10TH ANNUAL
GEORGIA AND THE SECOND AMENDMENT CONFERENCE:
GUN RIGHTS AND REGULATION IN GEORGIA AND BEYOND

Sponsored By: Institute of Continuing Legal Education
Who are we?

**SOLACE** is a program of the State Bar of Georgia designed to assist those in the legal community who have experienced some significant, potentially life-changing event in their lives. SOLACE is voluntary, simple and straightforward. SOLACE does not solicit monetary contributions but accepts assistance or donations in kind.

How does SOLACE work?

If you or someone in the legal community is in need of help, simply email SOLACE@gabar.org. Those emails are then reviewed by the SOLACE Committee. If the need fits within the parameters of the program, an email with the pertinent information is sent to members of the State Bar.

What needs are addressed?

Needs addressed by the SOLACE program can range from unique medical conditions requiring specialized referrals to a fire loss requiring help with clothing, food or housing. Some other examples of assistance include gift cards, food, meals, a rare blood type donation, assistance with transportation in a medical crisis or building a wheelchair ramp at a residence.

Contact SOLACE@gabar.org for help.
A solo practitioner’s quadriplegic wife needed rehabilitation, and members of the Bar helped navigate discussions with their insurance company to obtain the rehabilitation she required.

A Louisiana lawyer was in need of a CPAP machine, but didn’t have insurance or the means to purchase one. Multiple members offered to help.

A Bar member was dealing with a serious illness and in the midst of brain surgery, her mortgage company scheduled a foreclosure on her home. Several members of the Bar were able to negotiate with the mortgage company and avoided the pending foreclosure.

Working with the South Carolina Bar, a former paralegal’s son was flown from Cyprus to Atlanta (and then to South Carolina) for cancer treatment. Members of the Georgia and South Carolina bars worked together to get Gabriel and his family home from their long-term mission work.

The purpose of the SOLACE program is to allow the legal community to provide help in meaningful and compassionate ways to judges, lawyers, court personnel, paralegals, legal secretaries and their families who experience loss of life or other catastrophic illness, sickness or injury.

In each of the Georgia SOLACE requests made to date, Bar members have graciously stepped up and used their resources to help find solutions for those in need.

Contact SOLACE@gabar.org for help.
Dear ICLE Seminar Attendee,

Thank you for attending this seminar. We are grateful to the Chairperson(s) for organizing this program. Also, we would like to thank the volunteer speakers. Without the untiring dedication and efforts of the Chairperson(s) and speakers, this seminar would not have been possible. Their names are listed on the AGENDA page(s) of this book, and their contributions to the success of this seminar are immeasurable.

We would be remiss if we did not extend a special thanks to each of you who are attending this seminar and for whom the program was planned. All of us at ICLE hope your attendance will be beneficial as well as enjoyable. We think that these program materials will provide a great initial resource and reference for you.

If you discover any substantial errors within this volume, please do not hesitate to inform us. Should you have a different legal interpretation/opinion from the speaker's, the appropriate way to address this is by contacting him/her directly.

Your comments and suggestions are always welcome.

Sincerely,

Your ICLE Staff

Jeffrey R. Davis
Executive Director, State Bar of Georgia

Tangela S. King
Director, ICLE

Rebecca A. Hall
Associate Director, ICLE
10th Annual
Georgia and the Second Amendment Conference:
Gun Rights and Regulation in Georgia and Beyond
Co-Sponsored by:
American Constitution Society, Georgia Lawyer Chapter
GeorgiaCarry.Org
December 12, 2018
State Bar of Georgia Headquarters
104 Marietta Street, NW
Atlanta, Georgia

Presiding: Peter Canfield, Program Chair, Jones Day, Atlanta

8:15 REGISTRATION (All attendees must check in upon arrival. A removable jacket or sweater is recommended.)

8:55 WELCOME AND PROGRAM OVERVIEW

9:00 Developments in Georgia Gun Regulation & Litigation
Hon. Susan P. Tate, Judge, Athens-Clarke County Probate Court, Athens
Dawn M. Driedrich, Director of Office of Privacy and Compliance, GBI, Atlanta
Harry R. Foster, III, ATF, Atlanta Field Division, Atlanta
John R. Monroe, John Monroe Law, P.C., Dawsonville

9:45 BREAK

10:00 America and the Second Amendment: The Past, Present and Future of Gun Rights and Regulation
Eric J. Segall, Georgia State University College of Law, Atlanta, hosts a conversation with:
Adam Winkler, Professor of Law, UCLA School of Law and author, Gunfight: The Battle over the Right to Bear Arms in America, and
Clark Neily, Cato Institute vice president for criminal justice and co-counsel in District of Columbia v. Heller

11:15 Hot Topics in Gun Rights and Regulation
A discussion of gun issues of the moment, including school safety and plastic guns, with presentations by:
Marvin Lim, Holcomb & Ward LLP, Atlanta
Timothy D. Lytton, Georgia State University College of Law, Atlanta

12:00 BOX LUNCHEON (Included in registration fee)
Looking Forward: Guns and the 2019 Georgia Legislature

Greg Bluestein, political reporter, The Atlanta Journal-Constitution, moderates a panel on the past and future of guns and the Georgia General Assembly, with panelists to include:

Sen. Jennifer Jordan, District 6, Georgia State Senate, Attorney at Law, Atlanta

Rep. Scot Turner, District 21, Georgia House of Representatives, Holly Springs

Chief Stacey L. Cotton, Covington Police Department, Covington

1:15 ADJOURN
10th Annual
Georgia and the Second Amendment Conference:
Gun Rights and Regulation in Georgia and Beyond
Co-Sponsored by:
American Constitution Society, Georgia Lawyer Chapter
GeorgiaCarry.Org
December 12, 2018
State Bar of Georgia Headquarters
104 Marietta Street, NW
Atlanta, Georgia

Conference Materials
Final agenda
Panelist biographies

FIRST PANEL
Developments in Georgia Gun Regulation & Litigation

Letter from Attorney General Sessions
Bill to Amend OCGA 35-3-34
OCGA 16-11-129
Summary of Weapons Carry License Prohibitors
Weapons Carry License Federal and Georgia Prohibitors
H. Foster, Federal Firearms Law
J. Monroe, Georgia and the Second Amendment
Georgia Gun Litigation Annual Developments

SECOND PANEL
America and the Second Amendment: The Past, Present and Future of Gun Rights and Regulation

E. Segall, Originalism as Faith, Chapter 8
E. Segall, Goodbye Justice Kennedy and Goodbye Gun Control

THIRD PANEL
Hot Topics in Gun Rights and Regulation

M. Lim, Guns and Georgia Schools

FOURTH PANEL
Looking Forward

2018 Guns and Georgia Politics (news clips)
Pre-filed House Bill 2 / Georgia Constitutional Carry
8:15 **REGISTRATION**
(All attendees must check in upon arrival. A removable jacket or sweater is recommended.)
WELCOME AND PROGRAM OVERVIEW
9:00  
**Developments in Georgia Gun Regulation & Litigation**  
*Hon. Susan P. Tate, Judge*, Athens-Clarke County Probate Court, Athens  
*Dawn M. Driedrich*, Director of Office of Privacy and Compliance, GBI, Atlanta  
*Harry R. Foster, III, ATF*, Atlanta Field Division, Atlanta  
*John R. Monroe*, John Monroe Law, P.C., Dawsonville
The Honorable Governor Nathan Deal
202 State Capitol
Atlanta, GA 30334
United States of America

The Honorable Attorney General Chris Carr
40 Capitol Square NW
Atlanta, GA 30334
United States of America

Dear Governor Nathan Deal and Attorney General Chris Carr:

As the chief federal law enforcement officer, it is incumbent upon me to take every possible step to ensure the safety of law enforcement officers and the public at-large. Our national criminal justice databases, however, are only as good as the information our federal, state, local, and tribal partners make available to them. Without accurate, complete, and timely information, law enforcement is hamstrung in its ability to detect and respond to threats. Simply put, our ability to work cooperatively and share relevant information in a timely fashion is the key to keeping all of our communities safe.

Unfortunately, we are currently operating at an information deficit. Based on information States reported to SEARCH, the National Consortium for Justice Information and Statistics, only 68 percent of all arrests in state criminal history files nationwide have final case dispositions recorded. The danger to public safety as a result of this lack of information is extraordinary. Our nation's law enforcement officers rely on the information in these national-level databases, and anything but the most accurate, complete, and up-to-date information puts them, and all Americans, at risk. Additionally, our national firearms-related background check system, the

National Instant Criminal Background System (NICS) uses this same information. When the information upon which it relies is incomplete, we risk allowing the transfer of a firearm to a person who is prohibited by law from possessing it. This is a result we simply cannot tolerate.

I am committed to doing everything in my authority to make inroads against this intractable problem. The safety and security of our nation depends on our collective efforts to rise to this challenge and overcome the obstacles to complete information sharing.

Based on information your State reported to SHARC1, 72 percent of arrests in your state criminal history files have final case dispositions recorded. Anything less than full recording of final dispositions puts not only the law enforcement and citizens of your state at risk, but also the federal, state, local, and tribal law enforcement officers who rely on the records your State makes available to national criminal justice information systems. The same is true for other categories of case information that feed into the national systems. I ask that you carefully review your State's process for collecting and making information available to these systems. If there are areas in need of improvement, please respond within 45 days to Federal Bureau of Investigation (FBI) Criminal Justice Services Division, at CJIS-STATE@fbi.gov, identifying the obstacles to full information sharing and whether there are any challenges we can assist you in resolving. As an additional measure, I have separately directed the FBI to identify local jurisdictions that are not reporting arrests to their state repositories, and to determine jurisdictions that are not adequately making mental health records available to the NICS. I ask that you provide your cooperation and support in these endeavors.

Also attached to this letter is more information on the ten categories of persons who are prohibited under federal law from receiving or possessing firearms. It is particularly important that we have full information in these categories, so we can complete firearms-related background checks in a timely fashion. I encourage you to contact the FBI’s NICS Program, at (844) 265-6716, if you have questions about the information that should be made available to the NICS or if the Department of Justice can help in any other way to support reporting of this important information.

To support your information-sharing efforts, the Department has released grant solicitations under two relevant programs—the National Criminal History Improvement Program (NCHIP) and the NICS Act Record Improvement Program (NARIP). Grant funding under both of these programs can be used by state and local authorities to enhance the quality and completeness of records made available to the FBI’s national databases. The grant solicitations are posted on the Bureau of Justice Statistics’s website, at https://www.bjs.gov/index.cfm?ty=grants, and will close on May 14, 2018.
I extend to you my deepest appreciation for your cooperation in this important work. As public servants, it is incumbent upon us to dutifully enforce the law and protect the public. Together, we can make America safe.

Sincerely yours,

Jefferson B. Sessions III
Attorney General

Enclosures
A BILL TO BE ENTITLED
AN ACT

To amend Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and dissemination of criminal records to private persons and businesses, resulting responsibility and liability of the Georgia Crime Information Center, and provision of certain information to the FBI in conjunction with the National Instant Criminal Background Check System; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and dissemination of criminal records to private persons and businesses, resulting responsibility and liability of the Georgia Crime Information Center, and provision of certain information to the FBI in conjunction with the National Instant Criminal Background Check System, is amended by revising subsection (e) as follows:

(e) (1) The Georgia Crime Information Center shall be authorized to provide criminal history records, wanted person records, and involuntary hospitalization records information to the Federal Bureau of Investigation in conjunction with the National Instant Criminal Background Check System in accordance with the federal Brady Handgun Violence Prevention Act, 18 U.S.C. Section 921, et seq.

(2) The records of the Georgia Crime Information Center shall include information as to whether a person has been involuntarily hospitalized. Notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the Georgia Crime Information Center shall be provided such information and no other mental health information from the involuntary hospitalization records of the probate courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges Training Council and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. Further, notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity at the time of the crime, has been involuntarily hospitalized, or both from the records of the clerks of the superior courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of Georgia and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. After five years have elapsed from the date that a person's involuntary hospitalization information has been received by the Georgia Crime Information Center, the center shall
purge its records of such information as soon as practicable and in any event purge such records within 30 days after the expiration of such five-year period.

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.
§ 16-11-129. License to weapons carry, GA ST § 16-11-129

(a) **Application for weapons carry license or renewal license; term.** The judge of the probate court of each county shall, on application under oath, on payment of a fee of $30.00, and on investigation of applicant pursuant to subsections (b) and (d) of this Code section, issue a weapons carry license or renewal license valid for a period of five years to any person whose domicile is in that county or who is on active duty with the United States armed forces and who is not a domiciliary of this state but who either resides in that county or on a military reservation located in whole or in part in that county at the time of such application. Such license or renewal license shall authorize that person to carry any weapon in any county of this state notwithstanding any change in that person's county of residence or state of domicile. Applicants shall submit the application for a weapons carry license or renewal license to the judge of the probate court on forms prescribed and furnished free of charge to persons wishing to apply for the license or renewal license. An application shall be considered to be for a renewal license if the applicant has a weapons carry license or renewal license with 90 or fewer days remaining before the expiration of such weapons carry license or renewal license or 30 or fewer days since the expiration of such weapons carry license or renewal license regardless of the county of issuance of the applicant's expired or expiring weapons carry license or renewal license. An applicant who is not a United States citizen shall provide sufficient personal identifying data, including without limitation his or her place of birth and United States issued alien or admission number, as the Georgia Bureau of Investigation may prescribe by rule or regulation. An applicant who is in nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y). Forms shall be designed to elicit information from the applicant pertinent to his or her eligibility under this Code section, including citizenship, but shall not require data which is nonpertinent or irrelevant, such as serial numbers or other identification capable of being used as a de facto registration of firearms owned by the applicant. The Department of Public Safety shall furnish application forms and license forms required by this Code section. The forms shall be furnished to each judge of each probate court within this state at no cost.

(a.1) **Gun safety information.**

(1) Upon receipt of an application for a weapons carry license or renewal license, the judge of the probate court may provide applicants printed information on gun safety that is produced by any person or organization that, in the discretion of the judge of the probate court, offers practical advice for gun safety. The source of such printed information shall be prominently displayed on such printed information.
(2) The Department of Natural Resources shall maintain on its principal, public website information, or a hyperlink to information, which provides resources for information on hunter education and classes and courses in this state that render instruction in gun safety. No person shall be required to take such classes or courses for purposes of this Code section where such information shall be provided solely for the convenience of the citizens of this state.

(3) Neither the judge of the probate court nor the Department of Natural Resources shall be liable to any person for personal injuries or damage to property arising from conformance to this subsection.

(b) Licensing exceptions.

(1) As used in this subsection, the term:

(A) “Armed forces” means active duty or a reserve component of the United States Army, United States Navy, United States Marine Corps, United States Coast Guard, United States Air Force, United States National Guard, Georgia Army National Guard, or Georgia Air National Guard.

(B) “Controlled substance” means any drug, substance, or immediate precursor included in the definition of controlled substances in paragraph (4) of Code Section 16-13-21.

(C) “Convicted” means an adjudication of guilt. Such term shall not include an order of discharge and exoneration pursuant to Article 3 of Chapter 8 of Title 42.

(D) “Dangerous drug” means any drug defined as such in Code Section 16-13-71.

(2) No weapons carry license shall be issued to:

(A) Any person younger than 21 years of age unless he or she:

(i) Is at least 18 years of age;

(ii) Provides proof that he or she has completed basic training in the armed forces of the United States; and

(iii) Provides proof that he or she is actively serving in the armed forces of the United States or has been honorably discharged from such service;

(B) Any person who has been convicted of a felony by a court of this state or any other state; by a court of the United States, including its territories, possessions, and dominions; or by a court of any foreign nation and has not been pardoned for such felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitution or laws of such state or nation;
(C) Any person against whom proceedings are pending for any felony;

(D) Any person who is a fugitive from justice;

(E) Any person who is prohibited from possessing or shipping a firearm in interstate commerce pursuant to subsections (g) and (n) of 18 U.S.C. Section 922;

(F) Any person who has been convicted of an offense arising out of the unlawful manufacture or distribution of a controlled substance or other dangerous drug;

(G) Any person who has had his or her weapons carry license revoked pursuant to subsection (e) of this Code section within three years of the date of his or her application;

(H) Any person who has been convicted of any of the following:
   (i) Carrying a weapon without a weapons carry license in violation of Code Section 16-11-126; or
   (ii) Carrying a weapon or long gun in an unauthorized location in violation of Code Section 16-11-127 and has not been free of all restraint or supervision in connection therewith and free of any other conviction for at least five years immediately preceding the date of the application;

(I) Any person who has been convicted of any misdemeanor involving the use or possession of a controlled substance and has not been free of all restraint or supervision in connection therewith or free of:
   (i) A second conviction of any misdemeanor involving the use or possession of a controlled substance; or
   (ii) Any conviction under subparagraphs (E) through (G) of this paragraph for at least five years immediately preceding the date of the application;

(J) Except as provided for in subsection (b.1) of this Code section, any person who has been hospitalized as an inpatient in any mental hospital or alcohol or drug treatment center within the five years immediately preceding the application. The judge of the probate court may require any applicant to sign a waiver authorizing any mental hospital or treatment center to inform the judge whether or not the applicant has been an inpatient in any such facility in the last five years and authorizing the superintendent of such facility to make to the judge a recommendation regarding whether the applicant is a threat to the safety of others and whether a license to carry a weapon should be issued. When such a waiver is required by the judge, the applicant shall pay a fee of $3.00 for reimbursement of the cost of making such a report by the mental health hospital, alcohol or drug treatment center, or the Department of Behavioral Health and Developmental Disabilities, which the judge shall remit to the
hospital, center, or department. The judge shall keep any such hospitalization or treatment information confidential. It shall be at the discretion of the judge, considering the circumstances surrounding the hospitalization and the recommendation of the superintendent of the hospital or treatment center where the individual was a patient, to issue the weapons carry license or renewal license;

(K) Except as provided for in subsection (b.1) of this Code section, any person who has been adjudicated mentally incompetent to stand trial; or

(L) Except as provided for in subsection (b.1) of this Code section, any person who has been adjudicated not guilty by reason of insanity at the time of the crime pursuant to Part 2 of Article 6 of Chapter 7 of Title 17.

(b.1) Petitions for relief from certain licensing exceptions.

(1) Persons provided for under subparagraphs (b)(2)(J), (b)(2)(K), and (b)(2)(L) of this Code section may petition the court in which such adjudication, hospitalization, or treatment proceedings, if any, under Chapter 3 or 7 of Title 37 occurred for relief. A copy of such petition for relief shall be served as notice upon the opposing civil party or the prosecuting attorney for the state, as the case may be, or their successors, who appeared in the underlying case. Within 30 days of the receipt of such petition, such court shall hold a hearing on such petition for relief. Such prosecuting attorney for the state may represent the interests of the state at such hearing.

(2) At the hearing provided for under paragraph (1) of this subsection, the court shall receive and consider evidence in a closed proceeding concerning:

(A) The circumstances which caused the person to be subject to subparagraph (b)(2)(J), (b)(2)(K), or (b)(2)(L) of this Code section;

(B) The person's mental health and criminal history records, if any. The judge of such court may require any such person to sign a waiver authorizing the superintendent of any mental hospital or treatment center to make to the judge a recommendation regarding whether such person is a threat to the safety of others. When such a waiver is required by the judge, the applicant shall pay a fee of $3.00 for reimbursement of the cost of making such a report by the mental health hospital, alcohol or drug treatment center, or the Department of Behavioral Health and Developmental Disabilities, which the judge shall remit to the hospital, center, or department;

(C) The person's reputation which shall be established through character witness statements, testimony, or other character evidence; and

(D) Changes in the person's condition or circumstances since such adjudication, hospitalization, or treatment proceedings under Chapter 3 or 7 of Title 37.

The judge shall issue an order of his or her decision no later than 30 days after the hearing.
(3) The court shall grant the petition for relief if such court finds by a preponderance of the evidence that the person will not likely act in a manner dangerous to public safety in carrying a weapon and that granting the relief will not be contrary to the public interest. A record shall be kept of the hearing; provided, however, that such records shall remain confidential and be disclosed only to a court or to the parties in the event of an appeal. Any appeal of the court's ruling on the petition for relief shall be de novo review.

(4) If the court grants such person's petition for relief, the applicable subparagraph (b)(2)(J), (b)(2)(K), or (b)(2)(L) of this Code section shall not apply to such person in his or her application for a weapons carry license or renewal; provided, however, that such person shall comply with all other requirements for the issuance of a weapons carry license or renewal license. The clerk of such court shall report such order to the Georgia Crime Information Center immediately, but in no case later than ten business days after the date of such order.

(5) A person may petition for relief under this subsection not more than once every two years. In the case of a person who has been hospitalized as an inpatient, such person shall not petition for relief prior to being discharged from such treatment.

(c) Fingerprinting. Following completion of the application for a weapons carry license, the judge of the probate court shall require the applicant to proceed to an appropriate law enforcement agency in the county or to any vendor approved by the Georgia Bureau of Investigation for fingerprint submission services with the completed application so that such agency or vendor can capture the fingerprints of the applicant. The law enforcement agency shall be entitled to a fee of $5.00 from the applicant for its services in connection with fingerprinting and processing of an application. Fingerprinting shall not be required for applicants seeking temporary renewal licenses or renewal licenses.

(d) Investigation of applicant; issuance of weapons carry license; renewal.

(1)(A) For weapons carry license applications, the judge of the probate court shall within five business days following the receipt of the application or request direct the law enforcement agency to request a fingerprint based criminal history records check from the Georgia Crime Information Center and Federal Bureau of Investigation for purposes of determining the suitability of the applicant and return an appropriate report to the judge of the probate court. Fingerprints shall be in such form and of such quality as prescribed by the Georgia Crime Information Center and under standards adopted by the Federal Bureau of Investigation. The Georgia Bureau of Investigation may charge such fee as is necessary to cover the cost of the records search.

(B) For requests for license renewals, the presentation of a weapons carry license issued by any probate judge in this state shall be evidence to the judge of the probate court to whom a request for license renewal is made that the fingerprints of the weapons carry license holder are on file with the judge of the probate court who issued the weapons carry license, and the judge of the probate court to whom a request for license renewal is made shall, within five business days following the receipt of the request, direct the law enforcement agency to request a nonfingerprint based criminal history records check from the Georgia Crime Information Center and Federal Bureau of Investigation for purposes of determining the suitability of the applicant and return an appropriate report to the judge of the probate court to whom a request for license renewal is made.
(2) For both weapons carry license applications and requests for license renewals, the judge of the probate court shall within five business days following the receipt of the application or request also direct the law enforcement agency, in the same manner as provided for in subparagraph (B) of paragraph (1) of this subsection, to conduct a background check using the Federal Bureau of Investigation's National Instant Criminal Background Check System and return an appropriate report to the probate judge.

(3) When a person who is not a United States citizen applies for a weapons carry license or renewal of a license under this Code section, the judge of the probate court shall direct the law enforcement agency to conduct a search of the records maintained by United States Immigration and Customs Enforcement and return an appropriate report to the probate judge. As a condition to the issuance of a license or the renewal of a license, an applicant who is in nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y).

(4) The law enforcement agency shall report to the judge of the probate court within 20 days, by telephone and in writing, of any findings relating to the applicant which may bear on his or her eligibility for a weapons carry license or renewal license under the terms of this Code section. When no derogatory information is found on the applicant bearing on his or her eligibility to obtain a license or renewal license, a report shall not be required. The law enforcement agency shall return the application directly to the judge of the probate court within such time period. Not later than ten days after the judge of the probate court receives the report from the law enforcement agency concerning the suitability of the applicant for a license, the judge of the probate court shall issue such applicant a license or renewal license to carry any weapon unless facts establishing ineligibility have been reported or unless the judge determines such applicant has not met all the qualifications, is not of good moral character, or has failed to comply with any of the requirements contained in this Code section. The judge of the probate court shall date stamp the report from the law enforcement agency to show the date on which the report was received by the judge of the probate court. The judge of the probate court shall not suspend the processing of the application or extend, delay, or avoid any time requirements provided for under this paragraph.

(e) Revocation, loss, or damage to license.

(1) If, at any time during the period for which the weapons carry license was issued, the judge of the probate court of the county in which the license was issued shall learn or have brought to his or her attention in any manner any reasonable ground to believe the licensee is not eligible to retain the license, the judge may, after notice and hearing, revoke the license of the person upon a finding that such person is not eligible for a weapons carry license pursuant to subsection (b) of this Code section or an adjudication of falsification of application, mental incompetency, or chronic alcohol or narcotic usage. The judge of the probate court shall report such revocation to the Georgia Crime Information Center immediately but in no case later than ten days after such revocation. It shall be unlawful for any person to possess a license which has been revoked pursuant to this paragraph, and any person found in possession of any such revoked license, except in the performance of his or her official duties, shall be guilty of a misdemeanor.

(2) If a person is convicted of any crime or otherwise adjudicated in a matter which would make the maintenance of a weapons carry license by such person unlawful pursuant to subsection (b) of this Code section, the judge of the superior court or state court hearing such case or presiding over such matter shall inquire whether such person is the holder of a weapons carry license. If such person is the holder of a weapons carry license, then the judge of the superior court or state court shall inquire of such person the county of the probate court which issued such weapons carry license, or if such person has ever had his or her weapons carry license renewed, then of the county of the probate court
which most recently issued such person a renewal license. The judge of the superior court or state court shall notify 
the judge of the probate court of such county of the matter which makes the maintenance of a weapons carry license 
by such person to be unlawful pursuant to subsection (b) of this Code section. The Council of Superior Court Judges 
of Georgia and The Council of State Court Judges of Georgia shall provide by rule for the procedures which judges 
of the superior court and the judges of the state courts, respectively, are to follow for the purposes of this paragraph.

(3) Loss of any license issued in accordance with this Code section or damage to the license in any manner which 
shall render it illegible shall be reported to the judge of the probate court of the county in which it was issued within 
48 hours of the time the loss or damage becomes known to the license holder. The judge of the probate court shall 
thereupon issue a replacement for and shall take custody of and destroy a damaged license; and in any case in which 
a license has been lost, he or she shall issue a cancellation order. The judge shall charge the fee specified in subsection 
(k) of Code Section 15-9-60 for such services.

(4) Any person, upon petition to the judge of the probate court, who has a weapons carry license or renewal license 
with more than 90 days remaining before the expiration of such weapons carry license or renewal license and who 
has had a legal name change, including, but not limited to, on account of marriage or divorce, or an address change 
shall be issued a replacement weapons carry license for the same time period of the weapons carry license or renewal 
license being replaced. Upon issuance and receipt of such replacement weapons carry license, the license holder shall 
surrender the weapons carry license being replaced to the judge of the probate court and such judge shall take custody 
of and destroy the weapons carry license being replaced. The judge of the probate court shall provide for the updating 
of any records as necessary to account for the license holder's change of name or address. The judge of the probate 
court shall charge the fee specified in paragraph (13) of subsection (k) of Code Section 15-9-60 for services provided 
under this paragraph.

(f) Weapons carry license specifications.

(1) Weapons carry licenses issued prior to January 1, 2012, shall be in the format specified by the former provisions 
of this paragraph as they existed on June 30, 2013.

(2) On and after January 1, 2012, newly issued or renewal weapons carry licenses shall incorporate overt and covert 
security features which shall be blended with the personal data printed on the license to form a significant barrier to 
imitation, replication, and duplication. There shall be a minimum of three different ultraviolet colors used to enhance 
the security of the license incorporating variable data, color shifting characteristics, and front edge only perimeter 
visibility. The weapons carry license shall have a color photograph viewable under ambient light on both the front 
and back of the license. The license shall incorporate custom optical variable devices featuring the great seal of the 
State of Georgia as well as matching demetalized optical variable devices viewable under ambient light from the front 
and back of the license incorporating microtext and unique alphanumeric serialization specific to the license holder. 
The license shall be of similar material, size, and thickness of a credit card and have a holographic laminate to secure 
and protect the license for the duration of the license period.

(3) Using the physical characteristics of the license set forth in paragraph (2) of this subsection, The Council of Probate 
Court Judges of Georgia shall create specifications for the probate courts so that all weapons carry licenses in this state 
shall be uniform and so that probate courts can petition the Department of Administrative Services to purchase the 
equipment and supplies necessary for producing such licenses. The department shall follow the competitive bidding 
procedure set forth in Code Section 50-5-102.
(g) **Alteration or counterfeiting of license; penalty.** A person who deliberately alters or counterfeits a weapons carry license or who possesses an altered or counterfeit weapons carry license with the intent to misrepresent any information contained in such license shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for a period of not less than one nor more than five years.

(h) **Licenses for former law enforcement officers.**

(1) Except as otherwise provided in Code Section 16-11-130, any person who has served as a law enforcement officer for at least:

   (A) Ten of the 12 years immediately preceding the retirement of such person as a law enforcement officer; or
   
   (B) Ten years and left such employment as a result of a disability arising in the line of duty; and

   retired or left such employment in good standing with a state or federal certifying agency and receives benefits under the Peace Officers’ Annuity and Benefit Fund provided for under Chapter 17 of Title 47 or from a county, municipal, State of Georgia, state authority, federal, private sector, individual, or educational institution retirement system or program shall be entitled to be issued a weapons carry license as provided for in this Code section without the payment of any of the fees provided for in this Code section.

(2) Such person as provided for in paragraph (1) of this subsection shall comply with all the other provisions of this Code section relative to the issuance of such licenses, including, but not limited to the requirements under paragraph (2) of subsection (b) of this Code section. Any person seeking to be issued a license pursuant to this subsection shall state his or her qualifications for eligibility under this subsection on his or her application under oath as provided for in subsection (a) of this Code section.

(3) As used in this subsection, the term “law enforcement officer” means any peace officer who is employed by the United States government or by the State of Georgia or any political subdivision thereof and who is required by the terms of his or her employment, whether by election or appointment, to give his or her full time to the preservation of public order or the protection of life and property or the prevention of crime. Such term shall include conservation rangers.

(i) **Temporary renewal licenses.**

(1) Any person who holds a weapons carry license under this Code section may, at the time he or she applies for a renewal of the license, also apply for a temporary renewal license if less than 90 days remain before expiration of the license he or she then holds or if the previous license has expired within the last 30 days.

(2) Unless the judge of the probate court knows or is made aware of any fact which would make the applicant ineligible for a five-year renewal license, the judge shall at the time of application issue a temporary renewal license to the applicant.
(3) Such a temporary renewal license shall be in the form of a paper receipt indicating the date on which the court received the renewal application and shall show the name, address, sex, age, and race of the applicant and that the temporary renewal license expires 90 days from the date of issue.

(4) During its period of validity the temporary renewal license, if carried on or about the holder's person together with the holder's previous license, shall be valid in the same manner and for the same purposes as a five-year license.

(5) A $1.00 fee shall be charged by the probate court for issuance of a temporary renewal license.

(6) A temporary renewal license may be revoked in the same manner as a five-year license.

(j) Applicant may seek relief. When an eligible applicant fails to receive a license, temporary renewal license, or renewal license within the time period required by this Code section and the application or request has been properly filed, the applicant may bring an action in mandamus or other legal proceeding in order to obtain a license, temporary renewal license, or renewal license. When an applicant is otherwise denied a license, temporary renewal license, or renewal license and contends that he or she is qualified to be issued a license, temporary renewal license, or renewal license, the applicant may bring an action in mandamus or other legal proceeding in order to obtain such license. Additionally, the applicant may request a hearing before the judge of the probate court relative to the applicant's fitness to be issued such license. Upon the issuance of a denial, the judge of the probate court shall inform the applicant of his or her rights pursuant to this subsection. If such applicant is the prevailing party, he or she shall be entitled to recover his or her costs in such action, including reasonable attorney's fees.

(k) Data base prohibition. A person or entity shall not create or maintain a multijurisdictional data base of information regarding persons issued weapons carry licenses.

(l) Verification of license. The judge of a probate court or his or her designee shall be authorized to verify the legitimacy and validity of a weapons carry license of a license holder pursuant to a subpoena or court order, for public safety purposes to law enforcement agencies pursuant to paragraph (40) of subsection (a) of Code Section 50-18-72, and for licensing to a judge of a probate court or his or her designee pursuant to paragraph (40) of subsection (a) of Code Section 50-18-72; provided, however, that the judge of a probate court or his or her designee shall not be authorized to provide any further information regarding license holders.

Credits
Formerly Code 1933, §§ 26-5104, 26-5105; Code 1933, § 26-2904.

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Georgia Code Commission.
SUMMARY OF WEAPONS CARRY LICENSE PROHIBITORS

Brief Description of Federal and Georgia Prohibitors

NOTE: The following is a brief description of the federal and state prohibitors, which render a person ineligible for a weapons carry license. This is a brief description only; for the full text of the federal and/or state laws, please refer to the official statutes and any regulations issued thereunder. If you have any questions whether any of the following prohibitors applies to your charges, situation or circumstances, please consult an attorney.


(g)(1) Persons convicted in any court of a crime punishable by imprisonment for a term exceeding one year.
(g)(2) Persons who are fugitives from justice (subject to an active criminal warrant).
(g)(3) Persons who are unlawful users of or addicted to any controlled substance.
(g)(4) Persons who have been adjudicated as mental defectives or involuntarily committed to any mental institution.
(g)(5) Persons who are aliens and are illegally or unlawfully in the United States and legal aliens having a nonimmigrant status not covered by an exception.
(g)(6) Persons who have been dishonorably discharged from the U. S. Armed Forces.
(g)(7) Persons who have renounced their U. S. citizenship.
(g)(8) Persons who are subject to current restraining order involving an intimate partner or the child of an intimate partner.
(g)(9) Persons who have been convicted of a misdemeanor crime of domestic violence.
(n) Persons under current indictment or information for a crime punishable by a term of imprisonment in excess of one year.

Georgia Prohibitors [O.C.G.A. §16-11-129]

(b)(2)(A) Persons under 21 years of age unless at least 18 and completed basic training in armed forces of the US and actively serving or honorably discharged.
(b)(2)(B) Persons convicted of a felony who have not been pardoned.
(b)(2)(C) Persons against whom proceedings are pending for any felony.
(b)(2)(D) Persons who are fugitives from justice.
(b)(2)(E) Persons prohibited from possessing or shipping a firearm in interstate commerce pursuant to subsections (g) and (n) of 18 U.S.C. §922. (See above)
(b)(2)(F) Persons convicted of an offense arising out of the unlawful manufacture or distribution of a controlled substance or other dangerous drug. First offender w/o adjudication of guilt successfully completed and discharged is eligible if no other license exception applies.
(b)(2)(G) Persons who have had their weapons carry license revoked within 3 years of the application date.
(b)(2)(H) Persons convicted of i) carrying a weapon without a weapons carry license, or ii) carrying a weapon or long gun in an unauthorized location and not been free of all restraint or supervision in connection therewith and free of any other conviction for at least five years immediately preceding the date of the application.
(b)(2)(I) Persons convicted of any misdemeanor involving use or possession of a controlled substance and have not been free of all restraint or supervision in connection therewith or free of a second misdemeanor drug conviction for at least 5 years immediately preceding the date of application. First offender w/o adjudication of guilt successfully completed and discharged is eligible if no other license exception applies.
(b)(2)(J) Persons who have been hospitalized as an inpatient in a mental hospital or alcohol or drug treatment facility within five years prior to the application.
(b)(2)(K) Persons adjudicated mentally incompetent to stand trial unless relieved by court ordering incapacity.
(b)(2)(L) Persons adjudicated not guilty by reason of insanity unless relieved by court ordering incapacity.
NOTE: The following contains certain definitions and a list of federal and state prohibitors which render a person ineligible for a weapons carry license. For the full context of the federal and/or state laws, please refer to the actual, official statutes, any regulations issued thereunder and any case law interpreting them. If you have any questions regarding whether any of the following prohibitors apply to you, please consult an attorney.


