

No. 22-976

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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 THE DISTRICT OF COLUMBIA,  
ARIZONA, CALIFORNIA, COLORADO,  
CONNECTICUT, DELAWARE, HAWAII,  
ILLINOIS, MAINE, MARYLAND,  
MASSACHUSETTS, MICHIGAN, MINNESOTA,  
NEVADA, NEW JERSEY, NEW MEXICO,  
NEW YORK, NORTH CAROLINA, OREGON,  
PENNSYLVANIA, RHODE ISLAND, VERMONT,  
AND WASHINGTON AS *AMICI CURIAE*  
IN SUPPORT OF PETITIONER**

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**QUESTION PRESENTED**

Federal law has long restricted access to machine guns. A machine gun is defined as “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,” as well as a “part designed and intended solely and exclusively . . . for use in converting a weapon into a machinegun.” 26 U.S.C. § 5845(b). A “bump stock” is a device designed and intended to permit users to convert a semiautomatic rifle so that the rifle can be fired continuously with a single pull of the trigger, discharging hundreds of bullets per minute.

The question presented is whether a bump stock is a “machinegun” as defined in 26 U.S.C. § 5845(b).

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## INTRODUCTION AND INTEREST OF *AMICI CURIAE*

The District of Columbia and the States of Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington (collectively, the “*Amici States*”) file this brief as *amici curiae* in support of petitioner the Bureau of Alcohol, Tobacco, and Firearms (“ATF”) and its rule banning bump stocks. *Amici States* are jurisdictions across this Nation concerned about the severe public-safety threats posed by automatic weapons. Many *Amici* have already passed state-level bans on bump stocks based on their authority to protect the well-being of their residents. But state-by-state enforcement is not always sufficient when firearms can travel so easily across state lines, evading local regulations. ATF’s Final Rule classifying bump stocks as machine guns is a critical federal supplement to state regulation—one that furthers a long tradition of regulating or barring automatic weapons and their equivalents.

Machine guns are military-grade weapons designed primarily to create an indiscriminate “kill zone.” Bump-Stock-Type Devices, 83 Fed. Reg. 66514, 66520 (Dec. 26, 2018). They are not useful for hunting, sport, or self-defense. For that reason, federal law has strictly regulated automatic weapons since 1934 and has prohibited civilian ownership of new machine guns for the last half-century. Aiming to evade these federal regulations, the

firearms-accessory industry recently began to sell “bump stock” devices, which are marketed as workarounds to circumvent the general ban on automatic weapons. They enable users to approximate automatic firing using semiautomatic rifles, by harnessing recoil from each discharge to “bump” the gun’s trigger. As long as a gunman applies pressure to the barrel, he need only “pull” the trigger once—if at all. The dangers of bump stocks were made tragically clear in the 2017 massacre of 58 civilians in Las Vegas, where witnesses reported a barrage of fire akin to the spray of a traditional automatic weapon.

In 2018, following the Las Vegas shooting, President Trump directed ATF to promulgate a rule classifying bump stocks as machine guns for the purposes of federal firearms law. That Rule accords with the common-sense understanding that bump-stock-equipped rifles are machine guns in every relevant sense. It also ensures that longstanding legislative policy choices to prohibit automatic weapons are not undermined by transparent technological workarounds. But respondent now asks this Court to invalidate the Final Rule based on a parsimonious reading of ninety-year-old statutory text. That reading would reward efforts to skirt Congress’s directives and undermine public safety and local law enforcement. And it is at odds with the clear policy choice that Congress has made—and twice re-affirmed over several decades—to eliminate military-grade automatic weapons from public life. *Amici* States share Congress’s interest in keeping machine guns off our streets and accordingly urge this

Court to reverse the Fifth Circuit's invalidation of the Final Rule.

### SUMMARY OF ARGUMENT

I. The Final Rule follows directly from a century-old state and federal effort to regulate automatic weapons like machine guns, which create a unique threat to public safety and to the lives of law enforcement officers. Regulating bump stocks is consistent with a longstanding statutory scheme that Congress has crafted to encompass all devices designed to replicate automatic fire.

A. After machine guns began to proliferate commercially in the mid- to late-1920s, their criminal uses and ability to rapidly fire multiple rounds with a single trigger pull provoked regulatory scrutiny. In response to the increasing threats to public safety, a flurry of state bans on selling or possessing automatic weapons took effect. Eventually, Congress enacted the National Firearms Act of 1934, a taxing-and-registration scheme designed to dry up sales of automatic weapons nationwide. At first, it worked. But over the ensuing decades, gun manufacturers devised new ways to evade regulation by exploiting perceived loopholes in the definition of a "machinegun." In the 1980s, Congress responded decisively, passing legislation to make clear that *any* device designed to enable fully automatic fire is a machine gun. Today, civilian sales or transfers of new machine guns are prohibited outright.

