

No. 23-852

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

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

*v.*

JENNIFER VANDERSTOK, *et al.*

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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 AMICI CURIAE AMERICAN MEDICAL  
ASSOCIATION, TEXAS MEDICAL ASSOCIATION,  
AMERICAN ACADEMY OF FAMILY PHYSICIANS,  
AMERICAN ACADEMY OF PEDIATRICS, AMERICAN  
COLLEGE OF EMERGENCY PHYSICIANS,  
AMERICAN COLLEGE OF OBSTETRICIANS AND  
GYNECOLOGISTS, AMERICAN COLLEGE OF  
PREVENTIVE MEDICINE, AND THE AMERICAN  
GERATRICS SOCIETY IN SUPPORT OF  
PETITIONERS AND REVERSAL**

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## INTEREST OF *AMICI CURIAE*

The American Medical Association (AMA) is the largest professional association of physicians, residents, and medical students in the United States. Its purpose is to promote the art and science of medicine and the betterment of public health. Substantially all U.S. physicians, residents, and medical students are represented in its policy-making process through state and specialty medical societies and other physician groups seated in its House of Delegates.

The Texas Medical Association (TMA) is a private, voluntary, nonprofit association of over 57,000 Texas physicians, residents, and medical students, in all fields of medical specialization. It promotes the health of all Texans. AMA and TMA respectfully submit this brief on their own behalves and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition of the AMA and the medical societies of each State and the District of Columbia. Its purpose is to represent the views of organized medicine in the courts.<sup>1</sup>

The American Academy of Family Physicians (AAFP) is one of the largest national medical organizations, representing 130,000 family physicians and medical students nationwide. AAFP seeks to improve the health of patients, families, and communities by advocating for the health of the public and by

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<sup>1</sup> This brief was not authored in whole or in part by counsel for any party. No person or entity other than *amici* or their counsel made any monetary contribution to the preparation or submission of this brief.

supporting its members in providing continuous comprehensive health care to all.

The American Academy of Pediatrics (AAP) represents 67,000 pediatricians nationwide who are committed to the health, safety, and well-being of infants, children, adolescents, and young adults. AAP advances evidence-based best practices for decreasing firearm-related deaths and injuries to children and youth.

The American College of Emergency Physicians (ACEP) represents more than 38,000 emergency physicians, emergency medicine residents, and medical students. ACEP promotes the highest quality of emergency care and is the leading advocate for emergency physicians, their patients, and the public. ACEP continually strives to improve the quality of emergency medical services through the development of evidence-based clinical policies, and by funding emergency medicine research, providing public education on emergency care and disaster preparedness, and providing industry-leading continuing medical education.

The American College of Obstetricians and Gynecologists (ACOG) is the nation's leading group of physicians providing evidence-based obstetric and gynecologic care. As a private, voluntary nonprofit membership organization of more than 60,000 members, ACOG strongly advocates for equitable, exceptional, and respectful care for all women and people in need of obstetric and gynecologic care; maintains the highest standards of clinical practice and continuing education of its members; promotes patient education; and increases awareness among its members and the

public of the changing issues facing patients and their families and communities.

The American College of Preventive Medicine (ACPM) is a professional medical society representing approximately 2,000 physicians dedicated to the practice of preventive medicine and to improving the health and quality of life of individuals, families, communities, and populations through disease prevention and health promotion. ACPM supports effective policies and legislation at all levels of government intended to prevent and reduce injuries and deaths related to firearms.

The American Geriatrics Society (AGS) is a national non-profit organization of geriatrics healthcare professionals dedicated to improving the health, independence, and quality of life of all older Americans. Its more than 6,000 members include geriatricians, geriatrics nurse practitioners, social workers, family practitioners, physician associates, pharmacists, and internists who are pioneers in serious illness care for older individuals, with a focus on championing inter-professional teams, eliciting personal care goals, and treating older people as whole persons. As part of that mission, AGS recognizes that firearm-related deaths and injuries are a serious public health problem, with specific concerns impacting health, well-being, and quality of life as we age. Older adults who live in communities where firearm violence is an issue may be reluctant to leave home—impacting not only quality of life but also access to care. AGS is committed to working with a coalition of stakeholders to prevent firearms from being used intentionally or unintentionally to cause harm.

*Amici* submit this brief to offer their unique perspective, as associations of healthcare providers, on the compelling need to uphold the final rule of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), codified at 27 C.F.R. §§ 478.11 and 478.12(c) (the Rule).

The Rule is designed to keep unregistered firearms commonly referred to as “ghost guns” out of the hands of dangerous criminals and to assist law enforcement in the investigation of serious crimes. It requires commercial manufacturers of covered firearm parts kits, frames, and receivers, to obtain federal firearm licenses, mark their products with serial numbers, conduct background checks, and keep transfer records.

Regrettably, *amici* and their members have firsthand knowledge of the deaths and injuries caused by unlawful, irresponsible and inappropriate firearm use. Everyone is affected. Anyone can be a victim.

Many of *amici*'s members devote their lives to treating babies, children, parents, spouses, and other loved ones and friends in the most high-risk situations, when they are most vulnerable. The lives of firearm violence victims are placed in their hands every day. Whenever an innocent bystander is shot, whenever a curious child looks down the barrel of a firearm and pulls the trigger, whenever a gunshot victim is rushed through the emergency room fighting for her life, *amici*'s members are there. The firearm violence emergencies and trauma never end for *amici*'s members.