(g)(1) Persons convicted of a felony whose civil rights have not been restored.
(g)(2) Persons who are fugitives from justice.
(g)(3) Persons who are unlawful users of or addicted to any controlled substance.
(g)(4) Persons who have been adjudicated as mental defectives or involuntarily committed to any mental institution.
(g)(5) Persons who are aliens and are illegally or unlawfully in the United States and Legal aliens having a nonimmigrant status not covered by an exception.
(g)(6) Persons who have been dishonorably discharged from the U. S. Armed Forces.
(g)(7) Persons who have renounced their U. S. citizenship.
(g)(8) Persons who are subject to current restraining order involving an intimate partner or the child of an intimate partner.
(g)(9) Persons who have been convicted of a misdemeanor crime of domestic violence.
(n) Persons under current indictment or information for a crime punishable by a term of imprisonment in excess of one year.

Georgia Prohibitors [O.C.G.A. §16-11-129]

(b) Licensing exceptions.

(1) As used in this subsection, the term:

(A) “Controlled substance” means any drug, substance, or immediate precursor included in the definition of controlled substances in paragraph (4) of Code Section 16-13-21.

(B) “Convicted” means an adjudication of guilt.

(C) “Dangerous drug” means any drug defined as such in Code Section 16-13-71.

(2) No weapons carry license shall be issued to:

(A) Any person younger than 21 years of age unless he or she:

   (i) Is at least 18 years of age;
   (ii) Provides proof that he or she has completed basic training in the armed forces of the United States; and
   (iii) Provides proof that he or she is actively serving in the armed forces of the united States or has been honorably discharged from such service;

(B) Any person who has been convicted of a felony by a court of this state or any other state; by a court of the United States including its territories, possessions, and dominions; or by a court of any foreign nation and has not been pardoned for such felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitution or laws of such state or nation;

(C) Any person against whom proceedings are pending for any felony;

(D) Any person who is a fugitive from justice;

(E) Any person who is prohibited from possessing or shipping a firearm in interstate commerce pursuant to subsections (g) and (n) of 18 U.S.C. Section 922;

(F) Any person who has been convicted of an offense arising out of the unlawful manufacture or distribution of a controlled substance or other dangerous drug;
(G) Any person who has had his or her weapons carry license revoked pursuant to subsection (e) of this Code section within three years of the date of his or her application;

(H) Any person who has been convicted of any of the following:

   (i) Carrying a weapon without a weapons carry license in violation of Code Section 16-11-126; or

   (ii) Carrying a weapon or long gun in an unauthorized location in violation of Code Section 16-11-127

   and has not been free of all restraint or supervision in connection therewith and free of any other conviction for at least five years immediately preceding the date of the application;

(I) Any person who has been convicted of any misdemeanor involving the use or possession of a controlled substance and has not been free of all restraint or supervision in connection therewith or free of:

   (i) A second conviction of any misdemeanor involving the use or possession of a controlled substance; or

   (ii) Any conviction under subparagraphs (E) through (G) of this paragraph for at least five years immediately preceding the date of the application;

(J) Except as provided for in subsection (b.1) of this Code section, any person who has been hospitalized as an inpatient in any mental hospital or alcohol or drug treatment center within the five years immediately preceding the application. The judge of the probate court may require any applicant to sign a waiver authorizing any mental hospital or treatment center to inform the judge whether or not the applicant has been an inpatient in any such facility in the last five years and authorizing the superintendent of such facility to make to the judge a recommendation regarding whether the applicant is a threat to the safety of others and whether a license to carry a weapon should be issued. When such a waiver is required by the judge, the applicant shall pay a fee of $3.00 for reimbursement of the cost of making such a report by the mental health hospital, alcohol or drug treatment center, or the Department of Behavioral Health and Developmental Disabilities, which the judge shall remit to the hospital, center, or department. The judge shall keep any such hospitalization or treatment information confidential. It shall be at the discretion of the judge, considering the circumstances surrounding the hospitalization and the recommendation of the superintendent of the hospital or treatment center where the individual was a patient, to issue the weapons carry license or renewal license;

(K) Except as provided for in subsection (b.1) of this Code section, any person who has been adjudicated mentally incompetent to stand trial; or

(L) Except as provided for in subsection (b.1) of this Code section, any person who has been adjudicated not guilty by reason of insanity at the time of the crime pursuant to Part 2 of Article 6 of Chapter 7 of Title 17.
Federal Firearms Law

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FEDERAL FIREARMS LAWS: GUNS 101

- THE NATIONAL FIREARMS ACT OF 1934
  - 26 U.S.C. SECTIONS 5801-5872

- THE GUN CONTROL ACT OF 1968
  - 18 U.S.C. SECTIONS 921-931
History Of Federal Gun Laws

- The Second Amendment says "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed"

- But statutes limit this "right"
- Gun Control Act and National Firearms Act

- 1933, U.S. v. Miller
- 2007, D.C. v. Heller
- 2010, McDonald v Chicago


- Public and Congress concerned about violent crime - Dillinger, Bonnie Parker, Clyde Barrow, "Pretty Boy" Floyd, "Machinegun Kelly" were household words.

- NFA is based on Congressional taxing authority to impose taxes ($200) on the making and transfer of certain "gangster" type weapons, including machineguns, short-barrel weapons, and silencers.
NFA Background

- The NFA is part of the Internal Revenue Code.
- NFA taxes can be assessed and collected just like any other Federal tax.
- The NFA applies only in the 50 States and DC – it does not apply in U.S. possessions, as does the GCA.

Firearms Subject to the NFA

- Defined in 26 U.S.C. § 5845 to mean:
  - Shotgun with a barrel or barrels of less than 18 inches
  - Weapon made from a shotgun
  - Rifle with a barrel or barrels of less than 16 inches
  - Weapon made from a rifle
  - Any other weapon
  - Machinegun
  - Silencer
  - Destructive device
Taxes imposed by the NFA

- 26 U.S.C. § 5801-Imposes a special (occupational) tax on importers, manufacturers, and dealers in firearms-$1000 for importers/manufacturers; $500 for dealers
- 26 U.S.C. § 5811-imposes a transfer tax of $200 on transfer of most NFA firearms.
- 26 U.S.C. §§ 5852-5854-exemptions from making and transfer taxes for transfers between FFLs, transfers to and from government agencies

Registration

- 26 U.S.C. § 5841 requires that the Secretary maintain a central registry of all NFA firearms in the U.S. which are not in the possession or under control of the U.S.
- Section 5841(e) requires that registrants retain proof of registration which shall be made available to the Secretary upon request.
- Section 5841(b) requires that manufacturers, importers, and makers must register each firearm manufactured, imported, or made. Prevents mere possessors from registering.
- Exception in 27 CFR, Part 479 for firearms seized by or abandoned to a law enforcement agency. Form 10 registration.
Registration (continued)

- How are firearms registered?
  - Importers/manufacturers-Form 2 (Firearms)-Notice of Firearms Manufactured or Imported. 27 C.F.R. §§ 479.103, 479.112. Tax-free registration.
  - Nonlicensed individuals-Form 1 (Firearms), Application to Make and Register a Firearm. Fingerprints, photograph, law enforcement certification required. 27 C.F.R. § 479.62 $200 making tax imposed.
  - Firearms made by the United States do not need to be registered. But if firearms made by a contractor “on behalf of the United States,” Form 1 must be submitted and approved prior to making. 27 C.F.R. § 479.69.

Transfers of NFA Firearms

- 26 U.S.C. § 5812 provides that:
  - applications to transfer firearms will be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law.
  - Reference to law means Federal, State, and local law. NFA examiners consult State law files to determine whether the possessor’s State of residence imposes any restrictions on the type of weapon at issue.
Transfers (continued)

- Photo/fingerprints required with Form 1 & Form 4 applications. FBI conducts background check to determine whether maker/transferee has a criminal record that would prohibit possession of the firearm. GCA restrictions in § 922(g).
- Law enforcement certification required on Form 4 transfer applications-certification from CLEO that fingerprints and photo are those of applicant and that certifying official has no information indicating that receipt or possession of firearm would place transferee in violation of State/local law or that the transferee will use firearm for other than lawful purposes.

Criminal provisions

- Crimes in 26 U.S.C. § 5861:
  - Engaging in an NFA business without paying special (occupational) tax
  - Receiving or possessing a firearm transferred illegally
  - Receiving or possessing a firearm illegally made
  - Receiving or possessing an NFA firearm not registered to the possessor
  - Transferring a firearm illegally
  - Making a firearm illegally
  - Obliterating, removing, changing or altering the serial number or identification required on firearms
Criminal provisions (continued)

- Receiving or possessing a firearm with the serial number or identification obliterated, removed, changed, or altered
- Receiving or possessing a firearm not identified by a serial number
- Transporting, delivering, or receiving a firearm in interstate commerce not properly registered
- Receiving or possessing a firearm illegally imported or brought into the U.S.
- Making or causing the making of a false entry on applications, returns, or records knowing the entry to be false

Penalties in 26 U.S.C. § 5871-

- imprisonment for not more than 10 years, fine of not more than $250,000, or both.

Forfeiture of any firearm involved in a violation of the NFA pursuant to 26 U.S.C. § 5872. Note CAFRA time limits do not apply.
GUN CONTROL ACT (GCA) OF 1968
18 U.S.C. SECTIONS 921-931

- Purpose to fight crime and violence and support State and local authorities
- Provides for interstate controls, criminal provisions, prohibited persons categories, licensing of dealers, importers and manufacturers, and record keeping requirements

What's a Firearm?

- The term "firearm" means (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. Such term does not include an antique firearm.
Structure of the GCA

- Section 921: Definitions
- Section 922: Crimes and Violations
- Section 923: Licensing and inspection by ATF
- Section 924: Penalties for section 922, more crimes and forfeitures

Structure of the GCA continued

- Section 925:

Exceptions to the GCA and relief from disabilities

Exceptions for all governmental entities (with one exception to exception)

Prohibited persons relief from disabilities
Structure of the GCA continued

Section 926: Interstate transportation of firearms and concealed by law enforcement

Interstate transportation of firearms. Notwithstanding any other provisions of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: Provided, That in the case of a vehicle without a compartment separate from the driver's compartment, the firearm or ammunition shall be contained in a locked container other than the glove compartment or console.

Structure of the GCA continued

- Section 926B: Carrying of concealed firearms by qualified law enforcement officers.
  
  (a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).
Structure of the GCA continued

Section 927: Effect on State law
No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

Structure of the GCA continued

Section 929: Armor piercing ammo (during violent/drug crime)
Section 930: Possession of firearms or dangerous weapons in Federal facilities
Section 931: Body armor by violent felon
Dealing w/o a License

Section 922(a)(1)(A).

a. Description. Willfully engaging in business as an importer, manufacturer or dealer in firearms; shipping, transporting, or receiving any firearms in interstate or foreign commerce; and not being licensed under the act o the business in which engaged.

b. Elements.
   (1) Accused willfully committed act.
   (2) Accused engaged in the business as charged.
   (3) Accused shipped, transported, or received firearms in interstate or foreign commerce.
   (4) Dates of shipment, transportation, or receipt.
   (5) Place of shipment, receipt, or transportation.
   (6) Nonlicensed status of accused.

Lying and Buying (straw purchase)

Section 922(a)(6).

a. Description. In connection with the acquisition or attempted acquisition of any firearm or ammunition, the accused furnished or exhibited false, fictitious, or misrepresented identification intended or likely to deceive a licensed person with respect to any fact material to the lawfulness under this act of the sale or other disposition of such firearm or ammunition.

b. Elements.
   (1) Accused knowingly committed act.
   (2) Accused furnished or exhibited false, fictitious, or misrepresented identification.
   (3) Identification was intended or likely to deceive the licensed person.
   (4) Deception material to the lawfulness under the GCA for the sale or other disposition of the firearm or ammunition.
   (5) Deception regarded the acquisition or attempted acquisition of a firearm or ammunition.
   (6) Date of furnishing or exhibiting the false, fictitious, or misrepresented identification.
   (7) Place where false, fictitious or misrepresented identification was furnished or exhibited.
Section 922(g):

a. Description. Knowingly shipping, transporting, possessing, or receiving firearm or ammunition in interstate or foreign commerce by person who has been convicted of a crime punishable by imprisonment for a term exceeding 1 year, is an unlawful user of or is addicted to any controlled substance, as defined in 21 U.S.C. section 802, has been adjudicated as a mental defective or committed to a mental institution, is a fugitive from justice, is an illegal alien, has been dishonorably discharged from the Armed Forces, or who has renounced his U.S. citizenship.

b. Elements.

(1) Accused knowingly committed.
(2) Accused shipped, transported, possessed, or received a firearm or ammunition in interstate of foreign commerce.
(3) Accused was person who (a) had been convicted of a crime punishable by imprisonment for a term exceeding 1 year, as defined in 18 U.S.C. section 921(a)(20), (b) was an unlawful user of or addicted to any controlled substance, as defined in 21 U.S.C. 802, (c) had been adjudicated a mental defective or committed to a mental institution, (d) was a fugitive from justice, (e) was an illegal alien, (f) had been dishonorably discharged from the Armed Forces, (g) or had renounced his U.S. citizenship.

(4) Dates and places of shipment, transportation, possession, or receipt.

Felons - § 922(g)(1)

- Crime Punishable by Imprisonment for a Term Exceeding One Year
- does not include -
  - (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices*, or
  - (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

- What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.
Georgia Exceptions

- The following persons are not Federally prohibited from receiving firearms:
  1) Felons who have been pardoned
  2) Felons who received Relief from Disabilities from ATF and the State of Georgia
  3) Felons who have had their rights restored by the State (in GA it must specifically state “including the right to possess firearms”)
  4) Those who pled Nolo Contendere
  5) Those who successfully completed First Offender treatment

First Offenders

- Therefore, First Offender probationers are not considered “convicted” for Federal purposes.

- However, OCGA § 16-11-131 prohibits First Offender Probationers from possessing firearms while on probation.
Fugitives § 922(g)(2)

- A person is a fugitive from justice when they knowingly flee a jurisdiction to avoid prosecution or to avoid testifying in any criminal proceeding.

Unlawful Users – § 922(g)(3)

- Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather than the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm.
Unlawful User Cont’d

An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time:

1) a conviction for use or possession of a controlled substance within the past year
2) multiple arrests for such offenses within the past 5 years if the most recent arrest occurred within the past year
3) persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year.

Mental Defectives – § 922(g)(4)

- Must have been adjudicated as a mental defective or involuntarily committed to any mental institution
- § 922(g)(4) is a lifetime prohibition
- May apply for Relief
- More restrictive than OCGA § 16-11-129 which has a five year time limit
Aliens - § 922(g)(5)

who, being an alien -
(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26));

Aliens Exceptions

1) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;
2) an official representative of a foreign government who is accredited to the United States Government or the Government’s mission to an international organization having its headquarters in the United States;
3) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State;
4) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.
5) waiver from the Attorney General
Dishonorable Discharge – § 922(g)(6)

- Only dishonorable discharges are prohibiting

Renounced Citizenship
§ 922(g)(7)
Restraining Order
§ 922(g)(8)

Is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

MCDV – § 922(g)(9)

- Misdemeanor under State, Federal or Tribal Law
- Has as an element the use or attempted use of physical force or threatened use of a deadly weapon
- Committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim
**Obliterated Serial Numbers**

Section 922(k).
- **a. Description.** Knowingly transporting, shipping, or receiving in interstate or foreign commerce any firearm from which the importer's or manufacturer's serial number has been removed, obliterated, or altered.
- **b. Elements.**
  1. Accused knowingly committed act.
  2. Accused transported, shipped, or received a firearm in interstate or foreign commerce.
  3. Dates and places of transportation, shipment, or receipt by the accused.
  4. Serial number of firearm was removed, obliterated, or altered prior to

**Under Indictment**

- **Section 922(n).**
- **a. Description.** Willfully shipping, transporting, or receiving any firearm or ammunition in interstate or foreign commerce by person who is under indictment for a crime punishable by imprisonment for a term exceeding 1 year.
- **b. Elements.**
  1. Accused willfully committed act.
  2. Accused shipped, transported, or received a firearm or ammunition in interstate or foreign commerce.
  3. Accused was under indictment for a crime punishable by imprisonment for a term exceeding 1 year.
  4. Dates and places of shipment, transportation, or receipt.
Under Indictment Cont’d

- 18 USC § 922(n) prohibits transferring a firearm to those under indictment for a crime punishable by imprisonment exceeding one year.
- Remember that those under indictment can lawfully possess firearms and ammo, but they cannot receive additional firearms and ammo while under indictment.

Machineguns

Section 922(o).

a. **Description.** Knowing and unlawfully possessing or transferring a machinegun.

b. **Elements.**
   (1) Accused knowingly committed act.
   (2) Possessed or transferred a machinegun.
   (3) Date and place of possession or transfer.

c. **Exceptions.**
   (1) A transfer to or by, or possession by or under, the authority of Federal or State agencies.
   (2) Any lawful transfer or possession of a machinegun that was lawfully possessed before May 19, 1986.
FEDERAL Violent or Drug Crimes

Section 924(c)(1).

a. Description. Accused used or carried a firearm during and in relation to a Federal crime of violence or Federal drug trafficking crime.

b. Elements.

(1) Accused used or carried a firearm during and in relation to a Federal crime of violence or Federal drug trafficking crime.
(2) Description of the relationship of firearm to the crime.
(3) Description of the crime, including statutory citation.
(4) Date and place of commission of crime.
(5) Document prior conviction if this is a second or subsequent violation under this section.

§ 924(c) Penalties

- 924(c) Use or carrying firearm (or armor piercing ammo) during and in relation to a drug trafficking crime or federal crime of violence

- Minimum 5 years imprisonment
- Max 7 years brandishing
- Max 10 years discharge
- Second 924(c) 25 years minimum
- If murder occurred, life/death
§ 924(c) Penalties continued

- If sawed-off rifle or short-barreled shotgun penalty is minimum 10 years
- If machinegun penalty is minimum 30 years
- If armor piercing ammo minimum is 15 years

Armed Career Criminal

Section 924(e)(1).

a. Description. Accused, who has three prior convictions for a violent felony or serious drug offense or both, and who knowingly shipped, transported, received, or possessed any firearm or ammunition in interstate or foreign commerce in violation of section 922(g).

b. Elements.
(1) Accused knowingly committed act.
(2) Accused shipped, transported, received, or possessed a firearm or ammunition in interstate or foreign commerce in violation of section 922(g).
(3) Document three prior convictions for a violent felony, serious drug offense, or both.
(4) Dates and places of shipment, transportation, receipt, or possession of firearm.
(5) Predicate offenses committed on occasions different from each other.
Georgia and the Second Amendment

John R. Monroe

John Monroe Law, P.C.

Dawsonville, Georgia

December 12, 2018
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**Introduction to Bump Firing and Bump Stocks**

There is no formal definition of a bump stock, but it generally refers to some kind of replacement stock for a firearm intended to facilitate bump firing. Bump firing also has no formal definition, but it generally refers to a method of firing a semiautomatic firearm using isometric tension between the trigger and stock to achieve an oscillation of sorts. The firearm recoils to the rearward when fired, so that the shooter’s finger pressure on the trigger is lessened to the point that the trigger mechanism resets. The forward force being applied to the stock reapply pressure to the trigger, causing another discharge, and the cycle continues.

With a little practice, a shooter can accomplish bump firing without a bump stock with virtually any semiautomatic firearm, although it most commonly is done with rifles. When no bump stock is used, the shooter generally applies a forward force to the stock with his non-dominant hand, and uses something with some resilience or elasticity to put a rearward force on the trigger. It could be a string or rubber band, or even the forefinger with the thumb of the same hand hooked in a belt loop of the shooter’s trousers.

A bump stock facilitates the oscillation described. They generally are replacement stocks for the firearm that allows the frame of the firearm to move forward and rearward within the stock. In order to bump fire within the stock, the shooter still has to supply the isometric tension – a forward force on the firearm frame and a rearward force on the trigger. Regardless of the method of bump firing, the forces must be “just right.” The rearward force must be sufficient to overcome the firearm’s “trigger pull,” or the firearm will never fire. If the forward force is too great, it will overcome the recoil to the point that the trigger finger will stay on the trigger enough to prevent the
trigger group from resetting. If the forward force is too little, the trigger finger will not adequately re-engage the trigger to fire a subsequent shot.

**The Legality of Bump Firing and Bump Stocks**

If a shooter accomplishes bump firing without any devices but his own body parts (hands/fingers), he is merely shooting the firearm. It would be difficult to find illegal conduct in that act, and the ATF has never done so. When external devices are used, including bump stocks, then the ATF considers the nature of the interaction between the external devices and the firearm. In some instances, the device is determined to be an unregulated firearm accessory. In other cases, the ATF classifies the device as a machine gun. In 1996, the ATF determined that a 14-inch shoestring was itself a machine gun, because it could be used for bump firing. It later reversed itself, so that it is once again legal to possess shoes with strings and semi-automatic firearms.

While the ATF does not provide general guidance, and instead only evaluates devices on a case by case basis, the current classification practice can be summarized as follows when it comes to typical bump stocks. If the device provides a spring or similar feature to counteract the recoil, so that the shooter merely pulls the trigger and keeps it in place and the oscillation continues until the finger is removed, the device is a machine gun. If the shooter must manually supply the forward force, the device is not a machine gun, but instead is an unregulated accessory.

The ATF developed the foregoing practice in a case involving a bump stock called the Akins Accelerator. The inventor, William Akins, created a bump stock that completely replaced the forend stock and butt stock of a Ruger 10-22 .22 caliber semiautomatic rifle (probably the most popular semiautomatic .22 rifle in the country). The bump stock had a linear motion mechanism that allowed the frame to move only in
a linear direction – in line with the barrel. There were finger stops in the stock behind the trigger, so that when the shooter fired the rifle, the trigger finger could not travel farther backward, and it had a place to rest and remain when the firearm sequence began. There also was a spring that overcame the recoil of the firearm after the rifle had moved rearward enough to allow the trigger group to reset. The spring forced the rifle forward again, to the point that the trigger would engage the trigger finger (if the finger were still on the finger stops), causing a second and subsequent shot.

Akins submitted a sample of the device to the ATF for classification in 2004. After some back and forth discussion, the ATF determined that the device was not a machine gun. Akins then went into commercial production of the device and began selling them. They were quite popular, and the ATF received multiple inquiries from the public about them. In 2006, the ATF sent Akins’ company a letter overruling its earlier determination and declaring the Akins Accelerator to be a machine gun. The ATF did not identify a design change that precipitated the reversal. The ATF declared, however, that it was the spring that made the Akins Accelerator a machine gun, and that the device without a spring is still an unregulated accessory.

Akins sued the ATF in the U.S. District Court for the Middle District of Florida. The district court treated the case as a review of an administrative agency proceeding. The court gave the ATF *Chevron* deference and ultimately affirmed the agency action. The 11th Circuit affirmed, specifically ruling that the spring and its forward force make the Akins Accelerator a machine gun.

Since the Akins case, the ATF has consistently used the “spring test.” Devices with springs or similar mechanisms that supply the forward force are machine guns. Devices that require shooters to supply the forward force are not.
The Las Vegas Shooting

On October 1, 2017, a lone shooter in Las Vegas fired 1,069 rounds of ammunition in an 11 minute period, most of which were directed at a crowd attending an outdoor concert. This is an average firing rate of 97 rounds per minute. Over 1,000 of those rounds were fired from 12 AR-15 style rifles equipped with bump stocks and 100-round magazines. An AR-15 has a cycling rate of approximately 800 rounds per minute, so that a rifle being bump fired would empty a 100-round magazine in approximately 7.5 seconds. Officials have not reported what type of bump stocks they were, or if the bump fire capability of any was actually used in the shooting. Certainly none would have been necessary to achieve the number of shots fired in the amount of time it took. The ATF has not been permitted to examine the firearms used in the shooting to determine if any of them are machine guns under current laws and regulations.

Proposed Regulations

On March 29, 2018, the ATF published proposed regulations that would classify all bump stocks as machine guns. This proposal abandons the spring test. Specifically, it says, “The term ‘machinegun’ includes bump-stock-type devices, i.e., devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without the additional manipulation of the trigger by the shooter.”

If the proposed regulations are implemented, it is highly likely they will be the subject of litigation around the country. The ATF estimates that nearly $300M worth of bump stocks in existence would be subject to seizure or private destruction.
Mr. Brian A. Blakely

Dear Mr. Blakely:

This refers to your letter of February 6, 2004, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB), in which you inquired about the legality of a small section of string intended for use as a means for increasing the cycling rate of a semiautomatic rifle.

As you may be aware, the National Firearms Act, 26 U.S.C. § 5845(b), defines “machinegun” to include the following:

...any weapon that 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. This term shall also include 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, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person [bolding added].

In 1996, FTB examined and classified a 14-inch long shoestring with a loop at each end. The string was attached to the cocking handle of a semiautomatic rifle and was looped around the trigger and attached to the shooter’s finger. The device caused the weapon to fire repeatedly until finger pressure was released from the string. Because this item was designed and intended to convert a semiautomatic rifle into a machinegun, FTB determined that it was a machinegun as defined in 26 U.S.C. 5845(b).

We thank you for your inquiry, regret the delay in response, and trust the foregoing has been responsive.

Sincerely yours,

Sterling Nixon
Chief, Firearms Technology Branch
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

WILLIAM AKINS,

Plaintiff,

v.                                     CASE NO: 8:08-cv-988-T-26TGW

UNITED STATES OF AMERICA,

Defendant.

ORDER

This cause comes before the Court on Defendant’s Motion to Dismiss or in the
Alternative Motion for Summary Judgment, which is accompanied by the administrative
record of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF” or
“BATFE”) (Dkt. 19) and Plaintiff’s Response in Opposition, which is accompanied by a
Statement of Disputed Facts and exhibits (Dkt. 25). Defendant has also filed a Reply to
the Response. (Dkt. 28.)

Summary Judgment Standard

The parties have submitted many exhibits for the Court’s consideration in these
proceedings and, thus, Defendant’s instant Motion will be treated as a motion for
(reaffirming the general rule that whenever a judge considers matters outside the
pleadings in a 12(b)(6) motion, that motion is converted to Rule 56 motion for summary
judgment). Summary judgment is appropriate where there is no genuine issue of material
fact. Fed.R.Civ.P. 56(c). Where the record taken as a whole could not lead a rational
trier of fact to find for the nonmoving party, there is no genuine issue for trial. See
omitted). On a motion for summary judgment, the court must review the record, and all
its inferences, in the light most favorable to the nonmoving party. See United States v.
Diebold, Inc., 369 U.S. 654, 655 (1962). Having done so, the Court finds that
Defendant’s Motion for Summary Judgment is due to be granted. Defendant’s
memoranda are thorough and well-reasoned and, therefore, portions of them will be
incorporated herein.

Case Background

The Gun Control Act (“GCA”) prohibits any person from “possess[ing] a
machinegun” manufactured after May 19, 1986, subject to a limited exception for law
enforcement agencies. 18 U.S.C. § 922(o). Congress drew upon the definition of
“machinegun” as found in the National Firearms Act (“NFA”), Internal Revenue Code of
1954, 26 U.S.C. § 5845, which defines the term as follows:

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. The term shall also include 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, and any combination of parts from
which a machinegun can be assembled, if such parts are in the possession or
under the control of a person.
See 18 U.S.C. §§ 921(a)(23), 922(b); 26 U.S.C. § 5845; see also 27 C.F.R. 478.11; 479.11. Manufacturers of machineguns are required to register in accordance with 26 U.S.C. § 5822 and may only manufacture them for the use of a Federal or state department or agency. See 18 U.S.C. § 922(o). Congress has delegated the authority to regulate under the NFA to ATF. See 27 C.F.R. § 479; U.S. v. One Sentinel Arms Striker-12 Shotgun Serial No. 001725, 416 F.3d 977 (9th Cir. 2005) (recognizing delegation of authority to ATF).

In 1998, Plaintiff developed an “apparatus for accelerating the cyclic firing rate of a semi-automatic firearm,” and applied for a patent from the United States Patent and Trademark Office. (Dkt. 12, Ex A.) On August 15, 2000, Plaintiff received Patent No. 6,101,918 for his device, which he subsequently named the “Akins Accelerator.” (Id. at Ex. B; Dkt. 12, ¶ 7.) Plaintiff wrote to the Firearms Technology Branch (“FTB”) of ATF on March 31, 2002, enclosing a copy of his patent abstract, to inquire as to whether the device would be classified as a machinegun. (Dkt. 12, Ex. B.)

On July 28, 2003, FTB asked that Plaintiff submit a sample of the device and on August 21, 2003, Thomas Bowers (“Bowers”), Plaintiff’s business associate, submitted a prototype to FTB. (Dkt. 1, ¶ 15.) FTB examined the Akins Accelerator prototype, installed it in an SKS-type rifle, and test-fired it. (Dkt. 12, Ex. E.) On the second test-firing, the prototype broke. (Id.) Notwithstanding, FTB determined that “the submitted stock assembly does not constitute a machinegun . . . [nor] a part or parts designed and intended for use in converting a weapon into a machinegun.” (Id.) FTB informed Mr.
Bowers of its conclusion in a November 17, 2003 letter, noting that the “weapon did not fire more than one shot by a single function of the trigger.” (Id.)

On January 21, 2004, Bowers submitted a second letter, wherein he expressed “confusion” over the meaning of the November 17, 2003 letter and asked FTB to “clearly state[]” its opinion on the “application of the principle of operation” of the Akins Accelerator, not just on the physical prototype itself. (Dkt. 12, Ex. F.) FTB replied to Mr. Bowers’ letter on January 29, 2004, describing the device’s “proposed theory of operation” as “the application of the movement of the counter recoiling rifle to initiate a rapid succession of semiautomatic fire.” (Dkt. 12, Ex. G.) The letter then stated that the “classification of the stock assembly was rendered despite the breakage of the prototype,” noting that “[t]he theory of operation was clear even though the rifle/stock assembly did not perform as intended.” (Id.) The letter emphasized, however, that its conclusions were “valid provided that when the stock is assembled with an otherwise unmodified SKS semiautomatic rifle, the rifle does not discharge more than one shot by a single function of the trigger.” (Id.) Based on FTB’s classification that the Akins Accelerator was not a machinegun, Plaintiff began mass production and distribution of the devices through Plaintiff’s predecessor in interest, Akins Group, Inc.

On August 18, 2006, a website that Plaintiff was using to sell the Akins Accelerator came to the attention of ATF. (Dkt. 19, R. 25.)¹ The website advertised the

¹ Citations to pages in the administrative record (Dkt. 19) are signaled throughout this Order with “R.”
device as “Evaluated by FTB/USDOJ/BATFE” and quoted from FTB’s letters and the NFA. (R. 25-26.) Shortly thereafter, an Akins Accelerator customer wrote the FTB and requested “a written determination” of whether the device, “assembled with a standard Ruger 10/22 semiautomatic carbine as described by the manufacturer,” would constitute a machinegun within the NFA. (R. at 27-28.) The letter expressed concern that the earlier letters to Mr. Bowers did not “specifically include the use of the device with a standard Ruger 10/22 semiautomatic carbine.” (Id.) Around the same time, FTB received requests to evaluate other devices designed to accelerate the rate of fire of a semiautomatic firearm, including one to be used in conjunction with an AK-47 type semiautomatic rifle. (R. 50-52.)

On September 22, 2006, ATF opened an investigation into the then being sold Akins Accelerator. (Id at R. 54.) ATF obtained a retail-model device on October 6, 2006, and forwarded it to FTB on October 11, 2006. (Id.) Following a test-firing of the retail-model device, FTB wrote to Bowers on November 22, 2006, and advised him that it had tested the device with a Ruger 10/22 rifle and “demonstrated that a single pull of the trigger initiates an automatic firing cycle that continues until the finger is released, the weapon malfunctions, or the ammunition supply is exhausted.” (Dkt. 12, Ex. H.) The letter also noted that “[t]he Akins device assembled with a Ruger 10/22 is advertised to fire approximately 650 rounds per minute,” and concluded that the device must be

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2 See 26 U.S.C. § 5845(a) (defining “firearm”).
classified as a machinegun. (Id.) FTB stated that its prior letters “are hereby overruled” and advised Plaintiff to either register its Akins Accelerators on hand as machineguns in accordance with 26 U.S.C. § 5822 or surrender them. (Id.)

Then, on December 13, 2006, ATF issued a new policy statement, ATF Ruling 2006-2, out of concern for the public safety implications of other, similar devices. (Dkt. 12, Ex. I.) In that statement, ATF explained that “conversion parts that, when installed in a semiautomatic rifle, result in a weapon that shoots more than one shot, without manual reloading, by a single pull of the trigger, are a machinegun as defined in the National Firearms Act and the Gun Control Act.” (Id.) In addition, ATF provided a description of the Akins Accelerator, and held that such a device would be classified as a machinegun. (Id.)

On January 19, 2007, ATF required Plaintiff to remove recoil springs from his personal Akins Accelerators and surrender them. (Dkt. 1, ¶ 35.) On February 6, 2007, Plaintiff, through counsel, requested that FTB reconsider its classification of the Akins Accelerator as a machinegun. (Dkt. 12, Ex. J.) The request for reconsideration asserted that... “[i]f . . . the trigger finger remains in contact with the trigger, only one shot can result until the trigger is released and then pressed again.” (Id.) It also observed that a number of other devices have not been classified as machineguns, including devices that fire two or three shots with a single pull of the trigger. (Id.; R. 132.) The request for reconsideration emphasized that the agency’s original classification of the Akins Accelerator was “consistent” with “long-standing agency interpretations.” (Id.; R. 135.)
In conjunction with his request that ATF reconsider Ruling 2006-2, Plaintiff requested the opportunity “to present [his] case orally” to ATF. (R. 147.) On September 24, 2007, ATF issued a letter upholding that the machine gun classification without a hearing. (Dkt. 12, Ex. K.)

On February 18, 2008, Akins Group, Inc., assigned all rights and interests in claims it may have against the Government to Plaintiff. (Dkt. 1, ¶ 37.) On March 6, 2008, Akins filed a lawsuit in the Court of Federal Claims, requesting compensation under the Takings Clause of the Fifth Amendment, as well as declaratory and injunctive relief reversing ATF’s classification of the Akins Accelerator. See Akins v. United States, No. 08-136C (Ct. Fed. Cl. 2008) (No. 1). On May 2, 2008, the United States moved to dismiss the case, arguing with respect to Akins’ declaratory and injunctive relief claims that the Court of Federal Claims lacked jurisdiction to: (1) hear Plaintiff’s due process claim; (2) conduct Administrative Procedures Act (APA”) review of ATF’s ruling; (3) declare 18 U.S.C. § 922(o) unconstitutional; or (4) issue the requested declaratory and injunctive relief. See Akins v. United States, No. 08-136C (Ct. Fed. Cl. 2008) (No. 5). In response, Akins withdrew those claims. See Akins v. United States, No. 08-136C (Ct. Fed. Cl. 2008) (No. 6).

Plaintiff filed the instant action on May 21, 2008, claiming that ATF/FTB’s actions were arbitrary and capricious and a violation of due process. (Dkt. 1.) Plaintiff seeks relief in the form of: (1) a declaration that the Akins Accelerator is not a machinegun; (2) an injunction prohibiting Defendant from treating the Akins Accelerator as a machinegun
for any purpose; (3) an alternative declaratory ruling that 26 U.S.C. § 5845(b) is unconstitutionally vague on its face and as applied to Plaintiff; (4) alternative injunctive relief prohibiting Defendant from applying 26 U.S.C. § 5845(b) so as to treat the Akins Accelerator as a machinegun; and (5) costs and attorney’s fees. (Dkt. 1.)

On July 24, 2008, the Court of Federal Claims dismissed Akins’ remaining claims, holding that Akins’ takings claims were “barred under the police power doctrine,” and further holding that Akins “voluntarily entered an area subject to pervasive federal regulation, in which he could not have an “expectation interest . . . protected by the Fifth Amendment.  See Akins v. United States, 82 Fed. Cl. 619, 622-24 (Ct. Fed. Cl. 2008).

