,514, 66,532–33 (Dec. 26, 2018) (acknowledging thousands of comments showing that "bump firing" is a "technique that any shooter can perform with training or with everyday items such as" "rubber bands, belt loops, string, or even people's fingers").

ATF's definition of "automatically" redefines that term as not merely self-acting, but also the far broader and malleable category of a self-regulating function that includes ample manual input. And ATF interprets the phrase "by a single function of the trigger" as covering only the *initial* function in a series of multiple functions of the trigger. But ATF's expanded definitions falter when ATF fails to cogently explain why the definitions do not apply to all weapons that can be bump fired and to all items that can facilitate bump firing. Because each subsequent function of the trigger is not dependent on *how* the trigger finger is kept fixed and independent of the forebody, ATF's new definition would apply to *any* weapon that can be bump fired, and *any* mechanical assist that could be combined with a semiautomatic weapon to make such firing technique easier. Thus, nearly every semiautomatic firearm in existence would be defined as a machinegun—ATF's arbitrary and irrational denials of that consequence notwithstanding.

A bump stock does not alter the physics of bump firing. Nor does it alter the ability of any semiautomatic weapon to be bump fired in precisely

the same "self-regulating" manner initiated by the "initial" bump of the trigger that ATF claims occurs with ordinary bump stocks. All an unsprung bump stock does is provide some play between the forward portion of the firearm and the stock so that the recoil of any given shot can—depending on the amount of forward pressure being applied by the shooter—cause the forebody of the weapon (and hence the trigger) to slide backward and away from the trigger finger that remains unaffected by the recoil, thus releasing the trigger. It does *not* use that recoil to then re-engage the trigger; the shooter herself must add additional manual input. Without such input, no further shots would be fired.[2]

To fire a second shot, the shooter is required to push the forebody of the firearm forward again, thereby causing the trigger to "re-engage[]" the stationary trigger finger on the hand holding the stock. 83 Fed. Reg. at 66,533. A video verified by a former ATF administrator shows this process in action. Patton Media and Consulting, LLC, *Bump Stock Analytical Video FPC/FICG*, YOUTUBE (June 18, 2018);[3] *see also* Pls.' Statement of Facts ¶ 1, ECF No. 62-2, *Guedes v. ATF*, No. 18-cv-02988-DLF (D.D.C.).

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[2] A bump stock with an internal spring, by contrast, would capture the recoil energy in the spring and then use that energy, rather than manual input, to force the trigger forward and into renewed contact with the trigger finger. While that might be an automatic means of causing multiple functions of the trigger, this case concerns only unsprung bump stocks that do not have such self-acting mechanisms.

[3] https://youtu.be/1OyK2RdO63U (last visited Jan. 28, 2024).

To avoid the obvious mismatch between the statute and the actual operation of bump firing in general and bump stocks in particular, the government argues that a bump stock allows a firearm to function automatically because it makes bump firing easier by "control[ling] the recoil" and "control[ling] the firearm's direction of motion." Pet'rs' Br. 37. Making it easier to bump fire a firearm, however, is neither the test in the statute nor in the Final Rule. It does not speak to whether each subsequent round requires an additional function of the trigger to fire. Nor does it explain why making the operation of a weapon easier makes the shooting automatic or means that it is occurring via a self-acting mechanism. Indeed, the Final Rule's expansion of the phrase "shoot . . . automatically" to encompass not merely shooting by a "self-acting" mechanism, but also by an indecipherably vague and malleable "self-regulating" mechanism has no historical, grammatical, or contextual support. 83 Fed. Reg. at 66,533.

