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 FIREARMS POLICY COALITION, INC. IN SUPPORT OF RESPONDENT

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January 29, 2024

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INTEREST OF AMICUS CURIAE[1]

Firearms Policy Coalition, Inc. (FPC) is a nonprofit membership organization that works to create a world of maximal human liberty and freedom. It seeks to protect, defend, and advance the People's rights, especially but not limited to the inalienable, fundamental, and individual right to keep and bear arms. FPC accomplishes its mission through legislative and grassroots advocacy, legal and historical research, litigation, education, and outreach programs. FPC's legislative and grassroots advocacy programs promote constitutionally based public policy. Since its founding in 2014, FPC has emerged as a leading advocate for individual liberty in state and federal courts, regularly participating as a party or amicus curiae.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

"Under our system of government, Congress makes laws and the President, acting at times through agencies like [the Bureau of Alcohol, Tobacco, Firearms and Explosives], 'faithfully execute[s]' them"—an authority that assuredly "*does not* include a power to revise clear statutory terms." *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 327 (2014) (emphasis added) (quoting U.S. CONST. art. II, § 3). The authority of the executive branch—and the judiciary too—is a designedly humble one: "to interpret the

[1] Pursuant to SUP. CT. R. 37.6, amicus certifies that no counsel for any party authored this brief in whole or in part, no party or party's counsel made a monetary contribution to fund its preparation or submission, and no person other than amici or their counsel made such a monetary contribution.

language of the statute enacted by Congress." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461 (2002). Yet Petitioners—by promulgating the rule at issue and asking this Court to sustain it—have refused to take Congress at its word. Instead of faithfully executing the plain language of Congress's definition of "machinegun," Petitioners seek to rewrite it, so as to jibe more closely with what they perceive to be "the statute's purpose." Pet.Br.35. Because neither a court nor an agency has any "warrant to elevate vague invocations of statutory purpose over the words Congress chose," *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 463 (2022), the court below was right to invalidate Petitioners' rule.

For nearly a hundred years, Congress has tightly regulated "machineguns"—a term it has carefully defined as any weapon that can "shoot, automatically more than one shot, without manual reloading, by a single function of the trigger," as well as "any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun." 26 U.S.C. § 5845(b). That definition notably does not refer to the speed with which a firearm can shoot multiple rounds or the ease of doing so. Instead, it distinguishes lawful from unlawful arms by reference to the mechanical architecture of the firearm itself: firearms that continue to fire multiple rounds as long as the trigger is depressed without any other manual activity for reloading (commonly known as "fully automatic" firearms) are in the category of "machineguns," and firearms that require a new movement of the trigger for each single shot ("semiautomatic" and manual-action firearms) are not.

The bump-stock devices at issue in this case also fall outside the term "machinegun" as Congress has defined it. A bump stock may increase the firearm's rate of fire, but it does not change the mechanics of *how* a semiautomatic firearm shoots. And it is in the inherent nature of those mechanics that such a weapon can shoot only one round for each full backward-forward cycle of the trigger. That basic fact remains true when the arm is equipped with a bump stock. The bump stocks at issue here do not enable a semiautomatic firearm to fire more than one shot "by a single function of the trigger," *id.* they just enable the user to make the trigger function more quickly. Nor do they enable an equipped semiautomatic firearm to fire multiple shots "automatically," *id.*—for the firing sequence of a bump-stock equipped firearm does not continue without any further user input, but rather requires the user to undertake the independent physical action of continuously pushing the firearm forward with his other hand. In other words, a semiautomatic firearm equipped with one of the bump stocks at issue will fire only a single bullet when the trigger is depressed absent additional action by the user.

When ATF first considered the legality of bump stocks over twenty years ago, it correctly concluded that they do not qualify as "machineguns." Yet in 2018, in the face of acute political pressure, the agency reversed course and adopted a new definition of the term that encompasses the bump stocks at issue. Petitioners' defense of that newfound interpretation either ignores the statute Congress enacted or seeks to rewrite it. In place of the statutory language "single function of the trigger," *id.*, Petitioners would write

"single *pull* of the trigger"—a feat of linguistic gymnastics that *still* fails to encompass bump stocks. And instead of Congress's clear rule that a machinegun must fire multiple shots "*automatically* . . . by a single function of the trigger," *id.* (emphasis added), the Government would substitute a vague and manipulable inquiry into the "degree of human input" required to fire more than one shot. Pet.Br.35. All of these maneuvers, Petitioners maintain, are necessary to fulfill "the statute's purpose": restricting the ownership of any firearms that are "dangerous" because of their "rapid-fire capability." Pet.Br.35, 40.

This Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." *Sigmon Coal*, 534 U.S. at 461–62 (cleaned up). Congress chose to define "machinegun" with clear and unambiguous terms that refer to the functioning of a firearm's trigger, not its rate of fire. Because the bump stocks at issue plainly do not qualify as machine guns under that precise definition, Petitioners' decision to regulate them as if they did is contrary to law and must be set aside.

ARGUMENT

I. Semiautomatic Firearms Equipped with Bump Stocks Fire a Single Round Each Time the Trigger Functions.

To understand whether a bump stock can be used to "convert[ ] a weapon into a machinegun," 26 U.S.C. § 5845(b), it is necessary to understand the basics of how firearms function, and precisely how bump stocks

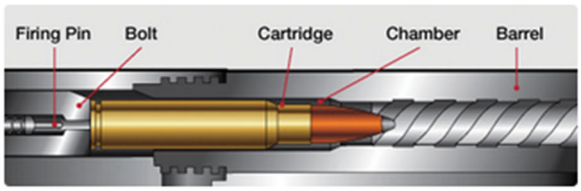
affect that functionality. We thus begin with a brief discussion of the mechanics of modern firearms and of bump stocks.

