No. 20-51016

United States Court of Appeals
for the Fifth Circuit

Michael Cargill,

Plaintiff-Appellant,

v.

Merrick B. Garland, et al.

Defendant-Appellees.

On Appeal from the United States District Court
for the Western District of Texas
Case No. 1:19-cv-349 (Hon. David Alan Ezra)

BRIEF OF *AMICUS CURIAE* LIBERTY JUSTICE CENTER IN SUPPORT OF PLAINTIFF-APPELLANT ON REHEARING EN BANC

Jeffrey D. Jennings
Liberty Justice Center
440 N. Wells St., Ste. 200
Chicago, IL 60654
(312) 637-2280

jjennings@libertyjusticecenter.org

Attorneys for Amicus Curiae
Liberty Justice Center

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Case No. 20-51016, *Cargill v. Garland*

The undersigned counsel of record for amicus curiae certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1, have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Person or entity	Connection to case and interest
Abby C. Wright	Counsel for Defendants-Appellees
Ashley C. Hoff	Counsel for Defendants-Appellees
Brad Hinshelwood	Counsel for Defendants-Appellees
Brian T. Boynton	Counsel for Defendants-Appellees
Bureau of Alcohol, Tobacco, Firearms, and Explosives	Defendant-Appellee
Harriet Hageman	Counsel for Plaintiff-Appellant
Jeffrey D. Jennings	Counsel for Amicus Curiae Liberty Justice Center
Kyle T. Edwards	Counsel for Defendants-Appellees
Liberty Justice Center	Amicus Curiae
Mark B. Stern	Counsel for Defendants-Appellees

Mark Chenoweth	Counsel for Plaintiff-Appellant
Merrick B. Garland	Defendant-Appellee
Michael Cargill	Plaintiff-Appellant
Michael S. Raab	Counsel for Defendants-Appellees
New Civil Liberties Alliance	Counsel for Plaintiff-Appellant
Richard Samp	Counsel for Plaintiff-Appellant
Steven Dettelbach	Defendant-Appellee
U.S. Department of Justice	Defendant-Appellee

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/s/ Jeffrey D. Jennings
Attorney of record for Liberty Justice Center.

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INTEREST OF AMICUS CURIAE

The Liberty Justice Center is a nonprofit, nonpartisan, public-interest legal aid firm that seeks to protect economic liberty, private property rights, free speech, and other fundamental rights. LJC pursues its goals through strategic, precedent-setting litigation to revitalize constitutional restraints on government power and protections for individual rights. *See, e.g. Janus v. AFSCME*, 138 S. Ct. 2448 (2018). This case interests *amicus* because it involves the nondelegation doctrine which is a separation of power principle that protects the individual rights that LJC defends. LJC also represents the Plaintiff-Appellants in *Nat'l Horseman's Benevolent & Protective Ass'n v. Black*, No. 22-10387, which is currently pending before this Court and which also involves the nondelegation doctrine.

LJC files this brief pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure and all parties to the appeal have consented to the filing of this brief. No counsel for any party authored any part of this brief, and no person or entity other than amicus funded its preparation or submission.

SUMMARY OF THE ARGUMENT

If the "machinegun" statute authorizes the Bump Stock Rule promulgated by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), then the statute violates the Constitution's nondelegation doctrine. The Bump Stock Rule states that bump stocks are "machinegun[s]" for purposes of the National Firearms Act and the federal statutory bar on the possession or sale of new "machinegun[s]." *Bump-Stock-Type Devices*, 83 Fed. Reg. 66,514 (Dec. 26, 2018); *see also* 18 U.S.C. §§ 922(o)(1), 921(a)(24); 26 U.S.C. § 5845(b); *Cargill v. Garland*, 20 F.4th 1004 (5th Cir. 2021), *reh'g en banc granted, opinion vacated*, 37 F.4th 1091 (5th Cir. 2022).

