IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE GUN OWNERS OF AMERICA, INC., *ET AL.* **PLAINTIFFS-APPELLANTS,** **V.** **WILLIAM P. BARR, ET AL.,** **DEFENDANTS-APPELLEES.**	**Case No. 19-1298**

OPPOSITION TO EMERGENCY MOTION FOR A STAY OF AGENCY ACTION

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INTRODUCTION AND SUMMARY

Plaintiffs challenge a final rule promulgated by the Department of Justice (DOJ) in the wake of the Las Vegas mass shooting that provides the agency's interpretation of the definition of "machinegun," as used in the National Firearms Act. *See Bump-Stock Type Devices*, 83 Fed. Reg. 66,514 (Dec. 26, 2018) (Rule). Plaintiffs contend that the "bump stocks" they possess should not be prohibited as machine guns and seek to enjoin the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) from implementing the Rule and enforcing the statute against them.

After the district court denied a preliminary injunction, plaintiffs filed a notice of appeal and what they characterize as a motion seeking a stay pending appeal, though the relief they seek is best characterized as injunctive relief.[1] In order to demonstrate entitlement to injunctive relief from this Court, plaintiffs must demonstrate a likelihood of success on the merits of their appeal. This they cannot do, as no court that has examined the statutory definition of "machinegun" has adopted plaintiffs' reading of its terms, and every district court to consider a challenge to the Rule has refused to grant a preliminary injunction. And under no circumstances should this Court issue nationwide relief, as plaintiff suggest in their March 23, 2019,

[1] This Court has held that a plaintiff faces the same burden with respect to demonstrating entitlement to a stay pending appeal as it does with respect to injunctive relief pending appeal. *Philip Randolph Inst. v. Husted*, 907 F.3d 913, 918 (6th Cir. 2018).

filing in this Court, as granting broader relief is not "necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

STATEMENT

A. Regulatory Background

1. Over the last century, Congress has imposed increasingly strict regulations on the manufacture, sale, and possession of machine guns. The National Firearms Act of 1934, 26 U.S.C. Chapter 53, imposed various requirements on persons possessing or engaged in the business of selling particular "firearms" (including machine guns), such as requiring that each maker of a regulated firearm shall "obtain authorization" before manufacture. 26 U.S.C. § 5841(c).

The National Firearms Act defines a "machinegun" as "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." 26 U.S.C. § 5845(b). Since 1968, the statute has also applied to parts that can be used to convert a weapon into a "machinegun." *See* Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, 1231. The definition thus includes "the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun." 26 U.S.C. § 5845(b).

In 1986, Congress largely banned machine guns as part of the Firearm Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 449. Under 18 U.S.C. § 922(o) it is generally "unlawful for any [private] person to transfer or possess a machinegun."

2. Since Congress prohibited machine guns, "inventors and manufacturers [have developed] firearms, triggers, and other devices that permit shooters to use semiautomatic rifles to replicate automatic fire." 83 Fed. Reg. at 66,515-16. This litigation involves "bump-stock-type" devices—which "[s]hooters use . . . to mimic automatic fire," 83 Fed. Reg. 66,516—and ATF's interpretation of the terms "automatically" and "single function of the trigger" as used in the definition of "machinegun," 26 U.S.C. § 5845(b).

ATF first encountered this type of device in 2002, when it received a classification request for the "Akins Accelerator," which operated by means of an internal spring. 83 Fed. Reg. at 66,517. Although ATF initially opined that the prototype it tested was not a machine gun, in 2006 ATF concluded that "the best interpretation of the phrase 'single function of the trigger' includes a 'single pull of the trigger.'" 83 Fed. Reg. 66,517. The Eleventh Circuit affirmed this understanding, holding that interpreting "single function of the trigger" as "'single pull of the trigger' is consonant with the statute and its legislative history." *Akins v. United States*, 312 F. App'x 197, 200 (11th Cir. 2009) (per curiam). ATF soon received classification requests for other bump-stock-type devices that did not include internal springs. In a series of classification decisions between 2008 and 2017, ATF concluded that such

devices were not machine guns based on an erroneous belief that in the absence of mechanical parts that would channel recoil energy, the bump stocks did not enable a gun to fire "automatically." *See id.*

3. In 2017, a shooter armed with semiautomatic weapons and bump stock devices killed 58 people and wounded 500 more in Las Vegas. 83 Fed. Reg. at 66,516. At the urging of members of Congress and other non-governmental organizations, DOJ decided to revisit its prior analysis of the terms used to define "machinegun" in 26 U.S.C. § 5845(b). DOJ published an advance notice of proposed rulemaking in the Federal Register. *Application of the Definition of Machinegun to "Bump Fire" Stocks and Other Similar Devices*, 82 Fed. Reg. 60,929 (Dec. 26, 2017).

