

Bump Stocks – Bumping Into the Law



By Paul Engel

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- Is a bump stock a machine gun?
- Do executive agencies have the authority to rewrite laws passed by Congress?
- Should the court make decisions based on the law or their emotions?

When does a rifle become a machine gun? That is the question asked in the Supreme Court case *Garland v. Cargill*. When the Bureau of Alcohol, Tobacco, Firearms, and Explosives suddenly decided to redefine bump stocks as machine guns, many Americans simply complied. However, when Michael Cargill surrendered his bump stocks to the ATF, he did so under protest, filing suit to challenge the rule under the Administrative Procedure Act. Those of us who enjoy and exercise our right to keep and bear arms owe Mr. Cargill a debt of gratitude, but the fight is not over. Thanks to Mr. Cargill's determination and persistence, the ATF's bump stock rule has been found to have violated U.S. law, meaning we get our bump stocks back. However, it also leaves open the chance for Congress to do what the ATF could not: Violate the Second Amendment one more time.

While this case has been watched closely by many in the Second Amendment community, the case isn't actually about the Second Amendment, even though I think it should be.

Second Amendment

Congress has long restricted access to “ ‘machinegun[s],’ ” a category of firearms defined by the ability to “shoot, automatically more than one shot . . . by a single function of the trigger.” 26 U. S. C. §5845(b);

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This is true. Congress has passed a law known as the National Firearms Act (NFA) that, among other things, restricts access to “machine-guns”. Does Congress have the authority to do so? Contrary to popular belief, the Second Amendment doesn’t make distinctions between different types of arms.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[U.S. Constitution, Amendment II](#)

The Second Amendment does not limit arms possession to the militia, neither does it place limits on the types of arms a person can own and carry. It simply states “the right of the people to keep and bear arms shall not be infringed.” So what is an arm that someone can keep or bear?

1. Weapons of offense, or armor for defense and protection of the body. ...
2. In law, arms are any thing which a man takes in his hand in anger, to strike or assault another.

[Arms: Webster’s 1828 Dictionary](#)

It would seem this definition, along with the actual language of the Second Amendment, should put to bed most of the “gun control” arguments. Congress went on to pass the NFA, even though it was criminal for them to do so. In the NFA, Congress makes a distinction between “machine-guns” and other types of firearms.

The 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.

[26 U.S.C. §5845\(b\)](#)

This distinction between types of firearms is the primary focus of this case.

Semiautomatic firearms, which require shooters to reengage the trigger for every shot, are not machineguns. This case asks whether a bump stock—an accessory for a semiautomatic rifle that allows the shooter to rapidly reengage the trigger (and therefore achieve a high rate of fire)—converts the rifle into a “machinegun.”

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Bump Stocks

Since this case is about bump stocks, it would make sense to specify what one is and how it works.

Shooters have devised techniques for firing semiautomatic firearms at rates approaching those of some machineguns. One technique is called bump firing. A shooter who bump fires a rifle uses the firearm’s recoil to help rapidly manipulate the trigger. The shooter allows the recoil from one shot to push the whole firearm backward. As the rifle slides back and away from the shooter’s stationary trigger finger, the trigger is released and reset for the next shot. Simultaneously, the shooter uses his nontrigger hand to maintain forward pressure on the rifle’s front grip. The forward pressure counteracts the recoil and causes the firearm (and thus the trigger) to move forward and “bump” into the shooter’s trigger finger. This bump reengages the trigger and causes another shot to fire, and so on. ...

Although bump firing does not require any additional equipment, there are accessories designed to make the technique easier. A “bump stock” is one such accessory.

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So, a bump stock is merely an accessory that makes it easier to bump fire a semi-automatic rifle. Normally, a person moves their finger to fire the weapon, but when bump firing, the weapon is allowed to move against the finger.

There is more to this case than just bump stocks though.

ATF Policy Change

So what led to this ATF rule to redefine bump stocks as machine guns?