Under federal law, it is illegal to possess a machinegun. *Bump-Stock-Type Devices*, 83 Fed. Reg. at 66,514; *see also* 18 U.S.C. §§ 922(o)(1), 921(a)(24); 26 U.S.C. § 5845(b). For decades, the ATF asserted that non-mechanical bump stocks did not constitute a machinegun under the statutory definition. Traditionally, a machinegun was understood to constitute a weapon that automatically shoots multiple shots with a single trigger function. A semiautomatic, even with a bump stock, does not satisfy that meaning because a single trigger pull results in only one shot fired. In 2018, ATF completed a volte-face by registering guns with bump stocks as a

machinegun, threatening Appellant Michael Cargill and other law-abiding bump stock owners with criminal charges if they did not relinquish their bump stocks by March 2019.

While Congress may delegate some legislative powers to agencies, "there are limits of delegation which there is no constitutional authority to transcend." *Panama Refining Co. v. Ryan*, 293 U.S. 388, 430 (1935). The standard for determining when this line has been crossed has been the intelligible principle test. "If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power." *J.W. Hampton Jr. & Co. v. United States*, 276 U.S. 394, 409 (1928). Permissible delegations of legislative power delegate fact-finding or authorize agencies to fill in the details where Congress has set out general provisions to guide and direct the agencies in exercising their authority. But agencies cannot be granted unfettered authority to exercise legislative power without violating nondelegation.

ATF is neither engaging in simple fact finding, nor "filling in the details" in promulgating its Bump Stock Rule. Instead, ATF rewrote the Congressional definition of "machinegun," which was intended to act as a

constraint on its power. An "intelligible principle" cannot serve its purpose of constraining the agency if the agency has absolute discretion to change that principle. Thus, the Court should construe the statute narrowly to avert this nondelegation concern and hold that the statute does not authorize the Bump Stock Rule.

ARGUMENT

I. The historical underpinnings of nondelegation underscore its indispensable role in maintaining the separation of powers.

In the early years of the republic, Congress had unchallenged plenary power over lawmaking. The President had a comparatively trivial role in issuing statutes beyond "recommendation and veto." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 655 (1952) (Jackson, J., concurring). Yet today, executive agencies are the primary federal criminal lawgivers. *See* Twitter.com: @CrimeADay. Congress has effectively given away much of its lawmaking power and the administrative state now promulgates over twenty times more rules than the number of laws that Congress passes. *See* 5 U.S.C. § 551(4)-(5) (establishing the current agency rulemaking's legal framework); *see also* Clyde Wayne Crews Jr., *How Many Rules and Regulations Do*

Federal Agencies Issue?, Forbes (Aug. 15, 2017).[1] "Congressional delegations have resulted in over 300,000 regulatory crimes, criminalizing everything from mislabeled marbles to misshapen meatloaf." Brief for the Institute for Justice, p. 3, *Gundy v. United States*, 139 S.Ct. 2116 (2019).

To be sure, some have claimed that notions of nondelegation were nonexistent during the founding era and that it is an "invented tradition." Adrian Vermeule, *There is no conservative legal movement*, Wash. Post (July 7, 2022).[2] Nothing could be further from the truth. Like many of the ideas enshrined in our Constitution, nondelegation originated in the disquisitions of preeminent Enlightenment political theorists like Baron de Montesquieu and John Locke. In his Second Treatise, Locke wrote the legislature "cannot transfer the power of making laws to any other hands; for it being but a delegated power from the people, they who have it cannot pass it over to others." Locke, Second Treatise § 141, at 71. He concluded: "when the people have said we will submit to rules, and be governed by laws made by such men, and in such forms, nobody else can say other men shall make laws for

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[1] https://www.forbes.com/sites/waynecrews/2017/08/15/how-many-rules-and-regulations-do-federal-agencies-issue/?sh=3192b9021e64

[2] https://www.washingtonpost.com/outlook/2022/07/06/epa-roberts-conservative-court-libertarian/.

them; nor can the people be bound by any laws but such as are enacted by those whom they have chosen and authorized to make laws for them." *Id.*

This desire for democratic accountability and a robust separation of powers directly impacted the Constitution's design. The Legislative Vesting Clause, the first substantive command in the Constitution, requires that "all legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. art. I, § 1. Subsequent clauses grant the President exclusive control over executive powers and the judiciary sole dominion of judicial power. Thus, the Constitution created clear delineations between the three branches of government. *See, e.g.*, The Federalist Nos. 47, 51 (James Madison).