An "automatic" firearm has long been understood as one that continues shooting as long as the trigger is pressed and held; not one that requires the trigger to be released and re-engaged for each shot. At the time of both the 1934 National Firearms Act and the Gun Control Act of 1968, "automatically" was understood as referring to the operation of a "self-acting" mechanism—not merely a vaguely "self-regulating" mechanism. An automatic firearm was understood as a firearm that fired continuously until the trigger was released or the ammunition exhausted. *See, e.g.*, WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY 127

(2d ed. 1964) (defining "automatic" and "automatical" as "1. Conducted or carried on by self-acting machinery; as, automatic operations."; defining "automatic pistol, automatic rifle, etc." as "a pistol, rifle, etc. that uses the force of the explosion of a shell to eject the empty cartridge case and place the next cartridge into the breech so that shots are fired in rapid succession until the trigger is released."); THE SHORTER OXFORD ENGLISH DICTIONARY 135 (3d ed. 1944) (1973 reprint) (defining "Automatic," in relevant part, as "1. lit. Self-acting, having the power of motion or action within itself 1812. 2. Going by itself; esp. of machinery and its movements, which produce results otherwise done by hand, or which simulate human or animal action 1802."); 1 THE OXFORD ENGLISH DICTIONARY 574 (1933) (1970 reprint) (defining "Automatic," in relevant part, as "1. lit. Self-acting, having the power of motion or action within itself. . . . 2. Self-acting under the conditions fixed for it, going of itself. Applied esp. to machinery and its movements, which produce results otherwise done by hand. . . ."); *cf.* John Quick, DICTIONARY OF WEAPONS AND MILITARY TERMS 40 (1973) (defining automatic fire as "continuous fire from an automatic gun, lasting until pressure on the trigger is released").

At most, the fact that bump firing is easier with a bump stock relates to the legally irrelevant point that bump stocks help shooters better stabilize the firearm or separate the recoil of the forebody from the positioning of the trigger finger. They do not, however, lead to the "automatic" shooting of multiple rounds from that firearm. Indeed, *any* stock stabilizes a rifle in much the same way—it controls the distance and

linearity of recoil.[4] Given that ATF suggests that other means of facilitating the bump firing of a semiautomatic firearm do not convert that firearm into an illegal machinegun, *see* 83 Fed. Reg. at 66,533, it is impossible to find a statutory basis for why this one means of making such action easier has crossed some new yet unknowable line from semiautomatic to automatic.

Indeed, because ATF admits that virtually all semiautomatic rifles can be "bump fired" with or without a bump stock, and often with the use of common household items—or even one's finger—ATF's definition would render all such firearms illegal as machineguns themselves or, when possessed along with common household items or even just pants with belt loops. *See* 26 U.S.C. § 5845(b) (defining a "machinegun" as "any weapon which shoots . . . automatically more than one shot, without manual reloading, by a single function of the trigger," and also as including "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"). That is far beyond the original public understanding of the statutory language and hence unreasonable. *See*

[4] Similarly, other simple physical aids, such as a belt-loop, a rubber band, or even a padded shooting jacket can facilitate bump firing by constraining movement of the firearm, allowing the trigger finger to be held still independent of the recoil, maintaining linearity during recoil, controlling the distance of recoil, and myriad other things a shooter otherwise would have to do through greater manual effort. But stabilizing a weapon is a far cry from automatically firing such a weapon, otherwise *every* stock, grip, or bipod would make a semiautomatic weapon a machinegun.

National Firearms Act: Hearings on H.R. 9066 before House Comm. on Ways and Means, 73rd Cong. 40–41 (1934) (Karl Frederick's congressional testimony) (precursor phrase "with one function of the trigger" was necessarily included in the definition of a machinegun "[b]ecause that is the essence of a machine gun. Otherwise you have the ordinary repeating rifle . . . which is in no sense and never has been thought of as a machine gun."). ATF's definitions effectively obliterate the well understood distinction between semiautomatic and automatic weapons.