For many years, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) took the position that semiautomatic rifles equipped with bump stocks were not machineguns under the statute. On more than 10 separate occasions over several administrations, ATF consistently concluded that rifles equipped with bump stocks cannot “automatically” fire more than one shot “by a single function of the trigger.” ... In April 2017, for example, ATF explained that a rifle equipped with a bump stock does not “operat[e] automatically” because “forward pressure must be applied with the support hand to the forward handguard.” ... And, because the shooter slides the rifle forward in the stock “to fire each shot, each succeeding shot fir[es] with a single trigger function.”

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As seems to be so often the case, we see politics rather than the law at the heart of these regulations.

ATF abruptly reversed course in response to a mass shooting in Las Vegas, Nevada. In October 2017, a gunman fired on a crowd attending an outdoor music festival in Las Vegas, killing 58

people and wounding over 500 more. The gunman equipped his weapons with bump stocks, which allowed him to fire hundreds of rounds in a matter of minutes.

This tragedy created tremendous political pressure to outlaw bump stocks nationwide. Within days, Members of Congress proposed bills to ban bump stocks and other devices “designed . . . to accelerate the rate of fire of a semiautomatic rifle.” ... None of these bills became law. Similar proposals in the intervening years have also stalled.

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What we see here is the ATF reversing their earlier position not because of a change in the law or technology, but because of political pressure. Nothing is mentioned about the fact that anyone can “fire hundreds of rounds in a matter of minutes” with or without a bump stock. Once again, political pressure was focused on the device rather than the person using it to commit crimes.

Even from the beginning of ATF’s attempt to rewrite the NFA, they faced problems.

While the first wave of bills was pending, ATF began considering whether to reinterpret §5845(b)’s definition of “machinegun” to include bump stocks. It proposed a rule that would amend its regulations to “clarify” that bump stocks are machineguns. ... ATF’s about face drew criticism from some observers, including those who agreed that bump stocks should be banned. Senator Dianne Feinstein, for example, warned that ATF lacked statutory authority to prohibit bump stocks, explaining that the proposed regulation “ ‘hinge[d] on a dubious analysis’ ” and that the “ ‘gun lobby and manufacturers [would] have a field day with [ATF’s] reasoning’ ” in court. ... She asserted that “ ‘legislation is the only way to ban bump stocks.’ ”

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Michael Cargill

Thankfully, there were several people who took the time, effort, and money to challenge the ATF's power grab. One of those people was Michael Cargill.

Michael Cargill surrendered two bump stocks to ATF under protest. He then filed suit to challenge the final Rule, asserting a claim under the Administrative Procedure Act. As relevant, Cargill alleged that ATF lacked statutory authority to promulgate the final Rule because bump stocks are not "machinegun[s]" as defined in §5845(b).

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As you can imagine, since Mr. Cargill's case made it all the way to the Supreme Court, things didn't go his way at first.

After a bench trial, the District Court entered judgment for ATF. The court concluded that "a bump stock fits the statutory definition of a 'machinegun.' "

The Court of Appeals initially affirmed, ..., but later reversed after rehearing en banc. A majority agreed, at a minimum, that §5845(b) is ambiguous as to whether a semiautomatic rifle equipped with a bump stock fits the statutory definition of a machinegun. And, the majority concluded that the rule of lenity required resolving that ambiguity in Cargill's favor. ... An eight-judge plurality determined that the statutory definition of "machinegun" unambiguously excludes such weapons. A semi-automatic rifle equipped with a bump stock, the plurality reasoned, fires only one shot "each time the trigger 'acts,' " ... and so does not fire "more than one shot . . . by a single function of the trigger," §5845(b). The plurality also concluded that a bump stock does not enable a semiautomatic rifle to fire more than one shot "automatically" because the shooter must "maintain manual, forward pressure on the barrel."

We granted certiorari, ... to address a split among the Courts of Appeals regarding whether bump stocks meet §5845(b)'s definition of "machinegun."