A. Semiautomatic Firearms Are Only Capable of Firing One Shot Each Time the Trigger Functions.

Modern firearms are breechloaders that fire cartridge ammunition loaded at the "breech," or back end, of the firearm (rather than at the front end of the firearm, through the muzzle). These firearms discharge each round by causing a firing pin to impact the primer located in the base of the ammunition cartridge, which then ignites the powder located in the body of the cartridge and propels the bullet (or shot pellets) through and out of the firearm's barrel. In modern firearms, this process is controlled by what Congress termed the "function of the trigger": the user moves the trigger backward (typically with his index finger) so that it releases a spring-loaded component called the "hammer" and allows it to spring forward and drive the firing pin against the primer.[2] A stylized depiction of this process is reproduced below, and a video illustrating it can be found at HUNTER-ED, *Video: How a Cartridge is Fired*, https://bit.ly/498JNj7 (last visited Jan. 23, 2024).

[2] Some firearms employ a striker rather than a hammer to thrust the firing pin forward. John W. Treakle, *Rifleman Q&A: Striker-Fired Actions Explained* (Feb. 8, 2022), https://bit.ly/4b8WKLn. Like the court below, we generally confine our discussion to firearms that employ a hammer, but the principles set forth apply equally to striker-fired firearms.

Figure 1:



Step 1: Cartridge is loaded into chamber.

Step 2: Action is closed, and the projectile is ready to be fired.

Step 3: Firing pin makes contact with the primer and ignites gunpowder, creating high pressure.

Step 4: Rapidly accumulating high pressure from the burning gunpowder pushes projectile out of the barrel.

How a Cartridge is Fired, HUNTER-ED, https://bit.ly/4b9CB8g (last visited Jan. 23, 2024).

For the firearm to discharge a second round, three basic things must happen: (1) the mechanism that propels the firing pin against the primer must be reset; (2) the spent (empty) cartridge (or shell, in the case of shotguns) must be ejected from the firearm and a new one, ready to be fired, must be inserted in its place; and (3) the firing pin must be driven forward again to strike the primer of the new cartridge. The combination of parts within the firearm responsible for these operations is known as the "action," and most modern bearable arms are typically sorted into three general categories based on the type of action they use.

Some firearm actions operate *manually*. These firearms require the user to manually reset the machinery that causes the firing pin to strike the primer—for example, by cocking the hammer so that it can be released again by the trigger. And they also require the user to eject and replace the spent cartridge with a new one: after each shot, "the mechanism of the firearm must be manually cycled by the shooter to unlock, extract, eject, feed, [and] chamber . . . a subsequent cartridge."[3] Some manually operated firearms contain no magazine for holding extra rounds at all, and a new round must be physically loaded into the firearm after each shot.[4] Others—such as bolt-action or lever-action rifles, or pump-action shotguns—may contain a magazine holding extra rounds inside the

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[3] NATIONAL RIFLE ASSOCIATION, *3 Firearm Modes of Operation (& How They're Powered)* (Oct. 4, 2023), https://bit.ly/3UacJTo.

[4] NATIONAL RIFLE ASSOCIATION, *How Do Guns Work? Single-Shot Mechanisms* (July 14, 2023), https://bit.ly/3HPcTIN.

firearm, but the user must still take some physical action to replace the spent cartridge with a new one (for example, by rotating and sliding the bolt to eject the spent cartridge and chamber a new one).[5] In any case, once the firearm is reloaded and re-cocked, the user must then cause the trigger to release the hammer in order to fire a successive shot. Any additional shots require a full repetition of the entire sequence.

Many other firearms operate *semiautomatically*. A semiautomatic action harnesses the energy from firing a round to perform the first two of the operations described above: to automatically eject the spent cartridge and load a new cartridge in its place,[6] and also to re-cock the firearm's hammer so that it is ready to fire a successive round. As with a manual action, however, the user must manually perform the third action: releasing the hammer by pulling the trigger so that it can strike the firing pin again.

The plurality opinion below described the mechanics of this process well. The portion of a semiautomatic firearm that ultimately drives the firing pin into the primer in the cartridge is comprised of four

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[5] NATIONAL RIFLE ASSOCIATION, *How Do Guns Work? Bolt-Actions* (Apr. 25, 2023), https://bit.ly/3UfsCbh; NATIONAL RIFLE ASSOCIATION, *How Do Guns Work? Lever-Actions* (May 25, 2023), https://bit.ly/47NOkGC; NATIONAL RIFLE ASSOCIATION, *How Do Guns Work? Slide/Pump-Actions* (May 25, 2023), https://bit.ly/3SrvhgP. In some cases, the same action that ejects and replaces the spent cartridge also re-cocks the hammer.

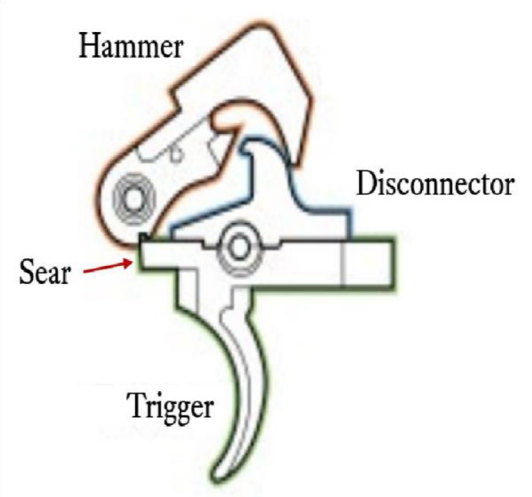
[6] NATIONAL RIFLE ASSOCIATION, *How Do Guns Work? Semi-Automatic (Self-Loading) Mechanisms* (Dec. 30, 2022), https://bit.ly/492f5be.

basic components: the trigger, sear, hammer, and disconnector.

