Prequel to *Loper Bright* Shows What Decisions May Look Like After *Chevron*'s Demise

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In *Garland v. Cargill*, the U.S. Supreme Court held that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) exceeded its statutory authority by issuing a rule that classifies bump stocks as "machineguns" under the National Firearms Act of 1934. ATF issued the rule in the wake of the 2017 mass shooting using a bump stock in Las Vegas.

In its June 14, 2024, decision, the Supreme Court split 6–3, with the same vote lineup that would come in the following weeks in *Loper Bright* and *Corner Post* — two major administrative law decisions likely to change regulatory litigation for years to come. See our July 9, 2024, client alerts "Supreme Court's Overruling of *Chevron* Deference to Administrative Agencies' Interpretations of Statutes Will Invite More Challenges to Agency Decisions" and "Supreme Court Opens the Door to More Rule Challenges by Extending Accrual Date for APA Cases."

Justice Thomas authored the majority opinion in *Cargill*, in which Chief Justice Roberts, Justice Alito, Justice Gorsuch, Justice Kavanaugh, and Justice Barrett joined. Justice Alito authored a concurring opinion putting the issue back on Congress. Justice Sotomayor, joined by Justice Kagan and Justice Jackson, dissented.

Both the majority and dissent closely parsed the language of the statute and applied it to bump stocks, with the majority concluding that the term "machinegun" plainly did not include bump stocks but the dissent concluding just the opposite. The dissent criticized that reading as contrary to the text's ordinary meaning "and unsupported by context or purpose."

Although *Cargill* came two weeks before *Loper Bright*, it is a good illustration of what regulatory litigation may look like now that *Chevron* is no longer the law.

- Judges may disagree vociferously about the best reading of a statute, like the majority and dissent. The majority thought the text was clear, but so did the dissent.
- Judges may also disagree about whether a statute is ambiguous, and how to make that determination in the first place. Both the majority and the dissent in the Supreme Court thought the statute was clear. But the en banc Fifth Circuit below could not agree on whether the statute was clear, with some judges finding that ATF's bump stock regulation was unambiguously outside the statute and other judges finding ambiguity on the question.
- Going forward, courts might ultimately be inclined to decide — like the majority in *Cargill* — that the statute is clear based on the text, even when other jurists would disagree. *Cargill* thus suggests that one of the likely outcomes after *Loper Bright* will be circuit splits, both over new regulations and over old regulations challenged under *Corner Post*, which opens doors to challenging old regulations (as we described in discussing *Corner Post*).
- As these observations show, *Cargill* highlights the Court's avowed commitment to textualism. The dissent relied on contextual and other clues to find one meaning of "single function of the trigger" — the shooter's action with the trigger — while the majority cast aside those inferences and focused only on the firearm's internal fire control mechanism. Those disputes parallel the different focuses of the same lineup of justices in *Corner Post*, where the majority focused on the plaintiff's injury and the dissent focused on the agency's final action. And those disputes drive home that, even if the Supreme Court considers judges final expositors of statutory text, judges may not agree on what that text means.
- Along the same lines, Justice Alito's concurrence is revealing because it shows that the Court follows its view of textualism to its answers even when it is certain that Congress would have wanted a different outcome.

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- The decision is also significant because it suggests that courts need not defer to agencies' views about how to *apply* law to facts — that is, how to resolve "mixed questions," even when the facts seem to be highly technical and relate to the agency's area of expertise. That reasoning is consistent with the Court's decision in *Loper Bright* that courts — not agencies — primarily are responsible for interpreting statutes. But *Cargill*, though coming before *Loper Bright*, goes a step further, because *Loper Bright* addressed primarily pure questions of law rather than mixed questions of law and fact.
- *Cargill* is thus likely to be a glimpse into what judicial decision-making will look like after *Loper Bright*, including in cases presenting mixed questions of law and fact. Both the majority and dissent engaged closely not just with statutory text but also with semiautomatic and automatic firing mechanisms of AR-15s and the operation of bump stocks, with the majority using multiple diagrams and linking to an animation on the Supreme Court's website. The decision shows that the Court is serious about expecting courts to figure out even very technical interpretive issues.
- Finally, at a more general level, *Cargill* illustrates how the Court expects *Loper Bright* to return policy decisions to Congress. As we discuss in our article on *Loper Bright*, courts are likely to look for clear delegations of authority when Congress wants agencies to make policy (and the Supreme Court may be receptive to nondelegation arguments when Congress goes too far in delegating authority). The Court's decision in *Cargill* shows, as Justice Alito points out in his concurrence, that Congress could have fixed the bump stock problem, and that it still can. What Congress cannot do is expect agencies to do its job.

