

No. 22 976

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In The  
**Supreme Court of the United States**

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MERRICK B. GARLAND, ATTORNEY GENERAL, et al.,

*Petitioners,*

v.

MICHAEL CARGILL,

*Respondent.*

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**On Writ Of Certiorari To The  
United States Court Of Appeals  
For The Fifth Circuit**

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**BRIEF OF *AMICUS CURIAE*  
PATRICK J. CHARLES  
IN SUPPORT OF PETITIONERS**

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**INTRODUCTION AND INTEREST OF  
*AMICUS CURIAE*<sup>1</sup>**

This *amicus curiae* brief is submitted on behalf of historian and legal scholar Patrick J. Charles to educate the Court on the historical background of the National Firearms Act (NFA) of 1934, Pub. L. No. 73-474, 48 Stat. 1236, to include its genesis, drafting history, and subsequent enforcement.

*Amicus curiae* is the author of two books detailing the social, intellectual, and legal history of our first federal firearms laws, and more than twenty articles on the history of firearms regulation and the use of history as a jurisprudential tool. As a military historian, *amicus curiae* is acutely familiar with the history of weapons of war, including automatic weapons. *Amicus curiae*'s scholarship has been cited and relied upon by several Circuit Courts of Appeals and by members of this Court. *Amicus curiae* currently serves as the Division Chief for the Air Force Historical Research Agency's (AFHRA) Oral History and Studies Division. For over a decade, *amicus curiae* has served as a United States Air Force (USAF) historian in several capacities, to include recently serving as the head of AFHRA's Research Division, where *amicus curiae*

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<sup>1</sup> *Amicus curiae* certifies that no counsel for any party authored this brief in whole or in part and that no person or entity, other than *amicus curiae* or his counsel, has made a monetary contribution to this filing. When possible, this brief provides hyperlinks to assist the Court in accessing hard-to-find source documents. If the Court should have difficulty in locating any source documents that are not hyperlinked within this brief, *amicus curiae* will happily provide them upon the Court's request.

oversaw all official historical information and archival requests for the USAF. The information and analysis contained herein are solely those of the *amicus curiae*, and not those of the USAF or the Department of Defense.



### SUMMARY OF THE ARGUMENT

In *Cargill v. Garland*, 57 F.4th 447, 459-62 (5th Cir. 2023), the Fifth Circuit held that a bump-stock device could not be regulated as a machine gun under 26 U.S.C. § 5845(b) because the device does not operate by a single mechanical function of the trigger. In reaching this conclusion, the court stated that the phrase “by a single function of the trigger” could not mean “a single pull of the trigger,” and therefore concluded that a bump-stock device could not be regulated as a machine gun. *Id.* at 459. The Fifth Circuit’s interpretation of 26 U.S.C. § 5845(b) flies in the face of history. The historical record—to include the textual and drafting history of the phrase “by a single function of the trigger”—overwhelmingly points in one direction. From the NFA’s inception, the definition of a “machine gun” encompassed every firearm capable of producing automatic fire through one manual action, operation, or performance of the trigger. The inner working mechanics of the various automatic-fire capable firearms available at the time were irrelevant to lawmakers. Rather, what was relevant was whether a respective firearm *could* produce automatic fire by one continuous pull of



the trigger. And that is exactly what a non-mechanical bump stock allows a firearm to do.

Absent this historical background, which no court to date has been adequately briefed on, it is understandable why some lower federal courts, to include the Fifth Circuit, have held that a bump-stock device does not fall within 26 U.S.C. § 5845(b)'s definition of a machine gun. *See, e.g., Cargill*, 57 F.4th at 459-62; *Hardin v. BATFE*, 65 F.4th 895, 898-902 (6th Cir. 2023). However, once the background history surrounding 26 U.S.C. § 5845(b) is contextually examined, it becomes abundantly clear that any firearm capable of producing automatic fire through one manual action, operation, or performance of the trigger falls within the statute's definition of a machine gun, which today includes certain firearms equipped with a bump-stock device. The history prior to, contemporaneous with, and immediately following the enactment of the NFA bears this out, particularly the enforcement history up through the mid-twentieth century.

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◆

## ARGUMENT

### **I. The Historical Background of 26 U.S.C. § 5845(b)**

When the text of a federal statute is somewhat ambiguous, this Court has periodically relied upon the statute's background history to illuminate its purpose, meaning, and application. *See, e.g., Sackett v. EPA*, 143 S. Ct. 1322, 1336-41 (2023); *Delaware v. Pennsylvania*,

143 S. Ct. 696, 711-12 (2023); *Wooden v. United States*, 142 S. Ct. 1063, 1072-74 (2022); *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415-16 (2019); see also *Arizona v. Navajo Nation*, 143 S. Ct. 1804, 1819-22 (2023) (Gorsuch, J., dissenting); *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321, 2366 (2021) (Kagan, J., dissenting); *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767, 782-83 (2018) (Sotomayor, J., concurring); *B&B Hardware, Inc. v. Hargis*, 575 U.S. 138, 169 (2015) (Thomas, J., dissenting). Of course, if a statute’s background history is “murky”—that is, the background history is more ambiguous than the text—it will not be countenanced. *Azar v. Allina Health Services*, 139 S. Ct. 1804, 1815 (2019); see also *Milner v. Department of the Navy*, 562 U.S. 562, 572 (2011). Fortunately, as it pertains to the background history of 26 U.S.C. § 5845(b), this is not the case. The historical record—to include the textual and drafting history of 26 U.S.C. § 5845(b)—overwhelmingly points in one direction. From the NFA’s inception, its definition of a “machine gun” encompassed every firearm capable of producing automatic fire through one manual action, operation, or performance of the trigger. The history prior to, contemporaneous with, and immediately following the enactment of the NFA confirms this.

#### **A. The History of Regulating Machine Guns at the State Level**

Although the advent of the machine gun goes back at least to 1861, with the invention of the Gatling gun, it was not until the 1920s that lawmakers seriously

considered regulating them.<sup>2</sup> The reason for this delay was essentially two-fold. First, until the 1920s, machine guns were not made readily available to the public. Such weapons were almost exclusively owned and operated by the military and law enforcement agencies. Second, even if machine guns had been made readily available, their large size and heavy weight made it difficult for individuals to carry and transport them.<sup>3</sup>

This all changed with the advent and commercial availability of submachine guns; the most notable being the Auto-Ordnance Corporation's Thompson Submachine Gun Caliber .45, or what is more commonly known to history as the "Tommy Gun."<sup>4</sup> Weighing under ten pounds and consisting of only 38 parts, the Tommy Gun was easy to transport and function.<sup>5</sup>

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<sup>2</sup> By 1925, only two states restricted the use of machine guns. Neither state, however, outright prohibited their ownership, nor legally defined what constituted a machine gun. *See* ACTS OF THE LEGISLATURE OF WEST VIRGINIA: REGULAR AND FIRST EXTRAORDINARY SESSIONS 30-32 (1925); ACTS AND RESOLVES PASSED BY THE GENERAL ASSEMBLY OF THE STATE OF VERMONT 127 (1923).

<sup>3</sup> Eric A. Dime, *An Effective Weapon to Combat Bandits*, 7 POLICE JOURNAL 7 (January 1921) ("In the past to secure automatic fire it [was] necessary to use guns sixteen to twenty pounds in weight. These weapons are complicated and require special and long training and the [criminal] action . . . is over before these guns can be brought into play.").

<sup>4</sup> For a useful short history on the development and evolution of machine guns up through 1932, see Julian S. Hatcher, *Machine Guns*, 80 AMERICAN RIFLEMAN 5-12 (June 1932).