> The trigger is the interface between the gun's internal mechanism and the human finger. The sear is the trigger's top-forward geometric plane, which locks snugly into a groove near the spring of the hammer. The hammer is the spring-loaded element that strikes the firing pin, causing ignition of the charge and propulsion of the bullet. The disconnector is a part that sits on top of the trigger and serves to reset the hammer after a round is fired; this resetting is what makes a semi-automatic weapon semi-automatic.

Pet.App.6a. These parts may be depicted as follows:

Figure 2:



Id.

When the trigger is moved backward—again, typically by the user moving it backward with his index finger—it "disengages the hammer from the sear, allowing the spring to swing the hammer to strike the firing pin." Pet.App.6a–7a. That ignites the primer and fires the round, and the force from the discharge then "thrusts the bolt backward, which kicks the hammer into the disconnector on top of the still-depressed trigger." Pet.App.7a. *So long as the hammer is secured by the disconnector, it cannot be released again to fire a successive shot.* When the trigger is allowed to move forward, however, it resets: "the hammer is pulled back into the cocked position and secured by the trigger's sear as it slips off the disconnector. The user may then fire again by pulling the trigger, without having to manually re-cock the hammer." *Id.* An animated graphic illustrating this process is available on the Fifth Circuit's website, *see* AR-15 ANIMATION, https://bit.ly/496BvYQ.

These components thus streamline much of the process that must be physically performed by the user of a manually operated firearm, potentially reducing the amount of time between shots. But with a semiautomatic firearm no less than a manually operated one, the trigger must go through a full backward-forward cycle for each shot: until the trigger moves forward and resets after one shot, the hammer remains secured by the disconnector; until the trigger moves backward again, the hammer remains secured by the sear; and until the hammer is released by both the disconnector and then the sear, it cannot strike the firing pin and discharge a successive round.

A final type of firearm, by contrast, operates *fully automatically*. Like a semiautomatic action, a fully

automatic action uses the energy generated by discharging a round to automatically expel the spent cartridge and insert a new cartridge in its place. But a fully automatic action also automates the entirety of the process of cocking *and releasing* the hammer, such that so long as the trigger is held backward, "an automatic weapon can shoot continuously until ammunition is depleted." Pet.App.8a. A fully automatic action accomplishes this continuous fire through use of "an 'auto-sear'— a device that serves to re-cock and release the hammer in tandem with the motion of the bolt for so long as the trigger remains depressed. In other words, the auto sear enables a pendulum swing of the hammer in sync with the bolt without any further input from the user . . . ." *Id.* Unlike a semiautomatic firearm, then, a fully automatic one fires multiple shots each time the trigger is moved backward to release the hammer and continues to fire as long as the trigger remains depressed by that single backward movement.

B. Bump Stocks Increase the Speed of a Semiautomatic Firearm's Operation, But They Do Not Enable It To Fire More Than One Round Each Time the Trigger Functions.

As discussed, unlike a fully automatic firearm, a semiautomatic firearm is capable of firing only one shot each time the trigger goes through a full backward-forward cycle: moving the trigger backward releases the hammer from the sear and allows it to strike the firing pin; allowing the trigger to return forward resets it by releasing the hammer from the disconnector and securing it to the sear. A user ordinarily accomplishes this cycle by moving his index finger

backward and forward, but *any* method of physically manipulating the trigger backward and forward will suffice. For example, any semiautomatic firearm can be "bump fired": instead of moving his index finger, the user can hold his index finger stationary and use his other hand, in conjunction with the firearm's recoil, to move *the firearm* back and forth, thereby pressing the trigger forward and backward against his stationary finger.

Bump stocks use the recoil generated when a firearm is discharged to speed up this process of bump-firing a semiautomatic firearm. Bump stocks replace the standard stock of a semiautomatic rifle—the back part of the firearm that fits into the pocket of the user's shoulder. "A typical bump stock consists of a sliding shoulder stock molded to a grip, a trigger ledge where the shooter places his finger, and a detachable rectangular receiver module that goes into the receiver well of the bump stock's handle to guide the recoil of the weapon when fired." Pet.App.9a. An image depicting a typical bump-stock is reproduced below. When using a bump stock, the user holds his trigger finger steady, and the bump stock facilitates the sequence where the firearm rapidly moves forward and backward, pushing the trigger against the finger repeatedly and thus causing it to reset and release the hammer multiple times in quick succession.

Figure 3:

Id.

Bump stocks come in two basic varieties: mechanical and non-mechanical. Only the non-mechanical kind are at issue in this case. Both types rely on the recoil from a shot to drive the firearm backward—thereby releasing the pressure on the trigger from the user's stationary index finger, allowing it to reset by shifting the hammer from the disconnector to the sear. With a mechanical bump stock, the firearm is then moved forward again—and the trigger is thus pressed against the stationary index finger and the hammer released—by an internal spring or similar mechanism located within the stock. Pet.App.10a. Non-mechanical bump stocks, by contrast, instead require the user to "maintain[ ] forward pressure on the gun's forebody, again causing the trigger to bump into the trigger finger, maintaining fire." Pet.App.9a-10a.