B. The Final Rule is faithful to this longstanding statutory directive and accords with the common-sense understanding that weapons equipped with bump stocks *are* machine guns. Once affixed to a

semiautomatic rifle, bump stocks enable individuals to attain an automatic rate of fire with virtually no additional effort. A shooter need only hold his trigger finger steady and maintain pressure on the barrel. With that minimal input, bump-stock-equipped rifles can slaughter dozens within minutes—just like the machine guns Congress targeted in the 1930s. During the notice-and-comment process, law enforcement officers in particular supported the treatment of bump stocks as machine guns, given the obvious threat posed to state and local officers. As ATF correctly recognized, Congress’s definition of a machine gun thus reasonably includes bump stocks. The Final Rule ensures that new technologies do not evade regulation purely by dint of novelty or otherwise thwart congressional intent.

II. In addition, by including bump stocks within the category of federally prohibited firearms, the Final Rule fulfills a core historic function of federal firearms policy: to prevent circumvention of local gun laws and aid local law enforcement.

A. Seventeen states and the District of Columbia currently restrict bump stocks through bans on possession or sales. These laws recognize that bump stocks present the same dangers as more traditional automatic weapons. Much like the state regulation of machine guns in the 1920s, this initial effort by states is a vital component of a nationwide response to a troubling new technology.

B. But federal law and policymaking have historically recognized that state-by-state prohibitions are not always sufficient to redress the harms of dangerous firearms. Interstate gun

trafficking enables criminals to evade state laws, making local enforcement difficult. This commerce in guns creates spillover effects, raising firearm homicide rates in neighboring states. By faithfully interpreting the federal machine-gun prohibition, the Final Rule ensures that states with strong local laws are not undermined by laxer regulations in neighboring jurisdictions.

ATF is well-positioned to implement this ban. As the federal agency empowered with administering the nation's gun laws, ATF has the expertise and authority to respond quickly to new technologies like bump stocks as they arise. And, here, ATF has recognized what is already clear: bump stocks transform ordinary weapons into machine guns, and as such they are covered by the existing federal prohibition.

## **ARGUMENT**

### **I. The Final Rule Is Consistent With A Long History Of Federal And State Laws Barring The Possession Of Machine Guns.**

Shortly after automatic weapons became commercially popular in the 1920s, they were increasingly found in the hands of criminals. Following several high-profile mass shootings, policymakers recognized the problem these weapons posed: by allowing civilians to rapidly fire multiple rounds with the single pull of a trigger, machine guns created a unique hazard to public safety. States first began addressing the problems posed by machine guns in the mid- to late-1920s, and Congress followed suit in 1934 with a nationwide taxing-and-registration regime. These efforts culminated in a

federal ban on the possession or transfer of new machine guns in 1986. Today, federal law prohibits the possession of “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). The statute also encompasses “any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun.” *Id.*

Bump stocks pose the same dangers that prompted state and federal regulation of machine guns. And they fit comfortably within the statutory text, which covers any device that “is designed to shoot . . . automatically” multiple shots “by a single function of the trigger.” *Id.* Put simply, a common-sense reading of the statute encompasses all weapons that automatically fire multiple shots with the ease of a single trigger pull. Because bump stocks fit this bill, this Court should uphold the Final Rule.

**A. Congress and state legislatures have consistently regulated or prohibited automatic weapons capable of rapid fire with a single trigger pull.**

Machine guns first became commercially available in the 1920s, following advances in firearm technology during World War I. *See* Robert J. Spitzer, *Understanding Gun Law History After Bruen: Moving Forward by Looking Back*, 51 *Fordham Urb. L.J.* 57, 61 (2023). Once the guns started circulating, their “uniquely destructive capabilities rapidly became apparent.” *Id.* at 62-63. With a single pull of the trigger, machine guns could fire a devastating



number of rounds at a rapid clip. *Id.* at 61-63. Newspapers were replete with “lurid and sensational accounts” of machine-gun crime, such as the use of the Thompson submachine gun (or “Tommy gun”) at the St. Valentine’s Day massacre in 1929. *Id.* at 63. Indeed, machine guns were considered so dangerous that not even the police wanted to use them. *See id.* at 62. As one police chief explained: “It is not possible for a police officer to open a machine gun up on a crowded street” because it risks “kill[ing] possibly ten innocent people to one criminal.” *Id.*

States acted first to address the problem machine guns posed. West Virginia banned possession of machine guns, with limited exceptions, by 1925. *See* 1925 W. Va. Acts 24, 30-32 (First Extraordinary Sess.). Several other states banned possession outright by 1927. *See, e.g.*, 1927 Cal. Stat. 938; 1927 Ind. Acts 469; 1927 Iowa Acts 201; 1927 N.J. Laws 180-81. For example, Rhode Island prohibited “*any* weapon which shoots automatically” as well as “any weapon which shoots more than twelve shots semiautomatically.” 1927 R.I. Pub. Laws 256-57 (emphasis added). Similarly, Michigan banned the manufacture, sale, or possession of “any machine gun or firearm which can be fired more than sixteen times without reloading.” 1927 Mich. Pub. Acts 888.