*Amici*'s members include many individuals who grew up with and value the recreational use of firearms or choose to own a firearm for self-defense. But

*amici* and their members share the strong conviction, informed by their healthcare work and research, that unregistered firearms have no place in a civilized society. The Rule does not impose any burden on responsible, law-abiding firearm owners.

*Amici* respectfully submit that this is a case in which this Court's decision will directly affect whether countless people will live or die. The stakes could hardly be higher.

### STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

In 1968, after a precipitous rise in firearm violence and several high-profile assassinations, Congress enacted the Gun Control Act. The Act had two goals: to “prevent guns from falling into the wrong hands,” and to “assist law enforcement authorities in investigating serious crimes.” *Abramski v. United States*, 573 U.S. 169, 172-73, 180 (2014). Before the Act, many parts of the domestic firearms market were unregulated. Juveniles, criminals, and other high-risk individuals could purchase firearms easily and anonymously through mail-order catalogs. They could also purchase so-called disassembled and “deactivated” firearms that could easily be converted to fire bullets. These purchases circumvented state firearm-control laws. And because there were generally no records of each purchaser's identity, law enforcement personnel often lacked information that was critical to the investigation of crimes perpetrated with those firearms.

The Act provides a “comprehensive scheme,” *Abramski*, 573 U.S. at 180, to address these issues. It requires background checks for commercial firearm purchasers. It also creates recordkeeping and serial

number requirements to help law enforcement investigate firearm-related crimes. These commonsense measures have saved countless lives and assisted law enforcement in bringing violent criminals to justice.

Ghost firearm kits are the current counterpart to the disassembled and deactivated firearms, and the firearms available by mail-order catalogs, of the 1960s. They are designed to evade the Act's requirements and restore the unregulated firearms markets that preceded the Act. Like the mail-order firearms of the 1960s, ghost firearm kits can be purchased anonymously by prohibited individuals, criminals, and children. Like the disassembled and deactivated firearms that "flood[ed]" the U.S. market in the 1960s,<sup>2</sup> ghost firearm kits are readily convertible to a functional state in which they are capable of firing bullets in the same manner as ready-to-use firearms.

The Rule effectuates the Act's legislative purpose. ATF correctly determined that the Act applies to ghost firearm kits that are readily convertible into functional firearms. As defined in the Act, the term "firearm" includes not only firearms that are ready to fire, but also "any weapon" that "is designed to or may readily be converted to expel a projectile by the action of an explosive," and the "frame or receiver of any such weapon." 18 U.S.C. § 921. This broad definition encompasses ghost firearm kits.

The Court should reverse the Fifth Circuit's ruling to the extent it would invalidate portions of the Rule.

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<sup>2</sup> S. Rep. No. 1340, 88th Cong., 2d Sess. 5 (1964).

## ARGUMENT

### I. FIREARM VIOLENCE WAS A HEALTHCARE CRISIS IN 1968, AND THE CRISIS IS EVEN GREATER TODAY

#### A. Congress Enacted the Gun Control Act to Address Firearm Violence

Congress enacted the Act in response to the alarming rise in firearm violence during the 1960s.

From 1960 to 1968, violent crime more than doubled.<sup>3</sup> Firearm homicides increased by 104%. 2 U.S. Dep't of Health, Education, and Welfare, *Vital Statistics of the United States*, 214-21 (1974). The firearm violence epidemic was described in vivid detail in the House and Senate Judiciary Committee reports that accompanied the bill that eventually became the Act. As the House report observed, “[h]andguns, rifles, and shotguns ha[d] been the chosen means to execute three-quarters of a million people in the United States” since the beginning of the century, with “50 lives \* \* \* destroyed by firearms each day.” H.R. Rep. No. 1577, 90th Cong., 2d Sess. 7 (1968). This violence—a “malignancy \* \* \* [of] senseless slaughter” that “[n]o civilized society can ignore”—required Congress to “strengthen Federal regulation of interstate firearms traffic.” *Ibid.* The Senate Judiciary Committee also documented that firearm violence had “steadily increased over the years”: firearm-related homicides increased 47%, firearm-involved robberies 58%, and firearm assaults 76% during the three-year

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<sup>3</sup> See Lauren-Brooke Eisen, *America's Faulty Perception of Crime Rates*, Brennan Center for Justice (Mar. 16, 2015), <https://perma.cc/ZJZ7-L22Y>.



period from 1964 to 1967. S. Rep. No. 1501, 90th Cong., 2d Sess. 22 (1968).

The availability of inexpensive firearms that could be purchased through mail-order catalogs—often in violation of state firearm laws—contributed to the increase.<sup>4</sup> The “epidemic of violence” was widespread.<sup>5</sup> Most American cities were affected. From 1963 to 1968, firearms were used to assassinate President John F. Kennedy, Senator Robert F. Kennedy, Medgar Evers, Malcolm X, and Martin Luther King, Jr.