ATF itself aptly explained why bump stocks are *not* machineguns for years under a proper understanding of bump firing. From 2008 to 2017 ATF consistently and repeatedly asserted that bump stocks are *not* machineguns and do not convert semiautomatic firearms into machineguns in ten different letter rulings, *e.g.*, 83 Fed. Reg. at 66,517, and in court. In *Freedom Ordnance Mfg. v. Brandon*, No. 3:16-cv-00243-RLY-MPB (S.D. Ind.), for example, ATF argued that unsprung bump stocks were not machineguns because bump firing:

> requires the shooter to manually pull and push the firearm in order for it to continue firing. Generally, the shooter must use both hands—one to push forward and the other to pull rearward—to fire in rapid succession. While the shooter receives an assist from the natural recoil of the weapon to accelerate subsequent discharge, the rapid fire sequence in bump firing is contingent on shooter input in pushing the weapon forward, rather than

> mechanical input, and is thus not an automatic function of the weapon.

Br. in Supp. of Mot. for Cross-Motion for Summ. J. at 22, ECF No. 28.

ATF was right then, and this Court should not let ATF's sudden about-face and manufactured obfuscation regarding the intrinsic nature of bump firing continue to threaten criminal liability on law-abiding gun owners in the United States. Because virtually all semiautomatic weapons can be bump fired, and because that technique can be aided by myriad common household products or clothing items, ATF's definition is necessarily overbroad and would eliminate statutory distinctions between less-regulated semiautomatic firearms and more-regulated machineguns. 18 U.S.C. § 921(a)(29) (defining "semiautomatic rifles" as, among other things, "requir[ing] a separate pull of the trigger to fire each cartridge"). Bump firing, whether aided by a bump stock, a rubber band, or merely a well-controlled finger, is not shooting automatically and the ease with which any given weapon can be bump fired does not turn semiautomatic firearms into heavily regulated machineguns.

In issuing the Final Rule, ATF also sought to dodge the obvious fact that bump firing a semiautomatic weapon involves multiple functions of the trigger by claiming that the *first* function of the trigger initiated a "firing cycle" that required no further affirmative action by the shooter and hence no further "pull" of the trigger. 83 Fed. Reg. at 66,534–35. But that, too, is absurd, even on its own flawed terms. Subsequent shots indeed require affirmative action by

the shooter in pushing the body of the firearm forward to bump the trigger into the finger. And regardless of *how* subsequent functions of the trigger are accomplished, the trigger must release and then interact with the trigger finger again each time a shot is fired. That involves multiple functions of the trigger, notwithstanding whether such functions are somehow part of a cycle. Indeed, waggling one's trigger finger back and forth or in a small circle is no less cyclic yet equally involves multiple functions of the trigger.

Moreover, even with a bump stock, a shooter must put forth a near exact amount of pressure on the body of the firearm to cause the trigger to re-engage with the trigger finger after each reset—too much forward pressure and the trigger will be unable to reset because the pressure will counteract the recoil; too little and the trigger will not be brought back to the stationary trigger finger with sufficient force to push the trigger back and release the hammer for the next shot. Thus, unlike operating a machinegun, bump firing takes a significant amount of ongoing manual interaction, skill, and very intentional movements to effectuate.

Given these facts, suggesting that the "firing cycle" of repeatedly bumping the trigger into the trigger finger through the manual exertion of forward pressure is accomplished by a "single" function of the trigger merely because it is "initiated" by the first function of the trigger is simply wrong. Indeed, that suggestion is akin to saying that a journey of a thousand steps is *initiated* by a single step and therefore *accomplished* by that step. Again, the absurd results produced by ATF's linguistic mutations are

more than sufficient to reject its statutory construction.

II. "Trigger," as used in the definition of "machinegun," is unambiguous and does not encompass the forebody of a semiautomatic weapon.

The government contends that "the 'trigger' of a firearm is *whatever* is used to initiate the firing sequence." Pet'rs' Br. 17 (citation omitted). Therefore, "[t]here is 'no meaningful difference' between (1) maintaining rearward pressure on the trigger of a conventional machinegun and (2) maintaining forward pressure on the front grip of a rifle with a bump stock." *Id.* at 34 (citation omitted). In other words, *any part* of the firearm—including its forebody—may be considered its trigger. This is wrong on all counts.