Model state laws soon incorporated this same ban on automatic weapons that could fire repeatedly with ease. In 1932, Congress mirrored Rhode Island’s definition nearly verbatim in passing a machine-gun ban for the District. *See* Pub. L. No. 72-275, § 1, 47 Stat. 650, 650 (1932). That same year, the National Conference of Commissioners on Uniform State Laws

issued a model law that all but prohibited the possession of a “machine gun,” defined as “a weapon of any description by whatever name known, loaded or unloaded, from which more than five shots or bullets may be rapidly, or automatically, or semi-automatically discharged from a magazine, by a single function of the firing device.” *Uniform Machine Gun Act*, Nat’l Conf. of Comm’rs on Unif. State Laws, 42d Annual Conference, Washington, D.C. (Oct. 4-10, 1932), <https://tinyurl.com/2fhfphjn>. Overall, a majority of states enacted anti-machine-gun laws between 1925 and 1934. Spitzer, *supra*, at 64.

Congress then intervened on a nationwide basis. By 1934, legislators were confronting what Attorney General Homer S. Cummings called “a very serious national emergency.” *National Firearms Act: Hearings on H.R. 9066 Before the H. Comm. on Ways and Means*, 73d Cong. 4 (1934) (“*NFA House Hearings*”). The resulting law, the National Firearms Act of 1934 (“NFA”), imposed taxing and registration requirements on the importation, sale, or transfer of “firearms,” which included “machine gun[s].” Pub. L. No. 73-747, ch. 757, 48 Stat. 1236, 1236. A machine gun, in turn, was defined as “any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger.” *Id.* § 1(b), 48 Stat. 1236. The House Report explained that the NFA was meant to provide a “remedy” to the “evil” of “machine gun[s],” noting that “there is no reason why anyone except a law officer should have a machine gun or sawed-off shotgun.” H.R. Rep. No. 73-1780, at 1 (1934).

Although some state prohibitions had included requirements regarding the size of a gun's magazine, the NFA focused instead on the amount of human input necessary to sustain automatic fire. The definition Congress settled on hinged on the ability to fire multiple shots with a single "pull" or "function" of the trigger—the terms were used interchangeably. As the president of the National Rifle Association ("NRA"), Karl T. Frederick, explained in testimony before the House, for non-automatic guns, "[y]ou must release the trigger and pull it again for the second shot to be fired." *NFA House Hearings* at 41. But the danger of a machine gun was that it "pours out a stream of bullets with a single pull." *Id.* Preventing that "stream of bullets" became a defining objective of federal firearms policy.

Congress's principal concern in crafting the NFA was thus to reduce the public-safety threat of automatic weapons, and it wrote the law to prevent circumvention through technological gambits. For instance, Congress ultimately departed from what was proposed in the original bill, which had copied the wording of the many state laws regulating guns with a 12-round magazine capacity. *See id.* at 1. Committee members had worried that this focus was misplaced for the NFA, as it created incentives for "some unscrupulous manufacturer of these machine guns" to produce a gun with an 11-round capacity and thus circumvent the law. *Id.* at 14 (statement of Rep. Hatton W. Sumners). Echoing this concern in his testimony before the House Ways and Means Committee, Frederick proposed the definition that the Committee eventually adopted. *See id.* at 39-40; *id.* at 83 (revised text); *id.* at 97 (statement of

Assistant Attorney General Joseph B. Keenan, explaining that the Department of Justice (“DOJ”) adopted Frederick’s definition in their revised bill). Again, as Frederick explained: “The distinguishing feature of a machine gun is that by a *single pull of the trigger* the gun continues to fire as long as there is any ammunition in the belt or in the magazine.” *Id.* at 40 (emphasis added). From the inception of the NFA, then, Congress’s concern was automatic fire—and preventing gun manufacturers from thwarting federal regulation through technical workarounds.