Standard of Review

This case is a challenge to ATF’s interpretation of 26 U.S.C. § 5845 and its application to the Akins Accelerator. Such final agency actions may be challenged as “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” under the Administrative Procedure Act (“APA”). See 5 U.S.C. § 706(2); 5 U.S.C. § 704. If that challenge is successful, the court may “hold [the action] unlawful and set aside agency action, findings, and conclusions.” Sierra Club v. Flowers, 526 F.3d 1353, 1360 (11th Cir. 2008). “This standard of review is highly deferential, and presumes the validity of the agency action.” Florida Manufactured Housing Ass'n, Inc. v. Cisneros, 53 F.3d 1565, 1572 (11th Cir. 1995); see also Sierra Club v. Van Antwerp, 526 F.3d 1353, 1360 (11th Cir. 2008) (holding that “this standard is exceedingly deferential”).
It is well established that this Court should confine its review to the administrative record. See Garcia v. United States, 2002 U.S. Dist. LEXIS 22704, at *18 (S.D. Fla. May 8, 2002) (holding that “[i]n an APA case, judicial review is based on an administrative record provided by the defendant agency to the Court”); see generally Florida Power & Light Co. v. Lorion, 470 U.S. 729, 743 (1985) (holding that “[t]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court”). A complete administrative record does not include privileged materials, such as documents that fall within the deliberative process privilege, attorney-client privilege, and work product privilege. In this case, Defendant has provided the Court with the complete administrative record and Plaintiff with a privilege log explaining the reasons for any redactions.

Ultimately, the reviewing court should only “ensure that the agency came to a rational conclusion, not [] conduct its own investigation and substitute its own judgment for the administrative agency’s decision.” Van Antwerp, 526 F.3d at 1360. Although the agency must have “examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made,” the Court must “uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned.” Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).
Discussion

ATF concluded that the Akins Accelerator is a machinegun based on its testfiring of a retail-model Akins Accelerator, installed in a Ruger 10/22 rifle, in accordance with the manufacturer’s instructions. Federal law defines a “machinegun” as any weapon which shoots “automatically more than one shot, without manual reloading, by a single function of the trigger.” 28 U.S.C. § 5845(b). The definition includes “any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun.” Id. (emphasis added). In the test-firing, FTB determined that “the person firing has to make one initial conscious effort to pull the trigger . . . [and] once the triggering cycle is initiated, the firearm continues to fire without interruption until a second, conscious releasing of the trigger stops the firing sequence.” (R. 157). Thus, the Akins Accelerator fires “more than one shot, automatically, without manual reloading, and without any additional conscious action to manipulate the trigger,” as set out in 28 U.S.C. § 5845(b).

Plaintiff does not dispute that the purpose of the Akins Accelerator is to make it possible for the shooter to act once and cause the rifle to fire repeatedly until its ammunition is exhausted or until the shooter takes an action to remove his finger from the device. (See Dkt. 25, Statement of Disputed Facts, ¶¶ 3-8.) In fact, Plaintiff acknowledged that the Akins Accelerator “bounces” the rifle back and forth, repeatedly causing the weapon to discharge by “push[ing] it into the finger.” (Id. at ¶¶ 6-7.) As
Defendant asserts, the reasonableness of ATF’s common-sense determination is supported by judicial precedent, legislative history, and the need to protect public safety.

The Supreme Court has adopted the view that “single function of the trigger” is synonymous with “single pull of the trigger.” See Staples v. United States, 511 U.S. 600, 603 n.1 (1994). In Staples, the Supreme Court interpreted the NFA definition and concluded that “any fully automatic weapon is a ‘firearm’ within the meaning of the Act.” Id. at 602. As the Court further explained, an automatic weapon is one “that fires repeatedly with a single pull of the trigger. That is, once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted. Such weapons are ‘machineguns’ within the meaning of the Act.” Id. at 603, n.1. In contrast, the Court “use[d] the term ‘semiautomatic’ to designate a weapon that fires only one shot with each pull of the trigger . . .” Id. Similarly, in analyzing a weapon that “required only one action—pulling [a user-installed] switch . . . to fire multiple shots,” the Fifth Circuit concluded that a “single function of the trigger” should be interpreted as a single action -- the trigger pull. United States v. Camp, 343 F.3d 743, 745 (5th Cir. 2003).

The legislative history of the NFA also confirms that ATF, like the above-cited courts, reasonably reads the phrase “single function of the trigger” as encompassing any “single pull of the trigger.” In testimony leading up to the passage of the NFA, the then president of the National Rifle Association equated the phrase “single function of the trigger” with a “single pull of the trigger.” As he explained:
The distinguishing feature of a machine gun is that by a single pull of the trigger the gun continues to fire as long as there is any ammunition in the belt or in the magazine. Other guns require a separate pull of the trigger for every shot fired, and such guns are not properly designated as machine guns. A gun, however, which is capable of firing more than one shot by a single pull of the trigger, a single function of the trigger, is properly regarded, in my opinion, as a machine gun.


Furthermore, ATF possesses the authority “to reconsider and rectify errors even though the applicable statute and regulations do not expressly provide for such reconsideration.” Gun South Inc. v. Brady, 877 F.2d 858, 862 (11th Cir. 1989). At the same time, however, when “[a]n agency’s view of what is in the public interest” changes, it “must supply a reasoned analysis . . . .”). Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 57 (1983). Without such a reasoned analysis, “[s]udden and unexplained change, or change that does not take account of legitimate reliance on prior interpretation, may be arbitrary, capricious [or] an abuse of discretion.” Smiley v. Citibank (South Dakota), N.A., 517 U.S. 735, 742 (1996).

In this case, ATF presents such a “reasoned analysis,” demonstrating that its new interpretation of the phrase “single function of the trigger” is necessary to protect the public from dangerous firearms. In Ruling 2006-2, ATF explains that the motivation for its reconsideration of the earlier letters to Plaintiff came from requests by “several members of the firearms industry to classify devices that are exclusively designed to increase the rate of fire of a semiautomatic firearm.” (Dkt. 12, Ex. I.) The Ruling then
sets forth a mechanical description of how such a device works (using the Akins Accelerator as an example) and reaches the important conclusion: “a single pull of the trigger initiates an automatic firing cycle.”  (Id.)  Next, it outlines the new policy, equating a “single function of the trigger” with a “single pull of the trigger,” and connecting the new interpretation to the legislative history of the NFA.  (Id.)  Finally, Ruling 2006-2 recognizes that this interpretation represents a policy change and states “to the extent that previous ATF rulings are inconsistent with this determination, they are hereby overruled.”  Id.

Plaintiff claims to have had “legitimate reliance on [ATF’s] prior interpretation;” however, Plaintiff did make changes to the practical operation of the device and its marketing that contributed to ATF’s reconsideration, even if the “theory of operation” of the Akins Accelerator did not change after Plaintiff submitted his prototype.  Plaintiff decided to retail a device intended for mounting on a different rifle model than that submitted for testing (the Ruger 10/22 instead of the SKS-type).  In conjunction with requests that ATF review similar devices designed for other rifle models, this change highlighted the need for ATF to consider whether its interpretation of “single function of the trigger” remained appropriate.  (See R. 159.)  This factor certainly diminishes the weight of Plaintiff’s detrimental reliance argument.  Notwithstanding, Plaintiff’s reliance interest cannot prevent agency reconsideration where the agency’s original opinion proves erroneous.  See Belville Mining Co. v. United States, 999 F.2d 989, 999 (6th Cir. 1993).
The Court agrees with Defendant that in the face of technological innovation of the Akins Accelerator and similar devices, ATF’s change of position is appropriate. ATF “must consider varying interpretations and the wisdom of its policy on a continuing basis.” Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc., 467 U.S. 837, 863-64 (1984). It is clear to this Court that ATF adopted its new position on the phrase “single function of the trigger” based on its experience and a reasoned analysis and because “[t]he court need only be satisfied that the bureau's policy change . . . [was] not the result of arbitrary and capricious action,” ATF’s new position is entitled to deference and “it is not [the] court's role[] to determine that the bureau's prior practice was the better position.” Gilbert Equip. Co., Inc. v. Higgins, 709 F. Supp. 1071, 1078 (S.D. Ala. 1989) (upholding ATF’s classification of a semiautomatic shotgun as “not particularly suitable for or readily adaptable to sporting purposes”); see also Springfield, Inc. v. Buckles, 292 F.3d 813, 819 (D.C. Cir. 2002) (finding that “agency views may change . . . [and] courts may require only a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.”).

Although Plaintiff urges that Defendant’s actions violate the Fifth Amendment’s Due Process Clause, the APA does not require that ATF provide him with a formal hearing. In considering a procedural due process claim, the “Supreme Court's balancing test essentially requires [the Court] to weigh three factors: (1) the nature of the private interest; (2) the risk of an erroneous deprivation of such interest; and (3) the government's interest in taking its action . . . .” Id. (citing Mathews v. Eldridge, 424 U.S. 319, 335
(1976)). Because of the important interests in regulating Plaintiff’s device and Plaintiff’s actual presentation of his arguments in written form to the agency (see R. 123-R. 136), the Court is convinced after a balancing of interests that Plaintiff has not been deprived of due process. First, although Plaintiff identifies an important interest affected by the reclassification -- his ability to manufacture and sell the Akins Accelerator without registering under 26 U.S.C. § 5822 -- that interest is limited by the pervasive federal regulation of the manufacture and sale of firearms. See Akins v. United States, 82 Fed. Cl. 619, 624 (Ct. Fed. Cl. 2008). As the Court of Federal Claims noted, a business owner beginning manufacture of rapidly-repeating firearms “ought to be aware of the possibility that new regulation might even render his property economically worthless.” Id. As Defendant asserts, Plaintiff’s interest -- though important -- is lessened by the regulatory environment.

Given the second Eldridge factor, there is little risk of an erroneous deprivation of Plaintiff’s interest in this case. The cornerstone of procedural due process is notice and a meaningful opportunity to be heard, and when those conditions are satisfied, there is “no absolute due process right to an oral hearing.” See Forjan v. Leprino Foods, Inc., 209 Fed. Appx. 8 (2nd Cir. 2006); see also Raditch v. U.S., 929 F.2d 478, 480 (9th Cir. 1991) (holding that due process principles may be satisfied through “notice and an opportunity to respond,” but response may be written or oral). After receiving notice of ATF’s new position, Plaintiff presented a lengthy memorandum requesting that the agency reconsider its decision, a process for which he retained representation from two outside counsels.
Plaintiff presented 14 pages of supporting legal arguments in his brief. (Id.) In his brief, Plaintiff included most of the legal arguments which he raises now supporting his position. It should also be pointed out that a new hearing before the agency is not the relief Plaintiff seeks for the agency’s alleged violation of his procedural due process. Cf. Ray v. Foltz, 370 F.3d 1079, 1085 n.8 (11th Cir. 2004) (observing that the ordinary remedy for a denial of due process is “the grant of the procedures due”). Instead, he seeks a reversal of the agency’s classification of the Akins Accelerator altogether. (Dkt. 1, ¶ 9.)

Plaintiff fails to even argue how an oral hearing would have made a difference in the outcome. Despite Plaintiff’s urging to the contrary, his memorandum presented only questions of law and statutory interpretation, not factual disputes of the sort that require an oral hearing. See Dredge Corp. v. Penny, 338 F.2d 456 (9th Cir. 1964) (stating that “[t]he opportunity to be heard orally on questions of law is not an inherent element of procedural due process, even where substantial questions of law are involved”). He is disputing the FTB’s legal interpretations of what constitutes a “trigger function.” He fails to identify any mistake of fact in the FTB’s understanding of the operation of the Akins Accelerator. In a follow-up letter to the FTB, Plaintiff noted that he sought oral argument “because the public policy implications involved in this case will have long-term effects on the NFA community,” not because he needed an opportunity to dispute the facts on which ATF based its decision. (R. 147.) However, inasmuch as Plaintiff had a meaningful chance to present his case to ATF in writing and there is little chance the
agency’s decision proved erroneous, the second Eldridge factor supports ATF’s
determination.

While the Complaint describes Plaintiff’s due process claim only as Defendant’s
alleged failure to provide him with a hearing, he asserts in his Response to Defendant’s
Motion that “Defendant was required to provide a notice of proposed rulemaking via
publication in the Federal Register” before issuing ATF Ruling 2006-2. (Dkt. 25, 6.)
However, “the APA’s notice and comment requirements apply to substantive rules
established through agency rulemaking, but do not apply to interpretive rules.” Hi-Tech
553(b)). “Interpretive rules are ‘issued by an agency to advise the public of the agency’s
construction of the statutes and rules which it administers.’” Id. (quoting Chrysler Corp.
v. Brown, 441 U.S. 281, 302 n.31 (1979)). As has been discussed, Ruling 2006-2
explains how ATF interprets the definition of “machinegun” contained in 26 U.S.C. §
5845(b) in the context of a device like the Akins Accelerator, and it is, therefore, an
interpretive rule to which the APA’s notice and comment requirements do not apply.

Finally, the third Eldridge factor weighs strongly in favor of ATF’s action. The
protection of the public's health and safety is a paramount government interest which
justifies summary administrative action . . . [i]ndeed, deprivation of property to protect
the public health and safety is ‘one of the oldest examples’ of permissible summary
action.” Gun South, 877 F.2d at 867 (quoting Hodel v. Virginia Surface Mining and
Reclamation Assoc., 452 U.S. 264, 300 (1981)). Weapons with a high rate of fire are
extremely desirable to criminals, increasing the government’s interest in summary action to close off a loophole by which they could be acquired. See generally United States v. Kirk, 1997 U.S. App. LEXIS 12670, at *n.2 (5th Cir. 1997). As Plaintiff correctly observed in his briefing to the Court of Federal Claims, if the Akins Accelerator is not classified as a “machinegun,” it would “not fall under any federal regulatory scheme of any kind.” See Akins v. United States, No. 08-136C (Ct. Fed. Cl. 2008) (No. 6). This unhindered capability would be wholly inconsistent with the strict regulation of machineguns imposed by the NFA and the prohibition on post-1986 machineguns imposed by the GCA. See United States v. Golding, 332 F.3d 838, 840 (5th Cir. 2003) (discussing the “risk . . . presented by the inherently dangerous nature of machineguns,” as shown by “Congress’s decision to regulate the possession and transfer of this specific type of firearm”); United States v. Haney, 264 F.3d 1161, 1168 (10th Cir. 2001) (“banning possession of post 1986 machine guns is an essential part of the federal scheme to regulate interstate commerce in dangerous weapons”). Thus, the Court agrees with Defendant that ATF has a powerful interest in correctly interpreting the statute to close the loophole created by its earlier interpretation of the machinegun definition and preserve the integrity of the system regulating dangerous weapons.

Finally, Plaintiff argues that the definition of machinegun found in 26 U.S.C. § 5845(b) “is unconstitutionally vague.” (Dkt. 1, ¶ 43.) Although Plaintiff alleges that the statute is vague both “on its face” and “as applied to Plaintiff,” Defendant is correct that this Court need only review the statute as-applied, because “[v]agueness challenges to
The statutes not threatening First Amendment interests are examined in light of the facts of the case at hand.” United States v. Awan, 966 F.2d 1415, 1424 (11th Cir. 1992) (quoting Maynard v. Cartwright, 486 U.S. 356 (1988)). A statute is unconstitutionally vague “only where no standard of conduct is outlined at all; when no core of prohibited activity is defined.” Ford Motor Co. v. Texas Dep't of Transp., 264 F.3d 493, 509 (5th Cir. 2001).

On the other hand, a statute is not unconstitutionally vague unless it is “substantially incomprehensible,” and “men of common intelligence must necessarily guess at its meaning.” Cotton States Mut. Ins. Co. v. Anderson, 749 F.2d 663, 669 (11th Cir. 1984); United States v. Wilson, 175 Fed. Appx. 294, 297 (11th Cir. 2006).

Plaintiffs’ own allegations support the well-established precedent that 26 U.S.C. § 5845(b), although permitting multiple interpretations, does not fall within this realm of incomprehensibility. Plaintiff’s own actions in communicating repeatedly with ATF suggest that the statute gave him fair notice that Akins Accelerators might well fall within the prohibited standard of conduct. He sufficiently understood the section 5845(b) definition to submit the device to FTB for classification. (Dkt. 12, Exs. B, C.) When Plaintiff began to offer the device for sale, he used ATF’s original opinion as a marketing tool. (See, e.g., R. 196) (noting that “especially important was that the Accelerator™ had received not one, but two approval letters from BATFE through their Firearms Technical Branch”). The fact that ATF’s initial classification was later deemed in error does not render the statute invalid for vagueness. Lawful statutes may be susceptible of multiple interpretations, and the mere fact that “there may be some ‘close cases’ or difficult
decisions does not render a policy unconstitutionally vague.”  Hills v. Scottsdale Unified School Dist. No. 48, 329 F.3d 1044, 1056 (9th Cir. 2003); see also Ford Motor Co. v. Texas Dep't of Transp., 264 F.3d 493, 509 (5th Cir. 2001) (holding that "[a] statute is not unconstitutionally vague merely because a company or an individual can raise uncertainty about its application to the facts of their case").

ACCORDINGLY, it is ORDERED AND ADJUDGED:

Defendant’s Motion to Dismiss or in the Alternative Motion for Summary Judgment (Dkt. 19) is granted. The Clerk is directed to enter judgment for Defendant, terminate any pending motions, and close this case.

DONE AND ORDERED at Tampa, Florida, on September 23, 2008.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

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Counsel of Record
IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 08-15640
Non-Argument Calendar

D. C. Docket No. 08-00988-CV-T-26-TGW

WILLIAM AKINS,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

(February 4, 2009)

Before BIRCH, HULL and Pryor, Circuit Judges.

PER CURIAM:

William Akins appeals the summary judgment in favor of the Bureau of
Acohol, Tobacco, Firearms, and Explosives and against his complaint that the
Bureau violated his due process rights when it classified the Akins Accelerator, an
accessory that increases the rate of fire of a semiautomatic rifle, as a prohibited
firearm. Akins argues that the decision of the Bureau to classify the Accelerator as
a "machinegun" as defined in the National Firearms Act, 26 U.S.C. § 5845(b), is
unreasonable and not entitled to deference; the classification of the Accelerator
without a hearing violated his right to procedural due process; and section 5845(b)
is unconstitutionally vague. We affirm.

I. BACKGROUND

The Gun Control Act makes unlawful for any person, other than law
enforcement personnel, to "transfer or possess a machinegun" manufactured after
May 19, 1986. 18 U.S.C. § 922(o). The term "machinegun" used in section
922(o) shares the definition of the term in the National Firearms Act. The
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). A machinegun also 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..."
Congress delegated authority to the Bureau to interpret and enforce the Act. 27 C.F.R. § 479.

Akins invented an “apparatus for accelerating the cyclic firing rate of a semi-automatic firearm” and received a patent for the accessory. The Accelerator is a molded stock that cradles a semiautomatic rifle and uses an internal spring and the force of recoil to reposition and refire the rifle. According to Akins, a gunman pulls the trigger, then “maintains tension against the finger stops,” and each time the rifle recoils, it is pushed forward by “tension supplied by the spring,” which pushes “the trigger . . . into the finger[] and the rifle.” The process continues until the rifle empties its ammunition chamber or the shooter releases contact with the finger stops. This process is known commonly as “bump firing,” but the Accelerator allegedly enables the shooter to achieve better accuracy than with similar devices.

In March 2002, Akins wrote the Firearms Technology Branch of the Bureau to inquire if it would classify the Accelerator as a machinegun. In the letter, Akins explained that the Accelerator “alter[ed] the stock on some semiautomatic rifles in a manner which allows them to be fired so rapidly that the practical effect is equivalent to a fully-automatic machinegun.” After the Firearms Branch tested a prototype of the Accelerator with an SKS-type rifle, it determined that "[t]he
weapon did not fire more than one shot by a single function of the trigger" and concluded that "the submitted stock assembly does not constitute a machinegun . . . [nor] a part or parts designed and intended for use in converting a weapon into a machinegun." The letter mentioned that the prototype broke during testing.

Concerned that the classification might not include an Accelerator that functioned properly, Akins asked the Bureau in January 2004 to explain its ruling. The Bureau stated that it classified the Accelerator based on its "theory of operation," which "was clear even though the rifle/stock assembly did not perform as intended." Akins began to produce and sell the Accelerator.

In August 2006, the Bureau noticed a website that Akins used to market the Accelerator. The website advertised the Accelerator as "[e]valuated by" the Bureau and quoted from its letters. An individual who had purchased an Accelerator wrote the Bureau and asked for a "written determination" whether the accessory when "assembled with a standard Ruger 10/22 semiautomatic carbine" would constitute a machinegun. The Bureau also received requests to evaluate other devices designed to increase the rate of fire of a semiautomatic firearm.

The Bureau opened an investigation regarding the Accelerator in September 2006. After the Bureau obtained and tested the accessory, it advised Akins in November 2006 that the Accelerator, when used with a Ruger 10/22 rifle.
“demonstrated that a single pull of the trigger initiates an automatic firing cycle that continues until the finger is released, the weapon malfunctions, or the ammunition supply is exhausted.” The Bureau classified the Accelerator as a machinegun, notified Akins that its previous letters were “overruled.” and instructed him either to register the devices he possessed or to surrender them.

On December 13, 2006, the Bureau issued a new policy statement, ATF Ruling 2006-2. The Bureau stated that “conversion parts that, when installed in a semiautomatic rifle, result in a weapon that shoots more than one shot, without manual reloading, by a single pull of the trigger, are a machinegun as defined in the National Firearms Act and the Gun Control Act.” The Bureau described the Accelerator in the statement and stated that the accessory was a machinegun. In January 2007, the Bureau ordered Akins to turn over any recoil springs in his possession.

In early February, Akins asked the Bureau to reconsider its decision. Akins alleged that “[i]f the trigger finger remains in contact with the trigger, only one shot can result until the trigger is released and then pressed again” and he mentioned that several other devices had not been classified as machinegans although they also enabled shooters to fire two or three shots with a single pull of the trigger. Akins argued that the original classification of the Accelerator was
"consistent" with "long-standing agency interpretations" and he asked for an opportunity to "present [his] case orally" to the Bureau. The Bureau affirmed its decision summarily in September 2007.

Akins filed a complaint against the United States in May 2008. He alleged that the decision of the Bureau was arbitrary and capricious and violated his right to due process. Akins requested the court: (1) declare that the Accelerator is not a machinegun; (2) issue an injunction to prohibit the government from treating the Accelerator as a machinegun; (3) declare section 5845 unconstitutionally vague; and (4) issue an injunction to prohibit the government from classifying the Accelerator as a machinegun.

The United States moved for summary judgment, which the district court granted. The district court found that the decision of the Bureau that the Accelerator qualified as machinegun was consistent with the language and legislative history of the National Firearms Act and concluded that the Bureau had the authority to reclassify the Accelerator. The court ruled that the actions of the Bureau did not violate Akins’s right to procedural due process and that the definition of machinegun in section 5845 was not unconstitutionally vague.

II. STANDARD OF REVIEW

We review a summary judgment de novo. Cooper v. Fulton County, Ga.
458 F.3d 1282, 1285 (11th Cir. 2006). Under the Administrative Procedures Act, we defer to the decision of the Bureau unless it "(1) exceeds the Bureau's statutory authority, (2) violates a constitutional right, or (3) constitutes an 'arbitrary' or 'capricious action,' or an 'abuse of discretion' or an action 'otherwise not in accordance with law.'" Gun South, Inc. v. Brady, 877 F.2d 858, 861 (11th Cir. 1989) (quoting the Administrative Procedure Act, 5 U.S.C.A. § 706(2)(A), (B), and (C) (West 1977)). Based on that deferential standard, we "cannot substitute our judgment for the Bureau's judgment, but rather, we must presume" that the actions of the government agency are "valid."" Id. We review de novo the constitutionality of a federal statute. See United States v. Awan, 966 F.2d 1415, 1424 (11th Cir. 1992).

III. DISCUSSION

Akins challenges the summary judgment on three grounds. First, Akins argues that the classification by the Bureau of the Accelerator as a machinegun is unreasonable. Second, Akins argues that the summary disposition of the classification violated his right to due process. Third, Akins contends that section 5845(b) of the National Firearms Act is unconstitutionally vague. These arguments fail.

The Bureau acted within its discretion when it reclassified the Accelerator as
a machinegun. A machinegun is a weapon that fires "automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. § 5845(b). The interpretation by the Bureau that the phrase "single function of the trigger" means a "single pull of the trigger" is consonant with the statute and its legislative history. See Staples v. United States, 511 U.S. 600, 602 n.1, 114 S. Ct. 1793, 1795 n.1 (1994); National Firearms Act: Hearings Before the Committee on Ways and Means, 73rd Cong. 40 (1934). After a single application of the trigger by a gunman, the Accelerator uses its internal spring and the force of recoil to fire continuously the rifle cradled inside until the gunman releases the trigger or the ammunition is exhausted. Based on the operation of the Accelerator, the Bureau had authority to "reconsider and rectify" what it considered to be a classification error. See Gun South, 877 F.2d at 862-63. That decision was not arbitrary and capricious. See id. at 866.

The Bureau did not violate Akins's right to due process when it reclassified the Accelerator summarily. Due process requires that the "'a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.'" Mathews v. Eldridge, 424 U.S. 319, 348, 96 S. Ct. 893, 909 (1976) (quoting Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123, 171-72, 71 S. Ct. 624, 649 (1951) (Frankfurter, J., concurring)). As the Mathews Court explained, "[a]ll that is
necessary is that the procedures be tailored, in light of the decision to be made, to the capacities and circumstances of those who are to be heard, to insure that they are given a meaningful opportunity to present their case.” Id. at 349, 96 S. Ct. at 909 (citation omitted). Akins received notice that the Bureau had reclassified the Accelerator, and Akins submitted a lengthy request for the agency to reconsider its decision based on his interpretation of the statute. No further process was required.

Section 5845(b) also is not unconstitutionally vague. A statute is constitutionally vague when it fails to give a “person of ordinary intelligence a reasonable opportunity to know what is prohibited.” Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S. Ct. 2294, 2298–99 (1972). The plain language of the statute defines a machinegun as any part or device that allows a gunman to pull the trigger once and thereby discharge the firearm repeatedly. See United States v. Thomas, 567 F.2d 299, 300 (5th Cir. 1978) (applying a commonsense meaning to the word “silencer” under former section 5845 in a vagueness challenge). Use of the word “function” instead of “pull” to reference the action taken by a gunman to commence the firing process is not so confusing that a man of common intelligence would have to guess at its meaning.

IV. CONCLUSION
The summary judgment in favor of the United States is AFFIRMED.
LVMPD Criminal Investigative Report of the 1 October Mass Casualty Shooting

LVMPD Event Number 171001-3519

Report from the Las Vegas Metropolitan Police Department’s Force Investigation Team on the shooting that occurred on October 1, 2017, at 3901 S. Las Vegas Boulevard at the Route 91 Harvest music festival.

Joseph Lombardo, Sheriff
Las Vegas Metropolitan Police Department

August 3, 2018
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I. EXECUTIVE SUMMARY

On October 1, 2017, at approximately 2118 hours, Mandalay Bay Hotel and Casino (Mandalay Bay) Security Officer Jesus Campos was assigned to check several Hotel Service Optimization System (HotSOS) alarms from various rooms inside the hotel. Room 32-129 was the last of the rooms Security Officer Campos was assigned to check.

Security Officer Campos was on the 30th floor and responded to the 32nd floor via the stairwell in the north end of the 100 Wing. Security Officer Campos attempted to enter the hallway to the 100 Wing, but the door would not open. He took the stairs to the 33rd floor and used the guest elevator to access the 32nd floor. Once on the 32nd floor, Security Officer Campos entered the foyer leading to the stairwell. He discovered an "L" bracket screwed into the door and doorframe that prevented the door leading into the stairwell from opening. Security Officer Campos called his dispatch center with the house phone located in the foyer to report the discovery.

Security Officer Campos heard what he described as a rapid drilling sound coming from Room 32-135 after he hung up the phone. As he walked down the 100 Wing hallway, Campos heard what he described as automatic gunfire coming from the area of Room 32-135 and realized he had been shot in the left calf. He took cover in the alcove of rooms 32-122 and 32-124 and utilized both his cellular phone and radio to notify his dispatch he was shot. Security Officer Campos advised he was shot with a BB or pellet gun. While waiting for other security personnel to arrive Security Officer Campos continued to hear gunfire coming from the room.

Engineer Stephen Schuck finished fixing a water leak on the 62nd floor when he was directed to respond to the 32nd floor in reference to the bracket preventing the stairwell door from opening. Engineer Schuck used the service elevator in the 200 Wing to access the 32nd floor. When he arrived on the 32nd floor, he gathered his tools and equipment and walked from the 200 Wing to the 100 Wing.

As Engineer Schuck walked up the hallway of the 100 Wing, he observed Security Officer Campos poke his head out of an alcove. Engineer Schuck then heard rapid gunfire coming from the end of the 100 Wing hallway that lasted approximately 10 seconds. When the gunfire stopped, he heard Security Officer Campos tell him to take cover. Engineer Schuck stepped into an alcove and gunfire again erupted down the hallway coming from Room 32-135. The gunfire lasted a few seconds then stopped. The gunfire started again after a brief pause, but Engineer Schuck believed it was directed outside and not down the hallway.

Meanwhile, inside the Las Vegas Village over 50 Las Vegas Metropolitan Police Department (LVMPD) personnel were on overtime assignments for the Route 91 Harvest music festival being held at the Las Vegas Village venue. The initial gunshots were heard on an officer’s body worn camera (BWC). As the suspect (Stephen Paddock) targeted the concertgoers with gunfire, officers quickly determined they were dealing with an active shooter and broadcast the information over the radio.

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1 A HotSOS Alarm is triggered by a guest room door that is left ajar for a predetermined amount of time.
The crowd inside the Las Vegas Village started reacting to the gunfire, and performer Jason Aldean ran off the stage. Officers and concertgoers began treating victims who were struck by gunfire. They also tried to get concertgoers out of the venue in a safe manner. Officers determined the gunfire was coming from an elevated position, possibly from the Mandalay Bay. Medical personnel were requested for multiple people struck by gunfire.

As the active shooter incident was occurring, two LVMPD officers were in the security office of the Mandalay Bay handling a call for service in reference to two females who were in custody for trespassing. The officers heard the radio broadcast of gunfire at the Route 91 Harvest music festival. Both officers, along with security personnel, exited the security office and responded toward the Las Vegas Village. As they were making their way through the casino, security personnel advised the officers of an active shooter on the 32nd floor of the hotel. The officers then directed security to escort them to that location. The officers and security personnel entered the Center Core guest elevators and were again advised the shooter was on the 32nd floor. The officers made a decision to respond to the 31st floor and take the stairwell to the 32nd floor.

LVMPD officers converged on the Las Vegas Village and Mandalay Bay. Officers formed multiple Strike Teams and entered the Mandalay Bay from various entrance points. A team of officers, including a Special Weapons and Tactics (SWAT) officer, reached the 32nd floor via the stairwell in the 100 Wing. Officers did not hear gunfire coming from Room 32-135. Officers were able to manually breach the “L” bracket on the stairwell door and gain access to the hallway. Officers immediately observed a food service cart, which had wires running under the door into Room 32-134, and prepared themselves for the possibility of an improvised explosive device (IED). The decision was made to use an explosive breach to make entry into Room 32-135.

After a successful breach of the doors to Room 32-135, officers entered and found a male (Paddock) deceased on the floor. Paddock appeared to have a self-inflicted gunshot wound to the head. Officers cleared the remainder of the room and observed numerous rifles in various locations as well as hundreds of expended casings. A second explosive breach was utilized to gain access to Room 32-134 through the connecting doors. Immediately after the breach, a SWAT officer negligently discharged his rifle. Officers cleared Room 32-134, finding several more rifles in the room.

Officers, medical personnel, and concertgoers continued the evacuation of victims in the Las Vegas Village venue. Several triage sites were established in the venue and surrounding area. Injuries ranged from being minor in nature to fatal. Hundreds of wounded were transported to area hospitals by ambulance and privately-owned citizen vehicles.

As the LVMPD’s investigative response occurred, it was decided early on (post-shooting) that the LVMPD’s Homicide Section would handle the documentation of the venue and 31 bodies found inside the venue and on the exterior perimeter. Homicide detectives worked closely with crime scene analysts and investigators from the Clark County Office of the Coroner Medical Examiner (CCOCME).
It was further decided the LVMPD’s Force Investigation Team (FIT) would take responsibility for the Mandalay Bay crime scene to include the collection of evidence, documentation of the scene, and the collection of Paddock’s body. This was all completed with the assistance from the Federal Bureau of Investigation’s (FBI) Evidence Recovery Teams (ERT). FBI ERT handled the collection of all evidence related to the Mandalay Bay and the Las Vegas Village venue.

FIT was given primary investigative responsibility over the investigation. The mission of FIT is to provide thorough, accurate, and unbiased criminal investigations related to an LVMPD member’s use of deadly force and other qualifying events resulting in death or substantial bodily harm. LVMPD policy states that FIT is responsible for the criminal investigation of deadly force and other high-risk critical incidents resulting in death or serious bodily injury. FIT is the primary investigative unit for any incident wherein the department member, during the course of his/her official duties, is the victim of a violent crime and sustains substantial injury.3

During the initial response to both scenes, FIT learned two LVMPD uniformed officers, Brady Cook and Casey Clarkson, were struck by gunfire. Preliminary information was received that Officer Charleston Hartfield was unaccounted for and presumed to have been struck by gunfire as well. Officer Hartfield was attending the festival in an off-duty capacity and assisted concertgoers in escaping the gunfire before he was fatally wounded. These factors are what initiated a FIT response.

In the days, weeks, and months following the 1 October shooting, LVMPD worked, alongside the FBI as well as numerous other local, state and federal agencies, to determine why the shooting occurred. Briefings looked to answer the following two questions:

1) Was there anyone, other than Paddock who took part in or assisted in the commission of these crimes?

2) What was Paddock’s motive?

This report was derived from the LVMPD’s preliminary investigative report that was released on January 18, 2018. The findings from that preliminary report remain accurate and in accordance with this final report. This report was authored to provide the reader with more information about who, what, when, and where. Regretfully, this report will not be able to address the why.

FIT believed it was important to expand upon the suspectology of Paddock. Interviews from family members are summarized in this report to include the Marilou Danley interviews. Early in the investigation, Danley was a person of interest for the LVMPD and FBI to locate and interview.

FIT expanded the sequence of events in this report to provide the reader with a greater knowledge of Paddock’s actions leading up to the day of the shooting. There is a strong belief among investigators that the events leading up to 1 October began with Paddock’s actions and behavior surrounding his stay at The Ogden Condominiums (The Ogden) located in downtown Las Vegas. Whether he used the Life Is Beautiful music festival as a rehearsal or not, we will

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3 LVMPD Department Manual 1/409.01 Internal Oversight and Constitutional Policing Bureau.
never know. What we do know is the actions and behaviors displayed by Paddock at The Ogden were consistent with those displayed at Mandalay Bay.

Also documented in this report is a detailed account of when Paddock purchased all of his weapons. Summarized are the forensic results from each gun that was recovered from rooms 32-135 and 32-134. This report details which guns were discharged and how many rounds each gun fired. DNA analysis concluded that there were no DNA anomalies to indicate anyone other than Stephen Paddock was responsible.

Note: This is a criminal investigative report. This is not a review of every officer’s actions or responses that took place that night. This report is meant to document the facts as to what happened. This report also provides the reader with background information as to the actions taken by investigative personnel. An administrative review, which is an internal process, will address issues surrounding tactics, training, decision making, policy and protocols.