The dramatic rise in firearm violence was an issue of national concern. Presidential commissions were empaneled to study the rapid escalation in violent crime, including the President’s Commission on Law Enforcement and Administration of Justice (1965), the National Advisory Commission on Civil Disorders (1967), and the National Commission on the Causes and Prevention of Violence (1968) (the Commission), which was tasked with “investigating \* \* \* [t]he causes and prevention of lawless acts of violence in our society.” Exec. Order No. 11,412, 33 Fed. Reg. 8583 (June 12, 1968).

Less than a year after the Commission was created, it released a 268-page report, *Firearms and Violence in American Life* (Jan. 1, 1969), which addressed firearm violence and its causes. The report explained

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<sup>4</sup> See also *Interstate Traffic in Mail-Order Firearms: Hearings Before the Subcomm. to Investigate Juvenile Delinquency*, 88th Cong., 1st Sess. 3186-87 (1963) (the Dodd Committee Hearings).

<sup>5</sup> See, e.g., Richard Starnes, *Panel Warns of Crime Peril*, The Pittsburgh Press, Dec. 12, 1969, at 3; *Bar Convention Feebly Tackles Nation’s Riots*, St. Petersburg Times, Aug. 11, 1967, at 14-A.

that, from 1965 to 1969, “the number of firearms homicides \* \* \* increased by almost 50 percent.” *Ibid.* at xii. This awful increase was due in part to record sales of handguns, which quadrupled between 1962 and 1968. *Id.* at xi. The Commission found “[t]he criminal’s primary firearm is the handgun.” *Id.* at xii. It was responsible for “three quarters of the homicides involving firearms,” even though handguns accounted for only “one quarter of all firearms,” *id.* at 53.

The Commission observed that much of the problem was due to the manner in which juvenile and adult criminals were able to obtain handguns. Most handguns used in firearm-related crimes were acquired in unregulated “secondhand” markets. *Firearms and Violence in American Life* at xi, 53. A large fraction were purchased by mail order and were unregulated. *Id.* at 151. These markets provided easy access to high-risk individuals who were otherwise ineligible to possess a firearm. Before the Act, “[p]ractically anyone—the convicted criminal, the mental incompetent, or the habitual drunkard—c[ould] purchase firearms simply by ordering them in those states that ha[d] few controls.” *Ibid.*

The Commission’s findings were consistent with those of other government inquiries. For example, in the early 1960s, the Senate Subcommittee to Investigate Juvenile Delinquency—known as the “Dodd Committee” after its chairman, Connecticut Senator Thomas J. Dodd—investigated “the sources of the ‘criminal’ gun,” namely the “readily available supply of firearms to juveniles and young adults” that was primarily responsible for firearm crimes. Dodd Committee Hearings at 3185-3186. The Dodd Committee

focused on mail-order firearms. It investigated recipients of such firearms in Washington, D.C., and several States. The results were “both alarming and distressing.” *Id.* at 3186. The Committee found that “mail-order weapons were delivered to ex-convicts, minors, and even in some cases to mental defectives.” *Ibid.* Of the 200 mail-order firearm recipients the Committee examined in the District of Columbia, “25 percent” “ha[d] criminal records \* \* \* cover[ing] offenses all the way from misdemeanors to felonies.” *Ibid.*

The Dodd Committee also focused on another source of high-risk firearms: the unregulated sale of disassembled and deactivated firearms. Local law enforcement officials explained that firearm dealers were able to “import[] cheap disassembled weapons classified as scrap metal” and “deactivated war surplus weapons” that could be “made operative” with minor modification. Dodd Committee Hearings at 3188. These disassembled and deactivated firearms, like mail-order firearms, were virtually unregulated and often found their way into the wrong hands, like a minor from a D.C. suburb who was able to purchase a deactivated machinegun. *Id.* at 3187. The Committee confirmed through its own testing that these disassembled and deactivated firearms could be converted “into a lethal weapon in about 2 or 3 minutes.” *Ibid.*

### **B. The Epidemic of Firearm Violence Is Even More Serious Today**

More than five decades after the “epidemic of violence” in the 1960’s, the public healthcare crisis caused by firearm violence has grown even worse. 48,830 mothers, fathers, brothers, sisters, children, babies and other loved ones, friends, and neighbors,

died of gun-related injuries in 2021—the most on record. See John Gramlich, *What the Data Says About Gun Deaths in the U.S.*, Pew Research Center (Apr. 26, 2023), <https://perma.cc/P2SW-SAHE>. There was a slight reduction in such deaths to 47,430 in 2022 and 42,987 in 2023, but the totals are still staggering and remain near all-time highs. *Ibid.*<sup>6</sup> Indeed, just last month, the Surgeon General declared firearm violence a public health crisis. See Office of the U.S. Surgeon General, *Firearm Violence: A Public Health Crisis in America* (June 25, 2024), <https://perma.cc/3UBQ-P8RX>.

Ghost firearms play a central role. Because they are assembled by individuals at home, often from kits purchased online and not by federally licensed manufacturers or importers, these firearms are unregistered and, therefore, untraceable. The respondents in this appeal include manufacturers of such kits. For example, respondent Polymer80’s “Buy Build Shoot” kit enables a purchaser to assemble an untraceable fully functional Glock-style semiautomatic handgun in as little as 21 minutes without specialized tools or gunsmithing experience. Pet. App. 236a-237a. A purchaser needs only the kit, common household power tools, and access to an instructional video on YouTube.