By enacting the NFA, Congress intended to eliminate the commercial sale of machine guns to civilians. It originally did so by imposing a tax, rather than an outright prohibition, because the latter was thought at the time to be outside Congress’s Article I powers. Attorney General Cummings testified that “a statute absolutely forbidding any human being to have a machine gun” might raise a “constitutional question” about congressional authority. *Id.* at 19; *see id.* at 100 (Assistant Attorney General Keenan explaining that the power to prohibit machine guns outright did not “reside[] in Congress”). DOJ had thus designed their proposed bill “meticulously to follow the Harrison Act,” *id.*, an anti-narcotics law that imposed taxes on distributors, manufacturers, producers, and importers of opium and cocaine, *see* Pub. L. No. 63-223, ch. 1, 38 Stat. 785 (1915). Such tax-based regulatory regimes were understood to generate congressional jurisdiction over intrastate transactions. *See* Franklin E. Zimring, *Firearms and*

*Federal Law: The Gun Control Act of 1968*, 4 J. Legal Stud. 133, 138 (1975).<sup>1</sup>

The taxes imposed by the NFA were onerous. The lowest rate—\$200 per transfer, NFA § 3(a), 48 Stat. at 1237—was equivalent to 100 percent of the price of a Tommy gun, *see Machine Gun Added to Police Auto’s Arsenal*, *Tulsa Daily World*, Aug. 20, 1933, at 7. That tax burden, coupled with widespread state bans, had a dramatic effect: after the passage of the NFA, “[l]egitimate sales” of machine guns “dried up almost overnight.” Adam Winkler, *Gunfight: The Battle Over the Right to Bear Arms in America* 203 (2011). The NFA also initially required existing machine-gun owners to register with the Secretary of the Treasury, “identifying such firearm, together with his name, address, place where such firearm is usually kept, and place of business or employment.” NFA § 5(a), 48 Stat. at 1238. Violations could result in fines up to \$2,000 or a prison sentence of up to five years. *Id.* § 14, 48 Stat. at 1240.

As gun technology advanced, Congress adapted, maintaining its commitment to eliminating automatic weapons. In the Gun Control Act of 1968 (“GCA”), Congress broadened the definition of machine gun to include “any combination of parts designed and intended for use in converting a weapon into a machinegun, and any combination of parts from

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<sup>1</sup> Indeed, the NRA even supported an outright ban on machine guns over a taxing-and-registration scheme that covered a broader array of firearms. *See To Regulate Commerce in Firearms: Hearings on S. 885, S. 2258, & S. 3680 Before a Subcomm. of the S. Comm. on Com., 73d Cong. 70* (1934) (“*NFA Senate Hearings*”).

which a machinegun can be assembled if such parts are in the possession or under the control of a person.” Pub. L. No. 90-618, § 201, 82 Stat. 1213, 1231. The new definition was designed to encompass “M-2 conversion kits,” which were “widely available” at the time and could convert a semiautomatic rifle into an automatic one. David T. Hardy, *The Firearm Owners’ Protection Act: A Historical and Legal Perspective*, 17 *Cumb. L. Rev.* 585, 668 (1987). The GCA thus brought these kits under the auspices of the federal registration and taxing regime.

But gun manufacturers continued to craft workarounds. “[S]ome manufacturers began to market a single part—usually a modified trigger or interrupter—which, when installed in a designated semiautomatic rifle, converted it to fully automatic fire.” *Id.* Because these modifications required only a single “part,” not a “combination of parts,” they escaped regulation even under the GCA’s expanded definition. In the 1980s, a special task force under President Reagan’s Attorney General William F. Smith issued a report warning of the dangers of “readily available parts” that converted semiautomatic weapons into fully automatic weapons with “simple tool work.” Cong. Rsch. Serv., *Federal Regulation of Firearms: A Report Prepared for the Use of the Senate Committee on the Judiciary* 26 (May 1982). At the time of the report, 20 percent of the machine guns seized or purchased by ATF had been so converted from semiautomatic firearms. *Id.* The task force recommended empowering ATF to “classify semi-automatic weapons that are easily converted into fully automatic weapons as” NFA firearms. *Id.* at 21. Later, in a letter submitted to the House

Committee on the Judiciary, the Director of ATF described the “unlawful conversion of semiautomatic weapons into machineguns” as an “increasing nationwide problem.” *Legislation to Modify the 1968 Gun Control Act: Hearings Before the H. Comm. on the Judiciary*, 99th Cong. 223 (1985) (“FOPA Hearings”).

At the same time, machine-gun sales were soaring. Between 1979 and 1984, the number of machine guns sold increased by 60 percent. *Armor Piercing Ammunition and the Criminal Misuse and Availability of Machineguns and Silencers: Hearings on H.R. 641 & Related Bills Before the Subcomm. on Crime of the H. Comm. on the Judiciary*, 98th Cong. 107 (1984). One reason was the diminishing burden of the original NFA tax: one congressman observed that the \$200 tax imposed by the NFA was, 50 years later, “small potatoes.” *Id.* at 108 (statement of Rep. William J. Hughes). In addition, a thriving drug trade was driving machine-gun usage, as “drug smugglers and dealers” were “embracing the machine-gun as the weapon of preference.” *Id.* at 110 (statement of Stephen E. Higgins, ATF Director).