II. PEOPLE INVOLVED

Victims

1) Jack Reginald Beaton
   Age: 54
   Clark County Coroner’s Office case number: 17-10060
   Clark County Coroner’s Office seal number: 727327
   Time of death: 0545 hours on October 2, 2017

2) Christopher Louis Roybal
   Age: 28
   Clark County Coroner’s Office case number: 17-10061
   Clark County Coroner’s Office seal number: 727302
   Time of death: 0545 hours on October 2, 2017

3) Lisa Marie Patterson
   Age: 46
   Clark County Coroner’s Office case number: 17-10062
   Clark County Coroner’s Office seal number: 732484
   Time of death: 0545 hours on October 2, 2017

4) Adrian Allan Murfitt
   Age: 35
   Clark County Coroner’s Office case number: 17-10063
   Clark County Coroner’s Office seal number: 737364
   Time of death: 0545 hours on October 2, 2017

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4 Information was obtained from reports produced by the CCOCME.
5) Hannah Lassette Ahlers
   Age: 34
   Clark County Coroner’s Office case number: 17-10065
   Clark County Coroner’s Office seal number: 732473
   Time of death: 0545 hours on October 2, 2017

6) Austin William Davis
   Age: 29
   Clark County Coroner’s Office case number: 17-10066
   Clark County Coroner’s Office seal number: 727385
   Time of death: 0545 hours on October 2, 2017

7) Stephen Richard Berger
   Age: 44
   Clark County Coroner’s Office case number: 17-10067
   Clark County Coroner’s Office seal number: 732488
   Time of death: 0545 hours on October 2, 2017

8) Stacee Ann Etcheber
   Age: 50
   Clark County Coroner’s Office case number: 17-10068
   Clark County Coroner’s Office seal number: 727388
   Time of death: 0545 hours on October 2, 2017

9) Christiana Duarte
   Age: 22
   Clark County Coroner’s case number: 17-10069
   Clark County Coroner’s seal number: 732404
   Time of death: 0545 hours on October 2, 2017

10) Lisa Romero-Muniz
    Age: 48
    Clark County Coroner’s case number: 17-10070
    Clark County Coroner’s seal number: 732458
    Time of death: 0545 hours on October 2, 2017

11) Heather Lorraine Alvarado
    Age: 35
    Clark County Coroner’s Office case number: 17-10071
    Clark County Coroner’s Office seal number: 732423
    Time of death: 0545 hours on October 2, 2017
12) Denise Cohen
   Age: 58
   Clark County Coroner's case number: 17-10072
   Clark County Coroner's Office seal number: 732474
   Time of death: 0545 hours on October 2, 2017

13) Kurt Allen Von Tillow
   Age: 55
   Clark County Coroner's Office case number: 17-10073
   Clark County Coroner's Office seal number: 732489
   Time of death: 0545 hours on October 2, 2017

14) Brennan Lee Stewart
   Age: 30
   Clark County Coroner's case number: 17-10074
   Clark County Coroner's seal number: 732414
   Time of death: 0545 hours on October 2, 2017

15) Derrick Dean Taylor
   Age: 56
   Clark County Coroner's Office case number: 17-10075
   Clark County Coroner's Office seal number: 732445
   Time of death: 0545 hours on October 2, 2017

16) Kelsey Breanne Meadows
   Age: 28
   Clark County Coroner's Office case number: 17-10076
   Clark County Coroner's Office seal number: 732486
   Time of death: 0545 hours on October 2, 2017

17) Jennifer Topaz Irvine
   Age: 42
   Clark County Coroner's Office case number: 17-10077
   Clark County Coroner's Office seal number: 727384
   Time of death: 0545 hours on October 2, 2017

   Age: 42
   Clark County Coroner's Office case number: 17-10078
   Clark County Coroner's Office seal number: 732415
   Time of death: 0545 hours on October 2, 2017
19) Carly Anne Kreibaum  
   Age: 33  
   Clark County Coroner’s Office case number: 17-10079  
   Clark County Coroner’s Office seal number: 732478  
   Time of death: 0545 hours on October 2, 2017

20) Laura Anne Shipp  
   Age: 50  
   Clark County Coroner’s Office case number: 17-10080  
   Clark County Coroner’s Office seal number: 732451  
   Time of death: 0545 hours on October 2, 2017

21) Carrie Rae Barnette  
   Age: 34  
   Clark County Coroner’s Office case number: 17-10085  
   Clark County Coroner’s Office seal number: 727391  
   Time of death: 0545 hours on October 2, 2017

22) Jordyn Nicole Rivera  
   Age: 21  
   Clark County Coroner’s Office case number: 17-10101  
   Clark County Coroner’s Office seal number: 732469  
   Time of death: 0545 hours on October 2, 2017

23) Victor Loyd Link  
   Age: 55  
   Clark County Coroner’s Office case number: 17-10102  
   Clark County Coroner’s Office seal number: 732497  
   Time of death: 0545 hours on October 2, 2017

24) Candice Ryan Bowers  
   Age: 40  
   Clark County Coroner’s Office case number: 17-10103  
   Clark County Coroner’s Office seal number: 732417  
   Time of death: 0545 hours on October 2, 2017

25) Jordan Alan McIllooin  
   Age: 23  
   Clark County Coroner’s Office case number: 17-10053  
   Clark County Coroner’s Office seal number: 732487  
   Time of death: 0545 hours on October 2, 2017
26) Keri Lynn Galvan  
   Age: 31  
   Clark County Coroner’s Office case number: 17-10054  
   Clark County Coroner’s Office seal number: 732499  
   Time of death: 0545 hours on October 2, 2017

27) Dorene Anderson  
   Age: 49  
   Clark County Coroner’s Office case number: 17-10057  
   Clark County Coroner’s Office seal number: 727313  
   Time of death: 0545 hours on October 2, 2017

28) Neysa C. Tonks  
   Age: 46  
   Clark County Coroner’s Office case number: 17-10058  
   Clark County Coroner’s Office seal number: 727306  
   Time of death: 0545 hours on October 2, 2017

29) Melissa V. Ramirez  
   Age: 26  
   Clark County Coroner’s Office case number: 17-10059  
   Clark County Coroner’s Office seal number: 732407  
   Time of death: 0545 hours on October 2, 2017

30) Brian Scott Fraser  
   Age: 39  
   Clark County Coroner’s Office case number: 17-10056  
   Clark County Coroner’s Office seal number: 732408  
   Time of death: 0545 hours on October 2, 2017

31) Tara Ann Roe  
   Age: 34  
   Clark County Coroner’s Office case number: 17-10055  
   Clark County Coroner’s Office seal number: 732441  
   Time of death: 0545 hours on October 2, 2017

32) Bailey Schweitzer  
   Age: 20  
   Clark County Coroner’s Office case number: 17-10051  
   Clark County Coroner’s Office seal number: 732420  
   Time of death: 2307 hours on October 1, 2017
33) Patricia Mestas  
   Age: 67  
   Clark County Coroner’s Office case number: 17-10049  
   Clark County Coroner’s Office seal number: 727390  
   Time of death: 2250 hours on October 1, 2017

34) Jennifer Parks  
   Age: 35  
   Clark County Coroner’s Office case number: 17-10052  
   Clark County Coroner’s Office seal number: 727359  
   Time of death: 2300 hours on October 1, 2017

35) Angela Gomez  
   Age: 20  
   Clark County Coroner’s Office case number: 17-10050  
   Clark County Coroner’s Office seal number: 732413  
   Time of death: 2253 hours on October 1, 2017

36) Denise Burditus  
   Age: 50  
   Clark County Coroner’s Office case number: 17-10082  
   Clark County Coroner’s Office seal number: 731590  
   Time of death: 0047 hours on October 2, 2017

37) Cameron Robinson  
   Age: 28  
   Clark County Coroner’s Office case number: 17-10083  
   Clark County Coroner’s Office seal number: 732437  
   Time of death: 2301 hours on October 1, 2017

38) James Melton  
   Age: 29  
   Clark County Coroner’s Office case number: 17-10084  
   Clark County Coroner’s Office seal number: 727311  
   Time of death: 2320 hours on October 1, 2017

39) Quinton Robbins  
   Age: 20  
   Clark County Coroner’s Office case number: 17-10046  
   Clark County Coroner’s Office seal number: 731535  
   Time of death: 2315 hours on October 1, 2017
40) Charleston Hartfield
   Age: 34
   Clark County Coroner’s Office case number: 17-10086
   Clark County Coroner’s Office seal number: 727353
   Time of death: 2230 hours on October 1, 2017

41) Erick Silva
   Age: 21
   Clark County Coroner’s Office case number: 17-10087
   Clark County Coroner’s Office seal number: 725563
   Time of death: 2230 hours on October 1, 2017

42) Teresa Nicol Kimura
   Age: 38
   Clark County Coroner’s Office case number: 17-10088
   Clark County Coroner’s Office seal number: 725567
   Time of death: 2230 hours on October 1, 2017

43) Susan Smith
   Age: 53
   Clark County Coroner’s Office case number: 17-10089
   Clark County Coroner’s Office seal number: 725552
   Time of death: 2230 hours on October 1, 2017

44) Dana Leann Gardner
   Age: 52
   Clark County Coroner’s Office case number: 17-10090
   Clark County Coroner’s Office seal number: 725569
   Time of death: 2250 hours on October 1, 2017

45) Thomas Day Jr.
   Age: 54
   Clark County Coroner’s Office case number: 17-10091
   Clark County Coroner’s Office seal number: 725591
   Time of death: 2341 hours on October 1, 2017

46) John Joseph Phippen
   Age: 56
   Clark County Coroner’s Office case number: 17-10092
   Clark County Coroner’s Office seal number: 725568
   Time of death: 0244 hours on October 2, 2017
47) Rachel Kathleen Parker
   Age: 33
   Clark County Coroner’s Office case number: 17-10093
   Clark County Coroner’s Office seal number: 725561
   Time of death: 2230 hours on October 1, 2017

48) Sandra Casey
   Age: 35
   Clark County Coroner’s Office case number: 17-10094
   Clark County Coroner’s Office seal number: 725550
   Time of death: 2230 hours on October 1, 2017

49) Jessica Klymchuk
   Age: 34
   Clark County Coroner’s Office case number: 17-10095
   Clark County Coroner’s Office seal number: 727322
   Time of death: 2230 hours on October 1, 2017

50) Andrea Lee Anna Castilla
   Age: 28
   Clark County Coroner’s Office case number: 17-10096
   Clark County Coroner’s Office seal number: 727381
   Time of death: 2301 hours on October 1, 2017

51) Carolyn Lee Parsons
   Age: 31
   Clark County Coroner’s Office case number: 17-10097
   Clark County Coroner’s Office seal number: 727382
   Time of death: 2300 hours on October 1, 2017

52) Michelle Vo
   Age: 32
   Clark County Coroner’s Office case number: 17-10098
   Clark County Coroner’s Office seal number: 727355
   Time of death: 2244 hours on October 1, 2017

53) Rocio Guillen
   Age: 40
   Clark County Coroner’s Office case number: 17-10099
   Clark County Coroner’s Office seal number: 732409
   Time of death: 2318 hours on October 1, 2017
54) Christopher Hazencomb  
   Age: 44  
   Clark County Coroner's Office case number: 17-10105  
   Clark County Coroner's Office seal number: 732444  
   Time of death: 1044 hours on October 2, 2017

55) Brett Schwanbeck  
   Age: 61  
   Clark County Coroner's Office case number: 17-10081  
   Clark County Coroner's Office seal number: 732471  
   Time of death: 1328 hours on October 3, 2017

56) Rhonda M. LeRocque  
   Age: 42  
   Clark County Coroner's Office case number: 17-10045  
   Clark County Coroner's Office seal number: 542385  
   Time of death: 0023 hours on October 2, 2017

57) Austin Cooper Meyer  
   Age: 24  
   Clark County Coroner's Office case number: 17-10047  
   Clark County Coroner's Office seal number: 540045  
   Time of death: 2257 hours on October 1, 2017

58) Calla-Marie Medig  
   Age: 28  
   Clark County Coroner's Office case number: 17-10048  
   Clark County Coroner's Office seal number: 539069  
   Time of death: 2246 hours on October 1, 2017

Living Victims

LVMPD recognizes the approximate 22,000 people who attended the Route 91 Harvest music festival are all victims. That number does not take into consideration the hundreds and possibly thousands who were walking along Las Vegas Boulevard outside the Las Vegas Village venue at the time of the shooting. The goal of FIT was to document those who actually sustained any type of physical injury, regardless of the extent or degree.

FIT used information received from local hospitals and medical facilities, crime scene analysts and detectives who responded to the primary and secondary scenes, and individual police reports to immediately begin compiling a comprehensive list of individuals who sustained physical injuries and individualized detailed accounts of the incident.

Based on the collective information that has been received to date in reference to the 1 October massacre, the following has been ascertained:
In the immediate aftermath of the shooting, victims locally sought treatment at Centennial Hills Hospital Medical Center, Desert Springs Hospital Medical Center, Henderson Hospital, Mountain View Hospital, Southern Hills Hospital & Medical Center, Southwest Medical Associates, Spring Valley Hospital Medical Center, St. Rose Dominican – Rose de Lima Campus, San Martin Campus, Siena Campus, Dignity Health neighborhood hospitals, Summerlin Hospital Medical Center, Sunrise Hospital & Medical Center, Sunrise Quick/Urgent Care, University Medical Center (UMC), UMC Urgent Care, and Valley Hospital Medical Center. Numerous out-of-state medical facilities also reported having treated victims of the 1 October incident.

Fifty-eight people were confirmed deceased; 31 victims were confirmed deceased at the venue and the remaining 27 victims were pronounced deceased at area hospitals. (4 victims were pronounced at Desert Springs Hospital Medical Center; 3 victims were pronounced at Spring Valley Hospital Medical Center; 16 victims were pronounced at Sunrise Hospital & Medical Center; 3 victims were pronounced at University Medical Center; and 1 victim was pronounced at Valley Hospital Medical Center.)

Approximately 869 people sustained documented physical injuries. Of those who sustained injuries, FIT was able to confirm approximately 413 gunshot or shrapnel injury victims. Approximately 360 victims sustained injuries other than gunshot or shrapnel injuries. Approximately 96 people were identified as having sustained an injury, but the type of injury sustained was unable to be confirmed.5

Suspect

Stephen Paddock

An extensive joint investigation involving the LVMPD and the FBI began immediately after the incident into the life of Paddock.

At the time of the attack, Paddock was 64 years old. He owned residences in Mesquite, Nevada (Mesquite) and Reno, Nevada (Reno) and lived with his girlfriend Marilou Danley. Paddock was the oldest of four sons born to Benjamin Paddock and Irene Hudson (Paddock). Paddock’s father was arrested and was incarcerated for bank robbery. Paddock and his brothers were raised solely by their mother after Benjamin went to prison.

Paddock graduated high school and college. He worked for the United States Postal Service during his college years. According to friends and family, Paddock began working for the Internal Revenue Service (IRS) after college and later worked for several corporations, performing accounting work. Paddock invested in real estate and made a substantial amount of money.

Paddock heavily invested, monetarily and emotionally, in any activity he began. He obtained his pilot’s license and at one point owned an airplane. He learned to scuba dive and bought all

5 These numbers reflect data collected through August 2, 2018. Due to the mass number, types of injuries sustained, and subjects who were treated and released prior to police contact, a definitive number of people who sustained gunshot or shrapnel injuries is not known.
required gear and equipment. With most of his hobbies, Paddock would quickly lose interest and sell any related equipment.

Paddock was described by many as a narcissist and only cared about himself. Paddock needed to feel important and only cared how relationships would benefit him. He did not have any religious or political affiliations.

Most of the people interviewed acknowledged Paddock’s gambling habits. He was known to gamble tens of thousands of dollars at a time and played at numerous casinos in Las Vegas and Reno. Paddock was given complimentary rooms and meals at the casinos he frequented due to the amount of money he gambled.

During the course of the investigation, it was learned Paddock had limited contact with law enforcement. Paddock was stopped by police on occasion for traffic-related offenses, receiving only traffic citations. No arrest history was found for Paddock.

Witnesses

The following individuals were identified as key witnesses during the investigation.

Hotel Employees

1) Shane Calloway
2) Jesus Campos
3) Daniel Cruz
4) Suzanne Curry
5) Myrna Gamboa
6) Antonio Hernandez
7) John Holdridge
8) Gerard Killeen
9) Eun Kyung
10) Paul Lacomb
11) Kevin Monaghan
12) Jorge Morales
13) Michael Oelke
14) Alan Rautenberg
15) Miguel Sanchez
16) Stephen Schuck
17) Anthony Sottile
18) Phillip Torrez
19) George Umstott
20) Shun Zhang
Police Personnel

1) Sergeant Bitsko
2) Sergeant Matchko
3) Detective Balonek
4) Detective Clarkson
5) Detective Donaldson
6) Detective Trzpis
7) Detective Walford
8) Officer Buntsky
9) Officer Cook
10) SWAT Officer Hancock
11) Officer Magsaysay
12) Officer Newton
13) SWAT Officer O'Donnell
14) Officer Thiele
15) Officer Tolbert

Friends and Family

1) Marilou Danley
2) Peggy Paddock
3) Irene Hudson
4) Eric Paddock
5) Kerry Marie Paddock
6) Bruce Paddock
7) Patrick Paddock
8) David Paddock
9) Jacob Paddock
10) Vivian Ayers
11) Paddock’s primary care physician
III. INCIDENT OVERVIEW

The Ogden

On September 17, 2017, Paddock checked into The Ogden where he was booked through September 28, 2017, which overlapped his reservation at Mandalay Bay. The Ogden is a multi-story condominium complex located in downtown Las Vegas. Paddock stayed in three different units during this time.

Paddock’s stay at The Ogden coincided with the Life Is Beautiful music festival. Similar to the Route 91 Harvest music festival, the Life Is Beautiful music festival is held in multiple open-air venues within the confines of several city blocks in downtown Las Vegas. The Ogden overlooks several of those city blocks and music venues. Life Is Beautiful lasted from September 22 through September 24.

While staying at The Ogden, Paddock exhibited behavior which was similar to his time spent at Mandalay Bay. Paddock left for long periods of time and moved a large amount of luggage between his vehicle and the rooms he was staying in. Paddock gambled numerous times at downtown Las Vegas casinos. Paddock was also observed moving numerous suitcases from his vehicle to the various units he rented.

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6 Information obtained by surveillance video.
7 Information obtained by surveillance video and staff interviews.
Mandalay Bay

On Monday, September 25, Paddock checked into Room 32-135 of the Mandalay Bay with a scheduled check-out date of October 2. On Friday September 29, Paddock checked into Room 32-134 which connected with Room 32-135 via connecting doors.

From September 25, through October 1, on several occasions, Paddock transported multiple suitcases to his room. Paddock also left the Mandalay Bay on a number of occasions for long periods of time, often returning to Mesquite.

(Diagram of 100 Wing of the 32nd floor of Mandalay Bay.)
Route 91 Harvest Music Festival

October 1 was the final day of the Route 91 Harvest music festival held at the Las Vegas Village concert venue located at 3901 S. Las Vegas Boulevard. The site is an open-air concert venue approximately 15 acres in size. It is bordered by Las Vegas Boulevard to the west, Reno Avenue to the north, Giles Street to the east, and Mandalay Bay Road to the south.

The festival was a three-day, country music concert with multiple entertainers. On October 1, 2017, the concert began at 1500 hours. Jason Aldean, the last performer, was scheduled to take the main stage at 2140 hours. Over 22,000 people were attending the final day of the festival.
IV. INVESTIGATION

Timeline

The details listed below were gathered from several different sources.\(^8\) For the purpose of this section, the sequence of events will begin on September 17 when Paddock checked into The Ogden and will end with the LVMPD officers making entry into Paddock’s Mandalay Bay room. All times in this section are approximates based upon different time sources and different timestamps which were all utilized to document this section of the report. All dates and times listed below occurred in the year 2017.

Between August 27 and September 14, Paddock made several reservations through Airbnb for three different units at The Ogden. Unit 2315 was reserved from September 17 through September 22. Unit 1220 was reserved from September 21 through September 23. Unit 1703 was reserved from September 24 through September 28. All units were north facing and had a view of the Life Is Beautiful event venues which was held from September 22 through September 24.

All units at The Ogden are individually owned and rented out by the owners through a third party. Because of this, check in is not conducted like most hotels. The owner contacts the concierge when a unit is rented and adds the renter to their guest list. The renter picks up a key fob from the concierge when they arrive.

On or around September 9, Paddock made his room reservation for a Vista Suite at the Mandalay Bay, ending in 235 but not a specific floor. On September 20, Paddock’s reservation was assigned by computer to Room 33-235. On September 21, Paddock’s reservation was changed by computer to Room 32-235. On September 24, Paddock was assigned to Room 32-135.\(^9\)

**September 17 through October 1**\(^{10}\)

**September 17**

Overview:
Paddock checked into Unit 2315 at The Ogden with a scheduled check-out date of September 22.

- At 2005 hours, Paddock removed a large trash bag from his vehicle. Paddock was observed getting in and out of the elevator with the trash bag.
- At 2014 hours, Paddock was in the parking garage with two roller bags.

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\(^8\) LVMPD officer BWC’s; Uber video; interviews to include officers, civilians, and Mandalay Bay employees; Mandalay Bay video surveillance; lock interrogation documents; cell phone videos and records.

\(^9\) All changes to Paddock’s rooms were done by a Mandalay Bay computer without Paddock’s knowledge.

\(^{10}\) Unless otherwise noted, observations or Paddock sightings were captured by video surveillance.
• At 2250 hours, Paddock was gambling at the El Cortez Casino and had an interaction with a slot attendant and two security guards.
• At 2302 hours, Paddock was with two suitcases at The Ogden.

September 18

Overview:
Paddock travelled from Las Vegas to Reno.

• At 0216 hours, Paddock removed a bag from his vehicle.
• At 0428 hours, Paddock was with a suitcase.
• At 0445 hours, Paddock interacted with The Ogden concierge while in possession of a suitcase.
• At 0447 hours, Paddock exited The Ogden with a suitcase.
• From 0449 hours to 0503 hours, Paddock took a ride share to McCarran International Airport.
• From 0600 hours to 0737 hours, Paddock flew to Reno.

September 19

Overview:
Paddock travelled from Reno to Phoenix, Arizona (Phoenix). Paddock purchased ammunition from Douglas Haig and drove back to Las Vegas in a rental car.

• From 1240 hours to 1424 hours, Paddock flew from Reno to Phoenix.
• At 1505 hours, Paddock rented a vehicle and departed for Douglas Haig’s residence.
• At 1610 hours, Paddock arrived at Haig’s residence. He purchased approximately 600 rounds of .308 armor piercing incendiary ammunition from Haig.
• From 1700 hours to 2326 hours, Paddock drove to Las Vegas in the vehicle he rented.
• At 2326 hours, Paddock entered The Ogden with a laptop bag and roller suitcase.

September 20

Overview:
Paddock travelled between Las Vegas and Mesquite.

• At 0024 hours, Paddock was in the parking garage of The Ogden with a laptop bag and roller suitcase. Paddock moved his Chrysler Pacifica from the 5th floor of the garage to the 2nd floor and parked near the vehicle he rented.
• At 0027 hours, Paddock transferred items from the rental vehicle to the Chrysler Pacifica.
• At 0051 hours, Paddock returned the rental vehicle. He returned to The Ogden in a ride share.
September 21

Overview:
Paddock travelled between Mesquite and Las Vegas. Paddock checked into Unit 1220 at The Ogden with a scheduled checkout of September 24. Paddock checked out of Unit 2315 a day early.

- From 2000 hours to 2113 hours, Paddock drove from Mesquite to Las Vegas.
- At 2113 hours, Paddock was in the parking garage of The Ogden with a rolling suitcase and trash bag.
- At 2118 hours, Paddock entered the lobby and had an interaction with an employee at the front desk until 2123 hours.
- At 2354 hours, Paddock had a rolling suitcase.

September 22

Overview:
Paddock travelled from Las Vegas to Mesquite. At an unknown time during the day, Paddock conducted an online search for “Life is beautiful 2017 Sunday schedule.”

- At 0031 hours, Paddock entered the elevator bank from the parking garage at The Ogden with a black suitcase.
- At 0043 hours, Paddock exited the elevator on the 6th floor of the parking garage.
- At 0045 hours, Paddock entered the elevator with a suitcase.
- At 0246 hours, Paddock left The Ogden with a rolling suitcase and black plastic bag and returned to his vehicle.
- From 0250 hours to 0410 hours, Paddock travelled from Las Vegas to Mesquite.
- From 0700 to 0830 hours, Paddock conducted multiple online searches.
- At 1500 hours, the Life Is Beautiful event began in downtown Las Vegas.

September 23

Overview:
Paddock appeared to spend most of the day in Mesquite.

September 24

Overview:
Paddock checked into Unit 1703 at The Ogden with a scheduled checkout date of September 28, overlapping his reservation at Mandalay Bay.
At 1531 hours, Paddock’s vehicle was in the parking garage of The Ogden.
At 1600 hours, Paddock was at the front desk and checked into Unit 1703.
From 2115 hours to 2216 hours, Paddock was inside the El Cortez Casino.
At 2314 hours, Paddock returned to The Ogden.

September 25

Overview:
The Life Is Beautiful event ended at approximately 0100 hours. Paddock checked into Mandalay Bay Room 32-135 under his name. Paddock booked the connecting room (32-134) for September 29 through October 2. Paddock was at Mizuya Sushi (inside the Mandalay Bay). He then drove his vehicle from self-park to valet.\textsuperscript{11}

At 0137 hours, Paddock was in the lobby of The Ogden with a plastic bag.
At 0137 hours and again at 0259 hours, Paddock was walking around The Ogden.
At 0845 hours, Paddock exited the elevator on the 6\textsuperscript{th} floor of the parking garage with a suitcase.
At 0915 hours, Paddock was in the lobby of The Ogden with a suitcase.
From 0928 hours to 1059 hours, Paddock was in the parking garage multiple times rolling suitcase. Paddock’s vehicle was on various floors of The Ogden parking garage.
At 1405 hours, Paddock exited the elevator with a rolling suitcase and took it to his vehicle. Paddock then returned to the elevator.
At 1414 hours, Paddock exited the elevator with a rolling suitcase and took it to his vehicle. Paddock then returned to the elevator.
At 1422 hours, Paddock exited the elevator with a rolling suitcase and a laptop bag and took them to his vehicle.
At 1425 hours, Paddock’s vehicle left The Ogden.
At 1446 hours, Paddock’s vehicle entered the Mandalay Bay self-parking area.
At 1533 hours, Paddock checked into Room 32-135 of the Mandalay Bay.
At 1656 hours, a bellman met Paddock and escorted him to Room 32-135. Paddock requested to go through the service elevators and not through the guest elevators. According to interviews, this request is not uncommon for guests of the hotel. Paddock rolled one bag, and a bellman used a luggage cart for the other four bags.

\textsuperscript{11} Confirmed by valet ticket #275263147.
From 2137 hours to 2140 hours, Paddock had his vehicle retrieved from valet, and Paddock left the Mandalay Bay.

At 2300 hours, Paddock arrived in Mesquite.

**September 26**

**Overview:**
Paddock spent time at his home in Mesquite, downtown Las Vegas, and Mandalay Bay.

- From 1012 to 1455 hours, according to cell phone records, Paddock’s cell phone was located in Mesquite.
- At 1535 hours, Paddock completed a wire transfer in Mesquite of $50,000 from his Wells Fargo account to an account in the Philippines.\(^{12}\)
- From 2012 hours to 2100 hours, Paddock drove from Mesquite to The Ogden.
- From 2102 hours to 2216 hours, Paddock walked around and gambled at the El Cortez Hotel.
- At 2223 hours, Paddock returned to The Ogden.
- At 2234 hours, Paddock departed The Ogden and drove to Mandalay Bay.
- From 2245 hours to 2252 hours, Paddock valeted his vehicle at Mandalay Bay and took six suitcases (located on a luggage cart) and one rolling suitcase (Paddock rolled the suitcase himself) up to Room 32-135 by way of the service elevator with help of a bellman. (The bellman who escorted Paddock on September 25 was different than the bellman who escorted Paddock on September 26).
- At 2308 hours, Paddock began gambling at Mandalay Bay and continued gambling into the next morning.

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\(^{12}\) Information obtained through federal grand jury subpoena.
September 27

Overview:
Paddock spent several hours gambling at Mandalay Bay. Paddock spoke with his VIP host reference wanting the "Vista Suite" at the end of the hall with the double doors. Paddock was insistent on the suite and connecting room. Paddock wanted to be in the 200 Wing as it had a better view, according to him. Paddock was upset about the room, but he was not angry. Paddock never mentioned the reason why he wanted a connecting room.

- At 0713 hours, Paddock stopped gambling, which he was doing continuously since the previous night.
- At 1556 hours, Paddock placed a room service order for two entrees, totaling $94.33.
- At 1632 hours, Room 32-135 was cleaned by hotel staff. Paddock remained in the room as it was cleaned.
- At 2003 hours, Paddock was seen in the valet area of Mandalay Bay with two rolling suitcases. Paddock had his vehicle retrieved from valet and left the Mandalay Bay at 2015 hours.
- At 2029 hours, Paddock arrived at The Ogden.
- From 2045 hours to 2200 hours, Paddock left The Ogden and drove to Mesquite, where he arrived at 2200 hours.
- At 2300 hours, Paddock arrived at the Walmart in Mesquite. He purchased luggage, razor blades, fake flowers, a vase and a Styrofoam ball.

September 28

Overview:
In Mesquite Paddock purchased a .308 bolt action rifle, deposited $14,000 into a Wells Fargo account, and wire transferred $50,000 to an account in the Philippines. Paddock visited an unofficial gun range in Mesquite before traveling back to the Mandalay Bay.\(^{13}\)

- From 0227 hours to 1420 hours, Paddock’s cell phone was located in Mesquite according to cell phone records.
- From 1444 hours to 1501 hours, Paddock made a $14,000 deposit at Wells Fargo and transferred $50,000 to a bank in the Philippines.\(^{14}\)
- At 1523 hours, Paddock purchased a .308 bolt action rifle from a gun store in Mesquite.
- From 1723 hours to 1803 hours, Paddock drove to the area of the City of Mesquite landfill located at 3200 Mesquite Heights Road (The landfill area is also an unofficial gun range in a rural area of Mesquite).
- From 2042 hours to 2146 hours, Paddock traveled from Mesquite to the Mandalay Bay and parked in valet. Paddock entered the Mandalay Bay with two rolling suitcases and a laptop bag.
- At 2218 hours, Paddock began gambling at Mandalay Bay and continued gambling into the next morning.

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\(^{13}\) The unofficial gun range was determined to be the City of Mesquite landfill.

\(^{14}\) Information obtained through federal grand jury subpoena.
September 29

Overview:
A second refrigerator was delivered to Paddock’s room (32-135). Staff was asked to only change linens and take out the trash in Room 32-135. A staff member was told by Paddock not to vacuum Room 32-135 and not to remove the food service cart from the room. Staff was asked specifically to change sheets and towels and inform Paddock when they were finished. Paddock remained in Room 32-135 and used his laptop as the rooms were being cleaned.

- At 0543 hours, Paddock stopped gambling, which he was doing continuously since the previous night.
- From 1228 hours to 1314 hours, Paddock ate at Mizuya Sushi and then returned to Room 32-135.
- At 1400 hours, rooms 32-135 and 32-134 were cleaned by hotel staff.
- At 1506 hours, Paddock checked into Room 32-134 (under Danley’s name) from the VIP check-in counter at the Mandalay Bay.
- At 1508 hours, Paddock took the guest elevator to the 32nd floor.
- At 1509 hours, Paddock entered Room 32-134.
- From 1509 hours to 0100 hours (September 30), Paddock remained inside rooms 32-134 and 32-135.
- At 2311 hours, a room service ticket totaling $102.99 was charged to Room 32-134.

September 30

Overview:
Paddock traveled to Mesquite twice from Mandalay Bay. Paddock placed “Do Not Disturb” signs on both rooms 32-135 and 32-134. Paddock gambled for a couple of hours and brought more suitcases up to his room.

- At 0100 hours, Paddock drove to Mesquite.
- At 0556 hours, Paddock returned to the Mandalay Bay with four suitcases.
- From 1204 to 1215 hours, hotel staff serviced the private minibar of Room 32-134. (Paddock placed the “Do Not Disturb” signs on the room doors after 1215 hours.)
- Between 1300 to 1400 hours, Paddock was asked if he would like rooms 32-135 and 32-134 cleaned. Paddock declined.
- From 1452 hours to 1508 hours, Paddock removed his vehicle from valet and parked in the self-parking garage.
- At 1512 hours, Paddock exited the parking garage elevator with two suitcase rolling bags.
- At 1520 hours, Paddock was seen in a guest elevator with the two rolling suitcases and took them to his room.
At 1952 hours, Paddock drove from Mandalay Bay to Mesquite and arrived at 2057 hours.

October 1

Overview:
From 0206 to 2040 hours, Paddock departed Mesquite and returned to Mandalay Bay. He spent several hours gambling, brought more suitcases to his room, and ordered room service.

- At 0206 hours, Paddock left Mesquite.
- At 0305 hours, Paddock arrived at the self-parking garage at the Mandalay Bay.
- From 0324 to 0734 hours, Paddock walked around the casino and gambled. Paddock used his own and Marilou Danley's player's cards.
- At 0737 hours, Paddock returned to his room.
- From 1222 to 1226 hours, Paddock moved his vehicle from the self-park garage to valet. This valet transaction was the only parking transaction during his stay at Mandalay Bay that was completed in Danley's name.15
- At 1229 hours, a room service ticket was opened for Room 32-134.
- At 1317 hours, Mandalay Bay valet parked Paddock's vehicle in “Garage East”, space #317.16
- At 1337 hours, the room service ticket in Danley's name was closed out for Room 32-134.17 The check totaled $67.60 and included two entrees.
- From 1423 to 1940 hours, the doors for Rooms 32-134 and 32-135 were manipulated multiple times. For example, the doors were opened, closed, and the dead bolt locks were engaged and disengaged several times.

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15 Valet ticket #275274484.
16 This is the same space detectives located the vehicle in after the shooting.
17 Room service ticket #51592684.
From 2040 to 2205 hours, a series of events led up to the mass shooting conducted by Paddock:

- At 2040 hours, a HotSOS alarm was generated for Room 32-129.
- At 2118 hours, the HotSOS call was assigned to Security Officer Campos via his cellphone. Security Officer Campos was assigned five HotSOS calls during the 2118 hours cellphone call. According to interviews of hotel staff, it is common practice to assign HotSOS calls to security officers and then immediately close out the HotSOS tickets prior to a security officers actually checking out the room. Security Officer Campos handled the HotSOS call for Room 32-129 last.
- At 2136 hours, the dead bolt to Room 32-135 was engaged.
- At 2140 hours, Jason Aldean started his performance at the Route 91 Harvest music festival.
- At 2146 hours, the dead bolt to Room 32-134 was engaged.

2146 to 2204 hours

- Security Officer Campos entered the service elevator at 2146 hours and got off on the 30th floor at 2147 hours.
- Security Officer Campos walked to the stairwell in the 100 Wing of the 30th floor and walked up to the 32nd floor.
- Security Officer Campos could not gain entry to the 32nd floor due to the door being barricaded.\(^\text{18}\)
- Security Officer Campos walked up the stairs to the 33rd floor. Security Officer Campos walked down the 100 Wing of the 33rd floor to Center Core. He took a guest elevator to the 32nd floor.
- At 2200 hours, Security Officer Campos exited the guest elevator and walked up the 100 Wing toward Room 32-129. Security Officer Campos checked Room 32-129 and found it was secure. Security Officer Campos walked into the foyer leading to the stairwell and observed the “L” bracket screwed into the door and frame.
- At 2204 hours, Security Officer Campos picked up a house phone located inside the small foyer leading to the stairwell and called security dispatch to report the “L” bracket on the door to the stairs. Security dispatch transferred the call to maintenance dispatch. The maintenance dispatcher then transferred Security Officer Campos to the maintenance supervisor’s cell phone.

\(^{18}\) The investigation would reveal the door leading from the stairwell to the 32nd floor was barricaded by an “L” bracket screwed into the door and the door frame.
From 2205 to 2216 hours, Paddock committed a mass casualty shooting that left 58 people dead and over 800 hundred injured:

**2205 hours**
- Engineer Schuck was contacted by the maintenance dispatcher via his radio.
- Paddock fired two single gunshots into the Las Vegas Village area.
- Paddock fired an undetermined amount of gunshots into the Las Vegas Village area.