In February 2018, the President issued a memorandum concerning bump stocks instructing DOJ, working within established legal protocols, "to dedicate all available resources to complete the review of the comments received [in response to the advanced notice], and, as expeditiously as possible, to propose for notice and comment a rule banning all devices that turn legal weapons into machineguns." *See Definition of Machinegun*, 83 Fed. Reg. 7949 (Feb. 20, 2018).

On March 29, 2018, DOJ published a notice of proposed rulemaking, proposing changes to the regulations in 27 C.F.R. §§ 447.11, 478.11, and 479.11 that would interpret the meaning of the terms "single function of the trigger" and "automatically." *See Bump-Stock-Type Devices*, 83 Fed. Reg. 13,442 (Mar. 29, 2018). The

final rule was published on December 26, 2018. *Bump-Stock Type Devices*, 83 Fed. Reg. 66,514.

The Rule sets forth the agency's interpretations of the terms "single function of the trigger" and "automatically," clarifies for members of the public that bump stocks are machine guns, and overrules ATF's prior, erroneous classification decisions treating certain bump stocks as unregulated firearms parts. *See* 83 Fed. Reg. at 66,514, 66,516, 66,531. The Rule further instructs "current possessors" of bump stocks "to undertake destruction of the devices" or to "abandon [them] at the nearest ATF office" by the Rule's effective date. *Id.* at 66,549. Current owners of bump stocks therefore have until March 26, 2019 to comply with the Rule in order to "avoid criminal liability." *Id.* at 66,530.

B. Procedural History

1. Plaintiffs challenged the Rule and sought a preliminary injunction. *See* Mot. 6-7. On March 21, the district court denied a preliminary injunction. As the court explained, "the parties' dispute" in this case "is whether the forward pressure exerted by the shooter using the non-trigger hand requires the conclusion that a bump stock does not shoot automatically." Op. 12. Applying deference under *Chevron v. Nat. Res. Def. Council*, 467 U.S. 837 (1984), the court conclude that the "agency's interpretation" of the terms "automatically" and "single function of the trigger" in the statute was consistent with the statute and "with judicial interpretations of the statute." Op. 13-14. Although the court recognized that "Defendants concede that Plaintiffs will suffer

irreparable harm without an injunction," the two other preliminary injunction factors did not weigh in plaintiffs' favor: "Congress restricts access to machine guns because of the threat the weapons pose to public safety. Restrictions on bump stocks advance the same interest." Op. 17.

2. The Rule was challenged in district courts nationwide. The United States District Court for the District of Columbia denied a request for a preliminary injunction, *see Guedes v. ATF*, 2019 WL 922594 (D.D.C. Feb. 25, 2019), *appeal docketed*, Consolidated Case Nos. 19-5042, 19-5043, 19-5044 (D.C. Cir. Feb. 26, 2019); the plaintiffs in that case appealed on an expedited schedule, and oral argument was heard before the D.C. Circuit on March 22. On March 23, the D.C. Circuit granted a temporary stay of enforcement of the rule as to the parties before it to permit it to resolve the plaintiffs' appeal.

In addition, on March 15, the United States District Court for the District of Utah ruled denied a similar request for a preliminary injunction. *See Aposhian v. Barr*, No. 19-cv-37 (D. Utah Mar. 15), slip op. at 9, *appeal docketed*, No. 19-4036 (10th Cir. Mar. 18, 2019). Plaintiff in that case requested an injunction pending appeal from the Tenth Circuit, which granted a temporary administrative stay as to the plaintiff in that case pending full briefing and resolution of plaintiff's motion.