Eventually, Congress once again acted to close these additional loopholes and reduce the danger of automatic weapons. To address the conversion problem, the 1986 Firearm Owners Protection Act (“FOPA”) re-defined a machine gun to include “any *part* designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun.” Pub. L. No. 99-308, § 109(a), 100 Stat. 449, 460 (emphasis added). Rather than raise the tax on machine guns, however, Congress opted for an express and complete

ban on civilian ownership of newly manufactured machine guns. *See id.* § 102, 100 Stat. at 453. It did so to provide “more effective protection of law enforcement officers from the proliferation of machine guns.” H.R. Rep. No. 99-495, at 7 (1986).

**B. The Final Rule ensures that bump stocks do not circumvent Congress’s careful regulatory scheme.**

The Final Rule continues the longstanding and bipartisan federal tradition of regulating automatic weapons or their equivalents. By prohibiting bump-stock devices, the Final Rule ensures that the “evil” of “machine guns” that Congress sought to address almost a century ago is not resurrected by minor technological workarounds. H.R. Rep. No. 73-1780, at 1.

Bump stocks first emerged because of the economic incentives that Congress’s machine-gun ban created. The FOPA’s creation of a “fixed universe” of pre-1986 machine guns that may be lawfully transferred between private parties drove up prices: by 2018, those guns cost between \$20,000 and \$30,000. Bump-Stock-Type Devices, 83 Fed. Reg. 13442, 13444 (Mar. 29, 2018). But semiautomatic versions of the same guns sold for 10 percent or less of that price. *See id.* This price premium created incentives to produce a regulatory workaround, spurring innovation in the firearm-accessories market. *See id.* As Jeremiah Cottle, the inventor of bump stocks, stated in a 2011 interview, he developed the original device because he “couldn’t afford what [he] wanted—a fully automatic rifle—so . . . [he made] something that would work and be affordable.”



Ann Givens, *Meet the Man Who Says He Invented the Bump Stock*, *The Trace* (Oct. 4, 2017), <https://tinyurl.com/mar4xru6> (quoting a 2011 interview in the *Albany News*).

Cottle succeeded in creating a device that fit his aim of circumventing federal law at an affordable price. In 2018, bump stocks could be legally acquired for an average of \$213—still a fraction of the cost of a pre-1986 machine gun, even when combined with the cost of a semiautomatic rifle. 83 Fed. Reg. at 66547. The concept was simple. Bump stocks are “designed to be affixed to a semiautomatic long gun . . . in place of the standard, stationary rifle stock.” *Id.* at 66516. When so attached, the device “harnesses and directs the firearm’s recoil energy to slide the firearm back and forth so that the trigger automatically re-engages by ‘bumping’ the shooter’s stationary finger without additional physical manipulation of the trigger by the shooter.” *Id.* In this manner, bump stocks enable users to “mimic automatic fire” simply by positioning their finger on the trigger ledge and maintaining forward pressure on the rifle’s barrel or front grip. *Id.*; see Pet. App. 103a. Like machine guns, bump stocks “eliminate the manual movements that the shooter would otherwise need to repeat in order to fire multiple shots.” U.S. Br. 35.

The results of a shooting with a bump stock can be catastrophic—and near-identical to those from a traditional automatic weapon. On October 1, 2017, a security officer in the Mandalay Bay Hotel and Casino in Las Vegas “heard what he described as automatic gunfire coming” from one of the rooms on the thirty-second floor. Las Vegas Metro. Police Dep’t, *LVMPPD*

*Criminal Investigative Report of the 1 October Mass Casualty Shooting* 7 (Aug. 3, 2018), <http://tinyurl.com/4f4auxta>. They were shots from a bump-stock-equipped semiautomatic rifle, one of several that Stephen Paddock had on hand as he gunned down concertgoers at the Route 91 Harvest Festival beneath him and committed the worst mass shooting in modern American history. See Bill Hutchinson et al., *The Anatomy of the Las Vegas Mass Shooting, the Deadliest in Modern U.S. History*, ABC News (Dec. 23, 2018), <https://tinyurl.com/4ryzm8ad>. For 11 minutes, Paddock terrorized the crowd. See *LVMPD Criminal Investigative Report*, *supra*, at 34. During this time, police radios reported hearing “fully automatic fire from an elevated position.” Hutchinson et al., *supra*; see *LVMPD Criminal Investigative Report*, *supra*, at 7, 34, 35, 41 (hotel security and police hearing “automatic” gunfire). By the time Paddock had finished his rampage, 58 people lay dead and almost 500 were injured. 83 Fed. Reg. at 66516.