<sup>5</sup> The Auto-Ordnance Corporation that manufactured the Tommy Gun expressly advertised these points. *See* WILLIAM J.

According to the Auto-Ordnance Corporation, the Tommy Gun was *the* “gun that makes one man equal twenty.”<sup>6</sup> Through a mere flip of the “rocker pivot” this submachine gun could transition between semi-automatic and automatic fire.<sup>7</sup> In the semi-automatic fire mode, the Tommy Gun could easily discharge a 100-round drum magazine in a minute.<sup>8</sup> Meanwhile, in automatic-fire mode, the same 100-round drum magazine—through one continuous or steady pull of the trigger—ran empty in just over four seconds.<sup>9</sup> That the “rocker pivot” was placed in automatic-fire mode did not necessarily mean, however, that when the trigger was pulled, the Tommy Gun automatically fired the ammunition that was contained within the attached magazine or drum. Achieving automatic fire in automatic-fire mode was dependent upon how the operator utilized his or her trigger finger. As several contemporaneous articles attest, in automatic-fire mode, the Tommy Gun was capable of discharging a single shot by the operator quickly pulling and releasing the trigger.<sup>10</sup> Only if the trigger was “held back” did the Tommy

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HELMER, *THE GUN THAT MADE THE TWENTIES ROAR* 271-72 (1969) (containing reprints of Tommy Gun advertisements).

<sup>6</sup> See Auto-Ordnance Corporation, *The Gun That Makes One Man Equal Twenty*, 7 *POLICE JOURNAL* at back of front cover (January 1921).

<sup>7</sup> *Handbook of the Thompson Submachine Gun: Model of 1921*, reprinted in HELMER, *supra*, at 235, 257-58.

<sup>8</sup> Dime, *supra*, at 7.

<sup>9</sup> *Police Get First of Submachine Guns*, *NEW YORK HERALD*, December 21, 1920, at 2.

<sup>10</sup> *Test of Thompson Submachine Gun*, *ARMY AND NAVY REGISTER*, April 9, 1921, at 355 (noting that the Tommy Gun “can

Gun “fire continuously[.]”<sup>11</sup> The Tommy Gun’s single-shot capability in automatic-fire mode was something that another popular automatic-fire capable firearm of the time, the Browning M1918 automatic rifle, apparently could not replicate,<sup>12</sup> but some earlier automatic-fire capable firearms and machine guns could.<sup>13</sup>

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[automatically] fire the contents of the magazine with a single prolonged pull or fire a single shot by merely releasing the trigger”); E.C. Crossman, *John Thompson’s Surprise Party*, ARMS AND THE MAN, November 1, 1920, at 3, 4 (“After a few [automatic] bursts I found that there was no trouble in firing one or two shots at a time by prompt release of the trigger”); E.C. Crossman, *A Pocket Machine Gun*, SCIENTIFIC AMERICAN, October 16, 1920, at 405 (“If the trigger is held back [in automatic fire mode], the result is a verberating roar of shots coming so fast that the ear cannot distinguish them apart. This of course empties a twenty shot magazine in less than a second; but the fire is easily controlled by the trigger pressure, and I found no trouble in firing single shots merely by a quick pressure of the trigger and instant release.”); see also *Machine Gun Fires from Hip*, BIRMINGHAM POST-HERALD (AL), July 16, 1921, at 6 (quoting Army Major A.B. Richeson as stating, “[The Tommy Gun] fires automatically as long as the trigger is held back, but single shots can be fired by quick release of the trigger after each shot.”).

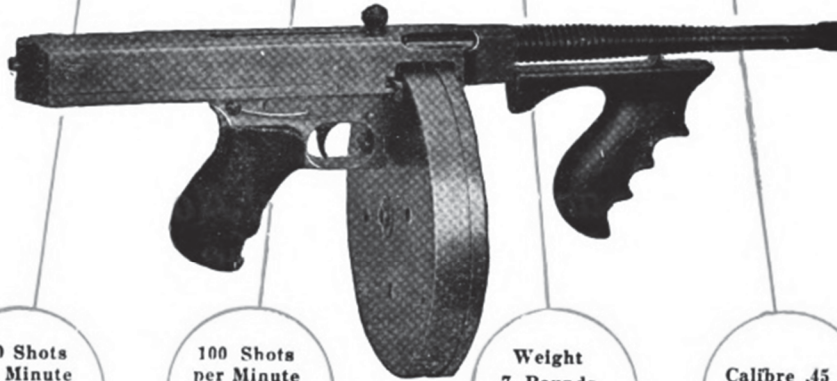
<sup>11</sup> Philip B. Sharpe, *Sub-Machine Gun Performance*, 82 AMERICAN RIFLEMAN 20, 22 (December 1934).

<sup>12</sup> See, e.g., James H. Collins, *Browning Gun the Best in the World*, CHARLOTTE NEWS (NC), July 16, 1921, at 12 (syndicated column noting that in “automatic fire” mode the Browning fired eight rounds “in a second with one pull of the trigger”).

<sup>13</sup> See, e.g., MACHINE GUNS 44 (1917), <https://catalog.hathitrust.org/Record/008371130> (describing the 1917 Lewis automatic machine gun’s function as follows: “*Automatic Fire*—Within the limits of the magazine capacity the gun continues to fire so long as the trigger is held back and stops firing whenever the trigger is released. It follows therefore that the operator may at will fire shots *either singly or in groups of two, three, four, or of any number up to the full magazine capacity*”) (emphasis added).

# The Gun That Makes One Man Equal Twenty

A new type of firearm: A combination Machine Gun and Semi-Automatic Shoulder Rifle in the form of a Pistol.



1500 Shots  
per Minute  
Full  
Automatic

100 Shots  
per Minute  
Semi-  
Automatic

Weight  
7 Pounds  
Length  
22 Inches

Calibre .45  
No. of Parts  
30

## The Thompson Submachine Gun

Lightest automatic gun in the world, weight seven pounds.

—can be taken apart and assembled in less than a minute without tools—

—does away with the complicated parts common to the gas and recoil operated guns—

—can be carried under the coat ready for instant use—

—It enables the amateur to fire with the precision and effect of an expert marksman.

There is nothing to break, wear or jam. "The Thompson" fires either ball cartridge or buck shot.

Extract from Report of United States Marine Corps,  
August 24th, 1920

"The very simple, positive and extremely rapid action of this gun was by far the most striking feature from a military standpoint. Approximately 2,000 rounds were fired during the test without stoppage. There were no broken parts nor any repairs made to the gun while under the observation of the board. Recoil appears to be reduced 50%."

Extract from United States Army Test, April 27th, 1920

"The action of the gun appears sturdy enough to stand continuous pounding and functioned reliably during test. Although the gun was fired as fast as magazines could be loaded for each 1,000 rounds, the gun did not heat sufficiently to cause trouble."