Statutory and Regulatory Background

Federal law restricts access to machineguns, imposing criminal penalties on those who possess or transfer them without special permission. First put in place in the National Firearms Act of 1934 in response to brutal violence from gangsters like Al Capone, restrictions on machineguns have increased over the years in an effort to address the ongoing problem of firearm use in violent crimes.

The National Firearms Act of 1934 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." It also includes "any part designed and intended … for use in converting a weapon into a machinegun."

Machineguns allow shooters to fire multiple times, or continuously, "by engaging the trigger only once." With an M16 (the military version of the AR-15) in automatic mode, for example, a shooter pulling the trigger once and holding it down can fire at a rate of 700-950 rounds per minute. In comparison, a semiautomatic firearm allows the shooter to fire "only one time by engaging the trigger. The shooter must release and reengage the trigger to fire another shot." So with an AR-15 rifle, for example, a regular person can fire at a rate of 60 rounds per minute by pulling the trigger once every second. A professional sport shooter can fire up to 180 rounds per minute, pulling the trigger three times per second.

"Bump firing" is a technique that allows shooters to "fir[e] semiautomatic firearms at rates approaching those of some machineguns." And a "bump stock" is an accessory that facilitates bump firing.

A semiautomatic rifle equipped with a bump stock can fire at a rate of 400-800 rounds per minute — much closer to the fire rate of a machinegun. To achieve that result, bump stocks do not change the basic firing mechanics. Instead, they help the shooter "rapidly manipulate the trigger" by replacing the semiautomatic rifle's ordinary stock (the part of the rifle that rests against the shooter's shoulder) "with a plastic casing that allows every other part of the rifle to slide back and forth." The casing helps the shooter manage the back-and-forth motion for firing and "also has a ledge to keep the shooter's trigger finger stationary." Although the shooter's finger remains stationary, the shooter uses his other hand "to maintain forward pressure on the rifle's front grip"; that forward pressure counteracts the backward motion that happens when a shot is fired, causing "the firearm (and thus the trigger) to move forward and 'bump' into the shooter's trigger finger." For each additional shot, "the trigger still must be released and reengaged."

For years, ATF's position was that semiautomatic rifles equipped with bump stocks were not machineguns under the Firearms Act because they could not "automatically" fire more than one shot "by a single function of the trigger" given the firing operation just described.

But ATF changed its position after a mass shooting in Las Vegas in October 2017 where a gunman used firearms equipped with bump stocks to kill 58 people and wound over 500 more by firing "hundreds of rounds in a matter of minutes." After the shooting, Members of Congress proposed bills to ban bump stocks and similar devices. While bills were pending, ATF proposed a rule that would "clarify" that bump stocks are machineguns under the 1934 Act. Senator Dianne Feinstein and others warned that ATF was exceeding its statutory authority. In Senator Feinstein's view, for example, "the only way to ban bump stocks" was through legislation.

ATF went ahead anyway, issuing its final rule in 2018. The rule defined "machinegun" to include "a bump-stock-type device" and "repudiated ATF's previous guidance that bump stocks did not qualify as 'machineguns'" under the statute. The rule

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"ordered owners of bump stocks to destroy them or surrender them to ATF within 90 days." Failing to comply would lead to criminal prosecution. Congress never passed legislation addressing bump stocks.

History and Facts of *Cargill*

Michael Cargill surrendered two bump stocks to ATF under protest and then sued to challenge the rule under the Administrative Procedure Act (APA). He argued, among other things, that bump stocks are not machineguns as defined in the Act, and that ATF exceeded it statutory authority in concluding otherwise.

The district court entered judgment for the government. The Fifth Circuit affirmed, but then reversed after rehearing en banc.