Regarding legislative power, Alexander Hamilton stated that it is the "power of making laws," which are "rules which those to whom it is prescribed are bound to observe." The Federalist No. 33 (Alexander Hamilton). Thus, those who helped shepherd the Constitution's ratification understood that if Congress could simply proclaim indeterminate objectives and then delegate the role of specific rulemaking to other entities, it would undermine the system of government. *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892); *see Gundy v. United States*, 139 S. Ct. 2116, 2134-35

(2019) (Gorsuch, J., dissenting). Chief Justice John Marshall recognized this, declaring that Congress may not "delegate . . . powers which are strictly and exclusively legislative." *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 42 (1825).

Despite the original public meaning of Article I's vesting clause, the delegation of legislative power to the executive branch has been a slow and creeping process. An initial exception for the delegation of fact-finding to the executive was recognized in the 1813 forfeiture case, *The Aurora*, 11 U.S. (7 Cranch) 382, 388 (1813). Next, the Supreme Court sanctioned the delegation of rulemaking authority where the regulations complemented Congressional directives. This type of delegation warrants the executive branch to determine "reasonable variations, tolerances, and exemptions, which, because of their variety and need of detailed statement, it was impracticable for Congress to prescribe." *See United States v. Shreveport Grain & Elevator Co.*, 287 U.S. 77, 85 (1932). The Court also acknowledged that the two exemptions for fact-finding and filling up the details entail legislative discretion but preserved them despite these concerns. *See United States v. St. Paul & Pac. R.R. Co.*, 282 U.S. 311, 324 (1931).

In *J.W. Hampton, Jr., & Co.*, the Court permitted the delegation of the power to regulate common carriers, entities open to the general public that transports people or goods, to the executive branch. 276 U.S. at 409. In doing so, the Court articulated the "intelligible principle" test that eventually became the modern tool for courts to assess the constitutionality of congressional delegations. *Id.* "If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power." *See id.* at 409.

This test was used to invalidate a statute in *Panama Refining Co.* 293 U.S. at 430. There, the Supreme Court held that the National Industrial Recovery Act exceeded Congress's capacity to delegate in authorizing the executive branch to establish "reasonable" rates for oil transportation. *Id.* at 416, 430. Later that year, in *A.L.A. Schechter Poultry Corp. v. United States*, the Court underscored that Congress had not laid out any principle to be followed by the executive branch. 295 U.S. 495, 542 (1935). The majority clarified that Congress could not relinquish or transfer essential legislative functions. While acknowledging the necessity of delegating increasingly complex legislative duties to administrators in the executive branch, the Court made

clear that the instrumentalities in the making of subordinate rules must be subject to limitations if separation of powers is to be preserved. *Id.* at 541-42. Since the National Industrial Recovery Act, no statute has been struck down by the Supreme Court on nondelegation grounds. *See* Cass R. Sunstein, *Nondelegation Canons*, 67 U. Chi. L. Rev. 315, 322 (2000) ("The nondelegation doctrine has had one good year, and 211 bad ones (and counting)."); Gary Lawson, *Delegation and Original Meaning*, 88 Va. L. Rev. 327, 328–29 (2002) ("After 1935, the Court has steadfastly maintained that Congress need only provide an 'intelligible principle' to guide decisionmaking, and it has steadfastly found intelligible principles where less discerning readers find gibberish.").

