



Written by [Bob Adelman](#) on March 26, 2019

Bump Stocks Now Illegal, With One Exception

The 90-day waiting period for banning bump stocks ended on Tuesday for every owner of the now-illegal firearm accessory, [with one exception: Clark Aposhian](#) (shown). With the assistance of the New Civil Liberties Alliance (NCLA), Aposhian obtained a temporary stay of the new administrative decree. It only protects him, but it opens the door for its eventual reversal.



Said NCLA's lead counsel, "Today [March 22] the [U.S. 10th Circuit] Court of appeals told the ATF that it could not rush through the bump stock ban without meaningful judicial review. The court understands the stakes and is refusing to let an innocent owner be declared a felon, as scheduled [on March 26]."

What's at stake is the very functioning of the federal government under the Constitution. The NCLA makes that clear from its mission statement:

The New Civil Liberties Alliance is a nonprofit civil rights organization founded by prominent legal scholar Philip Hamburger to defend constitutional freedoms — primarily against the Administrative State....

NCLA views the Administrative State as an especially serious threat to constitutional freedoms. No other development in contemporary American law denies more rights to more Americans.

Although Americans still enjoy the shell of their Republic, there has developed within it a very different sort of government — a type, in fact, that the Constitution was designed to prevent. This unconstitutional administrative state is the focus of NCLA's concerns.

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In the instant case the ACLA contends that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) exceeded its authority by arbitrarily and capriciously rewriting a congressional rule regarding bump stocks, which it called merely an "amendment" to that rule, thus short-circuiting congressional approval.

The rewrite went against the ATF's previous rulings dating back to 2010 declaring that bump stocks did not turn semi-automatic rifles to which they were attached into machine guns and therefore falling under federal prohibitions. But following Stephen Paddock's use of bump stocks in October 2017's Las Vegas massacre, they became anathema to the anti-gun crowd and President Trump. He ordered the ATF to rewrite the rule in order to ban them and the agency dutifully complied. As *The New American* noted at the time:

It was an "amendment" of an existing rule and not a new ruling per se and therefore didn't need



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Congressional approval.

The Department of Justice is amending the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to clarify that bump-stock-type devices — meaning “bump fire” stocks, slide-fire devices, and devices with certain similar characteristics — are “machineguns” as defined by the National Firearms Act of 1934 and the Gun Control Act of 1968 because such devices allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger....

The bump-stock-type devices covered by this final rule ... will be prohibited when this rule becomes effective [March 26, 2019].

Such a ruling, if it is allowed to stand, sets a dangerous precedent, as we noted:

What matters is the precedent it sets if the “final rule” becomes operative in March. If the ATF can arbitrarily declare that bump stocks turn semi-automatic weapons into “machine guns” and therefore fall under the NFA (National Firearms Act of 1934) and the GCA (Gun Control Act of 1968) prohibitions, then what’s to keep them from finding some way to turn semi-automatic rifles and pistols into illegal firearms under those laws as well?

This is precisely the point made by Tim Harmsen, a gun owner and one of the plaintiffs in another suit, brought by Gun Owners of America (GOA): “This issue for me is government overreach. The executive branch just said, ‘Hey, we want you, basically ATF, an agency, to rewrite, reinterpret federal law so we can get the outcome we want.’”

That point was reiterated by GOA’s legislative counsel, Michael Hammond: “It’s saying that a piece of plastic is a ‘machine gun.’ I think the court needs to take into consideration that if a piece of plastic is a machine gun, [then] the AR-15 is also a machine gun.”

That would turn the issue from one affecting only about 500,000 gun owners who possess the now-illegal “piece of plastic” into one affecting 100 million gun owners.

Erich Pratt, GOA’s executive director, called the move “dangerous”:

We think it’s really dangerous for a regulatory agency to be able to just turn on a dime. For 10 years they said that bump stocks fit within the law, [that] they were perfectly legal. And then they reversed themselves and said, “Oh, this piece of plastic is a machine gun.”

If they can do that and wave their magic wand, they can say anything is a machine gun.

If left in place, there is another issue: enforcement. When officials at the Department of Justice were asked just how it would enforce the edict emanating from the ATF, they responded: “We have no plans to go door to door, nor do we have the resources. The Department of Justice primarily relies on voluntary compliance by citizens. Most firearms owners are law-abiding citizens.”

But what if the law itself is illegal? What then? Ryan Liskey, a law-abiding citizen and gun owner living in Virginia, raised that question:

Do they [the ATF] have authority to do this? No. Is it a machine gun? No.

So do I follow an unconstitutional edict from the Department of Justice or do we stand our ground?

If Liskey “stands his ground” and is arrested for owning the newly illegal piece of plastic, and convicted, he becomes a felon, risking huge fines and up to 10 years in federal prison.



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All without congressional assent, thanks to the burgeoning administrative state exemplified by the ATF. Despite the ending of the 90-day waiting period, numerous appeals are pending, one of which might reach the Supreme Court.

Photo of Clark Aposhian: AP Images

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