The en banc judges disagreed about whether a bump stock qualified as a "machinegun." Of the 16 judges, 13 agreed that Congress would have to amend the statute to prohibit bump stocks. A 12-judge majority assumed the statute was ambiguous as to whether a semiautomatic rifle equipped with a bump stock qualifies as a machinegun, and concluded that the rule of lenity — which provides that, when a criminal statute is ambiguous, the tie goes to the defendant — required ruling in Cargill's favor. The majority also noted that, because the statute involves criminal penalties, the government's interpretation was not entitled to *Chevron* deference. (The Supreme Court would later say in *Loper Bright* that, whether *Chevron* applies to statutes with criminal applications was just part of the "dizzying breakdance" making *Chevron* unworkable.) And an eight-judge plurality concluded that the definition of machineguns clearly does *not* include bump stocks.

The Supreme Court granted certiorari to resolve a split about whether bump stocks meet the statutory definition of machinegun. Notably, the government did not argue that its interpretation of the National Firearms Act was entitled to *Chevron* deference. It argued only that under the best interpretation of the statute, bump stocks are machineguns.

Majority Opinion

The Court affirmed the Fifth Circuit in a 6–3 decision, holding that ATF "exceeded its statutory authority by issuing a Rule that classifies bump stocks as machineguns." The Court explained "that a semiautomatic rifle equipped with a bump stock is not a 'machinegun' because it cannot fire more than one shot 'by a single function of the trigger.' And, even if it could, it would not do so 'automatically.'"

Justice Thomas authored the majority opinion, in which Chief Justice Roberts, Justice Alito, Justice Gorsuch, and Justice Kavanaugh joined. Those same justices formed the six-justice majority in *Loper Bright* and *Corner Post*; the same three justices — Justice Kagan, Justice Sotomayor, and Justice Jackson — dissented across all three cases.

The Court "start[ed] with the statutory text, which refers to 'a single function of the trigger.'" The Court explained, with multiple diagrams and an "animated graphic" made available online, how a semiautomatic rifle without a bump stock fires, to demonstrate that "it fires only one shot per 'function of the trigger.'" The majority then explained that, even with a bump stock, "[t]he firing cycle remains the same." And it rejected ATF's interpretation of "single function of the trigger" to mean "a single pull of the trigger and analogous motions."

The Court then considered the a semiautomatic rifle equipped with a bump stock also does not fire "automatically" (the statute asks whether a weapon "shoots … automatically more than one shot … by a single function of the trigger"). In the majority's view, firing multiple shots "requires more than a single function of the trigger" — for example, the shooter must also maintain precisely "the right amount of forward pressure on the rifle's front grip with his nontrigger hand." Firing multiple shots with a semiautomatic rifle equipped with a bump stock thus requires more than engaging the trigger one time. Continuing its deep dive into firearms mechanics, the majority also compared a semiautomatic rifle with a bump stock to another, "indistinguishable" weapon — the Ithaca Model 37 shotgun — "that ATF concede[d] cannot fire multiple shots 'automatically.'"

Finally, the Court rejected the ATF's argument based on the "presumption against ineffectiveness" — that the 1934 Act would be ineffective if it did not classify semiautomatic rifles equipped with bump stocks as machineguns. According to ATF, "Congress 'restricted machineguns because they eliminate the manual movements that a shooter would otherwise need to make in order to fire continuously' at a high rate of fire, as bump stocks do." But the Court rejected that argument as contrary to statutory text. It explained that "[a] law is not useless merely because it draws a line more narrowly than one of its conceivable statutory purposes might suggest." And the 1934 Act covers many machineguns even if it does not cover rifles equipped with bump stocks.

Concurring Opinion

In a solo concurrence, Justice Alito wrote that the statutory text was crystal clear. Even so, he acknowledged that there was "little doubt that the Congress that enacted [the machinegun law] would not have seen any material difference between a machinegun and a semiautomatic rifle equipped with a bump stock." But because the text itself was clear and did not reach bump stocks, the Court had no choice but to find that ATF's rule exceeded its statutory authority.

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Justice Alito noted, however, that "[t]here is a simple remedy for the disparate treatment of bump stocks and machineguns": Congress can amend the statute. And, he added, it might already have done so had ATF "stuck with its earlier interpretation."