Made by Colt's Patent Firearms Mfg. Co. of  
Hartford, Conn., for

AUTO-ORDNANCE CORPORATION

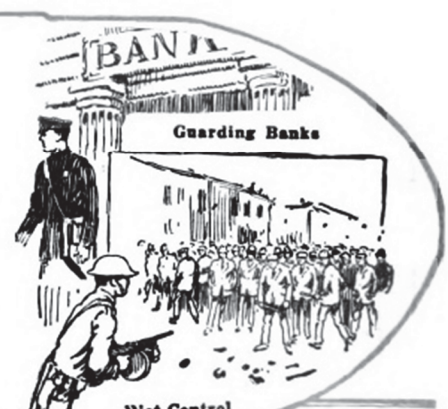


302 Broadway, New York City, U. S. A.

Cable Address: "AUTORDCO-NEWYORK"



The SUBMACHINE GUN has a thousand and one uses. It can be fired at point blank range or at a target a mile away. It provides absolute protection for Ranches, Estates, Banks, Offices, Industrial Plants, Railroad Yards, Express Cars, Ships, Docks, etc. It is splendidly adapted for use by State Constabulary, Militia, Police, Army, Navy and Marine Corps, State and National Troops, Special Officers, Hunters, etc. Adopted by the Police Departments of New York, Cleveland, etc.



Although the Tommy Gun was initially marketed as an “anti-bandit gun,” it quickly became coveted by criminals.<sup>14</sup> Other automatic-fire capable firearms were similarly coveted. Newspaper front pages across the country contained headlines such as “Gangsters Use Machine Guns,”<sup>15</sup> “Machine Gun Used in Bank Hold-Up,”<sup>16</sup> and “Machine Gun Thugs Kill Postal Employee.”<sup>17</sup> And it was not just the criminal use and abuse of automatic-fire capable firearms that made national news headlines.<sup>18</sup>

To combat the machine-gun problem, both the National Crime Commission (NCC) and the National Conference of Commissioners on Uniform State Laws (NCCUSL) began exploring the feasibility of uniform, state machine-gun legislation.<sup>19</sup> It took roughly six

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<sup>14</sup> HELMER, *supra*, at 78-98; *see also* E.C. Crossman, *Bootleggers Fight with Most Modern Weapons*, LOS ANGELES TIMES, December 5, 1926, part II, at 7. For many years, the Tommy Gun was the most coveted firearm by criminals capable of producing automatic fire. *See Gangsters Easily Acquire Machine Guns and Pistols*, MINNEAPOLIS TRIBUNE (MN), April 28, 1930, at 2.

<sup>15</sup> *Gangsters Use Machine Guns*, CHATTANOOGA DAILY TIMES (TN), February 26, 1927, at 1.

<sup>16</sup> *Machine Gun Used in Bank Hold-Up*, BALTIMORE SUN, October 2, 1927, at 1.

<sup>17</sup> *Machine Gun Thugs Kill Postal Employee*, WILKES-BARRE RECORD (PA), October 15, 1926, at 1.

<sup>18</sup> *See, e.g., 1 Slain, 14 Hurt in Trappers' War*, COURIER-JOURNAL (Louisville, KY), November 17, 1926, at 1-2.

<sup>19</sup> *Allen Calls Session to Combat Gunman*, BOSTON GLOBE, January 10, 1927, at 13; *Mills at Work on National Legislation to Regulate Sales of Machine Guns*, BROOKLYN EAGLE, December 29, 1926, at 2; *Will Regulate Possession and Use of Pistols*, DAILY EVENING ITEM (Lynn, MA), August 30, 1926, at 7; *Discuss Plans*

years for the NCC and NCCUSL to agree to the Uniform Machine Gun Act (UMGA), which sought to criminalize the possession and use of machine guns of any kind, save for their possession and use by military, law enforcement, or for some scientific purpose.<sup>20</sup> As to what legally constituted a “machine gun,” the UMGA defined it 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.”<sup>21</sup>

When the language of the UMGA was made publicly available, no one, at least that *amicus curiae* can find, disputed its definition of a “machine gun” as being too broad or too narrow. This was likely because the UMGA’s definition encompassed the firing capabilities of all the various machine guns, submachine guns, and automatic-fire capable rifles and pistols widely known at the time—*i.e.*, the Tommy Gun, Browning M1918 automatic rifle, Colt Monitor, and 1914 Luger automatic pistol with a special 32-round snail drum magazine to name a few<sup>22</sup>—the very guns that everyone

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*for Pistol Legislation*, RUTLAND DAILY HERALD (VT), July 26, 1926, at 3.

<sup>20</sup> See UNIFORM MACHINE GUN ACT 3-9 (1932), <https://catalog.hathitrust.org/Record/102226124>; see also John Brabner Smith, *Firearm Regulation*, 1 LAW & CONTEMP. PROBS. 400, 405 (1933).

<sup>21</sup> UNIFORM MACHINE GUN ACT, *supra*, at 6, § 1 (emphasis added).

<sup>22</sup> See *Deadly Arsenals for Gang Gunmen Easy of Access*, COURIER JOURNAL: MAGAZINE SECTION (Louisville, KY), October 14, 1928, at 4; *Sullivan Law Change Needed to Prevent Bandits*



agreed should not be in the hands of private persons.<sup>23</sup> Of course, the UMGA’s definition of a “machine gun” was not crafted out of thin air, nor without input from outside interest groups, particularly from firearms manufacturers and sporting, hunting, and shooting organizations.<sup>24</sup> The UMGA’s definition was borrowed from earlier machine gun laws enacted by state lawmakers.<sup>25</sup> As for the UMGA’s use of the phrase “single function,” it was borrowed directly from Pennsylvania’s 1929 law,<sup>26</sup> which defined a “machine gun” as “any

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*Buying New Machine Guns*, BROOKLYN EAGLE, December 27, 1926, at 1; Crossman, *Bootleggers Fight with Most Modern Weapons*, *supra*, at 7; see also HELMER, *supra*, at 123.

<sup>23</sup> As the National Rifle Association noted in its November 1926 edition of *American Rifleman*, the “laws should be amended to prohibit the use of machine-guns, howitzers, and field artillery by civilians—honest or otherwise.” *Guarding the Mails*, 74 AMERICAN RIFLEMAN 6 (November 1, 1926).

<sup>24</sup> For the history of sporting, hunting, and shooting organizations involvement in drafting and lobbying for uniform state firearms legislation circa the early-to-mid twentieth century, see PATRICK J. CHARLES, *VOTE GUN: HOW GUN RIGHTS BECAME POLITICIZED IN THE UNITED STATES 35-39* (2023); PATRICK J. CHARLES, *ARMED IN AMERICA: A HISTORY OF GUN RIGHTS FROM COLONIAL MILITIAS TO CONCEALED CARRY 189-203* (2018). For a few primary sources on this point, see NATIONAL FIREARMS ACT: HEARINGS BEFORE THE COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES 38-39 (1934) (statement of NRA President Karl T. Frederick).

<sup>25</sup> UNIFORM MACHINE GUN ACT, *supra*, at 10-11 (compiling the various state law definitions of a “machine gun” circa 1932).

<sup>26</sup> *Id.* at 3.

firearm that fires two or more shots consecutively at a *single function of the trigger or firing device.*”<sup>27</sup>

It was not until 1933 that state lawmakers faced any political pushback when it came to defining what legally constituted a “machine gun.” The pushback came from several sporting, hunting, and shooting organizations, most notably the National Rifle Association (NRA). Importantly, neither the NRA nor the other sporting, hunting, and shooting organizations opposed outlawing the possession or use of machine guns by private individuals. They were emphatically supportive of such legislation.<sup>28</sup> Rather, what the NRA and the other sporting, hunting, and shooting organizations took issue with was that several state machine gun bills were too “loosely drawn as to be inimical to the interests of sportsmen using semiautomatic guns. . . .”<sup>29</sup> The NRA and other sporting, hunting, and shooting organizations objected on these grounds to

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<sup>27</sup> 1929 Pa. Laws 777, § 1.