For starters, the term "trigger" in both the National Firearms Act's and Gun Control Act's definitions of "machinegun" is unambiguous. 26 U.S.C. § 5845(b). It specifically refers to the part of the firearm that is pulled (or pushed or otherwise made to traverse its range of motion) to release the action of that firearm. Morris L. Hallowell, *Illustrated Firearms Dictionary*, HALLOWELLCO.COM[5] (defining "Trigger" as "[t]he small lever on a cartridge firearm, which one pulls to cause the spring-loaded firing pin to impact the primer, causing the gun to discharge"); R.A. Steindler, THE FIREARMS DICTIONARY 259 (1970) (defining "Trigger" as "usually a curved, sometimes

[5] https://tinyurl.com/4my6ws9z (last visited Jan. 28, 2024).

grooved or serrated, metal bar that, when pulled rearward, releases its engagement on the sear . . . or hammer . . . thus firing the gun"). In a semiautomatic firearm, once pulled, the trigger is then released to reset the action of the firearm; in a machinegun, the trigger can remain depressed, and the action of the firearm will cycle automatically.

Understanding the functionality of a trigger requires a basic grasp on firearm functionality. At the core of a semiautomatic rifle is the bolt. The bolt ensures that an ammunition shell stays firmly in place so that sufficient energy pushes the bullet down the barrel, rather than simply pushing the bolt backward. In a single shot or manually repeating firearm, the bolt stays firmly locked in place during firing, whereas a semiautomatic firearm uses some energy from the fired round to cause the bolt to reciprocate or move rearward. Inside the bolt is the firing pin. The firing pin, which comes to a point towards its breech end (towards the face of the bolt where it contacts the ammunition), is what strikes the primer, causing the propellant inside an ammunition casing to combust and producing the explosion that propels the bullet.

As illustrated below, the trigger mechanism of a semiautomatic firearm consists of a trigger, a hammer, and a disconnector.[6] Image 1.

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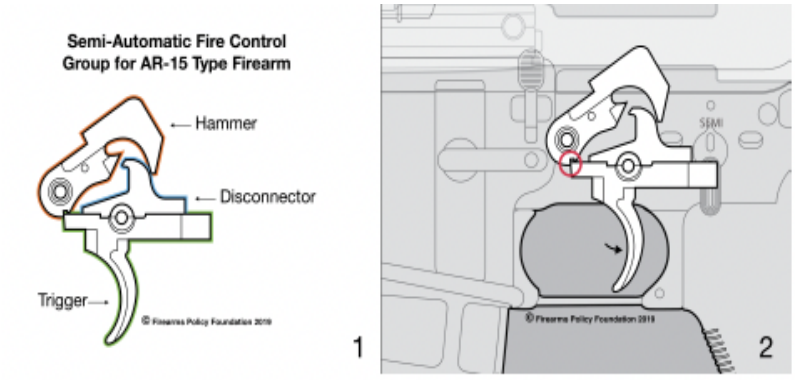
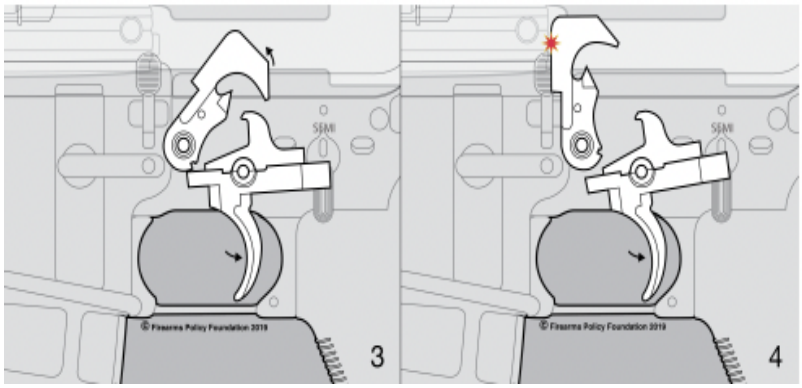
[6] The process can be viewed at *Image of AR-15 Trigger Mechanism*, FIREARMS POLICY COALITION, http://publicfiles.firearmspolicy.org/ar15.gif (last visited Jan. 28, 2024).