**2206 hours**
- Security Officer Campos ended the phone call and hung up the house phone. After hanging up the phone, Security Officer Campos heard what he described as rapid drilling noises.
- Paddock fired approximately 100 rounds into the Las Vegas Village area.
- Security Officer Campos began walking down the 100 Wing toward Center Core.
- Engineer Schuck was told by his supervisor to go to the 32nd floor.
- LVMPD unit 169SE broadcast over the Convention Center Area Command (CCAC) radio channel, “169SE, we got shots fired, 415A at the Route 91. Sounded like an automatic firearm.”
- Paddock fired rounds down the hallway at Security Officer Campos. Security Officer Campos was struck in the left calf with a bullet fragment. He took cover in the alcove between rooms 32-122 and 32-124.19
- Security Officer Campos told his dispatcher via his radio, “Hey, there’s shots fired in, uh, 32-135.”
- Engineer Schuck’s dispatcher told him specifically where to go on the 32nd floor. Engineer Schuck left the 62nd floor and walked to the service elevators with his equipment cart. The service elevators are located in the 200 Wing of the hotel.

**2207 hours**
- Paddock fired approximately 95 rounds into the Las Vegas Village area.
- LVMPD Officers Varsin and Hendrex left the Mandalay Bay Security Office with two armed Mandalay Bay security officers.
- Paddock fired approximately 100 rounds into the Las Vegas Village area.
- Paddock fired approximately 94 rounds into the Las Vegas Village area.

**2208 hours**
- Paddock fired the first round at the fuel tank (missed tank).
- LVMPD CAD Event 171001-3519 was generated for the shooting incident.

**2209 hours**
- Paddock fired the second round at the fuel tank (missed tank).
- Paddock fired the third round at the fuel tank (missed tank).

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19 Information determined through the investigation and contradicts the statement by Campos.
• Paddock fired the fourth round at the fuel tank (missed tank).
• Paddock fired the fifth round at the fuel tank, first strike into the fuel tank (top strike).
• Paddock fired the sixth round at the fuel tank, second strike into fuel tank (lower strike).
  The investigation was unable to determine when the seventh and eighth rounds were fired at the fuel tank.\textsuperscript{20}
• Paddock fired a number of rounds into the Las Vegas Village area.

(McCarran International Airport fuel tank with bullet strikes.)

(Upper bullet strike.)  (Lower bullet strike.)

2210 hours

• Engineer Schuck arrived at Center Core of the 32\textsuperscript{nd} floor and walked up the 100 Wing toward Room 32-135. As he walked, Engineer Schuck heard what he believed to be a jackhammer sound in the distance. Engineer Schuck quickly realized it was automatic

\textsuperscript{20} Sequence determined through audio of Uber video. There were eight .308 casings located inside of Room 32-134.
gunfire. After the gunshots stopped, Security Officer Campos yelled at Engineer Schuck to take cover.

- Engineer Schuck turned and took cover in the alcove between rooms 32-117 and 32-119. Paddock fired rounds down the hallway at Engineer Schuck. He was not struck by gunfire. Engineer Shuck attempted to open Room 32-117 with his master key card; however, the dead bolt lock was engaged, and he was unable to gain entry into the room.
- Engineer Schuck stated over his radio, “Shannon, call the police. Someone’s firing a rifle on the 32nd floor down the hallway.”

2211 hours

- LVMPD officers Varsin and Hendrex arrived at Center Core area of the 31st floor and began walking up the 100 Wing, along with armed security officers from Mandalay Bay.
- Paddock fired approximately 80-100 rounds into the Las Vegas Village area.
- Paddock fired approximately 95 rounds into the Las Vegas Village area.

2212 hours

- Two armed Mandalay Bay security officers exited the guest elevator on the 32nd floor and went to Center Core.
- Paddock fired approximately 80-90 rounds into the Las Vegas Village area.
- Paddock fired an unknown number of rounds into the Las Vegas Village area. LVMPD officers Clarkson and Cook were struck by gunfire during this volley.
- Officer Hendrex and a Mandalay Bay security officer advised over their respective radios they were on the 31st floor and could hear rapid gunfire above them.

2213 hours

- Paddock fired an undetermined number of rounds into the Las Vegas Village area.

2215 hours

- Paddock fired two separate volleys of an unknown number of rounds into the Las Vegas Village area.

2216 hours

- LVMPD officers Varsin and Hendrex, along with Mandalay Bay security officers, made entry into the stairwell on the 31st floor.
2217 hours

- Two LVMPD officers reach the 32nd floor via the guest elevators. Neither officer heard any gunfire after they exited the elevator.

2218 hours

- The heat detection indicator from inside Room 32-135 detected no further readings.

2241 hours

- A Strike Team, which included Sergeant Bitsko, Officer Newton, SWAT Officer Hancock, and Detective Walford ascended the stairs from the 30th floor. The Strike Team made entry and cleared the 31st floor.

2256 hours

- The Strike Team reentered the stairwell from the 31st floor and walked up to the 32nd floor.

2257 hours

- Sergeant Bitsko and SWAT Officer Hancock manually breached the door barricaded with the “L” bracket.

2320 hours

- The Strike Team conducted an explosive breach into Room 32-135 and made entry. The Strike Team reported Paddock was down from an apparent self-inflicted gunshot wound to the head.

2326 hours

- The Strike Team made a second explosive breach from inside of Room 32-135 into Room 32-134 through the connecting doors. Immediately after the explosive breach, an LVMPD SWAT officer negligently fired a three-round burst from his rifle. The rounds fired from the SWAT officer’s rifle struck a chair, an entertainment center/cabinet, and a wall.

After the Strike Team finished rendering rooms 32-134 and 32-135 safe, the scene was secured until investigative personnel arrived and assumed control of the 32nd floor.
Detailed Overview

During the course of the investigation, law enforcement personnel conducted numerous recorded interviews with LVMPD employees, casino employees, and citizens.

Along with the recorded interviews, written voluntary statements were obtained. These consisted of people attending the Route 91 Harvest music festival, people in the area at the time of the incident, and others with knowledge of the events. LVMPD asked employees to document their actions for those involved with the incident.

The following information was taken from witness statements and compiled into a chronological description of the events:

On October 1, 2017, LVMPD had 51 personnel assigned to work special events overtime for the Route 91 Harvest music festival. The personnel staffing consisted of a lieutenant, 5 sergeants, 44 officers, and a civilian. The event had officers staffed from 1300-0100 hours with officers arriving and securing at various times.

The specific assignments for the event were:
- West traffic (a sergeant, 10 officers)
- East traffic (a sergeant, 10 officers)
- Interior entry/gates (a sergeant, six officers)
- Interior early squad (a sergeant, eight officers)
- Interior late squad (a sergeant, eight officers)
- Event coordinator (an officer)
- Command post (an officer, a civilian)

The assignments were supervised by Lieutenant Spencer, who was designated as the incident commander for the festival.

At approximately 2118 hours, Mandalay Bay Security Officer Campos was working his normal duties when he was notified of several HotSOS calls in the 100 Wing tower where he was assigned to monitor. Once an alarm is received, the standard operating procedure for the Mandalay Bay security staff is to call the room and attempt to contact the guest. If there is no answer, a security officer will be sent to check the door. HotSOS calls are common and occur numerous times throughout the day. The security dispatcher will typically close the alarm out once a security officer is assigned. Security Dispatcher Brett Buck notified Security Officer Campos to check several HotSOS calls. Room 32-129 was last on his list to check.

Security Officer Campos was on the 30th floor and en route to Room 32-129 via the stairwell located at the north end of the 100 Wing. Security Officer Campos attempted to enter the foyer from the stairwell and discovered the door was secured and unable to be opened. The doors are to remain unlocked since the stairwell is a fire escape. The door has a handle but no locking mechanism.
Security Officer Campos stated he walked down the stairwell to the 31st floor, entered the hallway, and walked to Center Core. He used the guest elevator to go to the 32nd floor. (Video surveillance showed Security Officer Campos took the stairwell up to the 33rd floor, then took a guest elevator to access the 32nd floor.)

(Door secured by “L” bracket from stairwell and inside foyer.)

Security Officer Campos proceeded directly to the end of the 100 Wing hallway, opened the inner door of the foyer entrance to the stairwell, and observed the “L” bracket screwed into the doorframe and door that opens into the stairwell. He realized this is what kept the door secured. Security Officer Campos utilized the house phone mounted inside the foyer to notify the security dispatcher of the bracket. The information was passed to the engineering section.

(100 Wing hallway from Center Core toward Room 32-135.)
Security Officer Campos hung up the phone, heard what he described as a loud rapid drilling sound coming from Room 32-135. He believed the drilling sounded like it was coming from deep inside the room.

While walking toward Center Core, Security Officer Campos heard gunfire coming from Room 32-135 and ran down the hallway. Security Officer Campos realized he was shot in his left calf as he took cover in the alcove of rooms 32-122 and 32-124. Using both his radio and cell phone, Security Officer Campos advised the security dispatcher he had been shot in the leg with a BB or pellet gun and was injured. He stayed in the alcove while on his phone with the dispatcher waiting for help. Security Officer Campos heard more gunshots coming from inside Room 32-135, but no rounds were coming down the hallway.

As country music performer Jason Aldean performed on stage, LVMPD officers working the interior of the event heard what they described as fireworks going off. Officer Hutchason and Special Events Coordinator Rodriguez, who were in the command post with security personnel, used the video monitors to look for the source of the noise. Upon recognizing the source of the noise to be gunfire, Coordinator Rodriguez directed all officers to change their radios to the Convention Center Area Command (CCAC) radio channel. Coordinator Rodriguez monitored both the Events radio channel and CCAC radio channel throughout the incident.

LVMPD officers inside the Las Vegas Village recognized the sounds were coming from the southwest. Part of the crowd started to move toward the exits. Shortly after hearing the initial
gunfire, LVMPD officers heard the first long burst of described automatic gunfire. Once officers recognized the sound to be gunfire, they immediately searched for the gunman.

Security personnel along with LVMPD officers Hendrex and Varsin were in the security office of Mandalay Bay with two females being detained for trespass. They became aware via the radio of an active shooter call. Security Manager Oelke headed toward the Luxor side of the property when another call came over the radio that a security officer had been shot with a pellet gun in the tower of the Mandalay Bay.22

Security Manager Oelke ran to Center Core guest elevators of the Mandalay Bay and met with security managers Sottile, Umstott, and LVMPD officers Hendrex and Varsin. As they arrived at the elevators, Engineering Supervisor Shannon Alsbury was holding the elevator door open. Engineering Supervisor Alsbury used a key to lock out the elevator and keep it from being stopped by guests trying to get on. There was conflicting information being broadcast on the exact location of the shooter(s), whether it was on the 29th, 31st, 32nd or the 33rd floors. While on the elevator, they decided to check all the floors.

As the door opened on the 31st floor, security managers Oelke and Umstott and LVMPD officers Hendrex and Varsin exited and walked up the 100 Wing upon hearing gunshots coming from an unknown direction. Security Manager Sottile and Engineering Supervisor Alsbury continued to the 32nd floor on the elevator.

At the Las Vegas Village, LVMPD officers observed the crowd move away from the southwest portion of the venue. They believed an active shooter was in that area. As officers moved toward the stage, they heard several more bursts of gunfire. Officers directed citizens to get on the ground as they looked for a gunman. As officers moved through the crowd, they observed several citizens wounded and deceased. Officer Polion advised LVMPD Dispatch of shots fired and multiple casualties. The radio traffic was accidently broadcast on South East Area Command (SEAC) radio channel.

Officers assigned to the venue near Mandalay Bay Drive and Las Vegas Boulevard heard the initial gunshots followed by a long burst of gunfire. Detective Balonek, who was on Mandalay Bay Drive east of Las Vegas Boulevard, believed the gunfire was coming from inside the Las Vegas Village or from an elevated position. He retrieved his binoculars from his vehicle and scanned the north-facing tower of Mandalay Bay. Approximately three-quarters of the way up the tower on the north end, Detective Balonek observed a silhouette of a male standing in a shooting position several feet back from a window. Detective Balonek could not see muzzle flashes; however, he did observe smoke. Detective Balonek could not broadcast on the radio.

22 Security Officer Campos.
due to heavy radio use by other officers, so he switched to the Northeast Area Command (NEAC) channel and broadcast the shooter’s location.

At the same time inside Mandalay Bay, Engineer Schuck was in a room on the 62nd floor, fixing a water leak when he was directed by his radio dispatcher and supervisor to respond to the 32nd floor stairwell in the 100 Wing to remove the “L” bracket that Security Officer Campos had called and reported. Engineer Schuck utilized the 200 Wing service elevator to go down to the 32nd floor. He gathered his tools needed to remove the bracket and walked through the Center Core from the 200 Wing to the 100 Wing. Engineer Schuck walked approximately one-third of the way up the hallway when he observed Security Officer Campos poke his head into the hallway from a space between two rooms on Engineer Schuck’s right-hand side.

Engineer Schuck heard the sound of rapid gunfire coming from the end of the hallway. Security Officer Campos looked out from his position and yelled for Engineer Schuck to take cover. Engineer Schuck immediately took a step to his left into the alcove between two rooms. Gunfire erupted down the hallway toward his direction. Engineer Schuck felt the concussion of the rounds pass where he was taking cover. An unknown object struck him in his back without causing injury other than a small bruise. Engineer Schuck also stated he could see blood coming from Security Officer Campos’ calf area.

Below on the 31st floor, LVMPD officers Varsin and Hendrex, along with security managers Oelke and Umstott, walked up the 100 Wing when they heard gunfire coming from the 32nd floor. As they moved from Center Core toward Room 31-135, several volleys of gunfire could be heard. When they reached the area of Room 31-134, Officer Hendrex instructed everyone to move back. Officers Varsin and Hendrex, along with the security managers moved back and took cover in an alcove. They remained in the alcove for just over two minutes.

After leaving the alcove, they moved to the stairwell at the end of the hall. As they got closer to the stairwell, the gunfire continued, and they smelled gunpowder. They entered the 100 Wing stairwell and posted in that location.

Detective Clarkson, assigned to the event in uniform, was on Las Vegas Boulevard north of Mandalay Bay Drive when he heard the initial shots and radio traffic advising of multiple casualties inside the Las Vegas Village. Detective Clarkson and other officers took cover and began searching for the shooter, believing the shots were coming from the west. As patrol cars and a prisoner transport van arrived at the intersection, Detective Clarkson and other officers moved toward the vehicles for cover with the intention of moving toward Mandalay Bay.

CCAC patrol officers responded to the scene to assist. Officers Cook and Haynes arrived near Las Vegas Boulevard and Mandalay Bay Drive and parked their patrol vehicle. Officers Cook and Haynes moved towards the group Detective Clarkson was with.

As the officers moved behind the patrol vehicles, they started receiving direct gunfire which impacted the ground and patrol vehicles around them. Detective Clarkson received a gunshot wound to the neck while taking cover behind a patrol vehicle. Officer Cook was struck by a bullet in his right bicep that continued into his chest.
While behind the vehicles, officers realized the gunfire was coming from an elevated position and was directed at the patrol vehicles. During breaks in the gunfire, officers moved in teams of two from the patrol vehicle to a block wall for better cover. Detective Clarkson and Officer Cook were both transported to hospitals by separate LVMPD vehicles.

(LVMPD vehicles struck by gunfire.)

As the gunfire continued, officers inside the event moved through the Las Vegas Village and provided direction for people trying to exit. This included the actions of Officer Hartfield who was attending the concert in an off-duty capacity and was mortally wounded while taking police action. Officers located wounded persons, began first-aid measures, and coordinated medical efforts with off-duty medical personnel who were attending the concert.

Officers also directed people towards exits and toward positions of cover and concealment. Exterior officers on the east side of the Las Vegas Village were swarmed by people as they fled the gunfire. Officers directed them to continue east and north as they recognized the gunfire was coming from Mandalay Bay. As officers began to encounter wounded civilians, casualty collection points were set up and first aid was rendered. Officers assisted in getting the wounded to hospitals via ambulances, private vehicles, and patrol cars.

Exterior officers on the west side of the Las Vegas Village along Las Vegas Boulevard encountered people as they fled the venue. Officers knew the gunfire was coming from Mandalay Bay and directed people to stay behind cover and move to the north, away from gunfire. Officers
encountered several wounded people and provided first aid until they could be taken to medical personnel. As officers moved south, they formed Strike Teams and moved toward the Mandalay Bay.

Sergeants Richmond, Riddle, and Van Nest each formed Strike Teams, consisting of overtime officers and patrol officers who responded the venue. The Strike Teams moved west across Las Vegas Boulevard and into the parking lot of the Luxor Hotel, then south onto the Mandalay Bay property. Upon entering Mandalay Bay, Strike Teams coordinated efforts with other LVMPD officers and security personnel already inside the casino.

As Strike Teams entered the hotel through the main valet, they met hotel security and were directed to the Center Core guest elevators. Each group was given information the shooter was possibly on the 29th, 30th, or 31st floors, and they were escorted via elevator. After each group of officers were taken to the upper floors, they instructed the hotel security guards to lock out the elevators. A Strike Team, which included two SWAT officers, was taken to the Foundation Room located on the top floor. Once inside the bar, officers evacuated occupants to a safe location and cleared the area.

On the 32nd floor, Security Officer Campos and Engineer Schuck were still pinned down in the hallway. Engineer Schuck heard another round of rapid gunfire and believed it was being fired toward the outside of the building. During a small break in the gunfire, Engineer Schuck and Security Officer Campos ran from their position back towards Center Core. Engineer Schuck was checked for injuries by Engineering Supervisor Alsbury who arrived on the 32nd floor with armed Mandalay Bay security officers. Engineer Schuck stated the gunfire continued for several long rapid volleys with short breaks between. He described the breaks in fire lasting only 5 to 6 seconds before the gunfire would continue.

As LVMPD officers arrived on the 32nd floor they proceeded down the 300 Wing. Officers made entry into rooms and searched for occupants. Engineer Schuck redirected the officers to the 100 Wing where the shooting occurred. The sound of gunfire had ceased. The officers transitioned from active shooter protocol to barricaded subject protocol and began slowly and methodically evacuating guests from their hotel rooms.

After hearing the update of the shooters location, SWAT Officer O'Donnell and two patrol officers left the Foundation Room and responded to the 32nd floor. Upon exiting the elevator, they encountered several officers already on the floor. The officers moved up the hallway toward the suspect’s room.

Engineer Schuck locked out the elevators to keep guests from ascending the tower.

Police personnel on the 32nd floor included a sergeant, a SWAT officer, officers assigned to work the Las Vegas Village, and responding officers from various area commands. As occupants were evacuated from their rooms, they were moved to the elevator bank and down the tower. Officers discovered a small infant alone in one of the rooms. As evacuations continued, the nanny for the infant was located in a room across the hall and reunited with the child. The officers stopped evacuations approximately two-thirds of the way up the hall.
At the Las Vegas Village, officers encountered people who were hiding in multiple locations and evacuated them. Additional teams of officers arrived and swept the remaining areas of the Las Vegas Village. Once evacuations were completed, the scene was secured.

SWAT Officer Hancock, along with Sergeant Bitsko and Officer Newton, went to the 31st floor and ascended the stairs to the 32nd floor. In the stairwell, they met with LVMPD Officers Hendrex and Varsin and Mandalay Bay security personnel. SWAT Officer Hancock attempted to open the first of two doors to enter the hallway but could not due to the “L” bracket. (‘L’ bracket after the door was manually breached.)

SWAT Officer Hancock and Sergeant Bitsko manually breached the inner door leading to the foyer of the 32nd floor. Once in the foyer, the door leading to the 100 Wing hallway was cracked open enough to see the doors to rooms 32-135 and 32-134. Both doors were closed, and a room service cart was located in front of Room 32-134. A white tablecloth was draped over the service cart with various items on top of the tablecloth. Officers observed wires leading from the service cart to Room 32-134 and believed the suspect may have set an IED.
A decision was made to enter Room 32-135 utilizing an explosive breach and the other officers in the area were notified. No gunfire had been heard from the suspect’s room for approximately 40 minutes. Officers decided entry was necessary to the room to determine if the suspect was still inside and to stop any further shooting. SWAT Lieutenant Huddler was advised by SWAT Officer Hancock that the door to Room 32-135 was going to be breached using explosives. Officer Newton stepped into the hallway and utilized a ballistic shield to provide cover for SWAT Officer Hancock as he set the breach on the door while Sergeant Bitsko covered the door to Room 32-134. Sergeant Bitsko observed a camera on the food service cart in the hallway. He covered the camera and turned it away from the doorway while SWAT Officer Hancock hung the explosive on the door to Room 32-135. Once the charge was hung on the door, the officers returned to the stairwell.
The approval for the breach was given by SWAT Lieutenant Huddler. The officers were notified over the radio that the door to Room 32-135 was going to be breached and to take cover. Sergeant Bitsko utilized the ballistic shield to keep the door, from the foyer to the hallway, open in case the explosion damaged it. SWAT Officer Hancock observed approximately 12 officers in the stairwell behind him. He designated those who would be make entry into the suspect’s room, the other officers would be a Downed Officer Rescue Team.

The entry team consisted of Sergeant Bitsko, Officer Newton, SWAT Officer Hancock, and officers Donaldson, Trzpis, and Walford. Officers Burns and Thiele were assigned to post at the door upon the team’s entry to guard the hallway. The explosive breach was made into Room 32-135 and broadcast over the radio. The officers opened the stairwell door far enough to see the doorway to Room 32-135. They observed the breach was successful. Inside the room, they observed a rifle with a scope and bipod on the floor just inside the door. The officers waited for approximately 30 seconds before leaving the stairwell to see if there was any reaction from the suspect.

Moving slowly and methodically, Officer Newton entered first into the hallway with the shield followed by the officers from the stairwell. SWAT Officer O’Donnell and Officer Magsaysay joined the Strike Team as they entered the suspect’s room.

From behind the shield, the Strike Team entered into Room 32-135. The team split into two teams. Team 1 went left into a bedroom and cleared it. Team 2 went right, encountered the suspect lying on the floor and relayed that information. After clearing the bedroom, Team 1 held at the doorway into the main living area.

Team 2 encountered Paddock lying on his back on the floor. A small frame revolver was observed on the ground above Paddock’s head. Apparent blood was located on the revolver, and a pool of blood had formed around Paddock’s head. The officers believed Paddock had a self-inflicted gunshot wound. The large window at Paddock’s feet was broken out, and the curtain was blowing into the room. On the floor next to Paddock’s feet was a small sledge hammer, and Paddock was laying on top of a rifle. The officers also observed numerous rifles, shell casings throughout the living area, and several loaded magazines.

Team 2 continued through the living area to the right and encountered a locked door leading to the connecting Room 32-134. Team 1 moved through the living space up to Team 2. SWAT Officer Hancock and Officer Walford attempted to kick the door open but determined it was a solid wood door inside a metal frame. It was decided a second explosive breach was needed to gain entry into the connecting room.

SWAT Officer Hancock breached the door. Immediately following the explosive breach SWAT Officer O’Donnell had an unintentional discharge of a three-round burst from his rifle. Officers in the hallway heard the shots fired and broadcast shots had been fired inside the room. Officers flooded into Room 32-134 through the breached adjoining connector door.
As Room 32-134 was cleared several rifles were found inside the room. A small hallway separated the main area of the room from the bathroom and main door. Another food service cart draped in a white tablecloth was in the hallway. A laptop computer was on the cart and showed a live feed of the hallway. Inside the room, one of the large windows was broken out.

Both rooms were searched a second time to ensure a person was not hiding under any furniture. Several suitcases were observed throughout the rooms. Many of the suitcases contained loaded magazines. Officers observed a camera attached to the peephole on the main door of Room 32-135.

Sergeant Matchko was in the hallway and entered the rooms once they were cleared. Along with officers still in the room, Sergeant Matchko secured the crime scene. Sergeant Matchko was contacted by the command post and directed to locate any information in reference to Paddock. Sergeant Matchko told officers to look throughout the room in an attempt to locate any cell phones or identification for Paddock. These items were located, as well as several room keys and player cards in the name of Paddock and Danley. Pictures of the items were taken and sent to the command post as ordered. The officers rolled Paddock onto his side to check his pockets for identification but found none. After the search for identification was completed, the officers exited and secured the room.

Outside, officers cleared the Las Vegas Village, multiple reports of active shooters along Las Vegas Boulevard at various hotel properties were broadcasted. Various officers joined Strike Teams and left to address those reports. As the active shooter reports were cleared and determined to be unfounded, officers assigned to the Las Vegas Village returned to the command post.

Officers assigned to the Las Vegas Village remained on post until they were relieved the next morning. Officers maintained the security of the Las Vegas Village and the 32nd floor of the Mandalay Bay crime scenes as detectives and crime scene analysts responded and began the investigation.

**Interview Summaries**

The following are interview summaries of key witnesses. Although numerous interviews were conducted after the attack on October 1, not all interviews conducted are summarized in this report. The summaries are not verbatim.

**Civilians**

**Shane Calloway (Valet Attendant)**

On October 4, at approximately 1218 hours, detectives DeAngelis and Downing conducted an audio recorded interview with Shane Calloway inside the Mandalay Bay. Below is a summary of the interview.
On October 1, at approximately 1226 hours, Calloway was working in valet when Paddock arrived in his Chrysler van. Calloway approached Paddock’s van to welcome him. Paddock was alone in the van and Calloway asked Paddock if he was checking in. Paddock stated he already had a room and started to give Calloway the room number. Calloway stopped Paddock by telling him he only needed the name on the room. Paddock stated the room was under Marilou Danley’s name.

Calloway stated nothing stood out in reference to Paddock’s behavior and did not remember seeing him with any bags. The only thing Calloway thought was strange was the fact Paddock checked his vehicle in under Danley’s name.

Jesus Campos (Security Officer)

On October 4, at approximately 1255 hours, detective Penny conducted an audio recorded interview with Jesus Campos inside the Mandalay Bay. Also present was his union Representative. Below is a summary of the interview.

Campos is an unarmed security guard for the Mandalay Bay and was working his shift. Campos stated at approximately 2200 hours, he was advised by his dispatch to check a HotSOS alarm. The alarm location was Room 32-129. Campos went to the floor using the stairwell at the end of the tower. Upon reaching the 32nd floor, he was unable to open the door from the stairwell, which was unusual.

Campos stated he walked down to the 31st floor and came back to the 32nd from the elevator. Campos walked directly to the stairwell door which is next to Room 32-135. Upon opening the hallway door to the stairwell, he saw the secondary door leading to the stairs was secured with a metal bracket. He contacted his security dispatch, inquired about it and was told to contact maintenance. Campos was told by maintenance they knew nothing about it.

While Campos was standing at the stairwell doors, he started to hear an industrial drill sound coming from inside Room 32-135. Campos walked from that location toward Center Core of the floor and stated he was near Room 32-129 when he heard gunfire behind him. As Campos started running, he was struck in the left calf. Campos hid in the alcove of rooms 32-121 and 32-123 as he broadcast over the radio and called into his dispatch reporting gunfire and that he was shot.²³ Campos stated the gunfire was coming from Room 32-135. As Campos hid, he heard more gunfire coming from up the hall.

Campos stated three armed security officers were sent to his location. While in the hallway, he started hearing more gunfire which he believed lasted about 10 minutes. He believed the gunfire was being directed outside. Campos waited until he did not hear any more gunfire from the room before he decided to run to Center Core.

As Campos arrived at Center Core, he made contact with four Metro officers. Campos gave them information about the location of the shooter. He told the officers the suspect was shooting

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²³ Determined to be rooms 32-122 and 32-124 during the investigation.
through the peephole. Campos then went to the lower level of the hotel and received medical attention.

Campos stated when checking the stairwell door, he did not remember seeing a room service cart in the hallway outside of Room 32-135. He also stated while pinned down, he never peeked out and looked in the direction of the room for fear of being shot. Campos did not leave the alcove until after the gunfire stopped. The only suspicious noise he heard from Room 32-135 was the drilling.

Campos did not see the suspect (Paddock) during the incident.

**Daniel Cruz (Valet Attendant)**

On October 3, at approximately 1959 hours, detectives DeAngelis and Downing conducted an audio recorded interview with Daniel Cruz inside the Mandalay Bay. Also present for the interview was MGM Attorney Ashley Eddy. Below is a summary of the interview.

On September 26, Cruz was working in valet. Paddock arrived in a van, and Cruz greeted him. Cruz stated he knows Paddock because he is a regular at the Mandalay Bay and always tells the valet attendants his name is “Stephen with a PH Paddock.” Cruz was not 100% sure if Paddock was by himself. Cruz described Paddock as a friendly guy who usually tipped five dollars.

Cruz stated he was working on Friday, September 29, and saw Paddock in the valet area standing next to his vehicle with a short Asian female. Cruz believed Paddock was drunk, and the Asian female was happy and nice. Cruz asked Paddock where he was coming from and he replied, “That concert across the street.” Paddock gave Cruz five dollars and Cruz left. Cruz stated he was 100% sure it was Paddock and he was 100% sure it was Friday because he took Saturday (September 30) off. Cruz could not remember what Paddock or the Asian female were wearing, and nothing “stuck out” from his interaction with Paddock.

On October 5, at approximately 1046 hours, detectives DeAngelis and Downing along with MGM Attorney Ashley Eddy interviewed Cruz a second time. Detective DeAngelis explained to Cruz that they wanted to question him again reference the interaction he had with Paddock on Friday, September 29. Detective DeAngelis told Cruz he had some time to think about it, referring to the last interview, and then asked Cruz if he was “100% positive what you told us or has anything changed.” Cruz replied, “No, it’s the same.”

Cruz explained he wasn’t sure if the female with Paddock was Danley, but Paddock was with an Asian female. The female was driving the vehicle, and Paddock was the passenger. As Cruz explained how they were in the vehicle when he observed them, an unknown female interrupted the interview with detectives and the interview and recording stopped.24

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24 The interview was stopped due to an interruption and resumed shortly after.
At approximately 1049 hours, the interview with Cruz continued with the same persons present. Cruz continued to explain how he interacted with Paddock who was possibly drunk and how the Asian female was laughing.

Detective DeAngelis asked Cruz if he knew a guy named Phil Torres. Cruz stated he knew him and that Torres was a baggage handler. Detective DeAngelis asked Cruz if he saw Torres on that night (September 29) and Cruz responded, “Um, I don’t even know.” Detective DeAngelis explained to Cruz that he interviewed Torres and Torres told Detective DeAngelis he saw Paddock on the night of September 29. Torres stated Paddock was alone and not drunk. Detective DeAngelis explained they were having a difficult time finding a recorded video surveillance file of the interaction Cruz was describing on video.

Detective DeAngelis asked Cruz if it could have been a mistake in identity reference seeing Paddock on September 29. Cruz stated it could have been a mistake in identity, and he was only “50/50, 50%” sure that it was Paddock. Eddy asked Cruz how much the tip was that he received from the “individual.” Cruz stated it was a couple dollars. Detective DeAngelis asked Cruz if he ever referred to Paddock by his name when he spoke with him, and Cruz responded, “No-no.” Detective DeAngelis asked Cruz what the Asian female looked like, and Cruz responded, “Asian.” Cruz then described her as being approximately 4’11” to 5’2” with dark hair.

Note: Throughout the investigation detectives were not able to corroborate Cruz’s story. None of the surveillance video showed the interaction between Paddock and Cruz. Detectives have evidence that shows Paddock arriving alone at the Mandalay Bay valet on September 28, at approximately 2146 hours and not leaving the property until September 30, at 0100 hours.

Suzanne Curry (Room Service Attendant)

On October 3, at approximately 1651 hours, detective DeAngelis conducted an audio recorded interview with Suzanne Curry inside the Mandalay Bay. Also present for the interview was Detective James Downing. Below is a summary of the interview.

Suzanne Curry has been an employee of the Mandalay Bay since its opening. On October 1, Curry worked as a room service attendant and was given check #51592684, to take to Room 32-124. Curry knocked on the door, which was answered by a male, who was later identified as Paddock. The name on the ticket was Danley, and Curry addressed him as Mr. Danley (which he did not correct). Curry stated that Paddock did not appear to want to talk or engage in conversation. While inside the room, Curry did not notice anything out of the ordinary or suspicious. She also did not notice any other people inside the room or signs that another person was in the room with him.

Myrna Gamboa (Guest Room Attendant)

On October 4, at approximately 1707 hours, detectives DeAngelis and Downing conducted an audio recorded interview with Myrna Gamboa inside the Mandalay Bay. Also present for the interview was MGM Attorney Ashley Eddy and Mandalay Bay employee Catherine Kaufman to assist with language translation. Below is a summary of the interview.
Detectives asked Gamboa if she worked on Wednesday September 25. On that day, Gamboa went to Room 32-135 due to the guest (Paddock) requesting five extra towels. Upon going to the room and knocking on the door, Paddock answered the door and allowed her to enter. While in the room, he requested a new mini refrigerator and cleaning of the room due to a previous guest leaving food items in the refrigerator.

While cleaning the room, Gamboa saw luggage in the main suite area which consisted of approximately five bags, maybe more. After cleaning the main suite, Paddock asked for new linens on the bed. While changing the linens, Gamboa did not see any luggage in the bedroom. While there, room service delivered food to Paddock.

Gamboa stated Paddock would stare at her while she cleaned, and he asked her on two occasions if she was okay. She stated Paddock was the only person in the room. She observed an open laptop surrounded by papers on a table, but she never saw any guns or bullets.

On October 13, at approximately 1613 hours, Detective Hodson conducted a second audio recorded interview with Gamboa at the Mandalay Bay. Also present for the interview was an FBI agent and Mandalay Bay employees Ryan Yanagi, Perlette Jura and Andrew Harlett. Below is a summary of the interview.

Gamboa stated on September 25, she went to clean Room 32-135. The guest (Paddock) only wanted the bathroom cleaned and bed sheets changed. Gamboa did not see any trash to be taken out nor did she remove any trash from the room. While in the room, Paddock was on a laptop computer until room service arrived. As Paddock ate, he continued to watch Gamboa.

Gamboa did not see any other guests in the room. The only bags she saw were neatly stacked up. Gamboa only cleaned the room on this date.

**Antonio Hernandez (Guest Room Food Server)**

On October 3, at approximately 1737 hours, detectives DeAngelis and Downing conducted an audio recorded interview with Antonio Hernandez inside the Mandalay Bay. Below is a summary of the interview.

Hernandez worked as a food server on September 27, at approximately 1700 hours, when he received a service ticket to deliver food to Room 32-135. Hernandez stated Paddock opened the door to the room. Hernandez asked him, “How are you? How’s your day going?” but Paddock did not answer him.

Hernandez walked into the room, past the bar, and asked Paddock, “Where you want me to put your order?” He replied, “No, just leave it here.” Paddock tipped him ten dollars and Hernandez left.
Hernandez stated he did not see anything suspicious inside Room 32-135, including bags, computers, etc. Hernandez stated the service ticket was for two people; however, Paddock was alone inside the room.

**John Holdridge (Guest Room Attendant)**

On October 4, at approximately 1208 hours, detectives DeAngelis and Downing conducted an audio recorded interview with John Holdridge inside the Mandalay Bay. Below is a summary of the interview.

Holdridge stated on September 29, he received a call to “freshen” Room 32-134 because the occupant (Paddock) stated he smelled something. Upon going to the room, Holdridge stated there was no one inside. While inside the room, Holdridge put out air freshener. He did not see any luggage or clothing in the room, and the adjoining door, between rooms 32-134 and 32-135 was closed. Holdridge did not hear any noises from Room 32-135 and never saw or had contact with Paddock.

**Gerard Killeen (Bellman)**

On October 3, at approximately 1518 hours, Detective DeAngelis conducted an audio recorded interview with Gerard Killeen inside the Mandalay Bay. Below is a summary of the interview.

On September 26, at approximately 2247 hours, Killeen received a run ticket to deliver luggage. Killeen stated he took the luggage cart by himself to a room (32-135). Upon arriving at the room, Killeen knocked and the door was answered by a male (Paddock). Killeen propped the door open with a door stop and brought the luggage cart into the room.

Killeen stated as he unloaded the luggage cart, Paddock helped him remove items, which was not unusual. Killeen stated there was luggage on the cart as well as some non-luggage items (possibly a box). While unloading, none of the items Killeen moved were particularly heavy.

While in the room, Killeen only saw Paddock, and the brief conversation with him was not unusual.

**Eun Kyung (Sushi Bar Employee)**

On October 4, at approximately 1306 hours, detectives DeAngelis and Downing conducted an audio recorded interview with Eun Kyung inside the Mandalay Bay. Below is a summary of the interview.

