

# Justices' Bump Stock Ruling Skirted Deference, Lenity Issues

By **Tess Saperstein and John Elwood** (June 18, 2024)

On June 14th, in a 6-3 decision split along ideological lines, the U.S. Supreme Court in *Garland v. Cargill* struck down the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives' rule effectively banning bump stocks, devices that harness a gun's recoil to quickly reengage the trigger and enable rapid fire.

The case involved an unusual set of circumstances: a Republican presidential administration employing an expansive interpretation of the governing statutes to regulate firearms. Unlike recent gun cases, the main tension in this case had nothing to do with the Second Amendment. Instead, the argument and the court's opinion focused entirely on the ATF's interpretation of federal gun laws.

Additionally, despite presenting what would otherwise appear to be a classic case for agency deference, *Chevron* deference was not mentioned in the opinion. This was likely due to the fact that Attorney General Merrick Garland and the government did not argue that the ATF was entitled to deference, thereby allowing the court to avoid the contentious issue of whether agencies are entitled to deference when interpreting criminal statutes.[1]

Following the 2017 mass shooting at a Las Vegas music festival — the deadliest in American history — the Trump administration announced plans to ban bump stocks, the firearm accessory that made the shooting so deadly.[2] The administration accomplished this goal through the ATF, which, after engaging in notice-and-comment rulemaking, issued a final rule in 2018 classifying bump stocks as machine guns, which were, with limited exceptions, already banned under federal firearm laws.

In his majority opinion, Justice Clarence Thomas described the question presented as "whether a bump stock transforms a semiautomatic rifle into a 'machinegun,'" as defined by Congress.[3] In a highly technical discussion, the court — incorporating diagrams of an AR-15's trigger mechanism — analyzed the mechanical functioning of a semiautomatic rifle when a bump stock is added to it.

Title 26 of the U.S. Code, Section 5845(b), defines a machine gun as a weapon that shoots "automatically more than one shot ... by a single function of the trigger." The ATF's final rule interpreted "automatically" to mean "functioning as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger" and "single function of the trigger" to mean "a single pull of the trigger and analogous motions." [4]

The majority's and dissent's difference in interpretation centers on whether one considers the "function of the trigger" in relation to the firearm or from the perspective of the shooter. The majority read "function of the trigger" as a purely mechanical matter.

Looking to dictionary definitions of "function" and "trigger," Justice Thomas concluded, "[t]he phrase, 'function of the trigger' thus refers to the mode of action by which the trigger activates the firing mechanism. ... On weapons with these standard trigger mechanisms, the



Tess Saperstein



John Elwood

phrase 'function of the trigger' means the physical trigger movement required to shoot the firearm." [5]

As the majority reasoned, for each shot of a semiautomatic rifle equipped with a bump stock, "the shooter must engage the trigger and then release the trigger to allow it to reset," therefore, "[e]ven with a bump stock, a semiautomatic rifle will fire only one shot for every 'function of the trigger.'" [6]

The dissent, authored by Justice Sonia Sotomayor, accepted the ATF's argument that "function of the trigger" was properly read from the perspective of the shooter. The dissent derided what it described as the majority's "myopic focus on a trigger's mechanics rather than on how a shooter uses a trigger to initiate fire." [7]

Justice Sotomayor argued that "[n]othing about th[e] definitions" that the majority relied upon "suggests that 'function of the trigger' means the mechanism by which the trigger resets mechanically to fire a second shot." [8]

The dissent also argued that contemporaneous understanding of "machine gun" at the time of enactment supported her reading, quoting the president of the National Rifle Association during a 1934 hearing on the National Firearms Act before the U.S. House of Representatives. At that hearing, the NRA president stated that "[h]e understood the 'distinguishing feature of a machine gun [to be] that by a single pull of the trigger the gun continues to fire.'" [9]

However, as the majority noted, the ATF faced an uphill battle with its 2018 rule, given that, "[o]n more than 10 separate occasions over several administrations, ATF consistently concluded that rifles equipped with bump stocks cannot 'automatically' fire more than one shot 'by a single function of the trigger.'" [10]

Although current doctrine permits an agency to change its interpretation of ambiguous statutory language, the agency's repeated statements that the statutory language excluded bump stocks were difficult to overcome.