An animated graphic illustrating the use of a bump stock is available on the Fifth Circuit's website, *see* BUMP FIRE ANIMATION, https://bit.ly/42btgsn (last visited Jan. 23, 2024).

Either type of bump stock can increase the speed with which the firearm's trigger goes through the necessary backward-forward cycle. But neither results in the firing of more than a single shot each time the cycle repeats. For bump stocks do not alter the internal architecture of a semiautomatic firearm. And as discussed above, that internal architecture necessarily requires the trigger to go through a full cycle of movement before discharging each round: until the trigger moves to the forward position, the hammer is held stationary by the disconnector; and until the trigger moves again to the back position, the hammer is secured by the sear and cannot strike the firing pin.

II. Bump Stocks Do Not Enable Semiautomatic Firearms To Shoot Automatically More Than One Shot by a Single Function of the Trigger.

As noted above, a bump stock qualifies under Section 5845 as a "machinegun" only if it can be "use[d] in converting a weapon" "to shoot, automatically more than one shot . . . by a single function of the trigger." 26 U.S.C. § 5845(b). It cannot.

A. Firearms Equipped with Bump Stocks Do Not Shoot More than One Shot By a Single Function of the Trigger.

1. The first reason why bump stocks do not meet the statutory standard for machine guns follows directly from the description of a semiautomatic firearm's operation in Part I: semiautomatic firearms are

simply incapable of firing more than a single shot with each function of the trigger.

At the time of enactment, " 'function' meant the 'natural and proper action' of a thing." *Guedes v. BATFE*, 66 F.4th 1018, 1025 (D.C. Cir. 2023) (Walker, J., dissenting) (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY 876 (2d ed. 1933)). To put it another way, "[s]omething's 'function' was '[t]he special kind of activity proper to [it]; the mode of action by which it fulfills its purpose.' " *Id.* (quoting 4 OXFORD ENGLISH DICTIONARY 602 (1933)); *see also* Pet.App.20a; *Aposhian v. Wilkinson*, 989 F.3d 890, 895 (10th Cir. 2021) (Tymkovich, C.J., dissenting); *Gun Owners of America v. Garland*, 19 F.4th 890, 912 (6th Cir. 2021) (Murphy, J., dissenting). Accordingly, the first question presented by Congress's definition of "machinegun" is "whether a semi-automatic rifle equipped with a . . . bump stock fires more than one shot each time the trigger 'acts.' " Pet.App.20a.

It does not. Until the trigger on such a firearm "functions" by going through a complete cycle of movement—forward to release the hammer from the disconnector and secure it with the sear, backward again to release the hammer from the sear to strike the firing pin—a successive shot *cannot be fired*. A bump stock *increases the speed* with which the trigger "acts" or "functions" by going through this cycle, but it does not and cannot alter the basic physical mechanism of the firearm's action. And that mechanism is incapable of firing more than one shot for each function of the trigger so long as it is working properly.

2. Petitioners resist this conclusion, arguing that a firearm "shoots more than one shot by a single

function of the trigger . . . if it fires multiple rounds after the shooter pulls the trigger once," and that a bump-stock equipped semiautomatic firearm satisfies that requirement. Pet.Br.18 (cleaned up). As an initial matter, this argument would have the Court effectively *red-pencil* Congress's carefully crafted phrase of art—"single function of the trigger"—and replace it with different language altogether—"single *pull* of the trigger." That is not this Court's role. Congress could have used Petitioners' preferred phraseology—in fact, "[i]n defining *rifles* and *shotguns*, Congress chose to use the phrases 'single pull of the trigger' and 'each pull of the trigger' respectively." *United States v. Alkazahg*, 2021 WL 4058360 at *13 (N-M. Ct. Crim. App. Sept. 7, 2021). But in defining "machinegun," it instead chose to use the language "single *function* of the trigger"—a phrase that appears to have never been used before in published English, and that was thus apparently "created by Congress specifically to be used in these firearm statutes." Pet.App.26a n.7. "Single pull of the trigger" "are not the words that Congress wrote, and this Court is not free to 'rewrite the statute' to the Government's liking." *National Ass'n of Mfrs. v. Department of Def.*, 583 U.S. 109, 123 (2018) (quoting *Puerto Rico v. Franklin Ca. Tax-Free Trust*, 579 U.S. 115, 129 (2016).

Petitioners attempt to minimize Congress's textual choice, arguing that it used the language "function of the trigger" instead of "pull of the trigger" merely because it was a "more versatile phrase" that encompassed "any other single motion, such as a push, [used] to activate the trigger." Pet.Br.21–22, 26 (cleaned up). According to Petitioners, "[s]ome automatic firearms that were well known in 1934 used

triggers that had to be pushed with the thumb rather than pulled with the index finger," and "Congress's use of the more general term 'function' rather than 'pull' ensured that the statute would also cover those types of automatic firearms." Pet.Br.22. For similar reasons, Petitioners' own interpretation of "function of the trigger" includes not only "a single pull of the trigger" but also any "analogous motions." 27 C.F.R. § 478.11.

Far from supporting Petitioners' ultimate conclusion that bump stocks qualify as machine guns, this argument is in fact fatal to it. The argument concedes that "a single function of the trigger," 26 U.S.C. § 5845(b), cannot solely mean "a single pull on the trigger with a rearward motion of the index finger"—and that it necessarily includes other actions that "activate" the trigger, Pet.Br.22. The phrase surely must encompass, then, a user's "activation" of the trigger by pulling it when he bump-fires it—not by moving his index finger rearward against the trigger, but by forcing the trigger forward against the index finger.