On September 29, at approximately 1330 hours, Kyung was working at the sushi bar when Paddock arrived at the restaurant. Kyung stated Paddock sat at a table alone and ordered two rolls and a glass of water. Kyung knows Paddock by face and name due to Paddock frequenting the sushi bar in the past.
Kyung stated Paddock charged his bill to his room and tipped her in cash. While at the restaurant, he did not talk to anyone or use his cell phone. He only sat at the table and watched TV.

**Paul Lacomb (Security Officer)**

On October 11, at approximately 1457 hours, Detective Hodson conducted an audio recorded interview with Paul Lacomb inside the Mandalay Bay. Also present for the interview was Mandalay Bay representative Howell. Below is a summary of the interview.

Lacomb works as an armed security guard and has worked at Mandalay Bay for three years. On October 1, at approximately 2200 hours, he responded with his partner Miguel Sanchez to another security officer who was shot with a pellet gun or BB gun on the 32nd floor of the hotel. As they were on their way to the elevator, he heard over the security radio channel that there was an active shooter at the festival lot across the street.

Once they arrived on the 32nd floor, Security Officer Campos was running toward them as they entered Center Core from the elevators. Lacomb saw that Security Officer Campos had a small wound to his calf that appeared to have been caused by a BB gun or pellet gun. The wound was just dribbling a little bit of blood and appeared to have stopped bleeding. He stated that it only took them 3 to 4 minutes to respond to the 32nd floor from when they were first dispatched.

Lacomb heard numerous shots being fired from the end of the hallway. The shots were coming from a room near the end of the hallway but were not coming towards Center Core.

A few minutes after Lacomb arrived, LVMPD officers arrived on the floor. Lacomb stayed at Center Core to assist with whatever police needed. He was on the floor for over 11 hours until relieved and never went down to the suspect’s room.

**Kevin Monaghan (Wynn Casino Host)**

On October 7, at approximately 1531 hours, Detective Jex conducted an audio recorded interview with Kevin Monaghan at the Wynn Corporate Security Offices. Also present for the interview was Detective Sergeant MacDonald, an FBI special agent, and Wynn Attorney Donald Jude Campbell. Below is a summary of the interview.

Monaghan is employed as a casino host for the Wynn Las Vegas. Approximately 5 to 6 years ago, Paddock was assigned to him when another host left the company. During his first encounter with Paddock, Monaghan stated Paddock seemed to be an introvert, did not have a girlfriend, and really enjoyed gambling. Paddock was described as a “high-end roller.”

Over the years, Paddock never asked for anything out of the ordinary. Monaghan described him as an easy going customer, would always pay his markers on time, and never complained. For the first few years, Paddock was always alone when he came to the casino.
Approximately 3 years ago, Monaghan met Danley who Paddock introduced as his girlfriend. From that meeting forward, Paddock and Danley would come to the hotel together and gamble. Monaghan never saw anyone else with Paddock or Danley at the hotel.

During the time Monaghan knew Paddock, there was never any conversations about guns, explosives, politics, or current events. The last time Monaghan saw Paddock and Danley was August 2017 when they came to the hotel for a slot tournament.

**Jorge Morales (Bellman)**

On October 6, at approximately 1705 hours, Detective Patton conducted an audio recorded interview with Bellman Jorge Morales inside the Mandalay Bay. Also present for the interview were two FBI special agents and MGM Attorney Ashley Eddy. Below is a summary of the interview.

Morales has been a bellman at the Mandalay Bay since the day it opened. He works Friday through Tuesday from 1400 to 2200 hours.

On September 25, Morales was working his shift and received a service ticket from the registration desk to escort Paddock and his bags to Room 32-135. Morales remembered Paddock from past stays but didn't know anything specific about him. Morales introduced himself to Paddock and confirmed the room as 32-135.

Paddock requested to stay with his bags and use the back elevators or service elevators. Morales stated Paddock's request to use the service elevators was not unusual. He explained it's not uncommon for VIP guests to be escorted through the service elevators.

Paddock had regular luggage bags with him and nothing was unusual. The bags were on the service cart, and Paddock rolled one bag himself. Morales asked Paddock if he wanted to walk in front of him and he said, "No." Paddock followed Morales to the service elevators which run in the 200 Wing of the hotel. When they arrived on the 32nd floor, Paddock followed Morales to Room 32-135, which was located in the 100 Wing of the hotel.

When they arrived at the room, Morales asked Paddock if he would like him to take his bags to the back of the room. Paddock responded, "No, just leave them here" (at the front entry way of the room). Morales asked Paddock if he could get him anything for the room like ice or any directions, and Paddock said, "No." Morales stated Paddock was quiet and polite, nothing out of the ordinary, pretty low key, and normal.

When Morales removed the bags from the cart, the bags were normal weight, not lighter or heavier than usual, and Paddock did not react to Morales handling the bags. Paddock gave Morales a tip, and he left.

Morales was asked if he had any other contact with Paddock, and he replied, "No."
Michael Oelke (Assistant Security Manager)

On October 11, at approximately 1556 hours, Detective Hodson conducted an audio recorded interview with Assistant Security Manager Michael Oelke. Also present for the interview was an FBI special agent and MGM Attorney Ashley Eddy. Below is a summary of the interview.

Oelke stated he has worked for the Mandalay Bay for 12 years and is an assistant security manager on swing shift. On October 1, at approximately 2200 hours, officers had two females in custody in the security office of the building. They had requested an LVMPD patrol unit to assist with the trespass.

Officer Hendrex and his trainee (Officer Varsin) arrived and began to write the females citations. During that time, security dispatch reported a possible active shooter at the Luxor, then changed it to the Route 91 Harvest music festival.

The two LVMPD officers, security officers Oelke, Umstott, and Sottile also responded. While heading across the casino floor, they received information over their security radios that a security officer had been shot in the leg with a pellet gun on the 32nd floor.

They received information that the shooter was on the 31st floor and they exited the elevator on this floor. Oelke stated they were walking up the 100 Wing of the 31st floor from Center Core when he heard automatic gunfire. He described three breaks in the gunfire from what he believed was an automatic rifle. The tones of gunfire sounded different to him and that one of the volleys sounded like a higher powered rifle than the others.

As they arrived at the entrance to the stairwell from the 31st floor, the last volley of gunfire was occurring. The gunfire stopped, and he then heard a single gunshot, which sounded like it came from a handgun.

Oelke stated Officers Hendrex and Varsin, along with the security officers eventually entered the stairwell several minutes after the shooting stopped. They held up outside the 32nd floor entrance to ensure that the shooter could not escape down the stairwell.

Oelke stayed there with Officers Hendrex and Varsin until SWAT officers arrived and relieved them. He said he never entered the suspect’s room after police officers breached the room and cleared it. From the doorway, he observed the front part of the suite and could see numerous shell casings and a rifle with a bipod on the floor.

Alan Rautenberg (Wynn Casino Host)

On October 7, at approximately 1621 hours, Detective Jex conducted an audio recorded interview with Alan Rautenberg at the Wynn Corporate security offices. Also present for the interview was Sergeant MacDonald, an FBI special agent, and Wynn Attorney Donald Jude Campbell. Below is a summary of the interview.
Rautenberg is the vice president of player development at the Wynn Las Vegas. He stated he recognized Paddock’s photo from the news to be a frequent player at the casino with high roller status.

He believed he has seen Paddock and Danley in the casino in the past but had never had any direct contact with either of them. He also said that outside of recognizing him as a frequent player, he knew nothing about either Paddock or Danley.

**Miguel Sanchez (Security Officer)**

On October 11, at approximately 1632 hours, Detective Hodson conducted an audio recorded interview with Miguel Sanchez. Also present for the interview was an FBI special agent, and MGM Attorney Ashley Eddy. Below is a summary of the interview.

Sanchez has worked for the Mandalay Bay for approximately three years and was working as an armed bike security officer on October 1. He was working the arena dock area at the end of his shift, when he heard over his security radio that there was a shooting at the Route 91 Harvest music festival. He rode toward the festival when he was dispatched to respond to the 32nd floor where a security guard had been shot with a pellet gun.

Sanchez took the elevator up to the 32nd floor with his partner, Security Officer Lacomb. When they exited the elevator, he heard automatic gunfire coming from one of the rooms at the end of the 100 Wing. Security Officer Campos was still down the hallway when Sanchez heard the automatic gunfire. He heard two to three pauses between long volleys of automatic gunfire. During one of the pauses, Campos ran quickly down the hallway toward them.

Sanchez stated LVMPD officers arrived approximately five minutes after he and his partner had arrived on the floor.

Sanchez was ordered by an LVMPD sergeant in plain clothes to start clearing the rooms on the wings of the 32nd floor. Sanchez never saw the suspect or entered the room at any point.

**Stephen Schuck (Engineer)**

On October 6, at approximately 1730 hours, Detective Patton conducted an audio recorded interview with Engineer Stephen Schuck inside the Mandalay Bay. Also present for the interview were two FBI special agents and MGM Attorney Ashley Eddy. Below is a summary of the interview.

Schuck was an apprentice engineer at the Mandalay Bay and employed there since May 2017. Schuck was on the 62nd floor fixing a water leak, when he received calls from his dispatcher and supervisor to respond to the 32nd floor. Schuck was told a security officer (Jesus Campos) found the fire door in the 100 Wing screwed shut.
Schuck left the 62nd floor and entered the service elevators which are located in the 200 Wing of the hotel. Schuck took the elevator to the 32nd floor. When Schuck exited the elevator he moved his service cart into the hallway, grabbed his tools, and walked down the hallway. Schuck walked up the 100 Wing, and he saw someone (Campos) poke their head out into the hallway. Schuck didn't think anything of it because guests do that all the time. Schuck made it approximately 50 or 60 yards when he heard automatic gunfire. He originally thought the sound was possibly a jackhammer.

When the shooting noise stopped, Campos popped out from the right side of the hallway and told Schuck to get cover. Schuck jumped into the alcove of rooms 32-117 and 32-119. As Schuck faced the door, gunshots came down the hallway, and he felt something hit his back. Schuck believed he was shot, but he later learned a piece of the wall struck him. Schuck tried to open one of the doors with his master key, but the door was dead bolted. Schuck yelled over his radio, “Shots fired! Shots fired! Shannon get the police, do not come down the hallway, he’s shooting down the hallway!”

Schuck observed Campos two or three doors ahead of him and noticed Campos was shot in the leg. He didn’t know if Campos could walk or not. After the shooting stopped, he ran down the hallway. He believed more shots were going to be fired down the hallway so he jumped in front of another door. As that happened, Schuck heard another volley of gunshots. He stated the sound of gunshots were so loud he couldn’t tell if they were coming down the hallway or somewhere else.

When the shooting stopped, Schuck again ran down the hallway. As he ran, Schuck observed another security guard arriving in the 100 Wing near Center Core. Schuck told the security guard to get out of the hallway. They stayed at Center Core as the gunfire continued for two to three minutes.

Schuck was attending to Security Officer Campos’ leg and heard noises coming from the 300 Wing. Schuck looked down the 300 Wing and observed police officers kicking in doors. Schuck yelled at the officers and told them the shooter was in the 100 Wing.

The shooting had stopped by the time police officers ran down the 300 Wing and met Schuck at Center Core. Schuck’s supervisor arrived at that time. Schuck’s supervisor gave him a master key and told Schuck to take the elevator down to the beach level and turn off the guest elevators. After Schuck locked out the elevators, his supervisor called him over the radio and advised him to return to the 32nd floor because the police officers needed the master key. Schuck ran through the lobby of the hotel and took the service elevator back to the 32nd floor where he returned the master key to his supervisor.

At this time, guests exited their rooms. Schuck attempted to keep them in their rooms. Approximately 20 minutes later, an LVMPD officer asked Schuck to get the information of the person in Room 32-135. Schuck asked for the information over his radio. A security officer standing next to Schuck wrote down the information and gave it to police.
Schuck stayed on the 32nd floor until after SWAT breached the door to Room 32-135. He assisted directing guests when officers evacuated them from their rooms. He assisted SWAT officers by describing the layout of the rooms and floors. Schuck stated he knew he could have left at any time but he wanted to help the guests and LVMPD.

At approximately midnight, Schuck’s supervisor told him to put his tools away. Schuck eventually made it to his manager’s office and waited there until approximately 0700 hours.

Anthony Sottile (Security Operations Manager)

On October 12, at approximately 1156 hours, Detective Hodson conducted an audio recorded interview with Anthony Sottile. Also present for the interview was an FBI special agent and Mandalay Bay representative Dana Howell. Below is a summary of the interview.

Sottile stated he is the security operations manager at the Mandalay Bay. At approximately 2100 hours, he and his security officers located and identified two females who had been previously trespassed from the property. They took the females to the security office. They requested LVMPD officers to complete citations of the females in custody. At approximately 2140 hours, Officers Hendrex and Varsin arrived at the security office.

At approximately 2200 hours, Sottile heard reports of a shooting call over the LVMPD officer’s radio. He left the security office with the two LVMPD officers and his two employees, George Umstott and Michael Oelke. They start walking through the casino floor to assist in locating the possible shooter across the street at the Route 91 Harvest music festival. While en route, he heard over his radio that a security officer was shot on the 32nd floor.

After learning about the injured security officer, he entered the elevator with the LVMPD officers and security officers to go to 32nd floor. On the way up the tower, he received information over the Mandalay Bay radio channel that the shooting was coming from the 31st floor.

Sottile stated the female LVMPD officer (Varsin), along with Umstott and Oelke, exited on the 31st floor. Sottile continued to 32nd floor and believed Officer Hendrex was with him at the time but doesn’t remember exactly who was there. Sottile stated he heard consistent gunfire for approximately two minutes after he exited the elevator.

He stated other LVMPD units arrived on the floor within three to four minutes of him arriving on the 32nd floor. The officers took positions in the hallway and evacuated guests on the floor.

At approximately 2230-2240 hours, SWAT officers arrived and breached the room from the stairwell located next to Room 32-135. He heard the room was clear after a few minutes. He assisted in evacuating the rest of the rooms on the 32nd floor to include the 200 and 300 wings. Sottile went to the casino floor and worked on evacuating the rest of the property.

Note: Sottile’s account varies from the other statements where he says Officer Hendrex exited the elevator with him on the 32nd floor. It was confirmed, through body camera footage from Officer Varsin that Officer Hendrex exited the elevator on the 31st floor with her, Michael Oelke.
and George Umstott. This was also consistent with the statements obtained from Varsin, Oelke and Umstott.

**Phillip Torrez (Baggage Handler)**

On October 3, at approximately 1518 hours, Detectives DeAngelis and Downing conducted an audio recorded interview with Phillip Torrez inside the Mandalay Bay. Also present for the interview was MGM Attorney Ashley Eddy. Below is a summary of the interview.

On September 26, Torrez was working and came in contact with Paddock while helping with a luggage cart. Torrez could not remember in detail what baggage was on the cart, but he thought there were duffel bags. After loading the cart, Paddock requested to be taken to his room with his luggage. The normal protocol is a guest will be given a ticket and, upon getting to their room, the guest will call and have the luggage delivered.

When Paddock requested to go with his luggage, Torrez stated he does this for guests to expedite them, and it’s not unusual. While walking to the service elevator with the luggage cart, Torrez had casual conversation with Paddock. Paddock stated he had family coming to town and some of the luggage belonged to them. Torrez said the conversation was carefree, and Paddock was very pleasant. Upon reaching the service elevator, Torrez said Gerard (Killeen) took over. Torrez did not see Paddock the rest of his shift.

On September 29, Torrez was working and was called over by Valet to help a guest. Upon walking over, Torrez recognized the guest to be Paddock and possibly shook his hand. Paddock requested Torrez take him upstairs. Torrez stated he would request a bellman to help. During this encounter, Paddock was alone and had luggage items on a cart. Torrez escorted Paddock to the service elevator where he believed to have met bellman Jorge (Morales).

*Note: Throughout the investigation, detectives were not able to corroborate Torrez’ story. None of the surveillance video showed the interaction between Paddock and Torrez. Evidence shows that shows Paddock arriving at the Mandalay Bay valet on September 28, at approximately 2146 hours and not leaving the property until September 30, at 0100 hours. Detectives were able to identify “Jorge” as Bellman Jorge Morales.*

**George Umstott (Security Manager)**

On October 12, at approximately 1544 hours, Detective Hodson conducted an audio recorded interview with George Umstott inside the Mandalay Bay. Also present for the interview was an FBI special agent and Mandalay Bay Representative Dana Howell. Below is a summary of the interview.

Umstott stated he works at Mandalay Bay as an Assistant Security Manager and is armed while working in this capacity. On the night of October 1, he was with Security Managers Michael Oelke and Anthony Sottile with two females that were being trespassed in the security office when Officers Hendrex and Varsin arrived to issue citations to the females.
He heard there was a mass shooting at the festival lot over Hendrex's police radio. They initially planned to respond to the corner of Mandalay Bay Road and Las Vegas Boulevard. As they walked through the casino, he heard a radio broadcast that Security Officer Campos was shot in the leg with a pellet gun on the 32nd floor.

Security managers along with Officers Hendrex and Varsin responded to the guest elevators. While on the elevator, they heard information, on their radios, in reference to the shooter being on the 31st floor.

As they walked up the 100 Wing of the 31st floor, they heard gunshots coming from the floor above them. As they approached the stairwell, they could still hear gunshots coming from the 32nd floor.

According to Umstott, there were also reports of other shooters on the 62nd and 29th floors. Umstott responded to the 29th floor while everyone else stayed stacked inside the stairwell.

Umstott quickly cleared the 29th floor, returned to the stairwell and rejoined the group. Several other LVMPD officers had arrived in the stairwell, and eventually the stairwell door was breached. Umstott never went any further and returned to the casino floor.

Note: The investigation revealed there were no other shooters on the 29th or 62nd floor.

Shun Zhang (Food Server)

On October 3, at approximately 2228 hours, Detective DeAngelis conducted an audio recorded interview with Shun "Jackie" Zhang inside the Mandalay Bay. Also present for the interview was detectives Downing and Wilson. Below is a summary of the interview.

Zhang has been employed by the Mandalay Bay for almost 19 years as a food server in the Noodle Shop. On September 30, Paddock went to the Noodle Shop and sat in Zhang's section. Zhang recalled that Paddock was alone at the table. He ordered two entrees and ate both of them. Paddock was quiet and did not talk to anyone.

Police Personnel

Sergeant Joshua Bitsko

On October 3, at approximately 1843 hours, Detective Leavitt conducted an audio recorded interview with Sergeant Bitsko at LVMPD Headquarters. Also present for the interview was PMSA Attorney Tara Roberts. Below is a summary of the interview.

On October 1, Sergeant Bitsko was conducting squad training at the Moon Valley Nursery located at Eastern and I-215 Beltway. He heard radio traffic broadcast on the CCAC radio channel and realized they had an active shooter situation. He immediately responded toward Las Vegas Boulevard. He drove to the Mandalay Bay and parked near the entrance of the Shark Reef.
Sergeant Bitsko donned his heavy tactical gear, deployed his rifle, and a ballistic shield. A detective arrived shortly after, and Sergeant Bitsko handed the ballistic shield to him. Sergeant Bitsko, Officer Newton and several plain clothes detectives formulated a Strike Team and entered the Mandalay Bay through the Shark Reef. They cleared the area as they moved from the Shark Reef to the guest elevators.

His team exited the elevator on the 28th floor and took the stairwell to the 29th floor. After they cleared the 29th floor, they used the stairwell to move up to the 32nd floor and joined with SWAT Officer Hancock and others.

They pried open the stairwell door to enter the 32nd floor hallway, which was secured from inside. He observed a room service cart in the hallway. He also observed wires and an object on the cart. They moved into the hallway with Officer Hancock to place an explosive breach on the door. He observed a camera on the cart and placed a plate on top of the camera to conceal their movements.

The door to Room 32-135 was breached. Sergeant Bitsko, SWAT Officer Hancock, and other officers moved into the room and cleared it. He observed several AR-style rifles and a male lying on the ground with a gunshot wound to the head. He also observed a small, silver revolver with blood on it near the male’s head.

Sergeant Bitsko also assisted in breaching the connecting door to Room 32-134 and cleared it.

**Sergeant William Matchko**

On October 3, at approximately 1840 hours, Detective Jex conducted an audio recorded interview with Sergeant Matchko at LVMPD Headquarters. Also present for the interview was PMSA Attorney Jay Roberts. Below is a summary of the interview.

Sergeant Matchko was on his regular scheduled day off; however, he had come into work to assist detectives with the service of a search warrant. While his team prepared to serve the warrant, Sergeant Matchko heard the radio broadcast of an active shooter. He also heard gunfire in the background. Sergeant Matchko left the search warrant scene and proceeded toward the Mandalay Bay.

Sergeant Matchko arrived at the Mandalay Bay and entered the hotel, where he asked a security officer to get him up the elevators. He heard several different reports about where the shooting was coming from to include the 28th, 29th, and 32nd floors. As he reached the elevators, officers were already on it preparing to go up. Sergeant Matchko stepped onto the elevator and asked to be taken to where the security officer was shot. The information was conflicting, so he chose to go to the 28th floor, since they would come to it first and it was a possible location for the shooting.

As the group of officers exited the elevator, they did not hear gunfire. They cleared the hallways, observed no commotion, and didn’t hear gunfire. Sergeant Matchko gathered more information
and learned other officers were headed to the 32nd floor. He led the team up the stairwell to the 32nd floor. As they exited the stairwell, they made their way down the hallway. He observed other officers near the Center Core and moved to their location. He told officers to evacuate the guest rooms, and move all citizens to safety, as the group moved up the hallway.

Sergeant Matchko observed a food service cart near the suite where he was told the shooting was coming from. He was concerned about the cart, believed it looked out of place, and thought that it may be a trap or an IED. As he was focused on the cart, SWAT Officer Hancock arrived. Sergeant Matchko directed SWAT Officer Hancock to go back down a floor and to use a stairwell that would place him near the suite door. Sergeant Matchko was in communication with Sergeant Bitsko (who was also in the stairwell) and SWAT Officer Hancock. Knowing the plan to use an explosive breach, Sergeant Matchko prepared the officers with him, on their roles, and what to do if citizens exited their rooms due to fire alarms, or the sprinkler system activating after the breach.

When the explosive breach detonated, several citizens exited their rooms and were immediately escorted by officers to Center Core. Sergeant Matchko observed the group of officers exit the stairwell and make entry into the room. He heard them broadcast the suspect was down. Sergeant Matchko believed the suspect took his own life since he did not hear rounds fired after the officers made entry. Sergeant Matchko and his group maintained their position in the hallway as the team cleared Room 32-135 and breached and cleared Room 32-134.

As the room was cleared, several other active shooter calls were broadcast over the radio. Sergeant Matchko divided the teams and told the officers to go handle more calls. He received a phone call from Captain Tomaino who ordered him to look in the room for identification of the suspect or suspects. Photographs were taken using a cell phone camera and sent to the command post. With help from Detective Trzpis, they rolled the suspect onto his side, which caused blood to flow from his mouth and down the side of his face. His pockets were checked for photo identification, and he was rolled back to his original position. Officers then exited the room and held it for investigators.

Detective Stephen Balonek

On October 18, at approximately 0917 hours, Detective Penny conducted an audio recorded interview with Detective Stephen Balonek at LVMPD Headquarters. Below is a summary of the interview.

On October 1, Detective Balonek was working overtime at the Route 91 Harvest music festival. He was assigned to the south side of the venue between gates six and seven, near Mandalay Bay Road and Las Vegas Boulevard.

During the shift, Detective Balonek heard shots being fired. He heard approximately three to four shots then additional shots. Detective Balonek did not see a muzzle flash and believed the shots were from within the venue or an elevated position. Detective Balonek retrieved his binoculars and scanned the Mandalay Bay tower. Approximately three-quarters of the way up the tower on the far north end, Detective Balonek observed a silhouette of a man in a shooting position,
standing about four to six feet back from the window. He saw smoke from the gun but did not see muzzle flashes.

Detective Balonek heard the suspect (Paddock) was shooting into the venue so he directed citizens to move east. Detective Balonek encountered several victims with gunshot wounds and provided first aid. He directed those victims toward the mobile command vehicle where he knew there was medical personnel. During the gunfire, Detective Balonek stated the sound kept changing, and he thought it could be from multiple shooters.

After the shooting stopped, Detective Balonek took up a tactical position, stopped traffic, and remained on post until being relieved.

**Detective Casey Clarkson**

On October 5, at approximately 1148 hours, Detective Penny conducted an audio recorded interview with Detective Clarkson at LVMPD Headquarters. Also present for the interview was Las Vegas Police Protective Association (LVPPA) Representative Yant. Below is a summary of the interview.

Detective Clarkson was working overtime at the Route 91 Harvest music festival. He was partnered with Detective Brosnahan. Detectives Clarkson and Brosnahan were directed to Las Vegas Boulevard to assist with an intoxicated female. Afterward, they remained in the area of Las Vegas Boulevard and Mandalay Bay Road.

Detective Clarkson heard possible gunfire. He heard reports of multiple casualties over the radio. Detectives Clarkson and Brosnahan moved behind a pony wall and looked for the gunman. They moved toward patrol cars parked near them with intent to get to the Mandalay Bay.

While they moved toward the patrol cars and prisoner transport van, two civilians attempted to join their group. While addressing the civilians, they received direct gunfire. Detective Clarkson and a civilian moved behind the prisoner transport van for cover but realized it wasn't enough. Around this time, Detective Clarkson felt something strike his neck.

Detective Clarkson stayed behind cover and shielded Detective Brosnahan as the gunfire continued. He observed bullets impacting closer to the patrol vehicles and knew the shots were coming from an elevated position. Detectives Clarkson and Brosnahan, along with several other officers, moved from the patrol vehicles to behind a block wall where several civilians were found hiding. The civilians were pushed closer to the wall as officers shielded them with their bodies.

While behind the wall, Detective Clarkson was told he was bleeding. Detective Brosnahan applied direct pressure to the wound until another officer arrived with a medical kit. After having his neck bandaged, Detectives Clarkson and Brosnahan escorted civilians away from the street and through the venue. Detectives Clarkson and Brosnahan made their way to the medical tent and found several people who were critically injured. Ambulances couldn't get to the scene, so Detective Brosnahan left to retrieve Detective Clarkson’s police vehicle.
Detective Clarkson moved several wounded civilians to the sidewalk to prepare for transport. When Detective Brosnahan arrived, they loaded several critically injured patients into their vehicle and drove to Valley Hospital after hearing University Medical Center was full. Upon arrival at Valley Hospital, Detective Clarkson and the wounded civilians received medical treatment. After being discharged, Detective Clarkson returned to the command post.

**Detective Matthew Donaldson**

On October 3, at approximately 1820 hours, Detective Ploense conducted an audio recorded interview with Detective Donaldson at LVMPD Headquarters. Also present for the interview was Detective Sclimenti and LVPPA Representative Yant. Below is a summary of the interview.

Detective Donaldson was at LVMPD Headquarters. His sergeant came into the office and informed the squad of an active shooter call. The squad responded to the Mandalay Bay. Detective Donaldson was with Detective Walford and they entered the Mandalay Bay near the Shark Reef.

Once inside, they met SWAT Officer Hancock. From information being broadcast, they believed the shooting was coming from the 32nd floor of the hotel. When they got to the 32nd floor, they observed officers positioned in the hallway leading to the suite where they believed the shooting was coming from.

SWAT Officer Hancock led Detective Donaldson and several other officers down to the 31st floor. They gained access to the stairwell that would lead them adjacent to the suite where the shooting was. When they reached the stairwell, they found other officers at the stairwell door to the 32nd floor.

Officer Hancock placed a breaching charge on the door to the suite and breached the door. The door did not completely come off the hinges, but they were able to see rifles on the floor inside the room. Detective Donaldson made entry with the group into the suite and cleared the room. He observed what he believed to be 25-30 scattered rifles across the room. He observed what appeared to be a deceased white male, lying on his back.

There was a closed door that led to an adjoining room which was also breached and cleared. Once the suite and connecting room was cleared, he began doing welfare checks on the floor.

**Detective Stephen Trzpis**

On October 3, at approximately 1755 hours, Detective Quinteros conducted an audio recorded interview with Detective Trzpis at LVMPD Headquarters. Also present for the interview was Detective Ubbens and LVPPA Representative Hamm. Below is a summary of the interview.

Detective Trzpis was assigned to a South Central Area Command (SCAC) Patrol Detective squad and was at the office when he heard a possible active shooter at the Route 91 Harvest music festival broadcast over the radio. Detective Trzpis and his squad left the office, put on their tactical gear, and headed to the Mandalay Bay. Based on information from the radio, they
believed the active shooter was inside the hotel. They arrived at the hotel from the south side, at the Shark Reef entrance, where they joined Sergeant Bitsko and Officer Newton.

Detective Trzpis was given a shield by Sergeant Bitsko, and he entered the Shark Reef. The team moved to the elevator bank and had hotel security unlock an elevator and take them up the tower. As the team prepared to take the elevator up, they were joined by another team led by Sergeant Matchko. The information being received by the team was conflicting on where the shooting was coming from. Sergeant Bitsko decided to exit on the 28th floor, clear it, and move up the stairwell. Sergeant Matchko's team would continue up to the 29th floor.

The team cleared the 28th floor and moved up, clearing the floors until they reached the 30th floor. When they reached the 30th floor, they joined another team which was also clearing the floor. The group then moved up to the 31st floor together where they were met by SWAT Officer Hancock. The group moved up the hallway that led them to the stairwell adjacent to the suite where SWAT Officer Hancock believed the shooting was coming from. They entered the stairwell and found another group of security officers and uniformed patrol officers posted on the door to the 32nd floor. The door to access the 32nd floor was bolted shut, and SWAT Officer Hancock used a tool to pry it open. A quick peek was done into the hall, and they observed bullet holes in the door.

SWAT Officer Hancock breached the door to Room 32-135, and a group of officers made entry to clear the room. As Detective Trzpis moved into the suite, he observed what he believed to be the suspect down on the ground. After the main suite was cleared, a breach was used to access the connecting room and Detective Trzpis heard two gunshots but did not know who fired. When entry was made into the second room, it was cleared and found to be unoccupied. (The shots Detective Trzpis heard was the unintentional discharge by SWAT Officer O'Donnell.)

**Detective Blake Walford**

On October 3, at approximately 1857 hours, Detective Ploense conducted an audio recorded interview with Detective Walford at LVMPD Headquarters. Also present for the interview was Detective Sclimenti and LVPPA Representative Todd. Below is a summary of the interview.

Detective Walford was assigned temporary duty (TDY) to Gang Crimes and was at their office located at LVMPD Headquarters. The sergeant came into the office and informed the squad of an active shooter call. The squad responded to the Mandalay Bay. Detective Walford was with Detective Donaldson, and they made entry into the Mandalay Bay from the beach club entrance.

Once inside, they made their way to the hotel lobby where they met SWAT Officer Hancock. They were briefed the suspect was on the 32nd floor and had shot a security officer. As they reached the 32nd floor, he observed officers in the hallway that led to the suite. SWAT Officer Hancock took Detective Walford and other officers with him back to the 31st floor in order to access the stairwell that would put them next to the suite where they believed the suspect was located.
When they ascended the stairwell that would put them adjacent to the suite, they removed the lights so that when they opened the door they would not be back lit. They discovered the door that leads into the hall had been secured shut. The officers used a tool SWAT Officer Hancock carried with him to pry the door open. SWAT Officer Hancock placed an explosive charge on the door to Room 32-135 and breached it.

A group of officers from the stairwell entered the suite. When Detective Walford entered, he observed rifles in the room, and a deceased male on the floor. SWAT Officer Hancock used another explosive breach to open the connecting door to Room 32-134. As the door was breached, Detective Walford heard two to three rounds fired from one of the officers in the stack. They entered the connecting room where he observed more rifles. (The shots Detective Walford heard was the unintentional discharge by SWAT Officer O'Donnell.)

**Officer Bryon Bunitsky**

On October 3, at approximately 1645 hours, detectives Scilimenti and Ploense conducted an audio recorded interview with Officer Bunitsky at LVMPD Headquarters. Also present for the interview was LVPPA Representative Ramirez. Below is a summary of the interview.

Officer Bunitsky was working as a uniformed patrol officer in the Enterprise Area Command (EAC). Officer Bunitsky was on a domestic disturbance call with Officer Thiele. Officer Bunitsky heard from Officer Thiele there was an active shooter at the Mandalay Bay. Officer Bunitsky called a sergeant and advised he was responding to the active shooter call.

Officer Bunitsky arrived near Russell Road and Las Vegas Boulevard. Officer Bunitsky donned his tactical gear, which included his rifle and helmet. Officer Bunitsky ran down Las Vegas Boulevard to the Mandalay Bay near the convention entrance. Officer Bunitsky entered and ran through the casino toward the main part of the hotel. Officer Bunitsky met up with other officers, including SWAT Officer Hancock, by the elevators and learned the suspect was on the 32nd floor.

Officer Bunitsky and additional officers took the elevator to the 32nd floor and exited the elevator. Officer Bunitsky looked up the hallway and observed bullet holes through the suspect's (Paddock) room door, along with blood on the floor from the security officer being shot. SWAT Officer Hancock derived a plan to go back to the 31st floor and use the stairwell to make it back up to the 32nd floor near Paddock's room. After utilizing the stairwell, Officer Bunitsky posted the stairwell door that led into the 32nd floor.

Officer Bunitsky heard SWAT Officer Hancock call the SWAT lieutenant and tell him they were going to breach the door to Room 32-135. SWAT Officer Hancock breached the door, and officers entered the room. Officer Bunitsky posted near the stairwell covering the door of the adjoining Room 32-134. Officer Bunitsky heard yelling from inside the room and information about cameras and wires being in the room.

Officer Bunitsky continued covering the adjoining room and heard another breach along with a three-round burst. (The shots Officer Bunitsky heard was the unintentional discharge by SWAT Officer O'Donnell.) Officer Bunitsky entered Room 32-135 and took approximately five steps
inside. Officer Bunitsky observed guns scattered in the room and the main window broken. Officer Bunitsky heard SWAT Officer Hancock tell everyone to get out of the room and secure the scene. Officer Bunitsky backed out of the room and left the area. Officer Bunitsky left the casino and met with fire department personnel outside the Mandalay Bay. Officer Bunitsky spent the rest of the night searching for victims in the Route 91 Harvest music festival and clearing other casinos for possible additional shooters.

**Officer Brady Cook**

On October 9, at approximately 1615 hours, detectives Quinteros and Mendoza conducted an audio recorded interview with Officer Cook at LVMPD Headquarters. Also present for the interview was LVPPA Representative Hooten. Below is a summary of the interview.

On October 1, Officer Cook and his field training officer (FTO), Officer Haynes were on duty. Officer Cook was working his second day of field training. Officers Cook and Haynes were at Flamingo Circle to conduct foot patrol when they heard of a shooting at the Route 91 Harvest music festival.

Officer's Cook and Haynes got into their patrol car and responded to the event. While en route, Dispatch broadcast an active shooter at the Route 91 Harvest music festival. Upon arrival, they parked at Las Vegas Boulevard and Mandalay Bay Road near additional patrol units and a prisoner transport van. As they exited their patrol vehicle, they encountered immediate gunfire and could see rounds impacting the ground around them.

Officer Cook took cover as the gunfire continued. He could not see where the gunfire was coming from, but he soon realized the shots were coming from above them. While taking cover, Officer Cook was struck by a bullet in his right arm, causing it to go numb. He verbalized he was shot and could see blood.

Officer Haynes grabbed Officer Cook, and they ran northbound along Las Vegas Boulevard, seeking cover behind a patrol car. Officer Haynes assessed Officer Cook’s injury while they took cover. They both continued to run northbound, and gunfire continued until they reached another marked patrol unit. Officer Haynes transported Officer Cook to University Medical Center for medical attention.

**SWAT Officer Levi Hancock**

On October 3, at approximately 1607 hours, Detective Leavitt conducted an audio recorded interview with SWAT Officer Hancock at LVMPD Headquarters. Also present for the interview was Detective Ubbens and LVPPA Representative Hooton. Below is a summary of the interview.