<sup>28</sup> See, e.g., C.B. Lister, *What’s Ahead for 1934*, 82 AMERICAN RIFLEMAN 22 (January 1934) (“Senator [Royal Copeland] has indicated that . . . the machine gun is the weapon which needs to be legislated against. On this point, of course, the sportsmen agree with him.”); *Firearms Sales May be Limited by Florida Law*, TAMPA DAILY TIMES (FL), March 17, 1933, at 7A (NRA Secretary-Treasurer C.B. Lister expressing support for any law that “absolutely prohibited to all except the military and police” the use and possession of machine guns).

<sup>29</sup> C.B. Lister, *The Record for 1933*, 81 AMERICAN RIFLEMAN 8 (December 1933); see also *Our Business is Everybody’s Business*, 81 AMERICAN RIFLEMAN 6 (March 1933) (objecting to any state machine gun law where “the wording . . . is such as to outlaw every semiautomatic pistol, rifle, and shotgun.”).

machine gun bills proposed in the states of North Dakota, Oregon, and Texas.<sup>30</sup> Machine gun bills proposed and passed in the states of Kansas, Minnesota, and Wisconsin, however, did not draw these objections, and were positively described as “sane,” “sensible,” and “satisfactory.”<sup>31</sup>

While the 1933 Kansas law<sup>32</sup> did not define what constituted a “machine gun,” the 1933 Minnesota and Wisconsin laws did. Beginning with the 1933 Minnesota law, a “machine gun” was defined as “any firearm capable of automatically reloading after each shot is fired, whether firing singly by separate trigger pressure or *firing continuously by continuous trigger pressure. . .*”<sup>33</sup> In accord with the UMGA, Minnesota’s definition encompassed the firing capabilities of all the various machine guns, submachine guns, and automatic rifles and pistols known at the time, especially the multi-functional Tommy Gun. At the same time, at the request of the NRA and other sporting, hunting, and shooting organizations, Minnesota’s definition expressly excluded semi-automatic sporting rifles—that is, unless someone “changed, altered, or modified” their

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<sup>30</sup> *The Roll Call of 1933 Firearms Legislation*, 81 AMERICAN RIFLEMAN 20-21 (March 1933).

<sup>31</sup> *The Roll Call of 1933 Firearms Legislation*, 81 AMERICAN RIFLEMAN 38 (April 1933).

<sup>32</sup> See 1933 Kan. Sess. Laws 76 (emphasis added).

<sup>33</sup> SESSION LAWS OF THE STATE OF MINNESOTA 232, § 1(b) (1933) (emphasis added).

respective sporting rifle as to fire “continuously by continuous trigger pressure. . . .”<sup>34</sup>

The 1933 Wisconsin law approached the definition of a “machine gun” somewhat differently than that of Minnesota. However, the legislative intent, purpose, and overall scope was the same. Borrowing directly from Pennsylvania’s law and the UMGA, Wisconsin law defined a “machine gun” as “a weapon of any description by whatever name known from which more than two shots or bullets may be discharged *by a single function of the firing device.*”<sup>35</sup> Here, as with previous state machine gun laws, what was meant by the word “function” was an action, operation, or performance. A quick perusal of any contemporaneous dictionary or thesaurus buttresses this interpretation.<sup>36</sup> So too do contemporaneous firearms texts and literature, wherein the word “function” was often contextually used to mean an action, operation, or performance.<sup>37</sup>

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<sup>34</sup> *Id.* at § 1(c).

<sup>35</sup> WISCONSIN SESSION LAWS 245-46 (1933) (emphasis added).

<sup>36</sup> WEBSTER’S NEW INTERNATIONAL DICTIONARY 1019 (2d ed. 1934); THE ROGET DICTIONARY OF SYNONYMS AND ANTONYMS 13 (1931) (showing the words “function,” “act,” “operate,” and “perform” were synonymous); *id.* at 503 (same); ROGET’S THESAURUS OF THE ENGLISH LANGUAGE IN DICTIONARY FORM 7 (1936) (showing the words “action,” “operate,” “function,” and “perform” were synonymous); *id.* at 13 (same).

<sup>37</sup> *See, e.g.*, BASIC FIELD MANUAL: THOMPSON SUBMACHINE GUN CALIBER .45, M1928A1, at 9, 10, 12 (1941), <https://catalog.hathitrust.org/Record/009993580>; HUGH B.C. POLLARD, A HISTORY OF FIREARMS 178, 195, 214, 228 (1936); JULIAN S. HATCHER, TEXTBOOK OF FIREARMS INVESTIGATION, IDENTIFICATION AND

To Minnesota and Wisconsin lawmakers, as well as other state lawmakers, the inner working mechanics of the various machine guns, submachine guns, and automatic rifles and pistols were irrelevant. Indeed, many automatic-fire capable firearms principally relied on the recoil energy produced by each bullet's discharge to effectuate automatic fire.<sup>38</sup> However, the fact remains that many automatic-fire capable firearms up to this point in history mechanically operated somewhat differently.<sup>39</sup> There is simply no historical evidence, at least that *amicus curiae* could find, to suggest that late 1920s and early 1930s state lawmakers were remotely concerned with any of the inner working mechanics, to include the trigger mechanics, of the various machine guns, submachine guns, and automatic rifles and pistols known at the time. Rather, what was

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EVIDENCE 7, 8, 61, 65, 73, 96, 197, 230 (1935); JULIAN S. HATCHER, PISTOLS AND REVOLVERS AND THEIR USE 137, 138 (1927).

<sup>38</sup> See, e.g., W.H.B. SMITH, SMALL ARMS OF THE WORLD 165 (1955) (“submachine guns, of course, are *recoil operated* weapons on the elementary *blowback principle*”) (emphasis added); BASIC FIELD MANUAL, *supra*, at 1 (“The Thompson submachine gun . . . is an air-cooled, *recoil-operated*, magazine fed weapon”) (emphasis added). Much like these early twentieth century automatic-fire capable firearms, the modern bump stock principally relies on recoil energy to effectuate automatic fire. See *Cargill*, 57 F.4th at 459.

<sup>39</sup> Compare AUTOMATIC RIFLE (BROWNING) MODEL OF 1918: SERVICE HANDBOOK 20-27 (1921), <https://catalog.hathitrust.org/Record/009568367> (detailing the “functioning” of the Browning automatic rifle), with *Handbook of the Thompson Submachine Gun: Model of 1921*, *supra*, at 250-55 (detailing the “operating principle” of the Tommy Gun); see also Hatcher, *Machine Guns*, *supra*, at 5-12; MACHINE GUNS, *supra*, at 3-134.

relevant to these state lawmakers was whether the respective firearm *could*, like the bump-stock devices at issue here, produce automatic fire by one continuous pull, action, operation, or performance of the trigger.<sup>40</sup> If the answer to that question was “yes,” then such firearms were within the scope of the restriction. To interpret the “by a single function of the trigger” or “firing device” language otherwise—as the Fifth Circuit has<sup>41</sup>—would mean that the Tommy Gun and other contemporaneous, multi-functional submachine

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<sup>40</sup> This is indeed how automatic-fire capable firearms were designed and generally understood to function. *See, e.g.*, SMITH, *supra*, at 162 (“A submachine gun is a light weight weapon . . . [that] differs from the standard type of semi-automatic pistol (from which it was originally evolved) by the fact that it can fire cartridges full automatically so long as the trigger is held back.”); 2 MANUAL OF MILITARY TRAINING 8 (1923), <https://catalog.hathitrust.org/Record/100822959> (noting that an automatic rifle “differs from the service rifle and the semi-automatic rifle in that by one continuous squeeze of the trigger it will load, fire and eject cartridges automatically”); WAR PLANS DIVISION, MANUAL OF THE AUTOMATIC RIFLE 49 (1918), <https://catalog.hathitrust.org/Record/010883826> (“As a result of the gunner *holding the trigger* to the rear [automatic fire is accomplished]”) (emphasis added).