Dissenting Opinion

Justice Sotomayor, joined by Justice Kagan and Justice Jackson, dissented.

The dissent read the statute differently, and concluded that "[t]his is not a hard case" because "[a]ll of the textual evidence points to the same interpretation," that rifles equipped with bump stocks are machineguns. In the dissent's view, "[a] bump-stock-equipped semiautomatic rifle is a machinegun because (1) with a single pull of the trigger, a shooter can (2) fire continuous shots without any human input beyond maintaining forward pressure."

A machinegun and a bump-stock-equipped semiautomatic rifle were identical in material respects, the dissent explained. For example, someone using an M16 "need only pull the trigger and maintain backward pressure (on the trigger)" — meaning they pull the trigger only once to fire multiple shots. So too with "a bump-stock-equipped AR-15" — a shooter "need only pull the trigger and maintain forward pressure (on the gun)," again pulling the trigger just once to fire multiple shots. In both instances, "only one initial action" (*i.e.*, a "single function of the trigger") is required fire continuously.

"When I see a bird that walks like a duck, swims like a duck, and quacks like a duck, I call that bird a duck," Justice Sotomayor wrote. "A bump-stock-equipped semiautomatic rifle fires 'automatically more than one shot, without manual reloading, by a single function of the trigger.'" A semiautomatic rifle equipped with a bump stock thus plainly is a machinegun, according to the dissent.

The dissent pointed out that the majority's contrary interpretation required "six diagrams and an animation to decipher the meaning of the statutory text." In the dissent's view, the Court's interpretation was tortured and "casts aside Congress's definition of 'machinegun' and seizes upon one that is inconsistent with the ordinary meaning of the statutory text and unsupported by context or purpose."

The dissent also criticized the majority, saying it shifted its focus in reading the statute in a way that took the terms out of context. Rather than focusing on "the human act on the trigger referenced by the statute," the dissent said that the majority incorrectly "fixated" on the firearm's internal trigger mechanism. In that way, the majority — incorrectly, in the dissent's view — concluded that a semiautomatic rifle with a bump stock does not shoot multiple shots "by a single function of the trigger."

Like the ATF, the dissent also pointed to the "presumption against ineffectiveness," and criticized the majority for "arrogat[ing] Congress's policymaking role to itself by allowing bumpstock users to circumvent Congress's ban on weapons that shoot rapidly via a single action of the shooter."

The dissent emphasized that the majority's "decision to reject that ordinary understanding will have deadly consequences." In the dissent's view, "[t]he majority's artificially narrow definition hamstrings the Government's efforts to keep machineguns from gunmen like the Las Vegas shooter."

Implications

The Court's decision is important because it exemplifies the Court's commitment to textualism and shows how the Court expects lower courts to resolve questions without *Chevron*. Although the decision came two weeks before *Loper Bright* overruled *Chevron*, the government had not invoked *Chevron* and had instead expressly argued that ATF's reading of the statute was the best reading — the test the Court ultimately imposed in *Loper Bright*.

Cargill also suggests that courts need not defer to agencies' views about how to apply law to facts, even when the facts seem to be highly technical and fall under the agency's area of expertise. And it underscores that legislating is Congress's role — Congress cannot rely on agencies to change the law for it.

Commitment to Textualism

In *Cargill*, the Court interpreted the National Firearms Act of 1934 and found the statutory text clear. Justice Alito even wrote that "the Congress that enacted 26 U.S.C. § 5845(b) would not have seen any material difference between a machinegun and a semiautomatic rifle equipped with a bump stock." But because "the statutory text [was] clear," he concluded that the Court "must follow it."

The decision thus highlights that text is paramount. Relatedly, it shows that context may not be a primary driver for some jurists in interpreting statutes, but that focus and framing can make a difference. It also shows that different jurists will reach different results even when they purport to apply the same tools of statutory interpretation. And that reality is likely to lead to circuit splits resulting in disuniform law across the country — something agency interpretations receiving *Chevron* deference once mitigated — unless and until the Supreme Court steps in to resolve the circuit disagreement.

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Recall that the dissent criticized the majority for improperly focusing on the trigger's internal mechanism rather than "the human act on the trigger" — which is what the statute focused on, in the dissent's view. The dissent criticized what it called the majority's "myopic focus," which led it to reach a result that was "inconsistent with the ordinary meaning of the statutory text and unsupported by context or purpose."

