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Numerous *Amici* Join NCLA's Ask for Supreme Court to Rule Against ATF's Unilateral Bump Stock Ban

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

Washington, DC (February 2, 2024) – Ten U.S. Senators, ten law professors, and multiple civil liberties groups, policy research organizations and attorneys have filed 13 *amicus curiae* briefs supporting the New Civil Liberties Alliance's position in the *Garland v. Cargill* case that bump stocks are not machine guns. Representing Texas gun shop owner and Army veteran Michael Cargill, NCLA challenges the Bureau of Alcohol, Tobacco, Firearms and Explosives' Bump Stock Final Rule and ATF's expansion of the criminal scope of a statute by administrative fiat. The Final Rule reversed ATF's long-standing recognition that bump-stock-equipped firearms are *not* illegal machine guns, and the U.S. Court of Appeals for the Fifth Circuit rightly shot down the Rule early last year.

NCLA has arranged for former Texas Solicitor-General Jonathan Mitchell to present oral argument to the Supreme Court on Mr. Cargill's behalf on Feb. 28, urging the Justices to confirm the Fifth Circuit's ruling. NCLA thanks the *amicus* parties for standing with Mr. Cargill and thousands of other legal purchasers of bump stocks.

The *amici* who filed in support of NCLA's position include [U.S. Senators, Professors of Second Amendment Law, and the Independence Institute](#); [The Buckeye Institute](#); [Pacific Legal Foundation](#); [Manhattan Institute](#); [FPC Action Foundation](#); [Firearms Policy Coalition, Inc.](#); [National Shooting Sports Foundation, Inc.](#); [National Association of Criminal Defense Lawyers](#); [National Rifle Association of America, Inc.](#); [Second Amendment Law Center](#), [Second Amendment Defense and Education Coalition](#), [Federal Firearms Licensees of Illinois](#), [California Rifle & Pistol Association, Inc.](#), and [Guns Save Life](#); [Firearms Regulatory Accountability Coalition](#) and [Palmetto State Armory, LLC](#); [National Association for Gun Rights, Inc.](#), the [National Foundation for Gun Rights, Inc.](#) and [Rare Breed Triggers, LLC](#); [Gun Owners of America](#), [Gun Owners Foundation](#), [Gun Owners of California](#), [Heller Foundation](#), [Tennessee Firearms Association](#), [Tennessee Firearms Foundation](#), [Virginia Citizens Defense League](#), [Grass Roots North Carolina](#), [Rights Watch International](#), [America's Future](#), [U.S. Constitutional Rights Legal Defense Fund](#), and [Conservative Legal Defense and Education Fund](#).

The 13 *amicus* briefs reinforce NCLA's arguments and address a litany of other concerns, including the Rule of Lenity, preventing criminalization of innocent Americans, and *Chevron* deference. Excerpts follow:

"In the best tradition of our separation of powers jurisprudence, this Court should apply the criminal laws that Congress has written with unmistakable clarity. If there is reasonable doubt as to meaning, Congress can remove the doubt with new legislation."

— [Sens. Cynthia Lummis, Mike Lee, Kevin Cramer, John Barrasso, Pete Ricketts, Steve Daines, Cindy Hyde-Smith, Mike Rounds, Markwayne Mullin, Professors of Second Amendment Law, Independence Institute](#)

"The lately nascent view that Lenity should come to play only when such ambiguity ... is 'grievous' threatens to nullify the saving power of the doctrine. The better view is to uphold the classic understanding ... once a court

determines there are two or more interpretations of the law, and there remains reasonable doubt as to which of those interpretations correctly applies ... , a court should invoke the Rule of Lenity in favor of the defendant, find the least penal option, and await the correction and clarification of the law by the legislature.”

— [National Association of Criminal Defense Lawyers](#)

“[C]riminalization through regulation at the whim of everchanging agency determinations ‘turn[s] the normal construction of criminal statutes upside-down, replacing the doctrine of lenity with a doctrine of severity.’”

— [The Buckeye Institute](#)

“Lenity is a traditional interpretive tool that should apply before asking whether an agency interpretation is reasonable. And deferring to an agency under *Chevron* would be contrary to the Court’s non-deferential approach in other areas of criminal law; it would also undermine due process and the separation of powers.”

— [Pacific Legal Foundation](#)

“[I]n abruptly reversing 11 years of its own findings that bump stocks are not machine guns, ATF’s actions were not based on an alleged statutory ambiguity or agency expertise. Instead, they were done solely as a political expediency to avoid the need for legislation.”

— [Manhattan Institute](#)

“That kind of confiscatory, turn-in-your-lawfully-acquired-property-to-the-feds command is a rarity when it comes to the statute books, because Members of Congress like to be re-elected. But ATF has no such accountability and has shown no such restraint. ... The Court should return ATF to the limited role Congress assigned it before the agency can subject the citizenry to yet another illicit turn of the regulatory vise.”

— [National Shooting Sports Foundation, Inc.](#)

“[I]f this Court concludes that the statute is ambiguous, it should reject the Solicitor General’s argument that the rule of lenity applies only when a statute is ‘grievously ambiguous.’”

— [FAMM \(in an *amicus curiae* brief filed in support of neither party\)](#)

NCLA released the following statements:

“The broad *amicus* support provided to NCLA’s challenge to ATF well illustrates the public’s disgust with that agency’s abuse of its administrative powers.”

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

“NCLA greatly appreciates the support from the dozen-plus *amici* in this case. As we’ve said from the beginning, and as these *amicus* briefs underscore, this case is about unlawful administrative power, not gun rights.”

— **Mark Chenoweth, President and Chief Legal Officer, NCLA**

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

ABOUT NCLA

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

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