SWAT Officer Hancock was working his normal duties as a SWAT officer when he received notification of an active shooter and responded to the Mandalay Bay. SWAT Officer Hancock donned his tactical equipment and entered the casino where he met with patrol officers. He heard radio traffic the shooter was on the 32nd floor.
SWAT Officer Hancock and a Strike Team composed of patrol and K9 officers took the elevator to the 32nd floor where they found multiple officers posted on the floor. He received information the shooter was in the room at the end of the hallway. Due to the long length of the hallway, he decided to take the elevator down to the 31st floor and approach through the fire exit stairwell.

While in the stairwell, he encountered other officers and security who were standing by in the stairwell. He instructed the officers to disable the lights in the stairway to prevent them from being backlit when they opened the door. They pried open the fire exit door, which had been secured shut from the hallway. When the door was opened he observed a room service cart and wires which ran from the cart to a guest room. He believed the cart may be rigged with an IED.

While doing quick peeks, SWAT Officer Hancock saw multiple bullet holes in the door of Room 32-135. He decided to use an explosive breach which was authorized by SWAT Lieutenant Huddler.

When the door to Room 32-135 was breached, he conducted quick peeks and decided to make entry into the room. Once in the room, he located the suspect deceased on the floor with an apparent head wound. He encountered a second closed door to the connecting room and decided to use a charge to breach that door.

After the charge was activated, he heard SWAT Officer O'Donnell fire a burst of three shots. He spoke with SWAT Officer O'Donnell and realized he did not fire at a threat but had an unintentional discharge.

Entry was made into the connecting room, and officers found a broken window and several more weapons in the room.

After the room was deemed safe, he turned the room over to patrol and went to search for any possible additional shooters.

**Officer Marlon Magsaysay**

On October 3, at approximately 1635 hours, Detective Jex conducted an audio recorded interview with Officer Magsaysay at LVMPD Headquarters. Also present for the interview was Detective Quinteros and LVPPA Representative Todd. Below is a summary of the interview.

On October 1, Officer Magsaysay received a text message at home which advised of an active shooter at the Mandalay Bay. He responded to SCAC and put his tactical gear over his plain clothes and drove to the intersection of Russell Road and Las Vegas Boulevard. He met up with two SWAT officers who were gearing up. He ran with the SWAT officers to the Mandalay Bay. They heard a radio broadcast that the shooter was on the 32nd floor. They took the elevator up to the Foundation Room and cleared the area.

Officer Magsaysay and SWAT Officer O'Donnell went down to the 32nd floor. Other officers were already covering down on the hallway to the suspect’s door located at the end of the wing. He and SWAT Officer O'Donnell moved forward and made contact with SWAT Officer Hancock at
the stairwell near the suspect’s door. SWAT Officer Hancock placed a charge on the door and breached the door to the suite. He recalled seeing bullet holes through the door to the room and impact damage in the hallway as they approached.

Officer Magsaysay followed SWAT Officer O'Donnell through the door into the room and cleared it. They moved back into the main room and observed the suspect on the floor with an apparent gunshot wound to the head. There was a rifle and small revolver next to the suspect’s body. He observed multiple spent casings, magazines and rifles throughout the main room.

They moved to the connecting room door that was locked. SWAT Officer Hancock placed another charge on the door while SWAT O'Donnell and Officer Magsaysay stacked up behind him. As the charge was detonated, Officer Magsaysay heard three shots from SWAT Officer O'Donnell. He believed SWAT Officer O'Donnell was firing at a suspect. (The shots Officer Magsaysay heard was the unintentional discharge by SWAT Officer O'Donnell.)

As they moved into the room, Officer Magsaysay cleared the room. He observed more rifles and a laptop with wires that ran to a camera on the room service cart in the hallway. There was no other suspect located after they cleared both suites. After the room was cleared, he assisted in evacuating guests from other rooms on the 32nd floor.

**Officer David Newton**

On October 3, at approximately 1620 hours, Detective Keith conducted an audio recorded interview with Officer Newton at LVMPD Headquarters. Also present for the interview was LVPPA Representative Yant. Below is a summary of the interview.

On October 1, Officer Newton was informed by Sergeant Bitsko of an active shooter on the CCAC channel. Officer Newton switched his radio to CCAC and heard there was a shooter at the Mandalay Bay.

He and Sergeant Bitsko made a decision to park and enter the Mandalay Bay near the Shark Reef. When they arrived, Sergeant Bitsko requested additional officers to join them and form an active shooter team.

Once the other officers arrived, they entered the casino. They told security to evacuate citizens. While working their way through the casino, they heard a radio update that the shooter was possibly on the 29th floor. They took elevator to 29th floor and began clearing hallways.

They continued to move up, floor by floor, to the 31st floor where they met with SWAT Officer Hancock at the stairwell leading to suspect’s room on 32nd floor. They breached the locked interior stairwell door and devised a plan to breach the door of suspect’s suite with an explosive that SWAT Officer Hancock had with him. Officer Newton stated he had the ballistic shield and entered the hallway providing cover as SWAT Officer Hancock applied the explosive charge.

Once the door was breached, he made entry to the suite where he observed a rifle with a bipod on the floor and the suspect who appeared to have shot himself. They cleared the suite and then
encountered a locked door to the connecting room. SWAT Officer Hancock used another explosive charge to breach the door to the connecting room. After the connecting room was cleared, Officer Newton exited the room.

**SWAT Officer Sean O'Donnell**

On October 3, at approximately 1545 hours, Detective Jex conducted an audio recorded interview with SWAT Officer O'Donnell at LVMPD Headquarters. Also present for the interview was Detective Quinteros. Below is a summary of the interview.

Officer O'Donnell was assigned to SWAT and was on his regular day off when he received a text from a friend in K9. The text advised of an active shooter at the Mandalay Bay, and due to the source of the information, SWAT Officer O'Donnell immediately went to his SWAT vehicle which was at his residence, turned on his radio, and began to put on his work uniform and gear. SWAT Officer O'Donnell realized quickly the information on the shooting was accurate and began to head toward the incident.

SWAT Officer O'Donnell responded to the Mandalay Bay where he joined a patrol officer and another SWAT member as they made entry into the property. The information broadcast over the radio caused him to believe the shooting was on the 32nd floor; however, there were reports of other locations as well. The decision was made to go to the top floor and work their way down to look for any threats.

The group responded to the Foundation Room, which is located on the top floor of the hotel. They found patrons who did not seem frightened or aware of any incident occurring. When SWAT Officer O'Donnell observed this and heard more information coming in about the 32nd floor, he grabbed a security officer, one patrol officer, and proceeded to the 32nd floor using a service elevator. As they exited the service elevator, he noticed uniformed officers who were focused down one of the hallways. The officers briefed SWAT Officer O'Donnell about a security officer who had been shot down the hallway and about the location they believed the threat was coming from.

SWAT Officer O'Donnell could not hear any gunfire. SWAT Officer O'Donnell believed they should treat the situation as a barricade unless circumstances changed and shooting resumed. SWAT Officer O'Donnell held his position and was informed of SWAT Officer Hancock's location. He learned of SWAT Officer Hancock's plan to breach the door to the suite and make entry. He decided when SWAT Officer Hancock moved into the room, he would quickly move up the hallway and join him.

When SWAT Officer Hancock breached the doors to Room 32-135, SWAT Officer O'Donnell quickly moved up the hallway and joined the team. As they entered the room, SWAT Officers O'Donnell and Hancock moved in different directions. He could see weapons on the floor and announced that information to the group. Once his area was cleared, he moved into the main room where he observed a male lying on the floor with what he believed to be a gunshot wound to the head. He stated there was a small handgun near the males head.
There was a door that led to a connecting room, which the team focused their attention on. SWAT Officer Hancock set an explosive breach to make entry into the second room. The team again stacked and prepared to make entry. As the breach occurred and the team began to move, SWAT Officer O'Donnell felt he should change the rate of fire on his rifle to "select fire" which puts the gun into a three-round burst mode. As he made the switch, which takes hand manipulation, SWAT Officer O'Donnell's hand slipped which caused the weapon to fire a three-round burst into the wall. The team continued to move and went into the next room.

Once the rooms were cleared, the officers went back and located a wallet with identification that appeared to belong to the deceased person inside the room. The information of the person's identity was relayed to the command post as well as the information of the rounds that had been unintentionally fired.

**Officer Michael Thiele**

On October 3, at approximately 1639 hours, Detective Keith conducted an audio recorded interview with Officer Thiele at LVMPD Headquarters. Also present for the interview was LVPPA Representative Grammas. Below is a summary of the interview.

Officer Thiele was working in EAC with Officer Bunitsky. Both officers were on a domestic violence call when they heard an active shooter call was occurring in CCAC. Officer Thiele heard an officer had been shot and believed the officer was his brother (Officer Thiele would later learn his brother was not one of the officers who was shot). Both Officer Thiele and Bunitsky responded to the area of Russell Road and Las Vegas Boulevard. Officers Thiele and Bunitsky were teamed up with four other officers and a sergeant. The team of officers made their way through the Mandalay Bay and subsequently teamed up with SWAT Officer Levi Hancock.

The team responded to the 32nd floor but quickly turned around, went to the 31st floor, and went up a stairwell that was adjacent to the suspect’s room (Room 32-135). SWAT Officer Hancock devised a plan to breach the suspect’s room. SWAT Officer Hancock designated four officers to enter the room with him and three officers (one of which was Officer Thiele) to stay and watch the door.

After the breach occurred, Officer Thiele exited the stairwell and observed a cart in the hallway with cameras on it. As they stood guard outside of the suspect’s room, Officer Thiele heard a second breach occur inside the suspect’s room. After the breach, Officer Thiele entered the room and made it down a small hallway in the living room area. As he entered the small hallway, Officer Thiele heard the other officers inside the room state they were “Code 4”; therefore, Officer Thiele did not feel the need to go any further into the room.

After the room was cleared, officers Thiele and Bunitsky exited the room and responded to the command post where they were both assigned other duties.
Officer Michael Tolbert

On October 3, at approximately 1259 hours, Detective Penny conducted an audio recorded interview with Officer Tolbert at LVMPD Headquarters. Below is a summary of the interview.

Officer Tolbert was operating as a uniformed patrol officer and was in the area of Warm Springs Road and Las Vegas Boulevard when he heard the active shooter call over the radio. He responded to the Mandalay Bay, and parked his vehicle in front on the east side of the street. Officer Tolbert deployed with his shotgun when he heard automatic gunfire and believed the shooting was coming from the Mandalay Bay. He moved to the entrance of the Mandalay Bay when he was joined by other officers and entered the hotel.

The group made contact with security who stated they had possibly two shooters on the 29th and 32nd floors. They could not determine if there was still gunfire and made the decision to take the elevator to the 28th floor and then use the stairwell to access the 29th floor. While they cleared the 29th floor, they realized there was no shooting on that floor and proceeded to the 32nd floor.

When he reached the 32nd floor, there were several officers set up on a hallway. They were briefed that the shooting was coming from the end of the hallway, a security officer had been shot and the stairwell next to the suite was barricaded. Officer Tolbert joined a group of officers led by a SWAT officer down to the 31st floor, where they made their way back up a stairwell that led them next to the doors of the suite. The SWAT officer breached one of the stairwell doors that was secured by an "L" bracket and then placed an explosive breaching charge on the suite.

With the amount of officers in the stairwell, the decision was made to separate into two groups. One group would make entry into the room and the rest would maintain their position and be used for evacuation and downed officers. Officer Tolbert stayed with the second group as the first group made entry into the room. Once entry was made into the room, he heard them announce that a suspect was down. As the team that entered the room stated it was clear, the group from the hallway began to make their way toward the suite.

Officer Tolbert moved into the foyer of the suspect's room, after it had been cleared. As Officer Tolbert was in the foyer, the decision was made to finish clearing the rooms on the 32nd floor. There was information coming in of other possible active shooters at other hotels, so a group of officers including Officer Tolbert left to re-deploy to other locations. Officer Tolbert was stopped by a captain when he arrived at the valet area of the Mandalay Bay to help establish a command post.

Investigative Responsibilities

Due to the magnitude of the investigation, federal, state, and local law enforcement agencies conducted various aspects of the investigation. Information pertaining to the investigation was gathered by the FBI, Bureau of Alcohol Tobacco and Firearms (ATF), Nevada Gaming Control Board, Henderson Police Department, and various bureaus/sections within the LVMPD.
The ATF and FBI filed their respective legal processes in federal court. As a result, information gathered from those processes were kept with the respective federal agencies who authored the legal process. Summaries of the information generated are included in this report.

**FBI**

The FBI had 95 TDY personnel in Las Vegas within 24 hours. Within 48 hours 150 TDY personnel were assigned. This ultimately grew to 351 TDY personnel. FBI personnel took the lead in evidence documentation and collection and provided investigative support. A command post was established at the FBI’s Las Vegas field office.

All tips or items that needed to be investigated or followed up on were coordinated by the FBI and the LVMPD. These leads were tracked using the Operational Response and Investigative Online Network (ORION) through the FBI.

All video surveillance collected by investigators from various sources was housed and analyzed by the FBI.

**ATF**

The ATF assisted in gathering information related to the firearms owned by Paddock. They also provided investigative support by following up on leads provided to law enforcement and conducted interviews.

**Nevada Gaming Control Board**

The Nevada Gaming Control Board assisted in gathering information pertaining to Paddock’s and Danley’s gambling history.

**Henderson Police Department**

The Henderson Police Department assisted in identifying victims and witnesses who were transported to various hospitals.

**Las Vegas Metropolitan Police Department**

Several bureaus/sections within the LVMPD assisted FIT in the investigation into 1 October.

**Homicide Section**

Detectives with the Homicide Section responded to, and were responsible for, the documentation of the Las Vegas Village to include the scene and deceased victims. Detectives completed interviews of LVMPD employees who responded to the Las Vegas Village or the Mandalay Bay during the attack.
Downtown Area Command Patrol Investigative Section

Investigators with the Downtown Patrol Investigative Section conducted follow-up in the downtown Las Vegas area. Investigators interviewed the owners of the various units at The Ogden which Paddock rented. They located and viewed various video surveillance systems from different properties during the time period. Interviews were conducted with a number of hotel/casino employees who had contact with Paddock during his stay in the downtown area.

Special Investigations Section (SIS)

Investigators with the Special Investigation Section responded to the command post and were directed to respond to Spring Valley Hospital. Investigators interviewed victims, collected and impounded related evidence, and helped secure the hospital.

In the following days, SIS investigators obtained gaming information for Paddock through the Nevada Gaming Control Board. The information obtained included gaming history from various hotel/casino properties throughout Nevada.

Criminal Intelligence Section (CIS)

Investigators with the Criminal Intelligence Section responded to the command post shortly after the incident began. Investigators interviewed hotel/casino employees, reviewed video surveillance, reviewed valet and self-parking logs, and analyzed cell phone data and lock interrogation logs.

Counter Terrorism Section (CTS)

Investigators with the Counter Terrorism Section responded to the Command Post on 1 October. They immediately began developing and collecting intelligence on Paddock. Investigators drafted search warrants and court orders, coordinated efforts with other jurisdictions, conducted interviews, and produced situational and investigative updates.

Technical and Surveillance Squad (TASS)

Investigators with the Technical and Surveillance Squad responded to the Mandalay Bay as part of the initial tactical response. Investigators provided a wireless network for access to various systems required to develop, research, and track information. They coordinated the setup of a radio repeater to provide better radio communications. Investigators served orders for the preservation of social media to aid in the investigation along with obtaining cellular phone subscriber information to gather information for the investigation.

As the incident transitioned from the tactical phase to the investigative phase, TASS investigators analyzed cellphone tower information to develop information related to Paddock. They provided technical assistance to various agencies in the analysis of information.
Firearms and Narcotics Group (FANG)

Investigators with the Firearms and Narcotics Group worked in conjunction with the ATF. Investigators drafted and served court orders pertaining to the investigation and compiled the data learned through those orders. Investigators traced ownership history of the firearms recovered during the investigation. All firearms were traced directly to Paddock, and he was the original purchaser on 48 of the firearms. Of the firearms where Paddock was not the original purchaser, investigators were able to trace the sale of the firearms to Paddock.

Counter Terrorism Analysis Group (CTAG) and Central Intelligence Unit (CIU)

Investigators and analysts with the Counter Terrorism Analysis Group and the Central Intelligence Unit were tasked with research and analysis of information pertaining to the incident and subsequent investigation. The information compiled was used for briefings.

Las Vegas Village

Responsibility for documenting the venue scene was transferred from the LVMPD Homicide Section to the FBI Evidence Recovery Team on October 2, at approximately 1445 hours. The following scene description of the Las Vegas Village venue was authored by the LVMPD Homicide Section.

The Route 91 Harvest music festival was an open-air music event held at the Las Vegas Village. The festival was dimly lit with street lights, variable stage lighting and lights from temporary light stands on the perimeter. There was a chain link fence with dark netting surrounding the entire venue. On the west perimeter of the venue, there was a decorative concrete block wall between Las Vegas Boulevard South and the chain link fence. This wall ran nearly the entire length of the west side of the venue from E. Mandalay Bay Road to E. Reno Avenue.

The surface of the venue consisted of black asphalt with defined seating areas covered with artificial grass on both the northwest and south ends of the venue with vendor areas throughout. The northwest artificial grass area was used for lawn chair seating. The large artificial grass areas on the southern end was surrounded by seating, food vendors, and portable bathrooms. A large seating area with elevated bleachers and a covered VIP area was oriented near the southwest corner of the venue. Four pedestrian gates ran along the west side of the venue.

The Coca-Cola suites, additional seating areas, vendors, medical tent, and three pedestrian gates were located on the east side of the venue. The event's command post, a television broadcast tent, and one pedestrian gate were oriented on the north end of the venue.

The main stage was oriented on the south side of the venue. The main stage was covered by green roofing, and the sides were covered with black mesh. The main stage viewing area was located in the southern portion of the venue, north of the main stage, and was divided into two seating areas by metal pedestrian fencing. The fencing ran from a production tent, located in the center of the viewing area, and eventually encompassed the main stage. In addition to the fence separating the east and west side grass areas, the production tent and vendors helped to define
the two areas. Production vehicles, concert buses, and trailers were oriented south of the main stage.

Location of the Deceased Victims

A total of 31 bodies were located, documented, and eventually recovered from the inside of the venue and on the exterior perimeter. CCOCME investigators responded and assisted the LVMPD Homicide detectives and crime scene analysts to conduct the preliminary death investigations. Each victim was given an individual Clark County coroner’s case and seal number. The time of death was determined to be 0545 hours for those recovered from the venue and exterior perimeter. Davis Funeral Home responded and transported the deceased to the CCOCME for a complete examination.

1) Jack Reginald Beaton
2) Christopher Louis Roybal
3) Lisa Marie Patterson
4) Adrian Allan Murfitt
5) Hannah Lassette Ahlers
6) Austin William Davis
7) Stephen Richard Berger
8) Stacee Ann Etcheber
9) Christiana Duarte
10) Lisa Romero-Muniz
11) Heather Lorraine Alvarado
12) Denise Cohen
13) Kurt Allen Von Tillow
14) Brennan Lee Stewart
15) Derrick Dean Taylor
16) Kelsey Breanne Meadows
17) Jennifer Topaz Irvine
19) Carly Anne Kreibaum
20) Laura Anne Shipp

Four bodies were located and recovered near the medical tent in the northeast portion of the venue.

21) Carrie Rae Barnette
22) Jordyn Nicole Rivera
23) Victor Loyd Link
24) Candice Ryan Bowers

Seven additional victims were located and recovered from the exterior perimeter. Their body positions and locations suggested they had been placed at these locations. The descriptions of their injuries were obtained from the CCOCME investigators and the photographs taken by an LVMPD crime scene analysts.
25) Jordan Alan McIldoon  
26) Keri Lynn Galvan  
27) Dorene Anderson  
28) Neysa C. Tonks  
29) Melissa V. Ramirez  
30) Brian Scott Fraser  
31) Tara Ann Roe

The remaining victims were transported to various hospitals throughout the greater Las Vegas valley and pronounced deceased at their respective locations. CCOCME investigators responded and assisted the LVMPD crime scene analysts with documentation of the decedents’ injuries. Each victim was given an individual Clark County Coroner’s case and seal number. The time of death was determined by the treating physicians. Davis and Hites Funeral Home Services transported all victims from the hospital to the CCOCME for a complete examination. The descriptions of their injuries were obtained from photographs taken by LVMPD crime scene analysts.
DESERT SPRINGS HOSPITAL

32) Bailey Schweitzer
33) Patricia Mestas
34) Jennifer Parks
35) Angela Gomez

SPRING VALLEY HOSPITAL

36) Denise Burditus
37) Cameron Robinson
38) James Melton

VALLEY HOSPITAL

39) Quinton Robbins

SUNRISE HOSPITAL

40) Charleston Hartfield
41) Erick Silva
42) Teresa Nicol Kimura
43) Susan Smith
44) Dana Leann Gardner
45) Thomas Day Jr.
46) John Joseph Phippen
47) Rachel Kathleen Parker
48) Sandra Casey
49) Jessica Klymchuk
50) Andrea Lee Anna Castilla
51) Carolyn Lee Parsons
52) Michelle Vo
53) Rocío Guillen
54) Christopher Hazencomb
55) Brett Schwanbeck

UMC HOSPITAL

56) Rhonda M. LeRocque
57) Austin Cooper Meyer
58) Calla-Marie Medig
Mandalay Bay 32nd Floor

Scene

The scene was located in the 100 Wing of the 32nd floor of the Mandalay Bay. The 100 Wing consisted of a north-south oriented hallway with even numbered rooms on the east side and odd numbered rooms on the west side. The rooms ranged in numbers from 32-101 to 32-135. Room 32-135 was at the far north end of the 100 Wing with south-facing double entry doors. Room 32-134 was at the north end of the 100 Wing and was a connecting room to 32-135. Room 32-134 was east of the entry to Room 32-135 with a single entry door that faced west. A door leading to a foyer room, which led to the stairwell was at the north end of the hallway, west of the entry to Room 32-135, with a single entry door that faced east.
100 Wing Hallway

The hallway consisted of alcoves containing access to four rooms: two rooms on the east side of the hallway and two rooms on the west side of the hallway, with a segment of the hallway between each alcove. Each alcove had a ceiling mounted light with two light shades: an exterior blue shade and an interior white shade as well as a light sconce on the walls between the doors.

Decorative molding was mounted to the walls the entire length of the hallway. There were numerous bullet fragments throughout the hallway floor, from the north side of the alcove of rooms 32-101 through 32-104 to the alcove of rooms 32-133 through 32-135.
A room service cart containing numerous plates, food items, and silverware was on the east side of the hallway in front of Room 32-134. A black Logitech camera with connected wires was on top of the cart, at the south end. The camera was positioned in a south direction (down the hallway) and taped to a plate. A white camera with connected wires was attached to the lower portion of the cart at the north end. The camera was positioned in a south direction (down the hallway). Wires from both of the above described cameras ran under the door and into Room 32-134.

Room 32-135

Room 32-135 was a hotel suite located at the far north end of the hallway with south-facing double entry doors. The east door had two bullet holes above the door handle. The bullets traveled north to south, entering the interior side of the door and exiting the exterior (hallway). A camera was taped to the interior side of the east door inserted into the peephole. A hole was partially drilled into the bottom of the south wall, east of the entry doors. The west door was damaged (occurred during the explosive breach) and unattached from the door frame. The door was lying on the floor inside of the suite. There were bullet holes in the west door, with the bullets traveling north to south, entering the interior side and exiting the exterior (hallway).
The suite consisted of a south foyer room, a west bedroom (master bedroom) with attached bathroom, a north sitting area, a central bar/kitchenette, and a second bathroom east of the central bar/kitchenette. A southeast living room which contained a couch, chairs, an entertainment center cabinet, and a wall-mounted TV. A connecting door which led to Room 32-134 was located southeast of the living room on the south wall. The entire north end of the suite consisted of floor-to-ceiling windows.

Foyer inside Room 32-135

The foyer had a table along the west wall. There was a white Babysense camera pointed in the direction of the front entry doors at the south end of the table, and a black mini-refrigerator at the north end with a white Styrofoam cooler on top. There were casings scattered on the floor of the foyer and on the table along the west wall. A black rifle with the muzzle pointed south was at the northeast portion of the foyer on the floor.

An east-west hallway extended from the east side of the foyer. A black rifle on a bipod with the muzzle pointed west, and a drill bit partially covered by a white towel were at the west end of the hallway on the floor.

(Foyer of Room 32-135 from the sitting area.)

West Bedroom (Master Bedroom)

The bedroom was located west of the sitting area. There were east-facing double entry doors located northwest of the foyer and west of the sitting area. The room had a desk with a chair along the north wall just inside the entry doors. There were tools on the desk and the chair. A trash can was on the floor east of the desk that had numerous empty ammunition boxes inside. There was a white bag on the floor that had empty ammunition boxes inside as well as a broken Dell laptop computer. Two boxes containing empty ammunition boxes were on the floor behind the entry doors.
A pillar was west of the desk. An empty, red gym bag and an Anran home security system box were on the floor west of the pillar. An open suitcase and a drill were on top of a chaise lounge, which was along the south wall. There were chargers plugged into the south wall, west of the chaise lounge.

The bed was along the south wall with nightstands on either side. The following items were located on the bed: a Dell laptop computer, a passport in the name of "Stephen Paddock," four Home Depot gift cards, a checkbook, and a cash-out voucher for the Palms Casino dated 8/28/17. There were three suitcases west of the bed: two of which were empty and one had clothing inside. A television was on a dresser north of the bed. There were drill bits and tools on top of the dresser. Eight empty rifle magazines were on the floor below the west end of the dresser. An open suitcase with a tool box inside was east of the dresser. The closet was located along the wall east of the bed with a single shirt and a white bathrobe hanging inside.
The attached southeast bathroom had a tub along the north wall with two glass vacuum suction holders on top of the tub ledge. A sink counter was along the south wall with toiletries to include a prescription for Diazepam 10 mg in the name of "Steve Paddock," and two inhalers. The toilet room was to the east with a pair of boxers and a pair of shoes on the floor.
Sitting Area

The sitting area was north of the foyer. Floor-to-ceiling windows covered by curtains extended along the length of the north end of the suite. There was a couch along the north side of the room, a coffee table south of the couch, and two chairs pushed together (facing one another) south of the coffee table. Pillars were located near the northeast corner of the sitting area and at the northeast corner of the living room.

(Chairs pushed together in the sitting area of Room 32-135.)

A rifle magazine was between the west and central couch cushions of the north couch. The coffee table was covered by white towels. A rifle and an empty rifle magazine were on the coffee table. There were four rifles sitting on the pushed-together chairs, and a rifle magazine was on the north arm of the east chair. One rifle was on the floor east of the chairs. There were two suitcases on the floor east of the coffee table containing numerous loaded rifle magazines. An empty rifle magazine was on the floor, east of the suitcases.

(Sitting area of Room 32-135.)
There was a stack of 14 loaded rifle magazines on the west side of the northeast pillar. A blue plastic tube with a snorkel mouthpiece attached with green tape to the east end and a black funnel with a fan inside at the west end extended from the east side of the suitcases, across the coffee table, to the west side of the room, adjacent to the doors of the west bedroom.

A chair facing south with a side table to the east was at the west end along the northeast bank of windows. The window located immediately east of the northwest pillar was shattered with glass on the floor below it. Numerous casings were on the floor at the base of the window and on the seat of the chair. A blue and yellow Estwing hammer was on the floor at the east side of the northeast pillar, south of the broken window. The head of the hammer had tape wrapped around it. The curtains in place over the broken window were damaged. Two rifles with bipods were on the floor south of the chair.
A high top table was centrally located along the northeast bank of windows with a loaded rifle magazine on the southeast end of the table. An open suitcase was on the floor south of the table with numerous loaded rifle magazines inside. A rifle with a bipod was on the floor southeast of the table. There were casings on the floor surrounding the table. A handwritten note with distance/bullet drop calculations was recovered from this room. The note was originally observed on the small round table next to the aforementioned chair.

(Handwritten note with distance/bullet drop calculations.)

**Paddock’s Body**

Paddock was on the floor south of the chair and side table. He was wearing black pants, a long sleeve brown shirt, black gloves, and grey shoes. Paddock was on his back with his head to the south, feet to the north, and arms at his sides. There was apparent blood surrounding his nose, mouth, and on the floor under his head. There was also apparent blood on the front of his shirt. A rifle was on the floor under his legs. A grey box cutter was on the floor between his feet. There were casings on the floor surrounding him. A silver and black colored Smith & Wesson revolver with apparent blood on it was on the floor south of Paddock's head.
Bar/Kitchenette

The central bar/kitchenette was south of the sitting area east of the foyer and north of the east-west hallway. There was a north bar counter (east-west orientation) with three chairs on the north side of the counter. There were three rifles on the floor north of the west end of the counter with a backpack under them. One rifle was on the seat of the western-most chair: one rifle was on the seat of the easternmost chair; and one rifle was located on the west end of the bar counter. An empty silver colored rolling case was on the floor north of the counter, at the east end. A Luxor sticker and a "29" sticker were on the back of the case.

At the west end of the bar counter was an Anran monitor with a video feed to the previously described camera on the lower portion of the room service cart in the hallway, a laptop computer, which provided a live-feed to the camera attached to the peephole of the door, and a Samsung cell phone in a black case.

Centrally located on the bar counter were bank cards along with other cards in the name of "Stephen Paddock" and room key card packets. At the east end of the bar counter was a black holster, a black glove, binoculars, a blue hat, brown wallet, tape roll, credit cards, a Nevada ID in the name of "Stephen Paddock," a player's card in the name of "Marilou Danley," a valet ticket, a notepad with the words "unplug phones" written on it, a white handheld monitor, a black ZTE cell phone with the front and back cameras covered with tape, and a Samsung Galaxy S6 active in a black case.
At the southwest corner of the bar was a sink. There were two loaded rifle magazines and a Tundra fire extinguisher on the sink counter.

(Bar/Kitchenette from the sitting room.)

(Computer monitor showing live view of 100 Wing hallway. Cell phone, holster, and ID located on the countertop.)

Living Room

The southeast living room was east of the bar/kitchenette at the east end of the east-west hallway. There was a television mounted on the south wall with an entertainment center cabinet below, couches to the north and east, and an orange chair to the west. The couch cushions were off of the east couch and piled on the north couch and on the floor. A table and four chairs were up against the north side of the north couch.
A side table was west of the north couch. A Meade spotting scope was on the floor north of the side table. A pink piece of paper with written measurements in feet and yards on one side was on the floor west of the east couch.\textsuperscript{25}

An open black suitcase, containing soft rifle cases, was on the floor north of the entertainment center cabinet. There were three casings on the floor west of the side table and at the east end of the east-west hallway.\textsuperscript{26}

There was a bullet hole through the east arm of the orange chair: two bullet holes into the entertainment center cabinet along the south wall and one bullet hole into the south wall between the entertainment center cabinet and the connecting door to Room 32-134.\textsuperscript{27}

There were two suitcases along the west wall. A large, blue bag with numerous towels, soft rifle cases, and scope covers inside were along the west wall.

\textsuperscript{25} This note was originally located on the table near Paddock’s body. The wind blew it to this location.
\textsuperscript{26} These casings came from the SWAT officer’s rifle.
\textsuperscript{27} These bullet holes came from the SWAT officer’s rifle.
Room 32-134

Room 32-134 was a single connecting hotel room, south of Room 32-135. The connecting door was located at the south end of Room 32-135 in the southwest corner of the southeast living room. There was damage to the south adjoining door frame, and the damaged door was on the floor inside Room 32-134.\(^{28}\) The main entry door to the room was west facing, accessing the hallway. A room service cart, with an open laptop computer on the east end, was in the entry hallway, east of the entry door. Wires were plugged into the laptop and ran under the entry door. A video feed was visible on the laptop and showed the 100 Wing hallway looking south from the previously described black Logitech camera attached to the hallway room service cart.

(Room 32-134 from connecting door. Room 32-134 bedroom. Room 32-134 service cart.)

The room was furnished with two beds with a nightstand in between along the south wall, a desk, a dresser, a chair along the north wall, a television mounted on the north wall, and floor-to-ceiling windows on the east. The southern-most window was shattered with glass on the floor below it. There were nine loaded rifle magazines on top of the dresser. The dresser drawers were open and the decorative bottom molding was broken. There were three rifles with bipods on the east bed and several casings. One cartridge case was on the floor west of the east bed. There were two rifles on the west bed, one of which was a bolt action. A pair of black gloves were on the west side of the west bed. A pair of tan sandals were on the floor north of the west bed. A bullet hole was in the north wall corresponding with a hole in the south wall of the living room, and one bullet hole was in the comforter at the north end of the east bed.

\(^{28}\) Occurred during the second explosive breach.
There were two closets along the west wall with the door to the attached southwest bathroom. The bathroom had a sink counter along the south side and tub to the north. Clothing was on the floor under the sink counter along with a trash can. There was a snorkel tube located inside the trash can.

**Paddock's Vehicle**

Paddock’s vehicle was located in Mandalay Bay East Valet, 2nd floor, space 317 by investigators. The vehicle was a 2017 Chrysler Pacifica bearing Nevada plate 79D401, had been backed into space 317 and was locked. The key for the vehicle was obtained from valet.

A search warrant was obtained and at 0325 hours, detectives with the LVMPD All-Hazard Regional Multi-Agency Operations and Response Section (ARMOR) broke a window to the vehicle to allow an explosive detection dog access to the scent. A U.S. Marshall explosive detection K9 moved around the vehicle and gave an alert to the presence of explosive precursors.

Detectives secured the area on the belief there were explosive precursors within the vehicle. ARMOR detectives requested LVMPD dispatch to notify the Las Vegas Fire and Rescue Chemical, Biological, Radiological, Nuclear, and Explosive Task Force (CBRNE) to respond. Las Vegas Fire Rescue responded with their CBRNE vehicle along with FBI bomb technicians. Located inside the vehicle were five bags which were X-rayed and removed by the FBI.

Upon rendering the vehicle safe, the vehicle and all items located inside were photographed. All items removed from the vehicle were placed back inside, and the vehicle was sealed. The vehicle was subsequently towed from the Mandalay Bay Hotel to a secure FBI facility for a thorough search and evidence collection.

Evidence collected from inside Paddock’s vehicle included loaded rifle magazines for both AR-15 and AR-10 style rifles. Also collected were 20 two pound containers of exploding targets, 10 one pound containers of exploding targets and 20 two pound bags of explosive precursors.
LVMPD detectives responded to Paddock's residence in Mesquite. The residence was located at 1372 Babbling Brook Court. Detectives obtained and served a search warrant at this location. Inside the residence, seven shotguns, five handguns, six rifles, exploding targets, firearm ammunition, rifle magazines and computer related items were recovered. These items were impounded and turned over to the FBI for processing.

**Paddock's Reno Residence**

FBI Special Agents responded to Paddock's residence in Reno. The residence was located at 1735 Del Webb Parkway. Agents obtained and served a search warrant at this location. Inside the residence were two shotguns, five handguns, firearm ammunition, rifle magazines, and computer-related items. The items were recovered by the FBI for processing.\(^{29}\)

\(^{29}\) Information obtained by the FBI
Evidence Recovery

During the course of the investigation, hundreds of items of evidentiary value were located and impounded by LVMPD crime scene analysts and the FBI ERT. The following is a summary of key pieces of evidence located during searches of multiple locations.30

Mandalay Bay Location

32nd Floor – 100 Wing – Stairwell Foyer Room

Metal “L” bracket with three screws securing it to the interior door/frame.