ARGUMENT

In order to demonstrate their entitlement to the extraordinary relief of an injunction pending appeal of the district court's denial of their request for a

preliminary injunction, plaintiffs must show that they are likely to succeed on their claim that the Rule's interpretation of the term "machine gun" and its application of that interpretation to bump stocks conflicts with the statute and that issuing the preliminary injunction will prevent irreparable harm that is not outweighed by harm to third parties and the public interest. *See Philip Randolph Inst. v. Husted*, 907 F.3d 913, 917 (6th Cir. 2018) (citing *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991)). Plaintiffs cannot satisfy that stringent standard.

I. The Rule Is Lawful, and Plaintiffs Have Demonstrated No Likelihood of Success on the Merits.

Federal law bans the possession and transfer of "machineguns," 18 U.S.C. § 922(o), defined in the National Firearms Act as "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." 26 U.S.C. § 5845(b).

A bump stock is an apparatus used to replace the standard stock on a semiautomatic firearm that is designed "for the express purpose of allowing 'rapid fire' operation of the semiautomatic firearm to which [it is] affixed," 83 Fed. Reg. at 66,518, and converts an ordinary semiautomatic rifle into a weapon capable of firing at a rate of hundreds of bullets per minute with a single pull of the trigger. Unlike a regular stock, a bump stock channels the recoil from the first shot into a defined path,

allowing the contained weapon to slide back a short distance—approximately an inch and a half—and shifting the trigger away from the shooter's trigger finger. 83 Fed. Reg. at 66,532. This separation allows the firing mechanism to reset. *Id.* When the shooter maintains constant forward pressure on the weapon's barrel-shroud or fore-grip, the weapon slides back along the bump stock, causing the trigger to "bump" the shooter's stationary finger and fire another bullet. *Id.* Each successive shot generates its own recoil, which in turn causes the weapon to slide along the bump stock in conjunction with forward pressure, returning to "bump" the shooter's trigger finger each time, initiating another cycle in turn. To assist the shooter in holding a stationary position with the trigger finger and sustain the firing process, bump stocks are fitted with an "extension ledge." *Id.* at 66,516, 66,532. The shooter maintains constant rearward pressure on the extension ledge, ensuring that the trigger finger is positioned to be "bumped" with each successive cycle. *Id.* at 66,532. This continuous cycle of fire-recoil-bump-fire lasts until the shooter releases the trigger, the weapon malfunctions, or the ammunition is exhausted. *Id.* at 66,518.

The parties disagree on whether a bump stock converts a semiautomatic firearm into a "machinegun" by enabling a shooter to initiate and maintain a continuous process that "automatically" fires by a "single function of the trigger." 26 U.S.C. § 5845(b).

A. A "Single Function of the Trigger" Is a "Single Pull of the Trigger" for a Weapon Equipped with a Standard Trigger

1. For over a decade, ATF has recognized that the phrase "single function of the trigger" means a "single pull of the trigger" for a weapon equipped with a standard trigger. *See* 83 Fed. Reg. at 66,517. The function of a trigger is "to initiate the firing sequence" of a weapon. *United States v. Jokel*, 969 F.2d 132, 135 (5th Cir. 1992) (per curiam). Read in its full context, the phrase "'by a single function of the trigger' describes the action that enables the weapon to 'shoot . . . automatically . . . without manual reloading,' not the 'trigger' mechanism." *United States v. Evans*, 978 F.2d 1112, 1113 n.2 (9th Cir. 1992); *accord United States v. Olofson*, 563 F.3d 652, 658 (7th Cir. 2009) (noting that "a single function of the trigger" "set[s] in motion" the automatic firing of more than one shot); *United States v. Carter*, 465 F.3d 658, 664-65 (6th Cir. 2006). With a normal trigger, the "action" that initiates this process is the shooter's pull on the trigger. On a standard semiautomatic weapon, that single pull results in the firing of a single shot. For a subsequent shot, the shooter must release his pull on the trigger so that the hammer can reset. But on a fully automatic weapon—and on a weapon equipped with a bump stock—that same pull of the trigger initiates a continuous process that fires bullets until the trigger is released or ammunition is exhausted, without requiring that the shooter release his pull. Once the trigger has performed its function of initiating the firing sequence, the weapon fires "automatically more than

one shot, without manual reloading," 26 U.S.C. § 5845(b), until the shooter releases the trigger.