But the revival of the nondelegation doctrine in recent cases cannot be ignored. In *Gundy*, the majority recognized that if "the Attorney General had plenary power to determine the Sex Offender Registration and Notification Act's applicability to pre-Act offenders—to require them to register, or not, as she sees fit, and to change her policy for any reason and at any time," it would constitute an unconstitutional delegation of legislative prerogatives. *Gundy*, 139 S. Ct. at 2123 (cleaned up). While the Court ultimately upheld SORNA, the dissent noted that the intelligible principle test had become so

expansive that it now permits excessive delegations of congressional authority. Allowing the attorney general to write criminal laws in the manner that SORNA permits "would serve only to accelerate the flight of power from the legislative to the executive branch, turning the latter into a vortex of authority that was constitutionally reserved for the people's representatives in order to protect their liberties." *Gundy*, 139 S. Ct. at 2142 (Gorsuch, J., dissenting).

And this summer, in *West Virginia v. EPA*, the Court ruled that Congress did not give the EPA the power to develop emissions caps in Section 111(d) of the Clean Air Act. 142 S. Ct. 2587, 2616 (2022). The majority rooted its decision in the major questions doctrine. *Id.* at 2610. The major questions doctrine asserts that courts cannot construe statutes to authorize executive agencies to make policy determinations of significant power beyond what Congress could have reasonably been understood to have granted. *Id.* at 2608.

West Virginia is yet another milestone in the nondelegation doctrine's revival because the "major questions doctrine is closely related to . . . the nondelegation doctrine." *Nat'l Fed'n of Indep. Bus. v. DOL, OSHA*, 142 S. Ct. 661, 668 (2022) (Gorsuch, J., concurring). "Both are designed to protect the

separation of powers and ensure that any new laws governing the lives of Americans are subject to the robust democratic processes the Constitution demands." *Id.* at 668-69. "The nondelegation doctrine ensures democratic accountability by preventing Congress from intentionally delegating its legislative powers to unelected officials." *Id.* at 669. "The major questions doctrine serves a similar function by guarding against unintentional, oblique, or otherwise unlikely delegations of the legislative power." *Id.* Accordingly, "for decades courts have cited the nondelegation doctrine as a reason to apply the major questions doctrine." *Id.* at 668. Thus, the rise of the major questions doctrine also reflects the mood of the law shifting in favor of rigorous enforcement of the nondelegation doctrine.

To be sure, opponents of the nondelegation doctrine contend that modern government's dependence on legislative delegations since the advent of the administrative state belies the necessity and prudence of restoring the original conception of separation of powers. David French, *The Constitution Isn't Working*, The Atlantic (July 12, 2022).[3] But this does not negate the original public meaning of the Constitution as explained above. Congress'

[3] https://newsletters.theatlantic.com/the-third-rail/email/dc2cba7f-fe77-411c-8e11-47d4cadb8266/

continual prioritization of partisan imperatives over its institutional responsibilities is no justification for placing political expediency above the Constitution. *See Mistretta v. United States,* 488 U.S. 361, 416 (1989) (Scalia, J., dissenting). And it is out of step with this Court, which, just this year, struck down a statute on nondelegation grounds. *Jarkesy v. SEC*, 34 F.4th 446, 462 (5th Cir. 2022).

II. If the statute permits the ATF's new definition of "machinegun," then the statute violates the nondelegation doctrine.

While there are some permissible forms of delegations of legislative power, ATF's novel bump stock regulations are out-of-bounds in their disregard for the limits that Congress imposed. For a legislative delegation to be constitutionally valid, a statute authorizing such legislative power must communicate an "intelligible principle." *J.W. Hampton, Jr., & Co.*, 276 U.S. at 394. The "intelligible principle" rule articulates the concept that permissible delegations of legislative power assign the duty to merely "determine specific facts" or "to fill up the details under the general provisions made by the Legislature." *Panama*, 293 U.S. at 426 (cleaned up); *see also e.g.*, *Wayman*, 23 U.S. at 43; *Gundy*, 139 S. Ct. at 2136 (Gorsuch, J. dissenting). But the government's interpretation of the machinegun statute falls in neither of these buckets. And it lacks a limiting principle, which is a

telltale sign that it violates the nondelegation doctrine. *BST Holdings, L.L.C. v. OSHA*, 17 F.4th 604, 611 (5th Cir. 2021).