And if a "single function of the trigger" includes pulling (or "activating") it by bump-firing it, then *a bump stock is not a machine gun*. For each time the user of a bump stock "pulls" the trigger by pressing it forward against his stationary index finger, only one shot is fired. Yes, the bump stock increases the rapidity with which the trigger is released and then pulled, by harnessing the recoil from the previous shot to move the firearm backward and allow the trigger to reset, and utilizing the user's continuous forward pressure on the firearm to move the trigger against the index finger—and thus release the hammer from the sear—very quickly thereafter. But it remains the

case that "[t]he trigger . . . must necessarily 'pull' backwards and release the rifle's hammer . . . every time that the rifle discharges." *Aposhian v. Barr*, 958 F.3d 969, 995 (10th Cir. 2020) (Carson, J., dissenting) (internal citation omitted). "A single action never causes the rifle to fire more than one shot." *Guedes*, 66 F.4th at 1027 (Walker, J., dissenting).

The short of the matter is this: Petitioners can interpret Section 5845 in a way that encompasses bump stocks only if they read "function of the trigger" to *exclusively* mean "pulling the trigger with the backward motion of the index finger." Yet Petitioners themselves acknowledge that this reading is untenable, since it would exclude from the statute's reach any other way of activating the trigger, as well as the use of firearms that are discharged by alternate triggers not operated with the index finger at all. Accordingly, under Petitioners' own interpretation of the statutory phrase "single function of the trigger," bump stocks do not qualify as machine guns.

3. That point also suffices to dispose of Petitioners' reliance on various snippets of legislative history where "function of the trigger" is used interchangeably with "pull of the trigger." The Government develops this argument at great length, citing multiple hearings and committee reports. Pet.Br.18–20. It also cites a 1934 Treasury Department ruling, and this Court's statement in *Staples v. United States*, 511 U.S. 600, 602 n.1 (1994), that "a weapon that fires repeatedly with a single pull of the trigger" is a machinegun. *See* Pet.Br.21. But the argument fails on multiple levels. For starters, "legislative history is not the law," *Azar v. Allina Health Servs.*, 587 U.S. ---, 139 S. Ct. 1804, 1814 (2019), and all Petitioners'

legislative history shows here is that "pull of the trigger" was occasionally used interchangeably with, or as a sort of shorthand for, "function of the trigger." That is hardly surprising, given that the most common way of causing a trigger to function is by pulling it, and it proves nothing.

Indeed, that is precisely how Petitioners understand their various examples of the two phrases being used interchangeably. After reproducing those phrases over the course of several pages, they are forced to immediately concede that "[a]ll that said, the term 'single function of the trigger' is not limited to a single pull of the trigger," since it must include other ways of activating the trigger. Pet.Br.21. And as explained above, once the statutory language is understood as including ways of pulling or activating a trigger other than exclusively through the rearward motion of the index finger, then it must include pulling the trigger by bump-firing it—and bump stocks can no longer be counted as machine guns. Accordingly, even if the Government's legislative history argument were persuasive on its substance (and it is not), it ultimately leads nowhere.

4. Returning to the actual statutory text, Petitioners next argue that the phrase "function of the trigger" should be interpreted from the perspective of "what the shooter does to the trigger," rather than the "movement of the trigger itself," because "triggers do not activate firearms on their own; rather, a firearm starts firing only because the shooter does something to the trigger." Pet.Br.25. Yes, firearms do not go off "on their own," *id.*, but the plain text of Section 5845 "is indifferent about *why* the trigger moves—pull, bump, or otherwise—it looks only to how many shots

are fired each time the trigger moves." *Guedes*, 66 F.4th at 1026 (Walker, J., dissenting). The phrase "function of the trigger" thus "continuously points the reader back to the mechanics of the firearm." Pet.App.23a–24a. "The statute speaks only to how the trigger acts, making no mention of the shooter." *Aposhian*, 989 F.3d at 895 (Tymkovich, C.J., dissenting). Petitioners' interpretation of the statute as "refer[ring] to the shooter's action on the trigger," Pet.Br.25, is thus flatly contrary to the text.

The Government attempts to bolster its atextual reading by pointing to "other phrases with the same structure" that, it says, support its user-focused interpretation. Pet.Br.25–26. The phrase " '[s]troke of a key,' " according to Petitioners, refers to what the typist does to the key, " 'throw of the dice' to what the gambler does to the dice, and 'swing of the bat' to what the hitter does to the bat. So too for 'press of a button,' 'touch of a screen,' 'flip of a switch,' 'toss of a coin,' and 'wave of a wand.' " Far from supporting Petitioners' interpretation, these examples refute it. Most of these examples are highly rhetorical expressions that possess emotive force *precisely because* they focus on the object being acted upon at the exclusion of the person acting. Saying that the outcome of some event hangs on the "throw of the dice" has such expressive power precisely because it focuses on the random chance or fate guiding the motions of the dice itself, divorced from any control by the one who throws it; writing that someone can accomplish some feat with "the flip of a switch" conveys the unusual power of the machinery being used, precisely because the phrase focuses on the mechanical switch being manipulated to the exclusion of the individual using it. So too, the phrase

"function of the trigger" compels the reader to focus on "the function/action of the trigger itself [as] the only variable that matters." *Aposhian* 958 F.3d at 994 (Carson, J., dissenting).