Because not all firearms use a traditional pull trigger, Congress in the National Firearms Act and DOJ in the Rule used language designed to capture the full range of possible trigger devices. By employing the term "single *function* of the trigger," Congress ensured that it could cover weapons that use triggers activated by pushing a paddle, pressing a button, flipping a switch, or otherwise initiating the firing sequence without pulling a traditional trigger. *See*, *e.g.*, *United States v. Fleischli*, 305 F.3d 643, 655-56 (7th Cir. 2002) (holding that a minigun fired by "an electronic switch" was a machine gun). Indeed, at the time of the enactment of the National Firearms Act, many machine guns used push triggers to fire. *See* 83 Fed. Reg. at 66,519 n.5 (listing examples of machine guns that "operate through a trigger activated by a push," including Maxim and Vickers machine guns). By focusing on whether the shooter's "single function of the trigger" initiates an automatic process that discharges multiple bullets, Congress ensured that individuals could not "avoid the [National Firearms Act] simply by using weapons that employ a button or switch mechanism for firing." *Evans*, 978 F.2d at 1113 n.2. For the same reasons, the Rule states that a "single function of the trigger" encompasses "a single pull of the trigger and analogous motions," 83 Fed. Reg. at 66,533, recognizing "that there are other methods of initiating an automatic firing sequence that do not require a pull," *id.* at 66,515; *accord id.* at 66,534.

Legislative history confirms that the Congress that enacted the National Firearms Act understood that in the normal course, a "single function of the trigger" equated to the shooter's single pull of the trigger. In explaining the definition of "machinegun" in the bill that ultimately became the National Firearms Act, *see* H.R. 9741, 73rd Cong. (1934), the House Committee on Ways and Means report stated that bill "contains the usual definition of machine gun as a weapon designed to shoot more than one shot without reloading and *by a single pull of the trigger*." H.R. Rep. No. 73-1780, at 2 (emphasis added); *see* S. Rep. No. 73-1444 (1934) (reprinting House's "detailed explanation" of the provisions, including the quoted language).

Subsequent judicial interpretations of the phrase "single function of the trigger" further confirm that, when a standard trigger is involved, the ordinary meaning of the phrase looks to the shooter's action in pulling the trigger. The Supreme Court has observed that the National Firearms Act treats a weapon that "fires repeatedly with a single pull of the trigger" as a machine gun, in contrast to "a weapon that fires only one shot with each pull of the trigger." *Staples v. United States*, 511 U.S. 600, 602 n.1 (1994). Similarly, the Tenth Circuit recognized that a weapon qualified as a machine gun where it could be fired automatically "by fully pulling the trigger." *United States v. Oakes*, 564 F.2d 384, 388 (10th Cir. 1977). And the Fifth Circuit held that a modified rifle was a machine gun because it "required only one action—pulling the switch [the defendant] installed—to fire multiple shots" instead of requiring the shooter "to separately pull . . . each time the weapon is fired." *United States v. Camp*, 343 F.3d 743,

745 (5th Cir. 2003). The court held that § 5845(b) "expressly contemplate[s]" this distinction by focusing on "a single function of the trigger." *Id.* (emphasis in original).

And in litigation challenging the Rule, the two district courts to consider the issue have both agreed that "single function of the trigger" equates to "single pull of the trigger." In *Aposhian v. Barr*, No. 19-cv-37 (D. Utah Mar. 15), at slip op. 9, the district court explained that plaintiff had failed to demonstrate a likelihood of success on the merits because the Rule states the "best interpretation" of the terms "automatically" and "single function of the trigger." Op. 7 & n.8, 8, 10, 11. The court rejected plaintiff's interpretation of "single function of the trigger" as "refer[ing] to the mechanical movement of the trigger" in favor of the Rule's "shooter-focused interpretation." Op. 8. The court observed that "it makes little sense that Congress would have zeroed in on the mechanistic movement of the trigger in seeking to regulate automatic weapons." *Id.* Instead, the term "function" serves "to forestall attempts by weapon manufacturers or others to implement triggers that need not be pulled, thereby evading the statute's reach." Op. 8-9.