Ghost firearms pose the problems that the Act was designed to address. Like the mail-order firearms of the 1960s, they are unregistered and untraceable. They have thus become the weapon of choice for

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<sup>6</sup> Sareen Habeshian, *Mass Shootings Increased While Gun Violence Deaths Dropped in 2023*, AXIOS (Jan. 9, 2024), <https://tinyurl.com/tku7z5h8>.

individuals, such as convicted felons, who are subject to federal and state firearms restrictions, as well as for individuals, such as minors, who cannot legally possess firearms. In 2020, ghost firearm retailers operated in 26 States. Their reach extended much further through online platforms. *See* Everytown for Gun Safety Support Fund, *Untraceable: the Rising Specter of Ghost Guns* (May 14, 2020), <https://perma.cc/W5SY-E4FU>.

The number of ghost firearms that have been recovered by law enforcement personnel provides a sobering measure of the extraordinary and dangerous increase in their use to commit firearm-related crimes. Between 2016 and 2022, the number recovered by federal law enforcement increased more than 1300%, from 1,758 in 2016 to 25,785 in 2022.<sup>7</sup> Firearm recoveries by state and local law enforcement agencies similarly surged. In Washington, D.C., for example, the number of ghost firearms recovered by the Metropolitan Police Department increased 11,433% between 2017 and 2021. *See* Brady: United Against Gun Violence, *Ghost Guns*, <https://perma.cc/K4MS-FFCW> (last visited June 28, 2024).

The explosion in the use of ghost firearms to commit crimes has led firearm-safety experts and public officials to declare that ghost firearms are the “fastest-

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<sup>7</sup> See Fact Sheet: Update on Justice Department’s Ongoing Efforts to Tackle Gun Violence, Dep’t of Justice (June 14, 2023), <https://perma.cc/4N4H-JWPQ> (recording 25,785 ghost firearm recoveries in 2022); Justice Department Announces New Rule to Modernize Firearm Definitions, Dep’t of Justice (Apr. 11, 2022), <https://perma.cc/M7L3-AQA5> (recording 1,758 recoveries in 2016).

growing public-safety threat in \* \* \* [the] nation.”<sup>8</sup> Ghost firearms have been used to commit numerous terrible crimes, from school shootings, mass shootings, domestic violence and robberies, to murders of law enforcement officers. *See* Brady, *supra*. A few examples illustrate the unique danger these firearms pose, especially in the hands of individuals who are legally ineligible to possess a firearm:

- On November 14, 2019, a 16-year-old boy opened fire “at random” at Saugus High School in Santa Clarita, California, killing two other students and injuring three more. The shooter used a .45-caliber pistol that the shooter or his father assembled from a firearm kit. Both the shooter and his father were barred by law from possessing a firearm. *See* Dakin Andone, *The Gunman in the Saugus High School Shooting Used a ‘Ghost Gun,’ Sheriff Says*, CNN (Nov. 21, 2019), <https://perma.cc/E8ZJ-AM7U>.
- On February 28, 2022, a 39-year-old man shot and killed his three daughters and their chaperone during a supervised visit at a Sacramento, California church. A restraining order obtained by the shooter’s ex-girlfriend, the mother of the three slain girls, prohibited his possession of a firearm. But the gunman

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<sup>8</sup> See D.A. Bragg & Commissioner Sewell Announce 32-Count Indictment in Ghost Gun Takedown, Manhattan District Attorney’s Office (Oct. 11, 2022), <https://perma.cc/ASZ5-R5T4>; Justin Fenton, Baltimore police report a 400% increase in untraceable ‘ghost guns,’ as legislators consider action, *The Baltimore Sun* (Feb. 18, 2021), <https://perma.cc/3EFJ-KNSJ>.

used an unregistered, home-assembled semiautomatic rifle with an illegal 30-round magazine. See Don Thompson, *Man Used ‘Ghost Gun’ to Kill 3 Daughters in Church*, AP News (Mar. 6, 2022), <https://perma.cc/4KVY-WMEZ>.

- On January 31, 2023, a 23-year-old man shot and killed a police officer in Fresno County, California, with a .223-caliber assault rifle-style ghost firearm. The gunman was prohibited from possessing a firearm because he was a convicted felon. See Grace Toohey, *Suspect Used ‘Ghost Gun’ in Killing a Fresno County Police Officer, Officials Say*, Los Angeles Times (Feb. 4, 2023), <https://perma.cc/N7UG-CELC>.

## **II. THE GUN CONTROL ACT WAS DESIGNED TO ADDRESS FIREARM VIOLENCE BY REGULATING THE FIREARMS MARKET**

A particular focus of Congress when it enacted the Gun Control Act was the manner in which firearms were obtained by high-risk groups, such as convicted felons, minors, and others legally ineligible to possess firearms. The Senate Judiciary Committee report declared that “adequate Federal control over interstate and foreign commerce in firearms, and over all persons engaging in the business of importing, manufacturing, or dealing in firearms,” was necessary to permit “effective State and local regulation of \* \* \* firearms traffic.” S. Rep. No. 1501, 90th Cong., 2d Sess. 22. The report explained that “[t]he principal purposes of this act are to make it possible to keep firearms out of the hands of those not legally entitled to

possess them \* \* \* and to assist law enforcement authorities in the States and their subdivisions in combating the increasing prevalence of crime in the United States.” *Ibid.*; see also *Abramski v. United States*, 573 U.S. 169, 172-73 (2014).

