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Written by **Bob Adelmann** on April 27, 2023

Appeals Court Rejects ATF's Ban on "Bump Stocks"

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The Sixth Circuit Court's three-judge panel ruled unanimously on Tuesday that the attempt by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to reinterpret the 1934 National Firearms Act (NFA) to include "bump stocks" in its definition of "machine gun" failed to pass muster.

It used the "rule of lenity" to arrive at its decision: Where the law is ambiguous, the court must decide in favor of the defendant. In this case, the defendant, Scott Hardin, the owner of several bump stocks, claimed the reinterpretation by the ATF was unconstitutional.

Judge Ronald Lee Gilman, writing for the panel, explained:

> An Act of Congress could clear up the ambiguities, but so far Congress has failed to act.… In this situation, the rule of lenity … requires us to rule in favor of Hardin.

At issue is whether the attachment of a stock to a semi-automatic firearm that increases the rate of fire turns that rifle into a firearm heavily regulated by the NFA. For years, the ATF ruled that it did not. Courts are almost equally divided on the matter.

What is clear is that in 2018 the ATF changed the definition of a phrase in the NFA in order to include bump stocks as machine guns.

Panelist Judge John Bush caught the ATF in the act of changing the wording in order to include bump stocks as machine guns:

> The best reading of the statue is that Congress never gave the ATF "the power to expand the law banning machine guns through [the] legislative shortcut" [quoting from *Gun Owners of America, Inc. v. Garland*] of the ATF's rule at issue in this appeal … simply put, under the statute as it currently reads, the addition of a bump stock to a rifle clearly does not make it a machinegun.…
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> All [three] judges on this panel agree on this point: it is up to Congress, not the ATF, to change the law if bump stocks are to be made illegal.

He excoriated the ATF over changing the definition of a part of the law:

> This new agency-created definition … is an about-face from the ATF's original interpretation of the statute.… There were no changes in the relevant facts or law that led to the ATF making a 180-degree change of statutory interpretation to ban what once was legal.
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> There was only a profound change in political pressure.

The blame rests squarely on Congress for delegating to the ATF what the Constitution declares is the proper role of Congress: writing such rules.

The issue of such delegations was settled years ago. From Cornell Law comes this revelation:

> By vesting Congress with "[a]ll legislative Powers," has been viewed to limit the authority Congress can bestow to other branches of government or private entities.
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> In general, the Supreme Court has held that "the legislative power of Congress cannot be delegated." In 1935, Chief Justice Charles Evan Hughes, on behalf of the Court, declared that "Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested."
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> This principle is the basis of the nondelegation doctrine that serves as an important, though seldom used, limit on who may exercise legislative power and the extent to which legislative power may be delegated.
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> In its 2022 decision in *West Virginia v. Environmental Protection Agency*, the Supreme Court provided further clarity on the nondelegation doctrine, emphasizing that a decision of "magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body."

It is all but certain that the ATF will appeal Tuesday's ruling to the Supreme Court. If the high court takes it under review, it will have the opportunity to remind Congress that it has exceeded its authority under the Constitution's Article 1 by delegating such legislative powers to the ATF and to ban not only the faux rule made by the ATF, but to abolish the rogue agency itself.

Related article:

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