The district court in *Guedes v. ATF*, 2019 WL 922594, at *10 (D.D.C. Feb. 25, 2019), similarly concluded that the agency "acted reasonably in defining the phrase 'single function of the trigger' to mean a 'single pull of the trigger and analogous motions'" in light of "contemporaneous dictionary definitions and court decisions." *Id.* at *10 (quoting 83 Fed. Reg. at 66,553). The district court further observed that "a bump stock operates with a single

'pull' of the trigger because a bump stock permits the shooter to discharge multiple rounds by, among other things, 'maintaining the trigger finger on the device's extension ledge with constant rearward pressure.'" *Id.* at *11 (quoting 83 Fed. Reg. at 66,532).

2. Plaintiffs largely ignore the ordinary meaning of the term "single function of the trigger," 26 U.S.C. § 5845(b), and the interpretation of that language by Congress, the courts, and ATF. Plaintiffs insist that a bump stock "does not fire more than one round by 'a single function of the trigger,'" because in plaintiffs' view a "single function" occurs as long as the trigger itself moves, without regard to the shooter's actions. *See* Mot. 13. But this cramped definition defies statutory text and common sense. Plaintiffs' theory amounts to the contention that an aftermarket device could not convert an AR-15 or similar semiautomatic rifle into a "machinegun," as long as it permits the hammer to operate as originally designed. A rifle equipped with the Akins Accelerator, for example, would no longer qualify as a machine gun, despite the Eleventh Circuit's contrary ruling. *Akins*, 312 F. App'x at 200. And even a motorized device that mechanically and automatically pulled and released the part originally designed as the trigger on an AR-15 rifle at the flip of a switch would not qualify as a machine gun, because the internal mechanical operation would be unchanged. That the shooter produces a continuous firing cycle by taking only one step—flipping the switch—is entirely irrelevant under plaintiffs' theory.

"Function" is therefore not constrained to the precise mechanical operation of a specific type of trigger or firearm. On the contrary, given the range of possible trigger mechanisms and devices, the broad term "function" ensures that ingenious individuals cannot engineer around the restrictions of the National Firearms Act "simply by using weapons that employ a button or switch mechanism for firing." *Fleischli*, 305 F.3d at 655 (quoting *Evans*, 978 F.2d at 1113 n.2). Nor are such concerns hypothetical. As the Rule notes, ATF has applied the "single pull of the trigger" understanding to a host of devices that assist shooters in creating and sustaining a continuous firing cycle. 83 Fed. Reg. at 66,517-18. For example, in 2016, ATF classified "LV-15 Trigger Reset Devices" as machine gun parts. *Id.* at 66,518 n.4. These devices attached to an AR-15 rifle and used a battery-operated "piston that projected through the lower rear portion of the trigger guard" to push the trigger forward, enabling the shooter to pull the trigger once and "initiate and maintain a firing sequence" by continuing the pressure while the piston rapidly reset the trigger. 83 Fed. Reg. at 66,518 n.4.

B. A Rifle Equipped with a Bump Stock Fires "Automatically" Because It Fires "As the Result of a Self-Acting or Self-Regulating Mechanism"

1. The Rule gives the term "automatically" its ordinary meaning. As the Rule explains, "'automatically' is the adverbial form of 'automatic,' meaning '[h]aving a self-acting or self-regulating mechanism that performs a required act at a predetermined point in an operation.'" 83 Fed. Reg. at 66,519 (quoting *Webster's New International*

Dictionary 187 (2d ed. 1934); citing 1 *Oxford English Dictionary* 574 (1933) (defining "automatic" as "[s]elf-acting under conditions fixed for it, going of itself."). And the Rule straightforwardly adopts this definition, stating that a weapon fires "automatically" when it fires "as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds." 83 Fed. Reg. at 66,554; *see Olofson*, 563 F.3d at 658 ("[A]utomatically" in § 5845(b) means "as the result of a self-acting mechanism."). As the district court in the District of Columbia correctly held, the Rule's definition of "automatically" "correctly" defines the term and is "[c]onsistent with these contemporaneous dictionary definitions and the Seventh Circuit's decision in *Olofson*." *Guedes v. ATF*, 2019 WL 922594, at *10; *see also Aposhian v. Barr*, slip op. at 9.