To achieve these ends, Congress created a “comprehensive scheme,” *Abramski*, 573 at 180, that imposes requirements on persons engaged in the business of importing, manufacturing, or dealing in “firearms,” 18 U.S.C. §§ 922, 923. Such persons must obtain a federal firearms license, keep records of firearms purchases and transfers, and conduct background checks on purchasers before transferring firearms to non-licensees—who comprise the majority of the members of the public who are legally permitted to own firearms. 18 U.S.C. §§ 922(t), 923(a), and (g)(1)(A). Importers and manufacturers are required to imprint firearms with a serial number. 18 U.S.C. § 923(i). Certain persons are prohibited from possessing firearms, including convicted felons, fugitives from justice, and other high-risk individuals. 18 U.S.C. § 922(d).

#### **A. Congress Intended the Gun Control Act to Apply to Disassembled and Mail-Order Firearms**

The prevention of anonymous firearm purchases is a fundamental purpose of the Act. The Senate Report pointed, as “a matter of serious national concern,” to “the ease with which any person [could] anonymously acquire firearms,” including “criminals, juveniles” and “armed groups.” S. Rep. No. 1501, 90th Cong., 2d Sess. 22.

Anonymity allowed otherwise ineligible persons to bypass state firearm restrictions and made it



impossible for law enforcement to trace firearms used to commit crimes. Two firearms markets in particular were rife with abuse: the market for mail-order firearms, and the market for disassembled or deactivated firearms. The Act's background-check, licensing, registration, and serialization requirements focused on these previously unregulated firearm markets, as well as all other commercial firearm transactions.

***Mail-Order Firearms.*** Before the Act, individuals could directly and anonymously purchase firearms from mail-order catalogs. Mail-order firearms “afford[ed] circumvention and contravention of State and local laws governing the acquisition of firearms.” S. Rep. No. 1501, 90th Cong., 2d Sess. 23. They were “characterized by ready availability, minimal cost and anonymity of purchase.” *Ibid.* The Senate Report documented “the concern[s] of law enforcement officials” over this source of weapons, which had been “abuse[d] \* \* \* by juveniles, minors, and adult criminals.” *Id.* at 23.

The Act abolished the mail-order firearms market by requiring that all firearm purchases from importers, manufacturers, and dealers be recorded and subject to a background check. The Senate Report explained the Act would “channel[] interstate and foreign commerce in firearms through federally licensed importers, manufacturers, and dealers, thereby prohibiting the commercial mail-order traffic in firearms to unlicensed persons.” S. Rep. No. 1501, 90th Cong., 2d Sess. 23.

***Disassembled and Deactivated Firearms.*** The market for disassembled and deactivated firearms was another significant concern. Congress sought to

“curb the flow of surplus military weapons and other firearms,” S. Rep. No. 1501, 90th Cong., 2d Sess. 24, which were often imported in a deactivated state so they could be categorized as “scrap or parts” to circumvent tariff restrictions. S. Rep. No. 1340, 88th Cong., 2d Sess. 4 (1964). Congress found that “the United States ha[d] become the dumping ground” for such weapons. S. Rep. No. 1501, 90th Cong., 2d Sess. 28. This “flood of weapons” directly contributed to America’s epidemic of firearm violence:

The problem which this flood of weapons creates becomes great not because of the high figures of importation alone, but because of the fact that many of these guns have been diverted into the hands of juveniles, felons, and persons of undesirable and questionable character.

S. Rep. No. 1340, 88th Cong., 2d Sess. 5. Congress also found that “hundreds of thousands of starter guns ha[d] been imported into this country for nonsporting purposes.” S. Rep. No. 1501, 90th Cong., 2d Sess. 39. These starter firearms were then “conver[ted in]to a lethal firearm upon importation, or subsequent thereto” by unscrupulous firearms dealers or anonymous purchasers themselves. *Id.* at 38.

The Act regulates these firearms through its broad definition of “firearm,” which includes “any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.” 18 U.S.C. § 921(a)(3). That includes “unserviceable firearms”—*i.e.*, so-called

“Deactivated War Trophy” firearms or “DEWATS”<sup>9</sup>—that can readily be converted to fire a projectile. S. Rep. No. 1501, 90th Cong., 2d Sess. 29. As the Dodd Committee found, these deactivated firearms, which were capable of being converted into “a lethal weapon in about 2 or 3 minutes,” were previously available by mail-order to prohibited persons, including children. Dodd Committee Hearings at 3187.