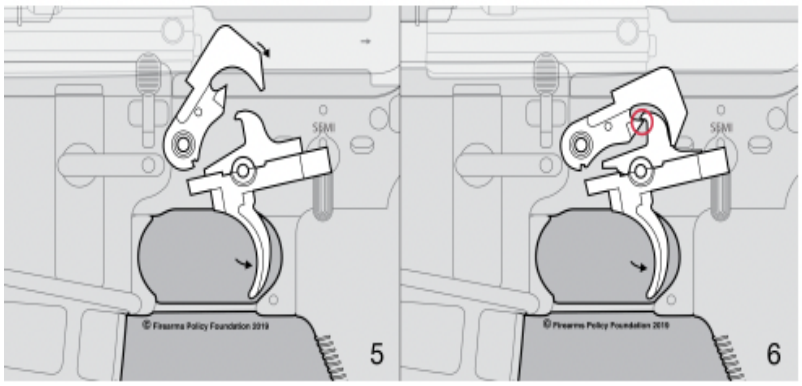


The hammer is spring-loaded, storing energy as it is moved rearward into the "cocked" position. The trigger keeps the hammer in the "cocked" position by way of its "sear," a geometric plane that locks the trigger and hammer together. Image 2. When the trigger is depressed, the trigger sear slides out of the way of the hammer, allowing the hammer to swing and strike the firing pin. Image 3.

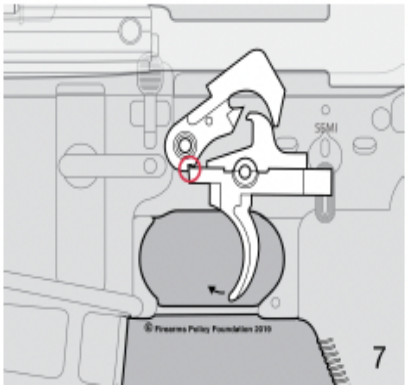
The hammer then strikes the firing pin and results in a single round being discharged. Image 4.



In a semiautomatic firearm, the bolt re-cocks the hammer. By the time the bolt reciprocates, the operator may still have the trigger depressed. This is where the "disconnector" comes into play. When the trigger is depressed, the disconnector moves into its active state. Image 5. When the weapon fires, the bolt travels rearward, pushing the hammer to the rear. The disconnector captures the hammer near its rearmost position. Image 6.



Then, as the user releases the trigger, the hammer slips off the disconnector and back onto the trigger's sear, where it is ready to be fired again. Image 7.



Were it not for the disconnector, upon firing, the bolt would push the hammer rearward, but as the bolt returned forward under spring pressure, the hammer would "follow" the bolt as it returns to battery, failing to re-cock the hammer or to strike the firing pin with sufficient force to discharge a subsequent round. Absent extraordinary circumstances, this creates a need to manually re-cock the hammer. Accordingly, a typical semiautomatic firearm would not become a "machinegun" even absent a disconnector.

A weapon failing to fire a subsequent shot because the hammer was not re-cocked experiences what is known as a "hammer follow" malfunction. This can happen in a typical semiautomatic firearm when the trigger is released and depressed again before the bolt travels all the way forward. It can happen as an ordinary result of rapid semiautomatic firing, be it from depressing the trigger too quickly, "bump firing," or otherwise.