As the Rule explains, a rifle equipped with a bump stock fits comfortably within the ordinary meaning of "automatically." The bump stock "performs a required act at a predetermined point" in the firing sequence by "directing the recoil energy of the discharged rounds into the space created by the sliding stock," ensuring that the rifle moves in a "constrained linear rearward and forward path[]" to enable continuous fire. 83 Fed. Reg. at 66,532. This process is also "[s]elf-acting under conditions fixed for it." The shooter's maintenance of continuous pressure on the extension ledge with the trigger finger and on the barrel-shroud or fore-stock with the other hand provides the conditions necessary for the bump stock to repeatedly perform its basic purpose: "to eliminate the need for the shooter to manually capture,

harness, or otherwise utilize th[e] [recoil] energy to fire additional rounds." *Id.* at 66,532.

2. In arguing that the agency's interpretation of "automatically" is erroneous, plaintiffs fail to engage with the dictionary definitions and other sources relied on by the Rule, the Seventh Circuit in *Olofson*, and the district court decisions denying injunctive relief. Instead, plaintiffs assert that bump stocks do not function as a result of a "self-acting or self-regulating mechanism" because the shooter must maintain pressure on the barrel-shroud or fore-stock of the rifle and the bump stock is not a "mechanism" that channels recoil energy. Mot. 11 n.3, 18-19. But as the district court in the *Guedes* observed, a device need not "operate spontaneously without any manual input" to properly be described as operating "automatically." *Guedes v. ATF*, 2019 WL 922594, at *11. Rather, a device is ordinarily described as operating "automatically" where it "perform[s] parts of the work formerly or usually done by hand" or "produce[s] results otherwise done by hand." *Id.* at *10 (quoting *Webster's New International Dictionary* (1933) and 1 *Oxford English Dictionary* (1933), respectively). And this understanding is reflected in ordinary usage: "[a]n automatic sewing machine, for example, still requires the user to press a pedal and direct the fabric." *Id.* at *11. Because a bump stock performs "two tasks the shooter would ordinarily have to perform manually"—"control[ing] the distance the firearm recoils and ensur[ing] that the firearm moves linearly"—a bump stock allows for an automatic continuous firing cycle. *Id.* Moreover, plaintiffs cannot dispute that the bump stock provides a channel

for recoil that permits the shooter to initiate a firing sequence releasing multiple rounds through one action.

Nor does it advance plaintiffs' claim to contend that the district court's order should be reversed because ATF and the district court made various "factual" errors. Mot. 16-18. For example, the government does not dispute that some machine guns can be fired with one hand, and that, generally, a bump stock requires two hands. *See* Mot. 17 n.7. The question is whether those factual differences are *legally significant*. They are not. The statute nowhere states that "automatically" means "one-handed" (a definition that would be inconsistent with the ordinary meaning of "automatically"). And, indeed, heavy machine guns may require more than *one person* to operate.

As a final matter, injunctive relief is not required because the district court applied *Chevron* deference. Mot. 15-16. This Court does not defer to the district court in its review of the Rule and its interpretation of the statute, the Rule provides the best interpretation of the statute, and the government has not relied on *Chevron* deference with respect to its interpretation of the machine gun definition used in the criminal prohibition of 18 U.S.C. § 922(o).[2]

II. The Public Interest Weighs In Favor of Denying Injunctive Relief

The protection of the public and law enforcement officers from the proliferation

[2] Although the government did not argue for *Chevron* deference with respect to the legal conclusion regarding the scope of a criminal prohibition, which is what is at issue here, courts of course should not disregard ATF's expertise, especially with regard to factual or technical matters.

of prohibited firearms is a bedrock foundation of federal firearms legislation, including the National Firearms Act, the Gun Control Act, and the Firearm Owners Protection Act. Implementation of the Rule promotes that public interest by protecting the public from the dangers posed by machine guns prohibited by federal law. *See* 83 Fed. Reg. at 66520 ("[T]his rule reflects the public safety goals of the [National Firearms Act] and [Gun Control Act.]"). In addition, implementation of the Rule reflects a particularized interest in advancing the safety of law enforcement personnel because "[a] ban [on bump stocks] . . . could result in less danger to first responders when responding to incidents." 83 Fed. Reg. at 66551. The "public[] interest in the safety of . . . law enforcement officials is both legitimate and weighty." *U.S. v. Denny*, 441 F.3d 1220, 1225-26 (10th Cir. 2006) (quoting *Penn. v. Mimms*, 434 U.S. 106, 110 (1977)). As with the interest in public safety, this interest would be disserved by an injunction, and this further tips the balance of the equities against the grant of injunctive relief.