In response to the shooting, ATF issued an advanced notice of proposed rulemaking to gather information about bump-stock devices. See *Application of the Definition of Machinegun to “Bump Fire” Stocks and Other Similar Devices*, 82 Fed. Reg. 60929 (Dec. 26, 2017). President Trump soon directed ATF “to propose for notice and comment a rule banning all devices that turn” semiautomatic weapons “into machine guns.” *Application of the Definition of Machinegun to “Bump Fire” Stocks and Other Similar Devices*, 83 Fed. Reg. 7949, 7949 (Feb. 23, 2018). Comments that ATF received confirmed what the Las Vegas shooting proved: bump-stock-

enabled firearms function as machine guns, with the same capacity for mass violence with a single trigger pull. Over 36,000 comments in support of the rule “expressly cited public safety, saving lives (or specifically saving children’s lives), reducing gun deaths and future mass shootings.” 83 Fed. Reg. at 66520. State and local government officials pointed out that a “potential perpetrator” of mass shootings might, after Las Vegas, “seek out these devices.” *Id.* Other comments emphasized “that the devices cause a decrease in shooter accuracy, and therefore are not useful for hunting and target shooting, and are inappropriate for use in self or home defense.” *Id.*

In addition, police officers noted that prohibiting bump stocks “will save the lives of those who are in law enforcement,” as “the rapid fire enabled by bump-stock-type devices significantly increases the casualties in an attack and puts police officers who respond at greater risk.” *Id.* The police report from the Las Vegas attack underscores the danger that bump stocks pose to law enforcement. Armed with a bump-stock-equipped rifle, Paddock was able to pin down the security officers who initially responded at the hotel as well as the police officers at the festival below who were searching in vain for the gunman. *See LVMPD Criminal Investigative Report, supra*, at 36, 41-43. Multiple police officers were hit by Paddock’s fire, and one off-duty officer who took police action during the shooting—Officer Charleston Hartfield—was killed. *See id.* at 42-43. Small wonder, then, that the International Association of Chiefs of Police supported the announcement that ATF was seeking to ban bump stocks, *see International Association of Chiefs of Police Applauds*

*U.S. President Trump's Action on Bump Stocks*, Int'l Ass'n of Chiefs of Police (Feb. 22, 2018), <http://tinyurl.com/56wwxenz>, just as all major law enforcement organizations had supported the machine-gun ban in 1986, *see* 132 Cong. Rec. 6854 (1986). Whether serving as first-responders to a mass shooting or fulfilling day-to-day law-enforcement functions, state and local police are uniquely vulnerable to the destructive capacity of automatic-fire weapons. *See, e.g., The Man Who Shot and Killed an HPD Officer Last Week Used an Illegally Modified Handgun, Bodycam Footage Shows*, Houston Pub. Media (Oct. 13, 2021), <http://tinyurl.com/38m3ymft>.

Finally, over 27,000 comments recognized that “it is useless to have a law against automatic weapons yet allow manufacturers to legally produce and sell an item with the sole purpose of turning a firearm into an automatic weapon.” 83 Fed. Reg. at 66521. The Fifth Circuit’s contrary conclusion is inconsistent with Congress’s long history of regulating automatic weapons and their equivalents, as well as its efforts to prevent circumvention of the law by encompassing technological workarounds.

## **II. The Final Rule Vindicates The Purposes Of Federal Firearms Law By Complementing State Efforts To Regulate Dangerous Weapons.**

By banning bump stocks, the Final Rule also vindicates a longstanding objective of federal firearms law: to assist state and local law enforcement in addressing gun violence through the implementation of a uniform national policy. A uniform federal ban is particularly critical now, as research shows that guns

travel across state borders and create spillover effects even in states that have strict firearms legislation.

**A. At least 18 jurisdictions, including the District, have passed their own laws banning or regulating bump stocks.**

As in the 1920s, states are on the forefront of addressing the dangers of bump stocks. Today, at least 17 states and the District of Columbia have taken steps to regulate bump stocks or other devices used to convert semiautomatic weapons into automatic weapons.

Twelve states and the District ban the possession of bump stocks expressly.<sup>2</sup> Many of these statutes carry criminal penalties. For instance, a violation of Connecticut's ban on bump-stock possession is a Class D felony, resulting in up to five years' imprisonment. *See* Conn. Gen. Stat. §§ 53-206g; 53a-16. Florida imposes a similar sanction. *See* Fla. Stat. Ann. §§ 790.222, 775.082. Some statutes also impose hefty fines on those who refuse to turn in or destroy their bump stocks. In the District, violation of the prohibition against bump-stock possession can result in a prison sentence of one year and a fine of \$2,500. D.C. Code § 22-4514(c) to (d). The fine in Hawaii can