<sup>41</sup> *Cargill*, 57 F.4th at 459-62. If “by a single function of the trigger” meant a single mechanical function of the trigger, as the Fifth Circuit suggests, then the term “trigger mechanism” would have been used. The term “trigger mechanism” was most often used in firearms texts and manuals to describe the actual mechanical function of the trigger. *See, e.g.*, BASIC FIELD MANUAL, *supra*, at 8, 9, 14; HORACE KEPHART, SPORTING FIREARMS 91, 92, 146 (1938); *Handbook of the Thompson Submachine Gun: Model of 1921*, *supra*, at 252, 261; AUTOMATIC RIFLE (BROWNING) MODEL OF 1918, *supra*, at 21, 23, 43, 44; MURRAY BALDWIN, THE RELAXING TRIGGER 13, 25, 31, 39-41 (1920); HUGH B.C. POLLARD, AUTOMATIC PISTOLS 40, 42 (1920).

guns and automatic-fire capable firearms conceivably fell outside the definition of a “machine gun,” given that these firearms, even when placed in automatic-fire mode, could technically fire a single shot with a quick pull and release of the trigger. Yet state lawmakers circa the late 1920s and early 1930s clearly had these very firearms in mind when they enacted their respective machine-gun laws.<sup>42</sup> They would have perceived no meaningful distinction between those firearms and the bump-stock firearms disputed here.

### **B. The History of the National Firearms Act of 1934**

In the initial draft of H.R. 9066—which was the House version of what would eventually become the NFA of 1934—the definition of what constituted a “machine gun” was as follows: “The term ‘machine gun’ means any weapons designed to shoot automatically or semiautomatically twelve or more shots without reloading.”<sup>43</sup> Given that this definition encompassed many semi-automatic firearms typically used by members of the sporting, hunting, and shooting community, the NRA emphatically objected to it. It was, in fact,

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<sup>42</sup> There is no substantiated historical evidence circa the 1920s and 1930s, at least that *amicus curiae* can find, which shows that state lawmakers understood the word “function” in their respective machine-gun laws to mean the “mechanical function of a single trigger pull.” *See also supra* note 41.

<sup>43</sup> For a full copy of the original H.R. 9066, see NATIONAL FIREARMS ACT, *supra*, at 1-3. This definition of a “machine gun” was included at the request of the Department of Justice. *Id.* at 14.

former NRA President Karl T. Frederick’s “first criticism” of H.R. 9066 in his testimony delivered before a hearing of the House Ways and Means Committee. According to Frederick, the definition of a “machine gun” in H.R. 9066 was “inadequate and unsatisfactory” because it was underinclusive and would exclude any automatic-fire capable firearms that held magazines of “less than 12 shots.”<sup>44</sup> Frederick elaborated:

The well-known Thompson submachine gun [or Tommy Gun], which has figured in the papers extensively; the so-called “Browning” automatic fire rifle or the Monitor rifle, which is a somewhat similar weapon designed for police use, are both in fact capable of being operated automatically and semi-automatically. The number of shots which they may discharge is dependent solely on the size or the content of the magazine and if you use those guns with magazines holding only 11 shots they would not be, within the terms of this bill a machine gun.<sup>45</sup>

After several back-and-forth exchanges between Frederick and members of House Ways and Means Committee, Frederick proffered an alternative definition of a “machine gun” for the Committee members to consider—a definition which borrowed its language from earlier state machine-gun laws—laws that the NRA had emphatically endorsed. The alternative “machine gun” definition proffered by the NRA read as

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<sup>44</sup> *Id.* at 39.

<sup>45</sup> *Id.*



follows: “A machine gun or submachine gun as used in this act means any firearm by whatever name known, loaded or unloaded, which shoots automatically more than one shot without manual reloading, by a single function of the trigger.”<sup>46</sup> Frederick then expounded upon how this definition of a “machine gun” would not apply to any semi-automatic firearms—that is, firearms that *could not* fire multiple rounds with one continuous pull of the trigger.<sup>47</sup> This definition of a “machine gun” would, however, apply to any to automatic-fire *capable* firearms:

[Y]ou may look at the automatic pistol which is the standard weapon of the United States Army. That has an automatic discharge of the empty cartridge and a reloading principle which is operated by the force of the gas from the exploded cartridge. But with a *single pull of the trigger* only one shot is fired. You must *release the trigger and pull it again* for the second shot to be fired. You can keep firing that as fast as you can pull your trigger. But that is not properly a machine gun. . . .<sup>48</sup>

By the conclusion of the hearing, the NRA ultimately proved successful in convincing the House Ways and Means Committee to shelve H.R. 9066 and replace it with a bill that was acceptable to sportsmen,

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<sup>46</sup> *Id.* at 40.

<sup>47</sup> *Id.* at 40-41.

<sup>48</sup> *Id.*

H.R. 9741.<sup>49</sup> H.R. 9741 defined a “machine gun” as “any weapon which shoots, or is designed to shoot, automatically or semi-automatically, more than one shot, without manual reloading, by a single function of the trigger,”<sup>50</sup> or in layman’s terms, any “weapon designed to shoot more than one shot without reloading and by a single pull of the trigger.”<sup>51</sup>

Of course, convincing the House to accept this definition of a machine gun was only half the battle. The NRA turned its attention towards the Senate. At the start of the Senate Subcommittee on Racketeering and Crime hearing over what would eventually become the NFA of 1934, it appeared that the Subcommittee’s chairman, New York senator Royal S. Copeland, was intent on the Senate enacting its own bill, and any differences between the House and Senate versions of the bill would be worked out during a Joint Conference Committee.<sup>52</sup> However, following two days of hearings, Copeland met privately with NRA President Frederick and NRA Executive Vice President Milton A. Reckord to work out a deal.<sup>53</sup> Therein, Copeland agreed to allow Frederick and Reckord to make constructive changes to any bill of their choosing.<sup>54</sup> In return, Frederick and

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<sup>49</sup> CHARLES, VOTE GUN, *supra*, at 51-53; see also C.B. Lister, *Firearms Laws in the 73d Congress*, 82 AMERICAN RIFLEMAN 5, 17 (July 1934).

<sup>50</sup> 73 H.J. 757 (June 13, 1934).

<sup>51</sup> H.R. Rep. No. 1780, 73d Cong., 2d Sess. 2 (1934).

<sup>52</sup> CHARLES, VOTE GUN, *supra*, at 53-55.

<sup>53</sup> *Id.* at 56.

<sup>54</sup> *Id.*

Reckord agreed that the NRA would work with Copeland in producing a bill that would prevent criminals from obtaining firearms in interstate commerce.<sup>55</sup>

Unsurprisingly, the bill that Frederick and Reckord chose was H.R. 9741<sup>56</sup>—the very bill that the NRA had previously endorsed—which again defined a “machine gun” as “any weapon which shoots, or is designed to shoot, automatically or semi-automatically more than one shot, without manual reloading, by a single function of the trigger.”<sup>57</sup> H.R. 9741, in its final form, was introduced by Representative Robert L. Doughton on May 28, 1934, passed both houses in mid-June, and signed into law as the NFA by President Franklin D. Roosevelt on June 26, 1934.<sup>58</sup>

Not long after the NFA was enacted, several NRA members expressed confusion over the law’s registration requirements, particularly whether any semi-automatic rifles or pistols needed to be registered with federal authorities.<sup>59</sup> NRA Secretary-Treasurer C.B. Lister immediately sent out several statements on what legally constituted a “machine gun” under the NFA. In an August 1934 statement, Lister stated that only those firearms “*designed to shoot* more than one

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<sup>55</sup> *Id.*

<sup>56</sup> Lister, *Firearms Laws in the 73d Congress, supra*, at 17-18.