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We see once again in the District Court, the judges substituting their own preferences for the actual law. The very definition of "bump firing" involves resetting the trigger, then allowing it to bump into your finger again. Meaning that a single trigger function fires one round.

The Dissent

Justice Sotomayor wrote a dissent, joined by Justices Kagan and Jackson.

On October 1, 2017, a shooter opened fire from a hotel room overlooking an outdoor concert in Las Vegas, Nevada, in what would become the deadliest mass shooting in U. S. history. Within a matter of minutes, using several hundred rounds of ammunition, the shooter killed 58 people and wounded over 500. He did so by affixing bump stocks to commonly available, semiautomatic rifles. These simple devices harness a rifle's recoil energy to slide the rifle back and forth and repeatedly "bump" the shooter's stationary trigger finger, creating rapid fire. All the shooter had to do was pull the trigger and press the gun forward. The bump stock did the rest.

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Notice how Justice Sotomayor does not anchor her dissent on the law or the Constitution, but on the emotions generated by a mass murder. It appears quite obvious that these dissenting justices are not interested in determining a controversy based on the law, as their oath requires, but on legislating from the bench. Justice Sotomayor also attempts to mislead in her dissent by misrepresenting how a bump stock operates. She ignores the need to operate the trigger by the rifle going

back and forth, rather than just a person's finger.

Today, the Court puts bump stocks back in civilian hands. To do so, it casts aside Congress's definition of "machinegun" and seizes upon one that is inconsistent with the ordinary meaning of the statutory text and unsupported by context or purpose. When I see a bird that walks like a duck, swims like a duck, and quacks like a duck, I call that bird a duck. A bump-stock-equipped semiautomatic rifle fires "automatically more than one shot, without manual reloading, by a single function of the trigger." §5845(b). Because I, like Congress, call that a machinegun, I respectfully dissent.

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The court is not putting bump stocks back in civilian hands, it is preventing the ATF from illegally removing them. It's not the majority of the court that is casting aside Congress' definition of a machine gun, but the ATF and the dissent. If the dissenting justices see ducks when they look at a bump stocks, perhaps they've been watching too many Disney films where ducks talk, wear clothes, and dive into piles of money.

Conclusion

Six of the nine justices on the court looked at the facts of the case and came to a conclusion.

For the foregoing reasons, we affirm the judgment of the Court of Appeals.

It is so ordered.

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Interestingly, although the court made several references to the ATF exceeding its statutory authority in the syllabus of this decision, it makes no direct claim in the opinion itself. Rather, it points to the dissenting justices as attempting to rewrite the statute.

In any event, Congress could have linked the definition of “machinegun” to a weapon’s rate of fire, as the dissent would prefer. But, it instead enacted a statute that turns on whether a weapon can fire more than one shot “automatically . . . by a single function of the trigger.” §5845(b). And, “it is never our job to rewrite . . . statutory text under the banner of speculation about what Congress might have done.”

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The good news is the bump stock ban is dead, at least for now. [Senate Majority Leader Schumer has already announced plans to restore the bump stock ban.](#) While I do not expect Mr. Schumer’s plans to work, I also expect others in the anti-Second Amendment community to continue to attempt to violate the Constitution by infringing on the people’s right to keep and bear arms.

As I stated in the beginning, this case was not about the Second Amendment. Perhaps it should be. It’s time to find representatives at all levels of government who recognize our God-given right to defend ourselves from all enemies, foreign or domestic, civilian or government. Only then would those in Congress, the Executive Branch, and the courts who want to see the American people disarmed, be stopped in their tracks. Rather than seeing arms as evil and something to be restrained, we should see them for their benefit and true purpose, as Noah Webster did.

Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom of Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any bands of regular troops that can be, on any pretense, raised in the United States. A military force, at the command of Congress, can execute no laws, but such as the people perceive to be just and constitutional; for they will possess the power, and jealousy will instantly

inspire the inclination, to resist the execution of a law which appears to them unjust and oppressive. “

[Noah Webster – An Examination Into the Leading Principles of the Federal Constitution](#)

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