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<sup>2</sup> *See* Cal. Penal Code §§ 16930, 32900; Conn. Gen. Stat. § 53-206g; Del Code tit. 11 § 1444(a)(6); D.C. Code §§ 22-4501(1), 4514(a); Fla. Stat. Ann. § 790.222; Haw. Rev. Stat. § 134-8.5; Mass. Gen. Laws ch. 140, §§ 121, 131; Md. Code Ann., Crim. Law §§ 4-301(m)(1) to (2), 4-305.1; N.J. Stat. §§ 2C:39-1(ee), 2C:39-3(l); N.Y. Penal Law §§ 265.00(26-27), 265.10, 265.01-c; R.I. Gen. Laws § 11-47-8(d); Vt. Stat. tit. 13, § 4022; Wash. Rev. Code §§ 9.41.010(5), 9.41.190(1)(a).

reach up to \$10,000. Haw. Rev. Stat. §§ 134-8.5, 706-640(1)(c).

In addition, five other states regulate bump stocks without expressly naming them. For example, Minnesota and Virginia prohibit possession of a “device that allows a semiautomatic firearm to shoot more than one shot with a single pull of the trigger or by harnessing the recoil of energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger.” Minn. Stat. § 609.67 subd.1(d)(2); *see* Va. Code Ann. § 18.2-308.5:1(A) to (B). Sanctions in Minnesota can reach up to 20 years’ imprisonment or a fine of up to \$35,000. Minn. Stat. § 609.67 subd.2(a). Illinois bans devices that increase the rate of fire when attached to a semiautomatic weapon, *see* 720 Ill. Comp. Stat. 5/24-1(a)(14), while Iowa bans the sale of such devices, *see* Iowa Code § 724.29. And Nevada has since 2020 prohibited any device that “eliminates the need for the operator of a semiautomatic firearm to make a separate movement for each individual function of the trigger” and either “materially increases the rate of fire” of the weapon or “approximates the action or rate of fire of a machine gun.” Nev. Rev. Stat. § 202.274.

Together, these 18 jurisdictions represent almost half of the nation’s population. *See State Population Totals and Components of Change: 2020-2022*, U.S. Census Bureau, <https://tinyurl.com/bdde4r2r>. Their laws illustrate the widely held view that bump stocks—like machine guns—have no place in public life.

**B. The Final Rule fills the gaps in state-by-state regulation of bump stocks.**

Although state laws are critical to reducing gun violence, Congress has recognized since 1934 that automatic weapons pose a nationwide problem requiring a federal solution. Federal firearms law has thus long operated to fill in the gaps left by the enforcement of state-level prohibitions. The Final Rule sits squarely in this regulatory tradition and aids states in achieving their law-enforcement objectives.

1. Despite the proliferation of state machine-gun bans through the 1920s, by 1934 the federal government had realized that state efforts to stem the violence of machine guns were not a complete solution. *See, e.g.*, H.R. Rep. No. 73-1780, at 1 (“It has been frequently pointed out that there are limitations on the States [and] that the Federal Government has powers in the field . . .”). House and Senate testimony on the NFA focused on the threat posed by “criminals” who “mov[e] continuously across State boundaries.” *NFA House Hearings* at 108 (statement of Major Gen. Milton A. Reckford); *see NFA Senate Hearings* at 26 (“[T]here are many times when you cannot deal with the criminal problem through State law alone. . . . We have got to do something, as a Federal Government, to control this problem of crime, the same as we do with disease.” (statement of Sen. Royal S. Copeland)). The NFA was thus designed to endow the federal government with powers to address a situation that it viewed as “far beyond the power or control of merely local authorities.” *NFA House*

*Hearings* at 4 (statement of Attorney General Cummings).

A similar concern with cross-border violence motivated the GCA, which was passed to end “mail order murder,” H.R. Rep. No. 90-1577 (1968), *reprinted in* 1968 U.S.C.C.A.N 4410, at \*4435, and prohibited most interstate firearms transfers, *see* GCA § 102, 82 Stat. at 1216-21. At the time, Congress and the public were reeling from the firearm-enabled murders of President John F. Kennedy, Martin Luther King, Jr., and Senator Robert F. Kennedy, whose deaths focused attention on mail-order guns that were circumventing state laws. *See* Zimring, *supra*, at 147-48. Congress thus passed the GCA to curb easy access to these weapons, which found their way into the hands of “criminals, immature juveniles, and other irresponsible persons” despite the fact that these individuals “could not purchase guns under the laws in their own jurisdictions.” *Id.* at 145 (quoting an unpublished report from Sen. Thomas Dodd, the prime sponsor of the GCA). In addition to expanding the definition of machine guns to thwart gun-industry workarounds, the GCA also aimed to “control the indiscriminate flow of [guns] across State borders,” which had “subverted” “strong local or State laws.” H.R. Rep. No. 90-1577, *reprinted in* 1968 U.S.C.C.A.N. 4410, at \*4413, \*4425.