### **B. The Act Applies to Ghost Firearms**

The dangers posed by ghost firearm kits are precisely the types of harms Congress addressed by enacting the Act. Indeed, in relevant ways, ghost-firearm kits are the modern manifestation of mail-order and disassembled and deactivated firearms. If the Act did not apply, ghost firearm kits, like the mail-order firearms of the 1960s, would allow anonymous individuals to purchase firearms across state lines to facilitate crime, without any required background check or recordkeeping. Indeed, such anonymity is a *selling point* of ghost-firearm manufacturers. Prior to the Rule, they marketed their ability to avoid federal background checks. *See, e.g., The History of Legally Buying Firearms Without a FFL*, 80% Arms Blog (Dec. 3, 2019), <https://perma.cc/83Z8-F9Q9> (incomplete firearm kits exempt from federal background checks). And like the disassembled and deactivated firearms that “flood[ed]” the U.S. market in the 1960s, S. Rep. No. 1340, 88th Cong., 2d Sess. 5, ghost firearm kits can be assembled into functioning firearms in a matter of minutes. *See* Pet. App. 236a-237a.

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<sup>9</sup> *See* ATF, *National Firearms Act Handbook* 68-69 (rev. Apr. 2009), <https://tinyurl.com/5mb76b7s/>.

The Fifth Circuit did not seriously address the Act’s legislative history. The court simply observed that the Act’s comprehensive definition of the term “firearm” replaced the Federal Firearms Act’s regulation of “any part or parts of” a firearm. Pet. App. 20a. But the change in definition does not and was not intended to limit the Gun Control Act’s reach to finished firearms, frames, or receivers. Rather, Congress simply found that it was “impractical to have controls over *each small part* of a firearm”—such as an isolated trigger, hammer, or firing pin—and narrowed the definition to “include[] only the major parts of the firearm, that is, the frame or receiver.” H.R. Rep. No. 1577, 90th Cong., 2d Sess. 10 (emphasis added); S. Rep. No. 1501, 90th Cong., 2d Sess. 29-30 (same). That did not withdraw from the Act’s reach nearly complete firearms, frames, or receivers that are “designed to or may readily be converted” into functioning firearms.

### **III. ATF’S RULE REGULATING GHOST FIREARMS IS AUTHORIZED BY THE GUN CONTROL ACT**

#### **A. Ghost Firearm Kits Are “Firearms” Within the Plain Meaning of the Statute**

The Act defines “firearm” as follows:

- (A) Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- (B) the frame or receiver of any such weapon;
- (C) any firearm muffler or firearm silencer; or
- (D) any destructive device.

18 U.S.C. § 921(a)(3). Ghost firearm kits meet the definition of “firearm” in subsection (A). They are

weapons that can be “readily \* \* \* converted to expel a projectile by the action of an explosive.”

The Act does not define the terms “readily” or “convert,” but contemporaneous dictionary definitions provide guidance. *See, e.g., MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 228 (1994) (noting “the most relevant time for determining a statutory term’s meaning” is when the statute “became law”). Webster’s Third, the edition in print when the Act was enacted, defines “readily” as “with fairly quick efficiency: without needless loss of time: reasonably fast: speedily,” or “with a fair degree of ease: without much difficulty: with facility: easily.”<sup>10</sup> It defines “convert” as “to change or turn from one state to another: alter in form, substance, or quality: transform, transmute.” *Convert*, *Webster’s Third New International Dictionary Unabridged* 499 (1961) (*Webster’s*) (capitalization and emphasis omitted). The definition of “firearm” in Section 921(a)(3) thus includes a weapon that can be “alter[ed]” or “transform[ed]” from an inoperative state into a weapon capable of expelling a projectile “with fairly quick efficiency” or “with a fair degree of ease.”

Ghost firearm kits meet that definition. The record below indicates that some of the most popular ghost firearm kits can be assembled into a functional

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<sup>10</sup> *Readily*, *Webster’s Third New International Dictionary Unabridged* (1961) (capitalization and emphasis omitted). A third definition—“with prompt willingness: without hesitating, quibbling, or delaying: with alacrity: willingly”—is “directed towards an actor’s mental disposition and is obviously inapposite.” *United States v. TRW Rifle 7.62x51mm Caliber, One Model 14 Serial 593006*, 447 F.3d 686, 690 (9th Cir. 2006).

firearm capable of expelling a projectile in as little as 21 minutes, using household tools and manufacturer-provided jigs. Pet. App. 236a-37a. That evidence is consistent with the experiences of investigative journalists, who have found that popular ghost firearm kits can be built in just over an hour. *See* NBC News, *How Easy Is It To Build A ‘Ghost Gun’? We Bought One To Find Out*, YouTube (Mar. 17, 2022), <https://tinyurl.com/3725b5dr>. It is also consistent with the experience of firearm enthusiasts. For example, a popular firearm blog describes one of the most popular ghost firearm kits as “very easy to build” by “anyone” using a jig and household tools. *See* Travis Pike, *The Polymer80 PF940V2 Ghost Gun Kit*, Loadout Room (Aug. 7, 2019), <https://perma.cc/3RPC-N3MP>.