<sup>57</sup> 73 H.J. 757 (June 13, 1934).

<sup>58</sup> National Firearms Act of 1934, Pub. L. No. 73-474, 48 Stat. 1236.

<sup>59</sup> *See, e.g., The Federal Firearms Law*, 82 AMERICAN RIFLEMAN 20 (September 1934).

shot, without reloading, by a single pull of the trigger” qualified as machine guns under the NFA.<sup>60</sup> A month later, in a letter to the editor of the sporting, hunting, and shooting newspaper column “Forest, Field and Stream,” Lister wrote that the NFA’s machine gun “provisions apply only to full automatic arms which *function continuously* until the magazine capacity has been exhausted by a single pressure on the trigger or other firing device.”<sup>61</sup>

The NRA was not alone in sending out guidance as to what constituted a “machine gun” under the NFA. So too did several federal officials who had received public information requests regarding the NFA’s scope. Minnesota-based U.S. Marshal Bernard Anderson, for one, sent out a letter clarifying that under the NFA “ordinary manual loading or autoloading” firearms did not need to be registered.<sup>62</sup> However, any firearm that “discharges the entire magazine capacity” by “one pull on the trigger” did.<sup>63</sup> St. Louis, Missouri-based Internal Revenue collector Thomas J. Sheehan issued a similar

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<sup>60</sup> *New Gun Statute is Explained at Capital*, RENO EVENING GAZETTE (NV), August 25, 1934, at 7 (emphasis added); see also *Clears New Law on Registration*, SPOKESMAN-REVIEW (WA), September 2, 1934, at 13.

<sup>61</sup> William C. Snyder, *Forest, Field and Stream*, BLUEFIELD DAILY TELEGRAPH (WV), September 16, 1934, at 10 (emphasis added); see also *Don’t Have to Report Pistols*, LOS ANGELES TIMES, August 19, 1934, part vi, at 2.

<sup>62</sup> *Firearms Law is Interpreted by Bernard Anderson*, WINONA REPUBLICAN-HERALD (MN), September 14, 1934, at 8.

<sup>63</sup> *Id.*

statement, noting that only firearms that “continue to shoot on one pull of the trigger” need to be registered under the NFA.<sup>64</sup> The same guidance was issued by Internal Revenue collectors in other states,<sup>65</sup> and was made applicable nationally upon the publication and distribution of the September 17, 1934 edition of the *Internal Revenue Bulletin*.<sup>66</sup>

### **C. The History of Enforcement Up to Through the World War II War-Trophy Problem**

It was not long after Congress enacted the NFA of 1934 that sales of machine guns, submachine guns, and automatic rifles and pistols were effectively under control.<sup>67</sup> So too was the “machine gun” registration process under the then uncontroversial Internal Revenue “continue to shoot” guidance. From June 26, 1934, through October 31, 1935, Internal Revenue registered a total of 11,413 “machine guns & machine rifles” under said guidance as follows:

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<sup>64</sup> *Here’s “Lowdown” on Firearms*, LEADWOOD PRESS (MO), September 21, 1934, at 1.

<sup>65</sup> *See, e.g., Firearm Registration Provisions Explained*, REDWOOD GAZETTE (Redwood Falls, MN), September 13, 1934, at 7; *Firearms Tax Collection to Begin Quickly*, PRESS AND SUN-BULLETIN (Binghamton, NY), August 13, 1934, at 3.

<sup>66</sup> 13 INTERNAL REVENUE BULLETIN 38, No. 38 (September 17, 1934), <https://catalog.hathitrust.org/Record/100892898>.

<sup>67</sup> *No Tax Collected on Machine Guns*, COURIER-JOURNAL (Louisville, KY), December 26, 1934, at 12.

| <b>Machine Gun Type or Category</b>                      | <b># Registered</b>        |
|--|----------------------------|
| Thompson Sub-Machine Gun<br>(Auto-Ordnance Corp.)        | 7,094                      |
| Thompson Sub-Machine Gun<br>(Other Registrations)        | 1,364                      |
| Miscellaneous and Foreign<br>Manufacture Machine Guns    | 821                        |
| Browning Rifle (Automatic)                               | 50                         |
| Colt Patena Firearms Mfg. Co.<br>Machine Guns and Rifles | 2,045                      |
| Hyde Arms Corp. Machine Guns<br>and Rifles               | 34                         |
| Foreign Imported Machine Guns<br>and Rifles              | 5                          |
| <b>Total</b>   | <b>11,413<sup>68</sup></b> |

Six years later, Internal Revenue applied the same “continue to shoot” guidance to a grand total of 158,532 “machine gun” registrations.<sup>69</sup> However, the events of

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<sup>68</sup> See *Firearms: Registration and Transfers Reported Under the Provisions of the National Firearms Act of June 26, 1934, Up to And Including October 31, 1935*, November 1, 1935, Homer Cummings Papers, Box 103, Folder Attorney General Personal File—Firearms and National Firearms Act (Charlottesville, VA: University of Virginia Special Collections), <https://bit.ly/3RiPy6i>.

<sup>69</sup> ANNUAL REPORT OF THE COMMISSIONER OF INTERNAL REVENUE 29 (1941), <https://www.irs.gov/pub/irs-soi/41dbfullar.pdf>. For the other Internal Revenue annual reports, see *Statistics of Income Tax Stats Archive—1863 to 1999 Annual Reports and Internal Revenue Service Data Books*, IRS.GOV, <https://www.irs.gov/statistics/soi-tax-stats-archive-1863-to-1999-annual-reports-and-irs-data-books>. The reason this number is so high circa 1941 was

World War II quickly exposed a flaw in Internal Revenue's registration process when U.S. military members began mailing back dangerous war trophies, including enemy explosives and automatic weapons found on the battlefields. These dangerous war trophies later found their way onto public streets and thoroughfares.<sup>70</sup>

The federal government initially responded by publishing guidance via several circulars.<sup>71</sup> Yet as World War II dragged on, the problem of dangerous war trophies entering the United States only got worse. In 1944, both the War Department and the Department of Navy responded by publishing and disseminating additional guidance on the subject. U.S. military members were informed that they could "bring back small items of enemy equipment" save for "explosives, and . . . other items the usefulness of which in the service, or need for training purposes . . . or the value as scrap metal outweighs their value as trophies as determined by the theater commanders,"<sup>72</sup>

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the outbreak of World War II, wherein U.S. manufacturers were tasked with mass producing these automatic weapons of war.

<sup>70</sup> See, e.g., *Civilians Warned to Report Explosive War Souvenirs*, PITTSBURGH PRESS (PA), July 25, 1944, at 6.

<sup>71</sup> See War Department, Circular No. 243, October 7, 1943, <https://bit.ly/46RGTO9> (prohibiting military members from mailing "explosives" and "firearms capable of being concealed on the person"); 24 INTERNAL REVENUE BULLETIN: CUMULATIVE BULLETIN 1945, at 457 (1945) (noting how on October 22, 1943, the Bureau of Customs issued an ineffective circular regarding the importation of firearms from the war).