A similar critique surfaced in *Corner Post*, decided weeks after *Cargill*. In that case, the Court held that a claim under the APA does not accrue for purposes of 28 U.S.C. §2401(a)'s six-year statute of limitations until the plaintiff is injured by a final agency action. In dissent, Justice Jackson wrote that under the APA, a claim is focused on the agency — so a claim should accrue upon the final agency action, rather than when a plaintiff is injured. The majority's approach, in comparison, was "plaintiff-centric" — and the Court's holding flowed from that view of the statute. Framing and focus matter, and at least for the majority, context and purpose will not overcome plain text.

What is more, the decision highlights that there likely will be continued disagreement about whether statutory terms are ambiguous, and how to make that determination. The majority in *Cargill*, for example, thought the statute clearly did not reach bump-stock-equipped semiautomatic rifles, even though only a plurality of the en banc Fifth Circuit reached that same conclusion. It is possible that, going forward, courts may be less likely to find statutory ambiguity in the first place — resting instead on the text and concluding that a statute simply means what it says. But even after *Loper Bright*, ambiguity still matters in some areas of statutory interpretation, like laws with criminal applications subject to the rule of lenity.

Possible Preview of Judicial Decision-Making in Mixed Questions of Law and Fact Post-*Loper Bright*

Cargill also may provide a preview of how courts may decide mixed questions of law and fact after *Loper Bright*. Having found the statute clear, the Court in *Cargill* applied it to a relatively technical set of facts without deferring to the agency's interpretation or application of the statutory terms to those facts.

To be sure, *Chevron* deference was not directly at play. The Fifth Circuit explained that, when criminal penalties are on the table, *Chevron* deference doesn't apply — so it did not apply in *Cargill*'s case. And the government argued that its interpretation was the best one — no *Chevron* deference required. But the majority in *Cargill* thought the statute clearly did not reach bump-stock-equipped semiautomatic rifles, even though only a plurality of the en banc Fifth Circuit reached that same conclusion. Its analysis showed no trace of deference, even though whether bump stocks are machineguns arguably involved a mixed question of law and fact on an issue and subject matter within the ATF's expertise.

Indeed, the Court's approach in *Cargill* seems to flow from the reasoning in *Loper Bright* (and although *Loper* was issued several weeks after *Cargill*, the Court would of course have been working on it internally when it issued *Cargill*). In *Loper Bright,* the Court overruled *Chevron* and held that the APA requires courts to decide whether an agency has acted within its statutory authority without deference to the agency's views. Perhaps anticipating that mixed questions of law and fact — as opposed to questions of pure statutory interpretation — were up next, Justice Kagan's dissent in *Loper Bright* noted that "[i]t is frequently in the consideration of mixed questions [of law and fact] that the scope of statutory terms is established and their meaning defined." *Cargill* seems to have anticipated exactly that, showing how courts might approach mixed questions of law and fact after *Loper Bright* by deciding the question for themselves without deferring to the agency's views. No more "dizzying breakdance," as Chief Justice Roberts put it in *Loper Bright*. Just interpreting and applying the law — if you have the votes.

Putting the Ball Back in Congress' Court

Cargill, and Justice Alito's concurrence in particular, also underscores a separation of powers theme running through the Court's major administrative law decisions this term. The majority makes clear that Congress — not ATF — must amend the statute if it wants to ban bump stocks. That is a "simple remedy," as Justice Alito put it — and one that might already have happened had ATF "stuck with its earlier interpretation" that semiautomatic rifles equipped with bump stocks are not machineguns.

The decision thus exemplifies one of the driving forces of *Loper Bright* — putting policy decisions back in Congress' hands. As we describe in our article on *Loper Bright*, the Court is likely to continue requiring clearer statements for delegations of discretionary authority to agencies, and to be receptive in coming terms to nondelegation challenges to Congress' efforts to put discretion into agencies' hands.

Conclusion

Parties challenging agency action might rely on *Garland v. Cargill* going forward to argue that courts should not defer to an agency's application of law to facts, even when it comes to technical subject matters.

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If you have questions, please reach out to any of the attorneys listed above.