Partially complete frames and receivers also meet Section 921(a)(3)’s definition of “firearm.” The Fifth Circuit held otherwise, reasoning that an incomplete frame or receiver is not a “firearm” because subsection (B), which references “the frame or receiver of any such weapon,” omits the “flexible language” of subsection (A)—*i.e.*, “designed to or may readily be converted.” Pet. App. 17a. That interpretation is incorrect. It overlooks a critical statutory linkage: the reference to “any such weapon” in subsection (B) is to the weapon described in subsection (A), including its “flexible language.”<sup>11</sup> Accordingly, subsection (B) includes not-yet-complete frames or receivers that are

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<sup>11</sup> Judge Oldham’s concurrence correctly recognized the relationship between subsections (A) and (B). *See* Pet. App. 57a (“With its placement immediately following (A), we can easily understand (B)’s ‘any such weapon’ language to incorporate the definition of ‘weapon’ in (A).”).

“designed to” be or may “readily be converted” into the frame or receiver of a functional firearm. 18 U.S.C. § 921(a)(3).

The Rule was adopted by ATF pursuant to the Act. 18 U.S.C. § 926(a). Its application to ghost firearm parts kits is consistent with the plain-meaning of Section 921(a)(3) discussed above. The Rule defines “firearm” to “include a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive.” 27 C.F.R. § 478.11. The words “complete[],” “assemble[],” and “restore[]” all comfortably fit within the plain meaning of “convert.” All three describe a process of conversion from one state to another.<sup>12</sup> The Rule likewise mirrors the Act’s use of “readily.” Just as that term modifies the phrase “to be converted” in Section 921(a)(3), so too does the term “readily” modify the equivalent phrase “be completed, assembled, restored, or otherwise converted” in the Rule. 27 C.F.R. § 478.11. And the Rule’s definition of “readily” to mean “reasonably efficient, quick, and easy,” *ibid.*, is consistent with the plain meaning of that word, as noted above.

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<sup>12</sup> See *Complete*, *Webster’s* at 465 (defining “complete” as “to bring to an end often into or as if into a finished or perfected state”); *Assemble*, *Webster’s* at 131 (defining “assemble” as “to fit together various parts of so as to make into an operative whole”); *Restore*, *Webster’s* at 1936 (defining “restore” as “to bring back to or put back into a former or original state”).

### **B. The Fifth Circuit’s Contrary Holding is Erroneous**

The Fifth Circuit’s conclusion that the Rule exceeds ATF’s regulatory authority is wrong and should be reversed.

The Court accused ATF of “strip[ping] the word ‘readily’ of its meaning” by “includ[ing] any objects that could, if manufacture is complete, become functional at some ill-defined point in the future,” thereby regulating “minute weapon parts that might later be manufactured into functional weapons.” Pet. App. 23a-24a, 27a. Not so. The Rule does not regulate individual firearm components *qua* components, but only as parts of a firearm kit that may readily be converted into a functional firearm. That is consistent with the Act and its legislative history. While Congress found it “impractical to have controls over *each small part* of a firearm,”<sup>13</sup> nothing in the text of Section 921(a)(3) or the Act’s legislative history suggests that Congress intended to remove from the Act’s purview nearly complete firearms that can “readily be converted” into an operational state. To the contrary, Congress intended the Act to cover so-called disassembled and “deactivated” firearms that, with modification by the user, could readily be converted to fire a projectile. *See* pp. 17-18, *supra*.

The Fifth Circuit’s assertion that the Rule breaks with “almost fifty years of uniform regulation,” Pet. App. 16a, is also manifestly incorrect. As *amici* Gun Violence Protection Groups noted in support of the

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<sup>13</sup> H.R. Rep. No. 1577, 90th Cong., 2d Sess. 10 (emphasis added); S. Rep. No. 1501, 90th Cong., 2d Sess. 29-30 (same).



government's petition for certiorari, ATF has consistently held since 1976 that an "unfinished' frame or receiver" is a "firearm" under Section 921(a)(3) when the frame or receiver can readily be converted into a functioning firearm. See Gun Violence Protection Groups Amicus Br. 7-8; see also Admin. Record Part 3 at ATF0266, *City of Syracuse et al. v. Bureau of Alcohol, Tobacco, Firearms & Explosives et al.*, No. 1:20-cv-06885 (S.D.N.Y. Dec. 8, 2020) (ECF No. 60-3) ("unfinished frames manufactured by either the die casting or investment casting method" are "firearms" under the Act "[i]f the castings may be readily converted" to fire a projectile). ATF has repeatedly affirmed that interpretation in classification letters responding to firearm manufacturers' questions about the legal status of unfinished frames and receivers. Consistent with ATF's longstanding interpretation of Section 921(a)(3), many of its letters concluded that the frames or receivers in question qualified as "firearms" given the speed with which they could be converted to fire a projectile. See, e.g., Admin. Record Part 1 at ATF0020, *City of Syracuse et al.* (ECF No. 60-1) (unfinished receiver was a firearm because it could be made functional within 75 minutes). And, like the Rule, these classification letters show ATF's concern with "individuals \* \* \* attempt[ing] to sell firearms in unassembled or unfinished form, thereby avoiding [the Act's] recordkeeping and transfer restrictions" and "provid[ing] an avenue whereby prohibited persons may be able to acquire mail order firearms in kit form." *Id.* at ATF0023-24.

