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NCLA Wins Major Fifth Circuit en Banc Decision Tossing ATF's Bump Stock Ban

Michael Cargill v. Merrick B. Garland, et al.

Washington, DC (January 6, 2023) – The full Fifth Circuit bench [ruled](#) today that a bump stock does not fall within the definition of “machinegun” as set forth in federal law. Thus, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) lacked the statutory authority to issue the Final Rule banning bump stocks. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, represents gun shop owner, Army veteran, and firearms instructor Michael Cargill in [Michael Cargill v. Merrick B. Garland, et al.](#) NCLA applauds this decision, which not only allows our client to keep his property, but also prevents ATF’s unlawful attempt to rewrite a criminal law.

The *en banc* court addressed which branch of government has the constitutional authority to change the criminal law if changes are warranted. NCLA argued that: (1) the Final Rule conflicts with the statutory definition of a machinegun and thus exceeds ATF’s authority; (2) ATF’s construction is not entitled to *Chevron* deference; (3) to the extent that the courts determine that the definition of machinegun is ambiguous with respect to bump stocks, they should apply the rule of lenity to determine that bump stocks are not machineguns; and (4) if the statute were interpreted as authorizing ATF’s declaration that bump stocks are prohibited machineguns, then the statute would be an unconstitutional delegation of Congress’s legislative powers.

The Fifth Circuit agreed with NCLA on every one of these points.

The current statute, adopted in 1986, prohibits “machineguns” in a manner that does not include non-mechanical bump stocks. The evidence at trial demonstrated conclusively that a semi-automatic rifle equipped with a non-mechanical bump stock is not a weapon that “shoots, is designed to shoot, or can readily be restored to shoot, automatically more than one shot ... by a single function of the trigger. In the 13-3 decision, the Fifth Circuit followed the straightforward interpretation of the statute that the definition of machinegun must turn on the action of the trigger. It was therefore impossible to square the Final Rule’s conclusion that bump stocks are machineguns with the uncontested evidence that every shot fired by a bump-stock-equipped semi-automatic rifle requires a separate “function” of the trigger.

Writing for the majority, Judge Jennifer Walker Elrod stated, “In defining the term machinegun, Congress referred to the mechanism by which the gun’s trigger causes bullets to be fired. Policy judgments aside, we are bound to apply that mechanical definition. And applying that definition to a semi-automatic rifle equipped with a non-mechanical bump stock, we conclude that such a weapon is not a machinegun for purposes of the Gun Control Act and National Firearms Act.” Further, Judge Elrod emphasized that *Chevron* deference has no role in this case, “because the Government waived it or because it does not apply to the Government’s interpretation of a statute imposing criminal penalties.” Additionally, “even if the statute were ambiguous—which it is not—the rule of lenity would require that we interpret the statute in Cargill’s favor.”

The Fifth Circuit's decision creates a circuit split with the DC, Sixth, and Tenth Circuits. NCLA anticipates that the Department of Justice will file a petition for writ of certiorari with the U.S. Supreme Court seeking to resolve the split.

NCLA released the following statements:

“NCLA has been seeking to set aside this unlawfully promulgated regulation from the get-go. We are pleased that a circuit court has finally—and decisively—recognized that Congress must be the one to pass any bump stock ban. The resulting circuit split should bring this decision to the U.S. Supreme Court’s attention promptly and supply a suitable vehicle for deciding this issue once and for all.”

— **Mark Chenoweth, President and General Counsel, NCLA**

“This case is not about gun control. It is instead about who has the constitutional prerogative to change the criminal law if changes are warranted. The current statute, adopted in 1986, defines ‘machinegun’ in a manner that does not encompass non-mechanical bump stocks. It is unlawful for a prosecutorial entity like ATF to rewrite existing law without authorization from Congress. Any change in gun-control laws must emanate from Congress.”

— **Rich Samp, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#) or watch the case video [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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