For a true machinegun, the "hammer follow" problem is one of precise timing. If the hammer is released too early, the hammer will follow the bolt and the firearm will not fire, needing to be manually re-cocked. If released too late, the bolt will lose forward travel before tripping the mechanism. This issue of timing is handled in machineguns by an "auto sear."

The "auto sear" is designed to hold the hammer in the "cocked" position until the firearm's bolt has returned all the way forward to battery. The auto sear then releases the hammer and discharges the weapon again. No additional input is needed from the operator. With an auto sear mechanism, if the trigger is

depressed, the weapon will fire continuously and (fairly) consistently until ammunition is depleted.

Thus, a machinegun equipped with an automatic fire mechanism contains a "self-acting" mechanism, which upon simply keeping the trigger depressed, without any further input, will fire successive rounds without "hammer follow."

For a semiautomatic weapon, however, even when bump fired, the key point of operator input in this entire process is multiple functions of the trigger. The trigger must be depressed for the first shot and then released and depressed again for each subsequent shot. The trigger is the mechanism that, when depressed—by pulling, bumping, or otherwise—releases the hammer and causes a shot to be fired. If not released, reset, and then depressed again, no subsequent shot will be fired. Only through repeated operator input will a semiautomatic firearm shoot, and the trigger must be re-engaged anew for each shot, even when bump firing.

While federal law does not specifically define "trigger," it does refer to a "trigger" several times—all of which demonstrate this same unambiguous understanding of the term. The federal definition of "rifle" is a weapon "fir[ing] only a single projectile through a rifled bore for each single *pull of the trigger*." 18 U.S.C. § 921(a)(7) (emphasis added). Similarly, the federal definition of "shotgun" explains that a shotgun fires "through a smooth bore either a number of ball shot or a single projectile for each single *pull of the trigger*." 18 U.S.C. § 921(a)(5) (emphasis added). The same is true of a "semiautomatic rifle," which fires "each cartridge" with "a separate *pull of the trigger*."

18 U.S.C. § 921(a)(29) (emphasis added). Each of those references are consistent with the common dictionary definitions discussed above, and inconsistent with the government's attempt to redefine what constitutes a trigger.

Given the above discussion of the firing mechanism of a typical semiautomatic weapon, the common public understanding of the word *trigger* is the physical lever that, when moved through its range of motion, releases the hammer to fire a round. And when the trigger itself is allowed to return to its starting position in a semiautomatic weapon, it resets the hammer in preparation for a subsequent function of the trigger. The government's suggestion that the forebody of a bump-stock-equipped semiautomatic weapon can magically transform into the trigger, Pet'rs' Br. 17, 34, ignores the operation of all semiautomatic firearms. And it leads to the absurdity that the actual trigger is not the trigger anymore, or that there are *two* triggers that must operate in conjunction to fire the weapon.

After all, pressure on the forebody of a weapon with or without a bump stock will not cause it to fire unless the trigger finger is placed on the mechanism-formerly-known-as-the-trigger and that mechanism runs through multiple functions of depression and release. Alternatively, if there are *two* nominal triggers, one that receives constant (though constantly titrated and modulated) forward pressure but that is ineffective unless the other engages in multiple functions through pressure and release, then it is impossible to know which trigger the statute refers to when discussing a single function of "the trigger." And,

of course, even without a bump stock, bump firing requires the identical forward pressure on the forebody of the weapon, thus making all forebodies the "trigger" of any bump-fire-capable weapon under the government's definition.

Given that the government's definition and interpretation of "trigger" is overbroad and leads to absurd results, it should be squarely rejected. This Court should recognize that even with a bump stock, semiautomatic weapons require multiple manual functions of the trigger to fire multiple shots, and hence are not machineguns.

CONCLUSION

For the foregoing reasons, *Amicus* joins Respondent in respectfully requesting that this Court uphold the *en banc* Fifth Circuit's decision below.

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