A. The ATF's new definition of "machinegun" is not mere fact finding that is appropriately constrained.

The Supreme Court has examined various instances of permissible delegations of legislative power which delegate fact finding to the executive but that still meaningfully constrain its actions. *See, e.g.*, *Lichter v. United States,* 334 U.S. 742, 779 (1948); *Yakus v. United States*, 321 U.S. 414, 424 (1944). In *Touby v. United States,* 500 U.S. 160 (1991), a statute authorizing the Attorney General to temporarily add a drug to a schedule of controlled substances passed the intelligible principle test because it implemented strict procedural requirements and provided sufficient guidance. The statute required the Attorney General to satisfy numerous requirements, "apart from the 'imminent hazard' determination required by § 201(h)." *Id.* at 167. For example, "if he wishes to add temporarily a drug to schedule I, [he] must find that it 'has a high potential for abuse,' that it 'has no currently accepted medical use in treatment in the United States,' and that '[t]here is a lack of accepted safety for use of the drug . . . under medical supervision.'" *Id.* (quotation omitted).

The court concluded that Congress "placed multiple specific restrictions on the Attorney General's discretion to define criminal conduct" and "[t]hese restrictions satisfy the constitutional requirements of the nondelegation doctrine." *Id.* at 167. The procedural restrictions effectively restrained the Attorney General from exercising unconstitutional legislative powers.

Here, unlike the Attorney General in *Touby*, the ATF is not engaging in mere fact finding. The statute at issue in *Touby* was borne out of the unique need for an expedited procedure in response to the development of new "designer drugs." *Id.* at 163. Bump stocks are not a new device; the technology was first patented in 2000. Nicholas Riccardi, *Regulators have flip-flopped on legality of some bump stocks,* AP News (Oct. 9, 2017).[4]

Congress explicitly defined "machinegun" in the National Firearms Act and this definition was incorporated in its federal machinegun ban. *See* 18 U.S.C. §§ 922(o)(1); 26 U.S.C. § 5845(b). By re-interpreting the definition of "machinegun" enacted by Congress, the ATF's Bump Stock Rule is engaging in unconstitutional legislating. This would be akin to the Attorney General redefining "imminent hazard" or "currently accepted medical use" for

[4] https://apnews.com/article/shootings-north-america-us-news-ap-top-news-patents-4997be363a7949a7ab757e1112af22fe.

purposes of the *Touby* statute. Altering the definitions of the restrictions placed upon the agency's delegated power goes beyond fact finding. Before promulgating the Bump Stock Rule, the ATF appropriately constrained itself to fact finding in its practice of releasing advisory classification letters in response to solicitations from manufacturers and owners of firearms and firearm accessories seeking the agency's view regarding the correct classification of such items. *See Cargill v. Barr*, 502 F. Supp. 3d 1163, 1178 (W.D. Tex. 2020), *aff'd sub nom. Cargill v. Garland*, 20 F.4th 1004, 1007-08 (5th Cir. 2021), *reh'g en banc granted, opinion vacated*, 37 F.4th 1091 (5th Cir. 2022). This fact finding exercise is in line with the procedures described in *Touby* for properly delegated authority. An agency redefining the boundaries of its own legislative authority is not.

B. The ATF's "machinegun" definition is not "filling in details" that is premised upon meaningful constraints and guidance provided by Congress.

