

Congress of the United States
Washington, DC 20515

October 1, 2022

The Honorable Nancy Pelosi
Speaker, U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Majority Leader, U.S. Senate
Washington, DC 20510

Dear Leader Schumer and Speaker Pelosi,

As Members of Congress, we write to urge you to bring legislation to the floor permanently codifying bump stocks as illegal, as currently established under a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) rulemaking. In addition to the two legal challenges to this rule pending at the Supreme Court, the illegality of bump stocks has been challenged time and time again in various appeals and circuit courts by the gun lobby since 2019. Accordingly, given this troubling state of play, we urge leadership to bring legislation to codify this rule – which has already passed the House – to make these dangerous devices permanently illegal and prevent future deadly shootings.

Five years ago this October, a gunman used a bump stock, a conversion accessory attached to a semi-automatic weapon that allows an increased rate of fire, to carry out the deadliest mass shooting in American history. On October 1, 2017, in the heart of Las Vegas, the gunman acted alone using a bump stock to take 58 innocent lives and injure nearly 500 others. Two months later in December 2017, the Department of Justice (DOJ) and ATF announced they would issue a rulemaking to ban bump stocks under the *Gun Control Act of 1968* and the *National Firearms Act of 1986*. Specifically, ATF clarified the definition of a “machine gun” to include bump stocks, making it illegal to manufacture, sell, and possess the devices for civilian use. This commonsense rule was finalized in December 2018 and took effect in March 2019. Notably, several states led by Republican governors, including Massachusetts, Florida, Maryland, and Vermont, signed laws to the same effect.

Troublingly, since 2019 gun advocates have relentlessly challenged this rulemaking in court, arguing through diminutive technicalities that bump stocks do not classify as machine guns and thus should not be regulated as such. This is despite the fact that bump stocks allow semi-automatic weapons to fire 400 to 800 rounds per minute, much like machine guns. Thus far, challenges to the ban have been appealed in federal court at least seven times. The 5th, 6th, 10th, and D.C. Circuit Courts have upheld the ban, though a full 6th Circuit Court decision was shy of only one vote needed to overturn it. Just last month, the full 5th Circuit Court in New Orleans opted to hear new arguments positing the illegality of the ban. In this case, bump stock advocates rely once again on trigger function technicalities as an argument that the devices do not qualify as machine guns. While this kind of argument has not had standing in court thus far,

conservatives and the gun lobby continue to launch a full-fledged assault on this commonsense ATF ruling led by a Republican Administration, issuing dozens of amicus briefs advocating for a reversal. Unless a ban is codified by Congress, these court challenges will undoubtedly continue.

As the Supreme Court grows more partisan and increasingly conservative, we are concerned about the viability of the ATF's bump stock ban if taken up by the Majority on the Court. While the Supreme Court has twice declined emergency appeal requests and has since rescheduled challenges to the ATF ruling, these cases are expected to be considered on the schedule when justices hold their post-summer conference on September 28th. This comes as 22 state attorneys general filed an amicus brief earlier this year asking that the Supreme Court overturn the ban on bump stocks.¹ It is noteworthy that in 2020 Justice Neil Gorsuch explicitly criticized ATF's rulemaking, calling the interpretation "bureaucratic pirouetting," and stated that the Supreme Court would "benefit from hearing...considered judgements."² This makes clear that members of the conservative majority on the Court are amenable to considering the bump stock ban, underscoring the need for Congress to legislate and make the illegality of these deadly weapons permanent.

In June 2022, the *Closing the Bump Stock Loophole Act* passed the House as part of the *Protecting Our Kids Act* package. This bump stock ban legislation regulates these devices in the same way that the ATF rule does – by classifying bump stocks as machine guns under current law which is consistent with their firing rate. Notably, the bump stock ban in the *Protecting Our Kids Act* was the most bipartisan title of the larger package with thirteen Republicans voting in favor of the provision. Further, several key Senate Republicans have stated their openness to supporting a bump stock ban, indicating that there is bipartisan support for a permanent ban.

As Members of Congress concerned that the legality of bump stocks can be influenced by sway from the gun lobby and decided by a partisan panel of judges, we urge you to bring legislation to the floor to permanently codify this ban. Doing so will ensure that bump stocks are treated under U.S. law like the deadly, military-grade devices that they are. Unequivocally, a bump stock ban is in the best interest of public safety and will prevent bad actors from using these devices to carry out deadly mass shootings in a matter of minutes.

Sincerely,



Dina Titus
Member of Congress



Betty McCollum
Member of Congress

¹ https://www.gunowners.org/wp-content/uploads/20220407144516796_GOA-v.-Garland-States-Amicus-ISO-Cert-Circ-Draft-Final.pdf

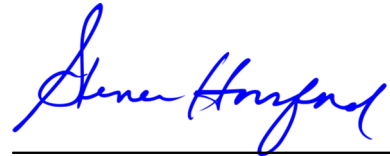
² https://www.supremecourt.gov/opinions/19pdf/19-296_8n59.pdf



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Member of Congress



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Member of Congress



Karen Bass
Member of Congress



Mikie Sherrill
Member of Congress

Daniel T. Kildee

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Member of Congress