In all events, Petitioners' insistence that the Court focus on "what the shooter does to the trigger," Pet.Br.25, is ultimately a red herring. Of course, what the user of a bump-stock-equipped semiautomatic firearm *does to the trigger*, in order to discharge the firearm, is *activate it through some bodily motion*. The important point is that the statutory text—as well as Petitioners' interpretation of it, in fact—is agnostic as to *what specific bodily motion the user employs*. *See Bump-Stock-Type Devices*, 83 Fed. Reg. 66,514, 66,535 (Dec. 26, 2018) (codified at 27 C.F.R. § 479.11) ("The term 'single function' is reasonably interpreted to also include other analogous methods of trigger activation."). And used in conjunction with a bump stock or not, *each time the user of a semiautomatic firearm activates the trigger, it fires only a single shot*. The bump stock affects only the speed with which a user can use his body to activate the trigger—not how many rounds are fired with a single activation of the trigger.

5. Petitioners object that following the plain and obvious meaning of Section 5845's text would be contrary to the ATF's "longstanding practice" of interpreting the definition of "machinegun" as encompassing the mechanical bump stock known as the "Akins Accelerator." Pet.Br.26–27. This case concerns non-mechanical bump stocks, so the Court need not address the applicability of Section 5845 to mechanical ones. And if anything, the Government's 2006 determination that the Akins Accelerator is a machine gun illustrates the *unpersuasiveness* of its interpretation

of the Act. That 2006 interpretation was itself a flip-flop—four years earlier, ATF had concluded that the device was *not* a machinegun because it correctly "interpreted the statutory term 'single function of the trigger' to refer to a single movement of the trigger." *Bump-Stock-Type Devices*, 83 Fed. Reg. at 66,517.

6. "In a final bid to elide the statutory text, [the Government] appeals to congressional purpose." *Biden v. Nebraska*, 600 U.S. ---, 143 S. Ct. 2355, 2372 (2023). "[A] machinegun is dangerous precisely because it eliminates the manual movements that a shooter otherwise needs to repeat in order to fire multiple shots," the Government insists, and so "[t]he statute's evident purpose" must be to regulate whatever firearms possess a requisite degree of "dangerousness." Pet.Br.24–25. But as this Court has come to understand, "[n]o law pursues its purposes at all costs." *Hernandez v. Mesa*, 589 U.S. ---, 140 S. Ct. 735, 741–42 (2020) (cleaned up). "Instead, lawmaking involves balancing interests and often demands compromise." *Id.* at 742. "For these reasons and more besides [this Court] will not presume with petitioners that any result consistent with their account of the statute's overarching goal must be the law but will presume more modestly instead that the legislature says what it means and means what it says." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017) (cleaned up). And here the statutory text passed by Congress draws the line that divides innocence from guilt not in terms of "the weapon's dangerousness," Pet.Br.25, or even its "rapid-fire capability," Pet.Br.40, but rather how many times the trigger must "function" to fire "more than one shot," 26 U.S.C. § 5845(b).

Petitioners attempt to dress their naked purposive argument in more attractive garb, casting it as a mere "anti-circumvention" rule preventing "offenders [from] elud[ing] [the statute's] provisions in the most easy manner." Pet.Br.38. Anti-circumvention principles "confirm that rifles with bump stocks are 'machineguns' under federal law," the Government says, because "rapid-fire capability poses an immense danger to the public," and "[l]ike other machineguns, rifles equipped with bump stocks have a prodigious rapid-fire capability upon a pull of the trigger." Pet.Br.40–41 (cleaned up). The end of the story thus reveals that the argument has no clothes: it is the same naked appeal to general congressional purposes that was there all along. For whatever subjective purposes our legislators might have been pursuing, the statute they ultimately settled upon *does not* distinguish lawful from unlawful firearms in terms of their "rapid-fire capability." Pet.Br.41. And adhering to the distinction they *did* adopt—between firearms that can and cannot fire more than one shot "by a single function of the trigger," 26 U.S.C. § 5845(b)—is not *circumventing* the statute, it is *faithfully applying* it.

Congress may yet choose to define "machinegun" in terms of a firearm's rate of fire rather than how many rounds are fired by each function of its trigger. But it is up to the elected lawmakers in that body to adopt such an amendment—not the bureaucrats at ATF, and not even this Court.

B. Firearms Equipped with Non-Mechanical Bump Stocks Do Not Function Automatically.

The bump stocks at issue are not "machineguns" under Congress's definition for a second and independent reason: they do not fire more than one shot "automatically." 26 U.S.C. § 5845(b). When Congress adopted that definition, "automatically" meant "self-acting under conditions fixed for it," or "going of itself." Pet.App.28a (cleaned up) (quoting OXFORD ENGLISH DICTIONARY at 574 (1933)). And a non-mechanical bump stock does not permit a semiautomatic firearm to fire more than one bullet in a "self-acting" manner. Rather, the firearm continues to fire *only* if the user undertakes the separate, continuous action of maintaining forward pressure on the front part of the firearm. It is only that distinct action that causes the successive rounds to fire—*not* the firearm or bump stock "going of itself." And "[a] mechanism cannot be self-acting or self-regulating if it requires user input to keep working." *Guedes*, 66 F.4th at 1027 (Walker, J., dissenting).