It is a permissible delegation of legislative power for the legislature to make general provisions and assign the duty of "fill up the details" to an agency or commission. *See, e.g., Gundy*, 139 S. Ct. at 2136 (Gorsuch, J., dissenting); *Wayman,* 23 U.S. at 43. In *Mistretta*, the sentencing commission passed scrutiny because Congress provided sufficient guidance to the

commission, which then filled in the details according to the prescribed boundaries. 488 U.S. at 377. The Court reasoned that Congress "legislated a full hierarchy of punishment—from near maximum imprisonment, to substantial imprisonment, to some imprisonment, to alternatives—and stipulated the most important offense and offender characteristics to place defendants within these categories." *Id.* The Court concluded that "[d]eveloping proportionate penalties for hundreds of different crimes by a virtually limitless array of offenders is precisely the sort of intricate, labor-intensive task for which delegation to an expert body is especially appropriate." *Id.* at 379.

But here, ATF's functional alteration of the "machinegun" definition is not equivalent to "filling in" the intricate or labor-intensive details of a complex sentencing scheme. Congress specifically defined "machinegun" in the National Firearms Act of 1934 and expanded that definition in the Gun Control Act of 1968 to say: "Any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger."[5]

[5] 26 U.S.C. § 5845(b); *see also* 18 U.S.C. § 921(24) ("The term 'machinegun' has the meaning given such term in section 5845(b) of the National Firearms Act.").

Thus, Congress has already provided the "details" of what constitutes a machinegun. But, if ATF can alter those details, and thus change the boundaries which are intended to outline and guide the exercise of its legislative power, there are effectively no constraints on that power.

C. The ATF's interpretation of "machinegun" raises nondelegation concerns because it lacks a limiting principle.

Agency interpretations of a statute so broad that the statute no longer guides its discretion violate the nondelegation doctrine as well as interpretations that lack a limiting principle. *Jarkesy,* 34 F.4th at 462; *BST Holdings, LLC*, 17 F.4th at 611; *Tiger Lily, LLC v. U.S. Dep't of Hous. & Urb. Dev.*, 5 F.4th 666, 672 (6th Cir. 2021).

This Court recently struck down a statue on nondelegation grounds for not offering the SEC any guidance. In *Jarkesy*, the SEC claimed its authorizing statute allowed it to choose whether to prosecute securities fraud in one of its internal tribunals or an Article III court. 34 F.4th at 459. The Court explained that "[t]he two questions we must address, then, are (1) whether Congress has delegated power to the agency that would be legislative power but-for an intelligible principle to guide its use and, if it has, (2) whether it has provided an intelligible principle such that the agency exercises only executive power." *Id.* The Court held that the discretion of whether to afford a

defendant "certain legal processes" or not was a legislative power and that the statute "offered no guidance whatsoever" on making that choice. *Id.* at 462. Thus, the statute violated the nondelegation doctrine. *Id.*

Jarkesy's logic applies here too. First, "[g]overnment actions are "legislative" if they have "the purpose and effect of altering the legal rights, duties and relations of persons . . . outside the legislative branch." *Id.* at 461 (internal quotation from *INS v. Chadha,* 462 U.S. 919, 952 (1983)). The district court's fact finding shows that the Bump Stock Rule creates a new ban on bump stock devices, which were previously legal to own, making this rule an act of legislation. *See Barr*, 502 F. Supp. 3d at 1178, *aff'd sub nom. Garland*, 20 F.4th at 1007-08, *reh'g en banc granted, opinion vacated*, 37 F.4th 1091 (5th Cir. 2022).

Second, if ATF has absolute discretion to redefine "machinegun," so that it includes firearms that require something more than a "single function of the trigger" to fire multiple bullets, then the machinegun statute effectively offers the ATF "no guidance whatsoever." Supp. App. Br. 12-13. To avoid this, this Court should interpret Congress' definition of "machinegun" as constraining the ATF's discretion, rather than allowing ATF to re-write Congress' constraints.