Neither the majority nor the dissent considered whether the statutory language was ambiguous — and thus whether the agency's interpretation might be entitled to deference. Both seemed to argue that the statutory language unambiguously favored their interpretation.

In refraining from addressing the question of deference, the court avoided answering (1) whether Chevron deference is even warranted, and (2) another issue that the en banc U.S. Court of Appeals for the Fifth Circuit waded into when it decided the case in January 2023: whether the ATF's interpretations of the National Firearms Act and the Gun Control Act should ever be given deference given that the statutes carry criminal penalties.

A plurality of the Fifth Circuit held that ambiguity should result in the application of the rule of lenity, rather than deference to the agency. The Supreme Court is now considering whether to overrule Chevron in *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. U.S. Department of Commerce*.

Beneath the technical question of whether a bump stock functions as a machine gun was the more fundamental legal question about the separation of powers and what role the executive branch can play in determining what constitutes a criminal act.

Despite a favorable ruling from the Fifth Circuit, the respondent Michael Cargill supported the government's petition for certiorari. Although unusual, the decision was undoubtedly strategic: The conservative majority of the Supreme Court has been inherently suspicious of administrative action with far-reaching implications, and Cargill proposed adding another question about whether the rule of lenity required construing ambiguity against the government.

Since Congress didn't unambiguously state that bump stocks are illegal, Cargill argued, bump stock owners would not be "on notice" that they are in possession of contraband. It would be unfair to prosecute someone if they didn't know their actions were illegal.

By seeking to expand the questions before the court, Cargill was likely hoping for a broad ruling that would limit the ATF's ability to harness ambiguity to promulgate broader restrictions.

If the court had ruled that ambiguity in the National Firearms Act and the Gun Control Act had to be construed against the agency, it would undermine a series of major regulatory steps the Biden administration has taken through the ATF.

Those regulatory steps address the proliferation of privately made firearms that are difficult to trace, also known as ghost guns,[11] as well as the availability of devices marketed as stabilizing braces[12] that can convert firearms into rifles, which are more heavily regulated under existing federal firearm laws.

The lenity issue may arise again in *Garland v. VanDerStok*, a case the court has taken for next term that presents the lawfulness of the ghost gun regulations, and where the respondent is again invoking lenity.

Even the conservatives on the court are split as to when the rule of lenity should apply.[13] Perhaps for that reason, the majority bypassed the issue and held instead that the "ATF therefore exceeded its statutory authority" by issuing a rule that contradicted the text of the statute.[14]

However, the court's avoidance of the deference question in *Garland v. Cargill* may also foreshadow its forthcoming decisions in *Loper Bright and Relentless*, which should shape the future of agency deference.

---

*Tess Saperstein is an associate at Arnold & Porter Kaye Scholer LLP.*

*John Elwood is a partner and head of the appellate and Supreme Court practice at the firm.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

[1] <https://www.yalejreg.com/nc/lenity-and-agency-deference-in-garland-v-cargill-by-tess-saperstein/>.

[2] <https://www.govinfo.gov/content/pkg/FR-2018-02-23/pdf/2018-03868.pdf>.

[3] Majority at 3.

[4] <https://www.govinfo.gov/content/pkg/FR-2018-12-26/pdf/2018-27763.pdf>.

[5] Majority at 7.

[6] Majority at 12.

[7] Dissent at 7.

[8] Dissent at 8.

[9] Dissent at 8.

[10] Majority at 3.

[11] <https://www.federalregister.gov/documents/2022/04/26/2022-08026/definition-of-frame-or-receiver-and-identification-of-firearms>.

[12] <https://www.govinfo.gov/content/pkg/FR-2023-01-31/pdf/2023-01001.pdf>.

[13] <https://harvardlawreview.org/print/vol-136/wooden-v-united-states/#footnote-ref-5>.

[14] Majority at 6.