In response to the clear public interest at stake, plaintiffs continue to suggest, without basis, that bump stocks may not have been used in the Las Vegas shooting at all, along with their contention that banning bump stocks will have no impact on the public interest because other dangerous weapons remain on the market. Mot. 19-20. Those conclusory assertions cannot outweigh the substantial public interests at stake, especially when weighed against the limited harm to plaintiffs: at most, plaintiffs will be required to surrender or destroy their bump stocks and will be unable to obtain new bump stocks unless and until they prevail in this litigation and a court accepts their

reading of the statute.

III. Nationwide Relief Is Not Appropriate.

If this Court determines to grant injunctive relief pending resolution of plaintiffs' appeal or fuller resolution of the motion for stay pending appeal, it should limit that relief to the plaintiffs in this case. As a general matter, a plaintiff lacks standing to seek relief on behalf of other parties not before the Court. As the Supreme Court recently admonished, any "remedy" ordered by a federal court must "be limited to the inadequacy that produced the injury in fact that the plaintiff has established"; a court's "constitutionally prescribed role is to vindicate the individual rights of the people appearing before it"; and "'standing is not dispensed in gross': A plaintiff's remedy must be tailored to redress the plaintiff's particular injury." *Gill v. Whitford*, 138 S. Ct. 1916, 1921, 1933-34 (2018) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006)). Principles of equity dictate the same result: it is a black-letter rule that injunctions "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (quoting *Yamasaki*, 442 U.S. at 702).

These principles apply with equal force to challenges to agency action, especially with respect to a nationwide *preliminary* injunction, an equitable tool designed merely to "preserve the relative positions of *the parties* until a trial on the merits can be held." *University of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (emphasis added). The APA should not be lightly construed to displace traditional equitable

principles, *Weinberger v. Romero-Barcelo,* 456 U.S. 305, 313 (1982), and courts have regularly rejected nationwide injunctions in cases involving challenges to agency rules. *See, e.g., Virginia Society for Human Life, Inc. v. Federal Election Commission*, 263 F.3d 379 (4th Cir. 2001); *Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644 (9th Cir. 2011).

These bedrock Article III and equitable principles prevent litigants from circumventing other basic features of litigation in the federal courts. Issuing injunctions that provide relief to non-parties subverts the class-action mechanism provided under the Federal Rules of Civil Procedure, *see McKenzie v. City of Chicago*, 118 F.3d 552, 555 (7th Cir. 1997), and creates a fundamentally inequitable asymmetry, whereby non-parties can claim the benefit of a single favorable ruling, but are not bound by a loss. *See also United States v. Mendoza*, 464 U.S. 154, 162 (1984) (providing that "nonmutual offensive collateral estoppel simply does not apply against the government"). And these effects are particularly pronounced here, where no plaintiff has succeeded in obtaining a preliminary injunction against the Rule on the merits, in this Court or any other, and the two courts of appeals to grant temporary relief have expressly limited those rulings to the plaintiffs before them and evinced no intent to agree with plaintiffs' view of the merits.

CONCLUSION

For the foregoing reasons, the Court should deny plaintiffs' request for an injunction pending resolution of this appeal. If this Court grants plaintiffs' request, it should limit the scope of relief to the plaintiffs before it.

Respectfully submitted,

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MARCH 2019

CERTIFICATE OF COMPLIANCE

The foregoing complies with Fed. R. App. P. 27 because it contains 5,189 words. This brief also complies with the typeface and type-style requirements of Rule 27 because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Abby C. Wright
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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2019, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Abby C. Wright
ABBY C. WRIGHT