<sup>72</sup> War Department, Circular No. 217, June 1, 1944, at 4-5, <https://bit.ly/3RxxQWi>.

but only on the condition that they first obtain a “certificate in duplicate signed by [their] superior officer stating . . . [they are] officially authorized by the theater commander to retain” any particular war trophy.<sup>73</sup> These instructions, if followed to the letter, would have prevented most explosives and automatic weapons from entering the United States.<sup>74</sup> Unfortunately, they were not, and the dangerous war-trophy problem persisted. It did not help that the Bureau of Customs was too understaffed to check every returning military member’s baggage and customs paperwork.<sup>75</sup>

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<sup>73</sup> War Department, Circular No. 353, August 31, 1944, at 5, <https://bit.ly/3TklREQ>.

<sup>74</sup> For some examples of how the War Department’s instructions were relayed down the chain-of-command, see U.S. Pacific Fleet and Pacific Ocean Areas, *Souvenirs*, June 25, 1945, <https://bit.ly/487plhY>; Headquarters Replacement Service, Circular No. 1, February 27, 1945, <https://bit.ly/3t21O3f>; Headquarters U.S. Forces India Burma Theater, Circular No. 1, January 5, 1945, <https://bit.ly/3TgNGxw>; War Department, Adjutant’s General Office, *Processing of Baggage from Overseas*, August 29, 1944, <https://bit.ly/3TiMV7b>; Headquarters North African Theater of Operations U.S. Army, *Mailing of Explosive Firearms*, April 28, 1944, <https://bit.ly/3TjqU8n>; Central Pacific Force, U.S. Pacific Fleet, *Souvenirs, Mailing and Transportation Of*, March 14, 1944, <https://bit.ly/3Tdatug>; Headquarters U.S. Army Forces Rear Echelon China Burma India, Circular No. 17, February 15, 1944, <https://bit.ly/3RzBMgZ>.

<sup>75</sup> 24 INTERNAL REVENUE BULLETIN: CUMULATIVE BULLETIN 1945, at 457. This is not to say, however, that the Bureau of Customs did not stop any dangerous, automatic war trophies from entering the country. See, e.g., *Yanks’ Souvenir Appetite Attested by Customs Officials in Falls*, GREAT FALLS TRIBUNE (MT), July 5, 1945, at 1; *A Souvenir is Deadly*, KANSAS CITY TIMES (MO), December 18, 1945, at 2.



Come 1945, the dangerous war-trophy problem had reached a point that both the War Department and the Department of Navy, in conjunction with the Department of Justice and Department of Treasury, issued new guidance that was much more explicit in prohibiting explosives and “firearms of the automatic type” as lawful war trophies.<sup>76</sup> As to what constituted a firearm of the “automatic type,” the new guidance listed “machine guns, submachine guns, or *any type of gun* in which the number of shots or bullets may be discharged with *one continuous pull of the trigger*.”<sup>77</sup> And to ensure that this new guidance reached those military members and veterans who had already returned stateside, Internal Revenue issued press releases on the subject that were reprinted in local newspapers across the country.<sup>78</sup> Each press release

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<sup>76</sup> War Department, Circular No. 155, May 23, 1945, at 4-5, <https://bit.ly/47NZDzr>; *Rules on Souvenirs Summarized*, BUREAU OF NAVAL PERSONNEL INFORMATION BULLETIN 71 (February 1945), <https://catalog.hathitrust.org/Record/000635337>.

<sup>77</sup> War Department, Circular No. 155, *supra*, at 5 (emphasis added). In September 1945, given the continuance of the war-trophy problem, the War Department issued a directive limiting each returning military member only one small, non-automatic firearm souvenir from the battlefield. See War Department, Circular No. 267, September 5, 1945, at 8, <https://bit.ly/3RyQbtZ>. The War Department’s crackdown on these unlawful war trophies during demobilization was so severe that it was common for returning military members to haphazardly discard them out of train windows. JOHN C. SPARROW, *HISTORY OF PERSONNEL DEMOBILIZATION IN THE UNITED STATES ARMY* 215 (1952), <https://bit.ly/3Rd5YNL>.

<sup>78</sup> See e.g., *On ‘Tommy Gun’ Trail*, KANSAS CITY STAR (MO), December 20, 1945, at 3; *Veterans Warned to Register All Automatic Guns*, LOGAN DAILY NEWS (OH), November 28, 1945, at 2;

made it clear that federal law required “any firearms of the automatic type, such as machine pistols, machine guns, submachine guns, or any type of gun from which bullets may be discharged with one continuous pull of the trigger” to be registered with Internal Revenue.<sup>79</sup> Alternatively, military members and veterans, at no charge to them, could elect to have Internal Revenue render the respective automatic-fire capable firearm inoperable.<sup>80</sup>

By 1946, however, the dangerous war-trophy problem had not improved. The death toll resulting from these trophies was now in the thousands,<sup>81</sup> prompting lawmakers to introduce new firearms legislation.<sup>82</sup> The dangerous war-trophy problem was so serious that even President Harry S. Truman acknowledged it in a

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*Commissioner Says to Register War Trophies and Guns*, BIG SPRING WEEKLY HERALD (TX), October 12, 1945, at 7; *Kraemer Warns Veterans About Gun Souvenirs*, JOURNAL (Meriden, CT), September 28, 1945, at 1.

<sup>79</sup> *Register Automatic Weapons, Vets Told by Federal Agency*, LACROSSE TRIBUNE (WI), September 27, 1945, at 8.

<sup>80</sup> See, e.g., Anne LoPresti, *List Automatic Weapon Souvenirs, U.S. Warns*, DAYTON HERALD (OH), December 15, 1945, at 14.

<sup>81</sup> Memorandum from Irving Perlmeter, Department of Treasury Public Relations Division, to Charles W. Jackson, Office of Government Reports, July 23, 1947, John T. Gibson Papers, box 4, folder War Trophies (Independence, MO: Harry S. Truman Presidential Library), <https://bit.ly/4831NLc>. By 1948, it was estimated that 54,000 people had been injured by dangerous war trophies. See *Death on the Mantel Shelf*, LOS ANGELES TIMES, April 11, 1938, part II, at 4.

<sup>82</sup> CHARLES, VOTE GUN, *supra*, at 75-77.

press conference. Truman assured the public that the government would continue to take steps to prevent these dangerous “implements of destruction from getting into the wrong hands.”<sup>83</sup> And while lawmakers debated whether to enact new firearms legislation to deal with the dangerous war-trophy problem, the Truman administration pressed forward with the federal campaign of urging military members and veterans to bring their firearm war trophies to local law enforcement agencies, who would then determine whether said trophies were in compliance with the NFA.<sup>84</sup>

Come 1947, it had become clear to lawmakers that enacting new firearms legislation to deal with dangerous war trophies was not politically feasible.<sup>85</sup> As a result, the political course of action taken was one of “education over legislation” through the establishment of the National War Trophy Safety Program (NWTSP).<sup>86</sup> The NWTSP was controlled by a special joint committee made up of officials from the

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<sup>83</sup> President’s News Conference, January 15, 1946, Public Papers of Harry S. Truman 1945-1953 (Independence, MO: Harry S. Truman Presidential Library), <https://www.trumanlibrary.gov/library/public-papers/15/presidents-news-conference-0>.

<sup>84</sup> See, e.g., *Inspect Vets’ Guns*, YORK DISPATCH (PA), June 18, 1946, at 11; Quentin R. Mott, *Drawing the Teeth from Weapons of War*, EVENING STAR (Washington, DC), May 12, 1946, at C5; *U.S. Warns of War-Gun Menace, Offers to Make ‘Em Safe for Free*, BROOKLYN EAGLE, April 1, 1946, at 8; *Must Be Registered*, ATLANTA CONSTITUTION, January 6, 1946, at 3B (noting that any firearm “designed to shoot more than one shot by a single pull of the trigger” is a “machine gun” under the NFA).