The Fifth Circuit's ruling would allow circumvention of the Act's serialization, recordkeeping, and

background check requirements. It violates this Court’s longstanding principle that a court, “[i]n construing a statute,” should “never adopt an interpretation that will defeat [the statute’s] purpose, if it will admit of any other reasonable construction.” *The Emily*, 22 U.S. (9 Wheat.) 381, 388 (1824).<sup>14</sup>

### **C. The Rule of Lenity and Principles of Constitutional Avoidance Do Not Require Affirmance**

Respondents argue that the rule of lenity and principles of constitutional avoidance require affirmance. Defense Distributed et al. Br. in Opp. 17-25; VanDerStok et al. Br. in Opp. 28-31. Not so. Neither doctrine applies.

The rule of lenity provides that “ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.” *Skilling v. United States*, 561 U.S. 358, 410 (2010). But the rule applies only “if ‘after seizing everything from which aid can be derived,’ there remains ‘grievous ambiguity.’” *Pugin v. Garland*, 599 U.S. 600, 610 (2023) (quoting *Ocasio v.*

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<sup>14</sup> The Court’s recent decision in *Garland v. Cargill* does not limit the application of this principle here. In *Cargill*, the Court held the presumption against ineffectiveness does not compel the conclusion that bump stocks are machineguns under 26 U.S.C. § 5845(b) because, since a shooter can achieve a similar rate of fire on an unmodified semiautomatic weapon using a manual bump-fire technique, the Court’s interpretation does not render § 5845(b) “far less effective.” *Garland v. Cargill*, No. 22-976, slip op. at 19 (S. Ct. June 14, 2024). Here, in contrast, a ruling that ghost firearm kits are not “firearms” under Section 921(a)(3) would effectively repeal the Gun Control Act’s core provisions and permit untraceable firearm sales that otherwise could not occur.

*United States*, 578 U.S. 282, 295 n.8 (2016); *see also Shaw v. United States*, 580 U.S. 63, 71 (2016) (the rule applies only if “at the end of the process of construing what Congress has expressed \* \* \* there is a grievous ambiguity or uncertainty in the statute” (internal quotation marks omitted)). In other words, the rule simply says that a tie goes to the runner; it says nothing about whether there was a tie in the first place. Here, it is clear from the Act’s text, and confirmed by contemporaneous word usage and the Act’s legislative history, that ghost firearm kits are “firearms” within the meaning of Section 921(a)(3). The rule of lenity is thus inapposite. *Abramski*, 573 U.S. at 188 n.10 (“Although the text creates some ambiguity, the context, structure, history, and purpose resolve it.”).

Respondents’ constitutional avoidance arguments are similarly unavailing. The avoidance canon counsels courts to avoid constitutional questions. *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 346-48 (1936) (Brandeis, J., concurring). As with lenity, it “comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one [plausible] construction.” *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018) (Alito, J.) (quoting *Clark v. Martinez*, 543 U.S. 371, 385 (2005)). Merely “[s]potting a constitutional issue does not give a court the authority to rewrite a statute as it pleases.” *Id.* at 298.

“When legislation and the Constitution brush up against each other, [the Court’s] task is to seek harmony, not to manufacture conflict.” *United States v. Hansen*, 599 U.S. 762, 781 (2023). Yet, respondents urge this Court to do the opposite. They pose a dual

strawman, asking this Court to misconstrue the Rule into a conflict with a non-existent constitutional question. The Court should decline that invitation.

First, citing *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), respondents contend “there is no historical tradition of regulating the private making of firearms” and “Congress has focused (as in the Gun Control Act) on regulating the commercial sale of firearms.” VanDerStok Br. in Opp. 29. But the sale of a ghost firearm kit *is* a commercial sale. The Rule’s regulation of such sales is completely consistent with the Act and Congressional intent. And respondents do not dispute—nor could they—that commercial firearm regulations are presumptively constitutional. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 626-627 & n.26 (2008) (recognizing that “laws imposing conditions and qualifications on the commercial sale of arms” are “presumptively lawful”).

Second, respondents argue that “[t]he Rule threatens to render the Gun Control Act unconstitutionally vague” because the phrase “may readily be completed” is “determined by reference to eight factors.” VanDerStok Br. in Opp. 29-30. But respondents do not cite any authority for the proposition that multifactor qualitative tests are unconstitutional—and there is none. To the contrary, such tests are commonplace.<sup>15</sup>

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<sup>15</sup> *See, e.g., Johnson v. United States*, 576 U.S. 591, 603-04 (2015) (“As a general matter, we do not doubt the constitutionality of laws that call for the application of a qualitative standard.”); *Salman v. United States*, 580 U.S. 39, 51 (2016) (rejecting vagueness argument for failure to demonstrate “hopeless indeterminacy”); *County of Maui v. Hawaii Wildlife Fund*, 590 U.S. 165, 188 (2020) (Kavanaugh, J., concurring) (a multifactor test can provide “more concrete guidance”).

Moreover, a firearm manufacturer or dealer may ask ATF for a classification determination if it is concerned that its product may run afoul of the Rule. See ATF, *Open Letter to All Federal Firearms Licensees: Impact of Final Rule 2021-05F on Partially Complete Polymer80, Lone Wolf, and Similar Semiautomatic Pistol Frames*, at 10 (Dec. 27, 2022), <https://perma.cc/9R8D-JZU5>. That further mitigates respondents' vagueness concern.

### CONCLUSION

The judgment below should be reversed to the extent it would invalidate portions of the Rule.

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