"Automatically" means an individual need do no more once a trigger is engaged to keep a firearm firing. Consider an "advertisement," which "declares that a device performs a task 'automatically by a push of a button.' " *Guedes v. BATFE*, 920 F.3d 1, 44 (D.C. Cir. 2019) (Henderson, J., concurring in part and dissenting in part). Most "would understand the phrase to mean pushing the button activates whatever function the device performs. It would come as a surprise . . . if the device does not operate until the button is pushed and *some other action is taken*—a pedal

pressed, a dial turned and so on." *Id.* at 45 (emphasis added).

To read "automatically" to encompass even those mechanisms that require additional manual input from the individual shooter would elide the distinction between "automatic" and "semiautomatic." "[A]n automatic gun reloads and fires automatically, so long as the shooter keeps his finger on the trigger." *Guedes*, 66 F.4th at 1027. By contrast, "[a] semiautomatic gun is one 'in which part, *but not all*, of the operations involved in loading and firing are performed automatically.' " *Id.* (emphasis added) (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY 187 (2d ed. 1934)). "A gun modified by a bump stock works *semi* automatically: the shooter plays a manual role in the firing process because he must keep constant pressure on the bump stock." *Id.*[7]

Indeed, a semiautomatic firearm equipped with a non-mechanical bump stock is indistinguishable in this respect from another type of firearm that Petitioners themselves concede does not fire multiple shots automatically. Certain shotguns allow the user

[7] In fact, to accept ATF's definition would mean that nearly *all* semiautomatic rifles are automatic because these firearms can be bump fired without a non-mechanical bump stock. While bump stocks make certain aspects of the process more efficient, there are many other ways to facilitate bump firing. For example, a video of a user bump firing a semiautomatic firearm with the help of only his belt loop is available at YOUTUBE (Aug. 7, 2021), https://bit.ly/496O5ax. Thus, as the court below recognized, "if ordinary bump firing constituted automatic fire, the Final Rule would convert a semiautomatic weapon into a machinegun simply by how a marksman used the weapon. That absurd result reveals the flaw in the Government's line of reasoning." Pet.App.31a (quotation marks omitted).

to fire continuously by "pull[ing] the trigger, hold[ing] it back, and pump[ing] the fore-end. The pump-action ejects the spent shell and loads a new shell that fires as soon as it is loaded." 83 Fed. Reg. at 66,534. When a commenter on the Government's proposed rule pointed out that this type of shotgun thus fires multiple shots with a single pull of the trigger, the Government responded that it nonetheless does not qualify as a machine gun because "it does not shoot 'automatically,' and certainly does not shoot 'without manual reloading.'" *Id.* (quoting 26 U.S.C. 5845(b)). Maintaining forward pressure on the fore-end of a bump-stock-equipped firearm is a manual function no materially different than pumping the fore-end of a pump-action shotgun. Yet Petitioners concede the latter function is sufficient to prevent the shotguns in question from firing more than one shot "automatically." *Id.* The same conclusion must follow for bump stocks. Petitioners now protest that these shotguns "require[ ] a greater degree of shooter input" than non-mechanical bump stocks, Pet.Br.38, but the line Congress drew is one that distinguishes between firearms that can and cannot fire multiple shots "automatically"—by "going of itself" without any further human input whatsoever (apart from the function of the trigger), Pet.App.86a—not one that depends on the government's nebulous assessment of the "degree of shooter input" involved.

C. Reading the Statutory Language As a Whole Confirms Beyond Any Doubt that Non-Mechanical Bump Stocks Are Not "Machineguns."

The statutory phrases limiting "machineguns" to firearms that fire multiple shots "automatically" and "by a single function of the trigger," 26 U.S.C. 5845(b),

each independently doom Petitioners' attempt to sweep non-mechanical bump stocks within that definition. But the matter is even clearer when the two phrases are read, as they must be, together as a single unit. A statutory provision's "text must be construed as a whole," ANTONIN SCALIA & BRIAN GARNER, READING LAW 167 (2012), yet many of Petitioners' arguments are based on a divide-and conquer approach that seeks to engage the phrases "single function of the trigger" and "automatically" in isolation from each other and then defeat them seriatim. That is not how statutory interpretation works. And when the phrase "shoot, automatically more than one shot, without manual reloading, by a single function of the trigger" is understood as a whole, Petitioners' arguments collapse.

1. The Government repeatedly asserts, for example, that bump stocks enable a user to fire more than one round "by a single function of the trigger," 26 U.SC. § 5845(b), because the initial activation of the trigger "initiates a firing sequence" that discharges multiple rounds. Pet.Br.23. But Congress did not write a definition of "machinegun" that includes any firearm that "*initiates a firing sequence of more than one shot* by a single function of the trigger." Instead, Congress provided that what a "single function of the trigger" must do, for an arm to be a machine gun, is "shoot, automatically more than one shot." 26 U.SC. § 5845(b). Petitioners' attempt to distinguish between using a trigger to "initiate" a firing sequence and to "continue[ ] a sequence that has already begun," Pet.Br.24, is thus flatly contrary to the statutory text. The statute does not speak in these terms; it is limited

to firearms that use a single function of the trigger to *fire more than a single shot*.

Worse still, if Section 5845 applied to any firearm allowing the user to *initiate a firing sequence* of more than one shot with a single function of the trigger, it would appear to encompass *every semiautomatic firearm*. For *every time* a user fires more than one round through ordinary semiautomatic fire, he has arguably "initiate[d] a firing sequence that produces more than one shot," 83 Fed. Reg. at 66,519, with a single function of the trigger—*the first one*. But that does not transform a semiautomatic firearm into a machinegun because it still does not *shoot, automatically more than one shot*" with each trigger activation. The same is true when the firearm is equipped with a bump stock.