<sup>85</sup> CHARLES, VOTE GUN, *supra*, at 76-77.

<sup>86</sup> *Id.* at 78.

Department of Treasury, War Department, Department of Navy, and the NRA. The NWTSP's objectives were (a) to promote "public safety in the handling of war trophies"<sup>87</sup> and (b) to ensure that any firearm trophies inviolate of the NFA were either registered with Internal Revenue or rendered inoperable.<sup>88</sup> As for which firearm trophies needed to be registered as machine guns or rendered inoperable, the NWTSP's guidance stipulated any "pistol or rifle *designed to fire more than one shot with each pull of the trigger . . .*"<sup>89</sup> Follow-on press releases and government directives regarding the NWTSP contained similar guidance.<sup>90</sup>

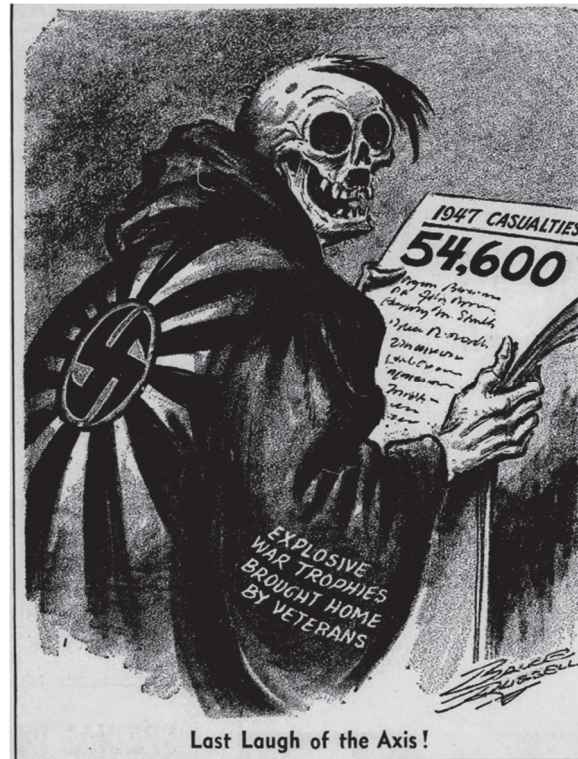
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<sup>87</sup> Memorandum from Henry Schneider, War Trophy Safety Committee, to President Harry S. Truman, July 24, 1947, Harry S. Truman Papers, White House Central Files: President's Personal File, box 630, folder 2177, National Rifle Association of America (Independence, MO: Harry S. Truman Presidential Library), <https://bit.ly/48bJ7ZO>.

<sup>88</sup> Department of Treasury, Press Release, Press Service No. S-332, May 18, 1947, John T. Gibson Papers, box 4, folder War Trophies (Independence, MO: Harry S. Truman Presidential Library), <https://bit.ly/3GGct6R> ("Except as to the statutory requirement for registration of machine guns and similarly fully automatic weapons, the committee program will be entirely of a voluntary and educational nature."). See also *Drive Under Way to "Pull Teeth" of Wartime Trophies*, JOURNAL NEWS (White Plains, NY), June 18, 1947, at 7; *Government Cracks Down on Weapons*, TIMES (Shreveport, LA), May 19, 1947, at 8.

<sup>89</sup> Memorandum from Secretary of War et al., Greetings [from NWTSP], April 30, 1947, Harry S. Truman Papers, White House Central Files: President's Personal File, box 630, folder 2177, National Rifle Association of America, <https://bit.ly/3t3yE3P> (emphasis added).

<sup>90</sup> See, e.g., *Tax Unit Stresses Dangers of Explosive War Trophies*, PRESS DEMOCRAT (Santa Rosa, CA), November 19, 1947, at 3



April 11, 1948, *Los Angeles Times* Political Cartoon on Dangerous War Trophies.

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(“Any weapon designed or altered so it is capable of firing more than one shot with one continuous pull of the trigger, such as a machine gun or machine pistol” must be registered.); *Must Register These Firearms*, UNION COUNTY JOURNAL (Marysville, OH), June 2, 1947, at 2 (“Any firearms . . . capable of firing more than one shot with one continuous pull of the trigger, such as a machine gun or machine pistol” need to be registered.); War Department, Circular No. 162, June 20, 1947, at 2, <https://bit.ly/48aiYKW> (“registration of automatic-type firearms, such as machine guns, submachine guns, or any type of gun from which a number of shots may be discharged with one continuous pull of the trigger, is mandatory [to be registered] under the provisions of the [NFA].”).

The NWTSP ran from May 1947<sup>91</sup> through October 1951.<sup>92</sup> During that time, more than 100,000 firearm trophies were inspected by federal, state, and local officials associated with the NWTSP, and more than 15,000 were registered as “machine guns” with Internal Revenue via the “one continuous pull of the trigger” standard.<sup>93</sup> And although the NWTSP formally ended in October 1951, up through at least 1972, the Department of Treasury continued to work closely with the Department of Defense in adjudicating which firearm trophies brought stateside by military members and veterans needed to be registered under the NFA’s “one continuous pull of the trigger” standard.<sup>94</sup>

#### **D. The National Firearms Act of 1934’s Definition of a “Machine Gun” in Summary**

As outlined above, the background history of the NFA of 1934 overwhelmingly points in one direction. From the NFA’s inception, its definition of a “machine gun” encompassed every firearm capable of producing

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<sup>91</sup> ANNUAL REPORT OF THE COMMISSIONER OF INTERNAL REVENUE 57 (1948), <https://www.irs.gov/pub/irs-soi/48dbfullar.pdf> (noting May 23, 1947, as the official start date).

<sup>92</sup> *War Trophies Going Under Regulations*, MUNCIE STAR (IN), October 26, 1951, at 4 (press release noting the deactivation of the War Trophy Safety Committee).

<sup>93</sup> ANNUAL REPORT OF THE COMMISSIONER OF INTERNAL REVENUE 62 (1951), <https://www.irs.gov/pub/irs-soi/51dbfullar.pdf>.

<sup>94</sup> For evidence of this, see *Statistics of Income Tax Stats Archive—1863 to 1999 Annual Reports and Internal Revenue Service Data Books*, IRS.GOV, <https://www.irs.gov/statistics/soi-tax-stats-archive-1863-to-1999-annual-reports-and-irs-data-books>.

automatic fire through one manual action, operation, or performance of the trigger. To lawmakers living at that time, the inner working mechanics of the various automatic-fire capable firearms were irrelevant. What was relevant was whether a respective firearm *could*, like the bump-stock devices at issue here, produce automatic fire by one continuous pull of the trigger. Not only does the history prior to and contemporaneous with the enactment of the NFA support this interpretation, but so too does the enforcement history up through the mid-twentieth century, particularly during and immediately after World War II. To interpret 26 U.S.C. § 5845(b) as the Fifth Circuit has recently done would essentially mean that tens of thousands, if not hundreds of thousands, of federal machine gun registrations over the course of many decades were done improperly.



**CONCLUSION**

For the foregoing reasons, the Fifth Circuit's unduly narrow construction of 26 U.S.C. § 5845(b) is at odds with how the statute has been consistently interpreted since its enactment. The Court should reverse the decision.

Respectfully submitted,

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