This Court's reasoning in *BST Holdings, LLC* supports this conclusion. 17 F.4th at 611. There, this Court noted that OSHA "was not—and likely *could* not be, under the Commerce Clause and nondelegation doctrine—intended to authorize a workplace safety administration in the deep recesses of the federal bureaucracy to make sweeping pronouncements on matters of public health affecting every member of society in the profoundest of ways." *Id.* (emphasis in original) (footnote omitted). Although the Court did not need to rule on the issue of nondelegation, the opinion restated that "the nondelegation doctrine constrains Congress' ability to delegate its legislative authority to executive agencies," and described the assumption that the mandate would pass constitutional muster as "dubious." *Id.* at 611 n.8. So too here. If "machinegun" can include firearms that fire multiple bullets with something in addition to pulling the trigger once, then the "single function of the trigger" has no limiting principle.

The Sixth Circuit also recently addressed an agency's interpretation of a statute that lacked a limiting principle. *Tiger Lily, LLC*, 5 F.4th at 672. In *Tiger Lily*, the court considered whether a statute permitting the CDC to combat disease through actions like "fumigation" authorized a rental eviction moratorium based on the statute saying the CDC could take "other

measures." *Id.* at 671. The court held that interpreting "other measures" as permitting the moratorium "could raise a nondelegation problem." *Id.* It reasoned that such an interpretation would mean "that the CDC can do anything it can conceive of to prevent the spread of disease." *Id.* The court explained that "[i]n applying the' nondelegation doctrine, the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred.'" *Id.* (quoting *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 475 (2001)). The court concluded that "[s]uch unfettered power would likely require greater guidance than 'such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases.'" *Id.* (internal citations omitted).

So too here. If ATF's interpretation of "single function of the trigger" is correct, then the statute lacks a limiting principle. It would allow the ATF to ban even semiautomatic firearms which fire multiple bullets with multiple functions of the trigger. To avoid this nondelegation problem, which concerns a major political question, the Court should interpret the machinegun statute so that it does not permit the ATF to ban non-mechanical bump stocks.

CONCLUSION

"Every member of Congress is accountable to his or her constituents through regular popular elections." *Jarkesy*, 34 F.4th at 459. "But that accountability evaporates if a person or entity other than Congress exercises legislative power." *Id.* at 460. The nondelegation doctrine seeks to protect democratic accountability by ensuring that only Congress wields the legislative power. This is especially important in this case because the ATF's interpretation of the machinegun statute would allow it to ban classes of firearms that Congress did not intend to criminalize. What is more, the ATF's interpretation is a "'work-around'" around Congress because Congress considered banning bump stocks and rejected the idea even after the deadly Las Vegas shooting. *BST Holdings*, 17 F.4th at 612 (internal citation omitted); Katie Zezima, *Facing congressional inaction, states move to ban bump stocks*, Wash. Post (Jan. 18, 2018).[6] Accordingly, the nondelegation doctrine prevents the ATF from usurping Congress's powers with an overly aggressive interpretation of the machinegun statute. This Court should reverse the district court's denial of relief for Plaintiff-Appellant.

[6] https://www.washingtonpost.com/national/2018/01/18/facing-congressional-inaction-states-move-to-ban-bump-stocks/.

Dated: August 1, 2022

Respectfully Submitted,

Jeffrey D. Jennings
Jeffrey D. Jennings
Liberty Justice Center
440 N. Wells St., Ste. 200
Chicago, IL 60654
Telephone: 312-637-2280
jjennings@libertyjusticecenter.org

Attorney for Amicus Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7) because the brief contains 4,205 words, excluding the parts of the brief exempt by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface in 14-point Century Schoolbook font.

Date: August 1, 2022

/s/ Jeffrey D. Jennings

Attorney for Amicus Curiae Liberty Justice Center

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing through the Court's CM/ECF system, which will send a notification of such filing to counsel of record.

Dated: August 1, 2022 /s/ Jeffrey D. Jennings
Jeffrey D. Jennings