2. The states today face a similar situation with regard to bump stocks as they did in 1934 with regard to machine guns and in 1968 with regard to mail-order firearms. A patchwork of state prohibitions on the possession or sale of bump stocks at times permits the devices to travel across state lines, subverting



state bans and endangering public safety. A uniform, nationwide policy is therefore necessary to ensure that local bump-stock bans are not circumvented by interstate traffic in guns.

Research has established that firearms tend to flow from jurisdictions with weak gun laws to those with stricter gun laws, underscoring the need for a federal solution. *See* Brian Knight, *Gun Policy and Cross-State Externalities: Evidence from Crime Gun Tracing*, 5 *Am. Econ. J.: Econ. Pol’y* 200, 201 (2013). Federal and state restrictions on firearms have generated a significant “secondary market” in firearms, “characterized by large price markups” and a “significant interstate component.” *Id.* Stricter gun laws produce higher prices on the secondary market, which in turn attracts a steady supply of guns from states with weaker laws. *See id.* at 215. Indeed, police chiefs and others responsible for enforcing states’ gun laws have grappled with this very problem for years. *See, e.g., FOPA Hearings* at 83 (testimony of Benjamin Ward, Commissioner, New York City Police Department) (describing a dynamic where dangerous firearms are purchased or traded “in States outside of New York . . . where you can purchase them more easily” and then “come back and come into our general stream”).

These interstate gun flows facilitate violence. According to one study, the correlation between the severity of a state’s restrictions on guns and a lower firearm fatality rate improves after accounting for the strength of firearm legislation in neighboring states. *See* Erik J. Olson et al., *American Firearm Homicides: The Impact of Your Neighbors*, 86 *J. Trauma Acute*

Care Surgery 797, 800 (2019). The study's authors conclude that "firearm trafficking from less restrictive neighboring states may correlate with increased firearm homicide rates in states with more restrictive firearm legislation." *Id.* This spreading of gun violence between state borders has been called the "neighbor effect." Ye Liu, Michael Siegel & Bisakha Sen, *Neighbors Do Matter: Between-State Firearm Laws and State Firearm-Related Deaths in the U.S., 2000-2017*, 59 *Am. J. Preventative Med.* 648, 654 (2020). "Although stronger state gun policies [are] associated with decreased firearm deaths, the presence of permissive neighboring states undermine[s] this protective effect." *Id.* at 655. Unsurprisingly, researchers who have documented this phenomenon have observed that it could be alleviated by a uniform federal policy. *See id.* at 656.

This same "neighbor effect" could attenuate the effectiveness of state bump-stock bans. ATF estimates that as many as 520,000 bump stocks were in circulation by the time it promulgated the Final Rule. 83 *Fed. Reg.* at 66547. Though some devices were destroyed or forfeited once the ban took effect, *see* Lisa Marie Pane, *Bump Stocks Are Turned in or Destroyed as Ban Takes Effect*, PBS (Mar. 28, 2019), <https://tinyurl.com/4sk6vepb>, the invalidation of the Final Rule could bring this market roaring back. States with their own prohibitions would be forced to expend significant resources to prevent bump stocks from flooding the secondary markets within their borders.

Like the NFA and GCA, then, the Final Rule is one component of a critical federal policy designed to

alleviate a nationwide threat. Over the past 90 years, Congress has made it abundantly clear that automatic weapons have no place in American life. It has also specifically empowered ATF with the authority to promulgate rules to carry out this statutory directive. *See* 18 U.S.C. § 926(a); 28 C.F.R. § 0.130(a). This authority has become even more critical as the pace of technological change has accelerated. Every year, the firearms industry devises new and dangerous weapons designed to test the outer limits of the nation's gun laws. *See* Lindsay Nichols & David Chipman, *Legal and Lethal: 9 Products That Could Be the Next Bump Stock*, Giffords (Sept. 28, 2018), <https://tinyurl.com/3dn6j94t>. It makes good sense to permit the agency charged with enforcement of the nation's gun laws to leverage its technical expertise to ensure that these workarounds do not gut federal protections. Nothing in the NFA, GCA, or FOIA requires otherwise. Indeed, each statute was drafted to prevent exactly the sort of circumvention-by-technicality that the Final Rule combats.

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“The growing frequency of crimes of violence in which people are killed or injured by the use of dangerous weapons needs no comment.” H.R. Rep. No. 73-1780, at 1 (1934). That is even more true today than it was in 1934, when Congress first acted to address the threat of automatic weapons. Much like the M-2 conversion kits of the mid-century and the modified triggers of the 1980s, bump stocks are the latest product of an industry determined to circumvent both state laws and Congress's clear

policy choice. The Final Rule properly prevents that circumvention.

**CONCLUSION**

The Court should reverse the decision below.

Respectfully submitted,

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