2. The Government adopts the same *in abstracto* approach to interpreting "automatically." It repeatedly argues, for example, that "the word 'automatic' does not connote a complete absence of human involvement." Pet.Br.33. Instead, it insists, the word encompasses "devices which perform *parts* of the work formerly or usually done by hand," such as "an automatic teller machine," "an automatic car wash," or "an automatic sewing machine." Pet.Br.32 (emphasis added) (cleaned up). That proposition might be relevant if Congress had defined "machinegun" as "a firearm that operates automatically," *plano*. It did not. Instead, Congress took care to specify precisely the way in which a machinegun must operate automatically: by "shoot[ing], automatically more than one shot . . . by a single function of the trigger." 26 U.SC. § 5845(b). A consumer who purchases a device advertised as an "automatic sewing machine" might

understand that he still must "press a pedal and direct the fabric." *Guedes*, 920 F.3d at 30 (cleaned up). But if the advertisement further stated that the machine "sews, automatically more than one stitch by a single function of the pedal," he would no doubt be surprised to learn that it stopped after the first stitch unless he continued to hold down a lever elsewhere on the machine.

Reading the statutory definition as a whole also refutes Petitioners' marquee argument in support of the notion that a non-mechanical bump stock allows a semiautomatic firearm to operate "automatically": that it requires no greater degree of human input than a fully automatic firearm. "In order to fire continuously" with a fully automatic arm, the Government notes, "the shooter must not only pull the trigger, but also keep the trigger pressed down." Pet. Br. 33. And "[t]here is no meaningful difference," it says, "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." Pet.Br.34 (cleaned up).

This argument fails because maintaining pressure on the trigger of a fully automatic machinegun *is* very different in the following respect: that user input is a "function *of the trigger*." 26 U.S.C. § 5845(b) (emphasis added). And under the statutory definition Congress actually wrote, that difference is dispositive. Section 5845 does not define "machinegun" as a firearm that fires multiple shots automatically, full stop—that is, without *any input from the user whatsoever*. Rather, it defines "machinegun" as a firearm that fires more than one round automatically "by a single function of the trigger." *Id.* A conventional

machinegun is automatic in just this sense: it "go[es] of itself," Pet.App.28a, *so long as* the user directs it to do so by the "function of the trigger," 26 U.S.C. § 5845(b). A semiautomatic firearm equipped with a non-mechanical bump stock does not, because the user can fire more than one round only if he undertakes a continuous action that *is separate and distinct* from the function of the trigger: maintaining forward pressure on the firearm with his other hand.

3. Similar reasoning disposes of Petitioners' various and increasingly far-fetched hypotheticals designed to undermine the plain meaning of Section 5845's text. For example, Petitioners imagine a device that fires multiple shots continuously with a single pull of the trigger, but only so long as the user also keeps "pressing and holding down a selector button." Pet.Br.36. This imaginary device also appears to be distinct from a non-mechanical bump stock—and again, in just the way that the statutory text singles out. For if pressing the button merely serves to *keep the trigger engaged*, as Petitioners' hypothetical suggests, then this action is best understood as simply *a part of* the "function of the trigger" itself—in the same manner as the automatic firearms discussed by Petitioners elsewhere, which use triggers that have to be pushed with the thumb rather than pulled with the index finger. Pet.Br.22. Like those firearms, Petitioners' hypothetical device would still fire multiple rounds "automatically" with each "function of the trigger," and so it would qualify as a machinegun under Section 5845(b)'s definition.

The same is true of the "AutoGlove" discussed by Petitioners, that used "a mechanized piston on the glove" to "repeatedly pull[ ] and releas[e]" a

semiautomatic firearm's trigger. Pet.Br.29; *see also id.* (discussing similar "motarized devices"). That device appears to be nothing more than an elaborate way of *replacing* a firearm's normal trigger ("the curved metal lever") with a new one (the mechanism used to "activate[ ] the glove") that only needs to function once to fire more than one round automatically. *Id.*; *see also* Pet.App.26a (trigger can be "something other than the metal lever"). A firearm plainly falls within Section 5845(b)'s definition if someone modifies it by altering the action and installing an auto sear that enables fully automatic fire. The same is true if the alteration uses a more elaborate device like the AutoGlove.

Likewise with the "forced reset trigger" raised by Petitioners. Pet.Br. 28. That device literally replaces a semiautomatic firearm's ordinary trigger assembly with a new one that "has no disconnector" at all; instead, when the hammer is thrust backward by the force of discharging a round, it is "momentarily held in place" by a "locking bar" until the next round is chambered, and then it is immediately released to fire a successive round, so long as the user "has simply maintained rearward pressure on the trigger." *United States v. Rare Breed Triggers, LLC*, 2023 WL 5689770, at *6 (E.D.N.Y. Sept. 5, 2023) (cleaned up). The forced reset trigger thus operates in a manner closely akin to the trigger on an ordinary fully automatic firearm—and despite the fact that one can see a forced reset trigger "move slightly back and forth against the shooter's finger with each shot" if one views its operation "in extreme slow motion," Pet.Br.28, it is clear that a firearm equipped with the device can "shoot, automatically more than one shot . . . by a single function of the trigger." 26 U.S.C. § 5845(b).

A bump stock is nothing like these real or imagined devices. Yes, it increases the speed with which the user activates the trigger—and hence the overall rate of fire. But Congress did not define "machinegun" in those terms. It remains free to do so, but unless and until it does, this Court must enforce the definition Congress has enacted.

CONCLUSION

The Court should affirm.

January 29, 2024

Respectfully submitted,

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