32nd Floor – 100 Wing – Hallway

Two surveillance cameras from the room service cart outside Room 32-134.
Bullet fragments

32nd Floor – Room 32-135 – Main Room

<table>
<thead>
<tr>
<th>Make</th>
<th>Model</th>
<th>Serial Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colt</td>
<td>M4 Carbine</td>
<td>LE451984</td>
<td>AR-15 .223/5.56 with a bump stock, vertical fore grip, and 100-round magazine. Front sight only.</td>
</tr>
<tr>
<td>Noveske</td>
<td>N4</td>
<td>B15993</td>
<td>AR-15 .223/5.56 with a bump stock, vertical fore grip, and 40-round magazine. EOTech optic.</td>
</tr>
</tbody>
</table>

30 Items of evidentiary value were housed and analyzed by the FBI
<table>
<thead>
<tr>
<th>Manufacturer</th>
<th>Model</th>
<th>Serial Number</th>
<th>Type Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>LWRC</td>
<td>M61C</td>
<td>24-18648</td>
<td>AR-15 .223/5.56 with a bump stock, vertical fore grip, and 100-round magazine. No sights or optics.</td>
</tr>
<tr>
<td>POF USA</td>
<td>P-308</td>
<td>UA-1600204</td>
<td>AR-10 .308/7.62 with a bipod, scope, and 25-round magazine.</td>
</tr>
<tr>
<td>Christensen</td>
<td>CA-15</td>
<td>CA04625</td>
<td>AR-15 .223 Wylde with a bump stock, vertical fore grip, and 100-round magazine. No sights or optics.</td>
</tr>
<tr>
<td>Manufacturer</td>
<td>Model</td>
<td>Serial Number</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------</td>
<td>----------------</td>
<td>---------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>POF USA</td>
<td>P-15 PE-1600179</td>
<td></td>
<td>AR-15 .223/5.56 with a bump stock, vertical fore grip, and 100-round magazine. No sights or optics.</td>
</tr>
<tr>
<td>Colt</td>
<td>Competition CCR014544</td>
<td></td>
<td>AR-15 .223/5.56 with a bump stock, vertical fore grip, an 100-round magazine. No sights or optics.</td>
</tr>
<tr>
<td>Smith &amp; Wesson</td>
<td>342 AirLite Ti CDZ7618</td>
<td></td>
<td>.38 caliber revolver with 4 cartridges, 1 expended cartridge case.</td>
</tr>
<tr>
<td>Manufacturer</td>
<td>Model</td>
<td>Serial Number</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
<td>---------------</td>
<td>-------------</td>
</tr>
<tr>
<td>LWRC</td>
<td>M61C</td>
<td>5P03902</td>
<td>AR-15 .223/5.56 with a bump stock, vertical fore grip, and 100-round magazine. EOTech optic.</td>
</tr>
<tr>
<td>FNH</td>
<td>FM15</td>
<td>FND000905</td>
<td>AR-10 .308/7.62 with a bipod, scope, and 25-round magazine.</td>
</tr>
<tr>
<td>Daniel Defense</td>
<td>DD5V1</td>
<td>DD5007426</td>
<td>AR-10 .308/7.62 with a bipod, scope, and 25-round magazine.</td>
</tr>
<tr>
<td>Manufacturer</td>
<td>Model</td>
<td>Serial Number</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------</td>
<td>---------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>FNH</td>
<td>FN15</td>
<td>FNB024293</td>
<td>AR-15 .223/5.56 with a bump stock, vertical fore grip, and 100-round magazine. EOTech optic.</td>
</tr>
<tr>
<td>POF USA</td>
<td>P15</td>
<td>03E-1603178</td>
<td>AR-15 .223/5.56 with a bump stock, vertical fore grip, and 100-round magazine. EOTech optic.</td>
</tr>
<tr>
<td>Colt</td>
<td>M4 Carbine</td>
<td>LE564124</td>
<td>AR-15 .223/5.56 with a bump stock, vertical fore grip, and 100-round magazine.</td>
</tr>
<tr>
<td>Manufacturer</td>
<td>Model</td>
<td>Serial No.</td>
<td>Description</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------</td>
<td>------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>LMT</td>
<td>Def. 2000</td>
<td>LMT81745</td>
<td>AR-15 .223/5.56 with a bump stock, vertical fore grip, and 100-round magazine. No sights or optics.</td>
</tr>
<tr>
<td>Make</td>
<td>Model</td>
<td>Serial Number</td>
<td>Description</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------</td>
<td>---------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Sig Sauer</td>
<td>SIG716</td>
<td>23D020868</td>
<td>AR-10 .308/7.62 with a bipod, red dot optic, and 25-round magazine.</td>
</tr>
<tr>
<td>Daniel Defense</td>
<td>DD5V1</td>
<td>DD5008362</td>
<td>AR-10 .308/7.62 with a bipod and scope. No magazine.</td>
</tr>
</tbody>
</table>

- Blue plastic hose with funnel, fan, and scuba mouthpiece attached.
- Surveillance camera mounted to room door peephole.
- Baby monitor camera (not mounted).
- Surveillance camera mounted to room door peephole.
- Small sledge hammer.
- Laptop computer.
- Surveillance camera monitor.
- Spotting scope.
- Binoculars.
- Expended .223/5.56 cartridge casings (approximately 1,050).
- Cellular phones.
- Nevada Driver License – Stephen Paddock.
- Mlife players card – Marilou Danley.
- Polymer 40-round AR-15 magazines (loaded).
- Steel 100-round AR-15 magazines (loaded).
- Polymer 25-round AR-10 magazines (loaded).
Live ammunition (approximately 5,280).
Handwritten note with distance/bullet drop calculations.
Suitcases, duffel bags, soft rifle cases, and towels.

32nd Floor – Room 32-135 – Bedroom Suite

- Laptop computer (on bed).
- Disassembled laptop computer missing hard drive (on floor).
- Power hand drills.
- Empty ammunition boxes and plastic bags.
- Scuba mask.
- Loose ammunition.
- Miscellaneous hand tools and drill bits.
- Miscellaneous screws and mounting brackets.
- Suitcases and towels.
- Empty rifle magazines

<table>
<thead>
<tr>
<th>Make</th>
<th>Model</th>
<th>Serial Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>FNH</td>
<td>FN15</td>
<td>FNCR000383</td>
<td>AR-15 .223/5.56 with a bump stock, vertical fore grip, and 100-round magazine. No sights or optics.</td>
</tr>
<tr>
<td>Ruger</td>
<td>American</td>
<td>695-93877</td>
<td>.308 caliber bolt action rifle with scope.</td>
</tr>
</tbody>
</table>
## Event: 171001-3519

<table>
<thead>
<tr>
<th>Weapon</th>
<th>Model</th>
<th>Serial Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>LMT</td>
<td>LM308MWS LMS18321</td>
<td>AR-10 .308/7.62 with a bipod and red dot scope. No magazine.</td>
<td></td>
</tr>
<tr>
<td>Ruger</td>
<td>SR0762 562-13026</td>
<td>AR-10 .308/7.62 with a bipod, scope, and 25-round magazine.</td>
<td></td>
</tr>
<tr>
<td>LMT</td>
<td>LM308MWS LMS18300</td>
<td>AR-10 with a bipod, scope, and 25-round magazine.</td>
<td></td>
</tr>
</tbody>
</table>

- Laptop computer connected to hallway surveillance cameras.
- Polymer 25-round AR-10 magazines (loaded).
- Expended .308/7.62 cartridge casings (8).
Mandalay Bay – East Valet – Space 317

2017 Chrysler Pacifica, Nevada/79D401 towed to FBI garage.
20x2 pound containers of exploding targets.
10x1 pound containers of exploding targets.
2x20 pound bags of explosive precursors.
Polymer 25-round AR-10 .308/7.62 magazines (loaded).
Polymer 40-round AR-15 .223/5.56 magazines (loaded).
Boxed ammunition.
Suitcases and towels.

McCarran Airport – Fuel Tanks – E. Mandalay Bay Road/Haven Street

Bullet fragments.

1372 Babbling Brook Court Mesquite, Nevada (Paddock’s House)

<table>
<thead>
<tr>
<th>Make</th>
<th>Model</th>
<th>Serial Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smith &amp; Wesson</td>
<td>SW99</td>
<td>SAB5974</td>
<td>9mm semi-automatic pistol.</td>
</tr>
<tr>
<td>Smith &amp; Wesson</td>
<td>M&amp;P9</td>
<td>HDU4086</td>
<td>9mm semi-automatic pistol.</td>
</tr>
<tr>
<td>Glock</td>
<td>17</td>
<td>BCGM344</td>
<td>9mm semi-automatic pistol.</td>
</tr>
<tr>
<td>Mossberg</td>
<td>500</td>
<td>V0397109</td>
<td>12 gauge pump action shotgun.</td>
</tr>
<tr>
<td>Sig Sauer</td>
<td>516</td>
<td>20J036999</td>
<td>AR-15 .223/5.56 rifle with a bipod and scope.</td>
</tr>
<tr>
<td>Arma-Lite</td>
<td>SPRM001</td>
<td>M-10-13530</td>
<td>AR-15 .223/5.56 rifle with a bipod and scope.</td>
</tr>
<tr>
<td>Mossberg</td>
<td>590</td>
<td>V0433557</td>
<td>12 gauge pump action shotgun.</td>
</tr>
<tr>
<td>LWRC</td>
<td>M61C-IC-A5</td>
<td>24-19038</td>
<td>AR-15 .223/5.56 rifle with a bipod and scope.</td>
</tr>
<tr>
<td>Mossberg</td>
<td>590</td>
<td>V0348193</td>
<td>12 gauge pump action shotgun.</td>
</tr>
<tr>
<td>Mossberg</td>
<td>930</td>
<td>AF0001141</td>
<td>12 semi-automatic gauge shotgun.</td>
</tr>
<tr>
<td>Arma-Lite</td>
<td>SPRM001</td>
<td>M-10-12006</td>
<td>AR-15 .223/5.56 rifle with a bipod and scope.</td>
</tr>
<tr>
<td>Sig Sauer</td>
<td>516</td>
<td>20K046207</td>
<td>AR-15 .223/5.56 rifle, with a bipod. No sights or optics.</td>
</tr>
<tr>
<td>Mossberg</td>
<td>590</td>
<td>P833785</td>
<td>12 gauge pump action shotgun.</td>
</tr>
<tr>
<td>Arsenal</td>
<td>Saiga 12</td>
<td>H09423015L</td>
<td>AK-47 style semi-automatic 12 gauge shotgun.</td>
</tr>
<tr>
<td>Arsenal</td>
<td>Saiga 12</td>
<td>H07420684</td>
<td>AK-47 style semi-automatic 12 gauge shotgun.</td>
</tr>
<tr>
<td>Beretta</td>
<td>92F</td>
<td>C856302</td>
<td>9mm semi-automatic pistol.</td>
</tr>
<tr>
<td>FN</td>
<td>5.7</td>
<td>386215450</td>
<td>5.7mm semi-automatic pistol.</td>
</tr>
</tbody>
</table>

Handgun, shotgun, and rifle ammunition.
Exploding targets.
Computer related items.
Soft body armor.

1735 Del Webb Parkway, Reno, Nevada (Paddock’s House)

<table>
<thead>
<tr>
<th>Make</th>
<th>Model</th>
<th>Serial Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smith &amp; Wesson</td>
<td>340</td>
<td>DCA2099</td>
<td>.357 caliber revolver.</td>
</tr>
<tr>
<td>Beretta Pietro</td>
<td>92A1</td>
<td>A098515Z</td>
<td>9mm semi-automatic pistol.</td>
</tr>
<tr>
<td>Remington Arms</td>
<td>870 Tactical</td>
<td>RS90036Z</td>
<td>12 gauge pump action shotgun.</td>
</tr>
<tr>
<td>Mossberg</td>
<td>590</td>
<td>V0187184</td>
<td>12 gauge pump action shotgun.</td>
</tr>
<tr>
<td>Glock</td>
<td>17 Gen4</td>
<td>BBVN828</td>
<td>9mm semi-automatic pistol.</td>
</tr>
<tr>
<td>Smith &amp; Wesson</td>
<td>M&amp;P9</td>
<td>HHA9534</td>
<td>9mm semi-automatic pistol.</td>
</tr>
<tr>
<td>Smith &amp; Wesson</td>
<td>M&amp;P9</td>
<td>HDL4053</td>
<td>9mm semi-automatic pistol.</td>
</tr>
</tbody>
</table>

Firearm ammunition.
Rifle magazines.
Computer-related items.

Las Vegas Village

Bullets and bullet fragments.

Ammunition

Several types of ammunition were located within rooms 32-135 and 32-134 loaded into rifle magazines for AR-15 and AR-10 style rifles. The AR-15 .223/5.56 rifle magazines were loaded with hollow point and polymer tipped hollow point ammunition. The AR-10 .308/7.62 rifle magazines and the bolt action rifle were loaded with Tracer, Frangible Incendiary Armor Piercing and Armor Piercing Incendiary ammunition.31

Firearms Forensic Analysis

Recovered in rooms 32-135 and 32-134 were 1057 shell casings. Forensic analysis was completed on all of the shell casings that were recovered. Of the rifles recovered from inside rooms 32-135 and 32-134, 14 were found to have been fired. The following table indicates which guns were fired and how many times:

<table>
<thead>
<tr>
<th>Make</th>
<th>Serial Number</th>
<th>Number of Rounds Fired</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daniel Defense</td>
<td>DDM4078072</td>
<td>100</td>
</tr>
<tr>
<td>POF</td>
<td>PE1600179</td>
<td>95</td>
</tr>
<tr>
<td>FNH</td>
<td>FNB024293</td>
<td>153</td>
</tr>
</tbody>
</table>

31 Information on the ammunition was summarized from the analysis report produced by the FBI.
Forensic analysis was also completed on the Smith and Wesson revolver recovered in Room 32-135. Scientists were able to determine the round recovered from Paddock’s head was fired from the revolver recovered in Room 32-135. It was determined the spent shell casing recovered in the cylinder of the revolver was fired from the revolver.\textsuperscript{32}

Lock Interrogations

The key cards for hotel rooms in Mandalay Bay are programmed by computer when checking into the hotel. Each card is automated to open the room door associated to that guest. As a result, each time a card is used to gain access to a guest room, the information is electronically stored. Lock interrogations were requested on both rooms 32-135 and 32-134.

On October 1, the door and lock to Room 32-135 was manipulated several times. The door was opened and closed and the dead bolt was thrown and released several times. At 2320 hours, the door to Room 32-135 showed “opened from the inside.” This is the time the door was breached by officers. The only key card used to open the door from the outside was issued to Paddock.

On October 1, the door and lock to Room 32-134 was manipulated several times. The door was opened and closed, and the dead bolt was thrown and released several times. The only key card used to open the door from the outside was issued to Paddock.

Prior to October 1, key cards issued to other guests were used in an attempt to make access into rooms 32-135 and 32-134 but access was denied.\textsuperscript{33}

DNA

Several items of evidentiary value were collected for DNA analysis from rooms 32-135 and 32-134 of the Mandalay Bay. These items included the 24 firearms recovered in the rooms, along with personal items, and were compared to known samples for Paddock and Danley.

\textsuperscript{32} Information was summarized from the analysis report completed by the FBI.

\textsuperscript{33} Lock interrogation reports for rooms 32-135 and 32-134. Lock interrogations are attached as Appendix A and Appendix B, respectively.
Scientists were able to determine Paddock’s DNA existed on several firearms, including the Smith and Wesson revolver. When tested against Danley’s DNA, the results for the firearms were either inconclusive or negative.

DNA recovered on personal items located in the rooms were tested and found to belong to Paddock and Danley. DNA also returned to known samples of hotel employees and previous room guests. Investigators conducted interviews with those people, and it was determined they had no interaction with Paddock and were not involved in the events of 1 October.³⁴

**Digital**

There were approximately 2,000 leads investigated. Approximately 22,000 hours of video and 252,000 images were obtained by investigators of the LVMPD and the FBI. Analysis found 500 sightings of Paddock.³⁵

Four laptop computers and three cellphones were located in rooms 32-135 and 32-134. All laptop computers and cellphones were given to the FBI to be forensically analyzed. The forensic analysis on all electronics located in rooms 32-134 and 32-135 have been completed, and the results of the analysis is listed in the following section.

**Evidence Item HP Laptop Computer Recovered in Room 32-134**

**Browser Artifacts**

The HP laptop computer contained Internet artifacts from the following cloud storage services: Dropbox.com, Box.com, and Microsoft One Drive. Dropbox and Microsoft One Drive were installed on the laptop. Box.com was accessed through a web browser.³⁶

**Google Maps**

On May 18, 2017, Google Maps searches were performed for Venice Beach and Fenway Park.

The following queries were also made with Google Maps:

- Royal Rooters’ Club, Boston, MA
- Blandford Street Station, United States
- Boston University Questrom School of Business
- Boston Hotel Buckminster, Beacon Street, Boston, MA
- Boston Arts Academy
- Official Red Sox Team Store
- Official Red Sox Team Store, 19 Yawkey Way, Boston, MA

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³⁴ DNA analysis was completed by the FBI. Information summarized from the FBI analysis report.
³⁵ Digital evidence analysis was completed by the FBI. Information summarized from the FBI analysis report.
³⁶ Computer analysis was completed by the FBI. Information summarized from the FBI analysis report.
Google Search Queries

On May 18, 2017, searches were performed for "summer concerts 2017," "grant park functions," "biggest bear," "La Jolla Beach," "open air concert venues," "biggest open air concert venues in USA," and "how crowded does Santa Monica Beach get."

On September 4, 2017, searches were performed for "Las Vegas rentals," "Las Vegas condo rentals," "Las Vegas high rise condos rent," and "Las Vegas Ogden for rent."

On September 5, 2017, searches were performed for "life is beautiful expected attendance," "life is beautiful single day tickets," and "life is beautiful Vegas lineup."

On September 15, 2017, searches were performed for "swat weapons," "ballistics chart 308," "SWAT Las Vegas," "ballistic," and "do police use explosives."

Bing Search Queries

On September 5, 2017, searches were performed for "Mandalay Bay Las Vegas," "Route 91 harvest festival 2017 attendance," and "Route 91 harvest festival 2017."

The following websites were accessed using an Internet Explorer private browser:

- http://lineup.lifeisbeautiful.com/
- https://www.google.com/maps?hl=en&tab=wl
- https://lifeisbeautiful.com/ticket/
- https://www.google.com/?gws_rd=ssl&q=how+crowded+does+santa+monica+beach+get&spf=1495082236761
- https://www.vividseats.com/blog/category/all-concerts/
- https://www.vividseats.com/blog/fenway-park-concerts-and-seating
- https://www.vividseats.com/blog/the-14-best-outdoor-concert-venues-in-the-us

The following websites were accessed using Internet Explorer:

- www.grantparkmusicfestival.com on May 18 at 0419 hours
- www.ticketmaster.com on May 18 at 0427 hours
- ticketmaster.com on May 18 at 0431 hours
- www.sandiego.org on May 18 at 0505 hours
Evidence Item Dell Laptop Computer Recovered in Room 32-135

Computer forensic analysis of a Dell laptop Model E5570 revealed numerous Internet searches for open-air venues. Additionally, several hundred images of child pornography were located on the computer's hard drive. The investigation into the source of these images is ongoing. The following Internet searches from this laptop are indicated below:37

Google Search Queries

- How tall is Mandalay Bay/ Unknown date
- NV gun shows/ September 2, 2017 and September 30, 2017
- Life Is Beautiful 2017/ September 20, 2017
- Excalibur Hotel & Casino/ September 23, 2017
- Las Vegas Academy of the Arts Performing Arts Center/ September 23, 2017
- Fremont Hotel & Casino/ September 23, 2017
- El Cortez Hotel & Casino/ September 23, 2017
- Family Courts & Services Center/ September 23, 2017
- Gary Reese Freedom Park/ September 23, 2017
- Cashman Center/ September 23, 2017
- Cashman Field/ September 23, 2017
- Neon Museum/ September 23, 2017
- The Mob Museum/ September 23, 2017
- Discovery Children’s Museum/ September 23, 2017 and September 26, 2017
- Arizona Charlie’s Decatur/ September 23, 2017
- Where is hard drive located on e5570/ September 28, 2017
- NHRA schedule 2017/ September 30, 2017

Cellular Phones

Along with the three cellular phones located in Room 32-135, two other telephone numbers were found associated with Paddock which included the telephone number associated with Danley. Call data records for all telephone numbers were obtained through court order from October 2016 through October 2017.

Telephone records indicated the four telephone numbers primarily used by Paddock were (310) 227-7094, (310) 357-3357, (310) 357-3358, and (702) 482-6360. There were no telephone numbers which contacted all of Paddock’s devices, however, there were phone numbers which

37 Computer analysis completed by the FBI. Information was summarized from the FBI report.
contacted more than one of his devices. The devices which used the telephone numbers (310) 227-7094 and (310) 357-3357 were the devices most used by Paddock.

**Telephone Number (310) 227-7094**

This telephone number had 1,837 contacts since the beginning of October 2016. Of those contacts, 668 were outgoing and 1,169 were incoming. The last outgoing call placed from this number was on September 27, 2017 at approximately 1522 hours. The last incoming call was on September 27, 2017 at 1058 hours.

**Telephone Number (310) 357-3357**

This telephone number had 1,615 contacts since the beginning of October 2016. Of those contacts, 127 were outgoing and 1,488 were incoming. The last outgoing call was on September 27, 2017 at 1518 hours. The last incoming call was on September 28, at 0816 hours.

**Telephone Number (702) 533-5316**

This telephone number was associated with a prepaid smartphone and had very little contact information. The last incoming telephone call was on September 17, 2017 at 1241 hours. The last outgoing telephone call was placed March 30, 2017 at 1154 hours.

**Financial Analysis**

A financial analysis was completed on Paddock and revealed a large decrease in financial liquidity. Investigators found 14 bank accounts associated with Paddock. In September 2015, his bank accounts totaled just under $2,100,000. By contrast, in September 2017, the amount in the accounts dropped to $530,000 with most of the decline occurring in 2017.

Over $600,000 was paid to casinos, approximately $130,000 was associated with Danley, and over $170,000 was paid to credit card companies. Paddock made almost $95,000 in firearms and gun-related purchases. One of the last checks Paddock wrote was to the IRS for over $13,000.\(^{38}\)

**Suspectology**

Suspectology is the gathering of information to help establish the identity of a suspect and motive in a crime. Suspectology can be developed through interviews with family, friends, and associates and also through analysis of data collected about a subject.

Agents with the FBI’s Behavioral Analysis Unit (BAU) responded to gather information and help with Paddock’s suspectology. At the time of this report, the FBI’s BAU assessment of Paddock is not complete and will be released by the FBI at a later date.

\(^{38}\) Financial analysis completed by the FBI. Information was summarized from the FBI report.
In order to obtain a better understanding of Paddock, the following interviews were completed with his family members and acquaintances. The following are summaries of the interviews conducted by investigators with various agencies.

**Marilou Danley**

Marilou Danley was interviewed on several occasions after the incident. Present during the interviews were various investigators with the LVMPD and FBI along with Danley’s daughter and lawyer. The following is a summary of the information provided and learned during those interviews.

Danley was born in the Philippines and later moved to Australia and became a citizen. Danley moved to the United States in the late 1980s. She married and lived in Tennessee and Arkansas until separating from her husband. Danley then moved to Reno and began working as a high-limit casino host.

While in Reno, Danley met Stephen Paddock and had a professional relationship. Over the course of a couple years, their relationship developed into a romantic one. Paddock was not living in Reno at the time but would visit often and stay at the casino. According to Danley, Paddock played video poker and was known as a high roller.

As their relationship developed, Paddock bought a condominium in Reno because he was tired of staying in the hotel. In 2013, Danley moved into the condominium, and Paddock continued to travel between Mesquite, Texas, and Reno. Paddock told Danley his family owned an apartment complex in Mesquite.

In 2014, Paddock purchased a single-family residence in the Reno area and sold the condominium. Paddock and Danley moved into the house, and it became their primary residence. In January of 2015, Paddock purchased a single-family residence in Mesquite. Paddock and Danley would travel between the two residences often. All real estate transactions were completed in Paddock’s name only.

After acquiring the Mesquite residence, Paddock and Danley would routinely travel to Las Vegas and stay at various casinos while gambling. Most of the trips were for a few days at a time. They had hosts at several casinos and would book rooms, show tickets, and concerts through the casino hosts. Paddock would often request a room with a nice view. Reservations were placed with both names so that both could charge incidentals to the rooms.

Paddock and Danley took multiple trips together, and Paddock asked Danley to quit working so they could travel more. Danley told him she could not because she had to work. Paddock convinced Danley to quit working in 2015 and agreed to give her a set amount of money every month. Paddock and Danley travelled, taking many cruises and international trips. Destinations included the Mediterranean, Bahamas, Dubai, and the Orient.

Danley described her relationship with Paddock as very romantic in the beginning; however, she noticed a gradual decline in affection. According to him, it was due to his declining health. Danley
stated over the course of their relationship, hugging and kissing stopped. Danley confronted Paddock about the lack of affection, and he told her he was unable to commit to more affection. Paddock would show concern and compassion despite the lack of affection.

Danley stated Paddock was no longer able to have an intimate relationship because he was unable to perform. Danley told investigators Paddock was physiologically able to have sex, but the physical act would exhaust him. Danley stated he would often sleep for long periods after physical exertion.

Danley described Paddock as a mild-mannered person and never violent. He rarely became visibly upset and did not yell or scream when angered. If he was upset about something, Danley stated Paddock would become quiet. He seldom drank alcohol, and she never observed him consume any type of illegal narcotic.

Paddock would often complain of being sick and told Danley that doctors couldn’t cure him. He stated doctors told him he had a chemical imbalance. Paddock would get very bad headaches from chemical smells and often asked to change rooms in hotels because of the smell in the room. Paddock would not shake hands with people and often wore cotton gloves. Paddock told her in the beginning of their relationship that she would have to stop wearing lipstick and perfumes because he was allergic to them.

According to Danley, Paddock was not a religious person. He would often say things like, “Your God doesn’t love me,” or “Your God doesn’t love us.” Danley described herself as a Catholic and would often make the sign of the cross. If something negative would happen after making the sign of the cross, Paddock would blame the negative action on Danley making the sign. Although not religious, Paddock did not have a problem with Danley taking part in religious practices. According to Danley, Paddock described himself as an atheist.

Danley stated Paddock didn’t talk in length about politics and did not belong to any political organizations. Paddock did express a dislike for the Obama administration and was happy when President Trump was elected. Paddock told her he believed President Trump would do something to stop illegal immigration. Paddock did not comment on the topic of gun control and did not display any racial bias.

In 2016, Paddock and Danley traveled to their residence in Reno. When they returned to Mesquite, Paddock brought back a large gun safe. The safe was placed in the garage of the Mesquite residence, and Danley observed a pistol in the safe when she placed jewelry in it. Danley observed an increase in guns and gun-related purchases after Paddock retrieved the safe.

In August 2017, Paddock and Danley drove to the residence in Reno. On their return to Mesquite, Paddock brought back a large quantity of ammunition. Danley assisted Paddock by putting loaded magazines into suitcases and duffle bags. According to Danley, each duffle bag contained 25 loaded magazines. Danley asked Paddock why he had so much ammunition and Paddock told her it was because one gun could use a lot of ammunition. Paddock also said he began buying ammunition in bulk because it was cheaper.
Danley believed Paddock's new found interest in guns was merely a hobby. Packages began arriving at the residence frequently, and Paddock would open the packages in the garage. Paddock often went to gun stores and gun shows. Danley accompanied Paddock on a few trips to gun stores but did not pay attention to the transactions. Danley also accompanied Paddock to an unofficial gun range located near the waste management landfill near Mesquite. Danley helped set up targets at long distances for Paddock to shoot with the rifles. After target shooting with the various rifles, Paddock would clean them in the garage. Danley helped Paddock load magazines and move ammunition on more than one occasion.

During a stay at the Mandalay Bay in the beginning of September 2017, Danley recalled Paddock behaving strangely. They were staying in Room 60-235, and she observed Paddock constantly looking out the windows of the room which overlooked the Las Vegas Village venue. Paddock would move from window to window looking at the site from different angles.

In late August or early September 2017, Paddock told Danley she should go see her family in the Philippines. Paddock booked the travel arrangements for Danley's flights. Danley departed on September 15 and was scheduled to return on October 4. Paddock completed three separate wire transfers into Danley’s account during the trip. The total of the transfers was $150,000. According to Danley, the money was to be used to purchase a home in the Philippines. Danley was concerned Paddock may be attempting to set her up with a home and break up with her.

Danley stated most of her communication with Paddock during the trip was by email or text message. They did have at least one voice call during the trip. Paddock told Danley the calls were expensive, and that’s why he set up international text messaging for the trip. During text or email conversations, Paddock would become evasive or change the subject if Danley asked where he was at but did tell her he was up $70,000. Around September 27, 2017, she received an email from Paddock asking her if she wanted to stay longer, and she replied she was ready to come home.

Danley learned of the attack while she was in Manila. She was on her way to dinner when her sister received a phone call telling them to come back to the house. When Danley and her sister walked into the house, she observed her driver's license photo on the television stating she was a person of interest in the investigation. Danley contacted her daughter in California and made arrangements to return to the United States.

**Peggy Paddock**

Paddock’s ex-wife Peggy was interviewed after the incident. Present during the interview were various agents with the FBI. The following is a summary of the information provided and learned during the interview.

Peggy was married to Paddock for approximately six years. After their divorce, Peggy and Paddock continued to invest in real estate together. Most of the properties were located in the Los Angeles area. Paddock would handle most of the details pertaining to the purchase and sale of properties with Peggy mainly assisting in financial support.
Paddock spoke of growing up with a single mom and financial instability during his marriage to Peggy. Paddock emphasized a need to be self-reliant and self-sustaining because of this. During high school and college, Paddock worked for the United States Postal Service. After graduating from college, he began working for the IRS. Paddock went on to work for Lockheed, the Defense Contractor Auditing Agency and then McDonnell Douglas.

Paddock was not interested in drawing attention to himself. He did not buy flashy clothes, jewelry or cars.

**Irene Hudson**

Irene Hudson, the mother of Stephen Paddock, was interviewed on October 2, 2017, by special agents with the FBI. The following is a summary of the information provided and learned during the interview.

Hudson is the biological mother of Paddock and was his former business partner. She stated the last time she spoke with Paddock was over the phone a couple weeks before the attack. Paddock called to check on her and make sure she was prepared for Hurricane Irma.

Hudson did not believe Paddock was affiliated with any religious or political groups. Paddock did not discuss either topic with Hudson. Hudson told agents Paddock was intelligent, good with numbers, and non-violent.

Hudson did not understand why Paddock committed such a horrible act. She believed Paddock must have developed some type of “brain tumor” which caused him to act the way he did.

**Eric Paddock**

Eric Paddock, a brother of Stephen Paddock, was interviewed on several occasions after the incident. Present during the interviews were various investigators with the LVMPD and FBI. The following is a summary of the information provided and learned during those interviews:

Eric is the youngest of four siblings born to Benjamin and Irene Paddock (Hudson). Benjamin was arrested and went to prison for bank robbery when Eric and his brothers were young. Eric stated several times to investigators his dad was on the FBI’s Ten Most Wanted list. Of the brothers, Eric only spoke to Paddock. Eric stated Patrick has “mental issues” and described Bruce as a “sociopath.” Eric stated Paddock had limited interaction with Benjamin after Benjamin’s release from prison.

Eric stated the last time he had contact with Paddock prior to the attack was approximately two weeks before and was via text message. Eric said it was not uncommon for long periods of time to pass without contact between them. He continued to say that they would only speak when something needed to be discussed.
When asked about political and religious affiliations, Eric stated Paddock had none and was neither liberal nor conservative. Eric did not believe Paddock voted in the prior presidential election. Paddock was not a religious person, did not believe in any higher power, and found religious people to be ridiculous.

Paddock graduated from college with a degree in accounting and later worked for the IRS. Eric believed Paddock worked for the IRS in order to learn how to hide income. Paddock later worked for an aerospace engineering company before becoming involved in real estate with family members.

Eric, Paddock, and their mother Irene started a business together investing in real estate. They owned several properties together, including apartment complexes in California and Texas. The properties were sold for a substantial profit which was split between them.

After the sale of the business properties, Paddock moved to Nevada and began gambling. Most of Paddock’s activities centered on gambling. Paddock had a mathematical mind and would only gamble when he believed the odds were in his favor. According to Eric, Paddock had won millions of dollars gambling and was well known in Las Vegas casinos. Paddock played mostly at the Wynn for the last few months. Because Paddock was so successful, casinos would no longer provide him free compensations.

Eric believed Paddock may have conducted the attack because he had done everything in the world he wanted to do and was bored with everything. If so, Paddock would have planned the attack to kill a large amount of people because he would want to be known as having the largest casualty count. Paddock always wanted to be the best and known to everyone.

Eric told investigators he and Paddock were smarter than the majority of other people. Eric told investigators he was in Las Vegas to help and show “how dumb you motherfuckers are,” referring to law enforcement. Eric believed Paddock would have planned every part of the attack methodically. Paddock would have a need for everything found in the room. Despite appearing unkempt and in poor health, Paddock was very detail-oriented.

Paddock would not have cared about the people he killed. It would not matter their race, religion or sex. Paddock was described by Eric as a “narcissist” and only cared for people that could benefit him in some way. Eric stated Paddock needed to be seen as important and needed to be catered to. According to him, Paddock did not have anger issues and was passive aggressive toward those who angered him.

Eric was upset with Paddock until he learned Paddock had removed the hard drives of the computers found in the hotel room. Eric was upset because Paddock completed the taxes for the family and had cheated on them. Eric was afraid the hard drives would implicate him and his mother for tax evasion. Upon learning the hard drives were missing, Eric said several times maybe he (Paddock) did care for us.
Eric felt Paddock cared deeply for Danley and would do whatever possible to help take care of her. Eric expressed anger over the possibility of Danley having access to his monetary assets. Eric referred to Danley as a “gold digger.”

Kerry Marie Paddock

Kerry Marie Paddock, the wife of Eric and sister-in-law of Paddock, was interviewed after the incident. Present during the interview were various Special Agents with the FBI. The following is a summary of the information provided and learned during those interview.

Kerry had not seen Paddock since July 2016 when she and Eric visited Paddock and Danley in Las Vegas. Kerry has known Paddock for approximately 36 years, but she only had contact with him around 20 times. Eric and Paddock would talk occasionally on the phone.

She knew Paddock worked for the IRS at one point in his life. Kerry, Paddock and Eric bought property together in Texas and California. She also believed that Paddock owned other properties, but she did not have any further information.

Kerry knew that Paddock gambled often and believed it helped him maintain his lifestyle. Paddock liked to talk about traveling and gambling. She never observed Paddock angry or upset.

Kerry knew Paddock was allergic to many things. Because of his allergies, Danley never wore lipstick or perfume. Kerry did not know if Paddock was ever diagnosed with any condition by a medical doctor.

Bruce Paddock

Bruce Paddock, a brother of Stephen Paddock, was interviewed on several occasions after the incident. Present during the interviews were various Special Agents with the FBI. The following is a summary of the information provided and learned during those interviews.

Bruce was staying at an inpatient medical facility awaiting back surgery. On October 1, at approximately 0230 hours, Bruce woke up in need of pain medication. Bruce watched the news on the television and learned of the shooting at the Route 91 Harvest music festival. Bruce heard that his brother, Paddock, was the suspect in the shooting. Bruce called the FBI public access line to report his location in case investigators needed to talk to him.

Bruce had no contact with Paddock or his mother for many years. Bruce had not seen Paddock since the early 1990s and had not spoken with him for over 10 years. Bruce called his mother to advise her what was going on and learned his mother was already aware.

Despite the lack of contact with Paddock, Bruce believed Paddock was suffering from mental illness and was paranoid and delusional. He did not believe Paddock was a violent person and did not abuse drugs or alcohol.
Bruce speculated that Paddock would’ve had to be “very pissed off” to commit such a violent act. Bruce further stated Paddock would have planned everything well in advance. He stated Paddock knew exactly what he was doing when he selected the hotel, the room, the floor, and the concert venue below.

According to Bruce, Paddock was successful and wealthy. Paddock worked for the IRS and the United States Postal Service. He stated Paddock owned several apartment buildings.

**Patrick Paddock**

Patrick Paddock, a brother of Stephen Paddock, was interviewed on several occasions after the incident. Present during the interviews were various Special Agents with the FBI. The following is a summary of the information provided and learned during those interviews.

Patrick works at the Pima County Wastewater Reclamation Department in Tucson, Arizona. Patrick learned of the attack in Las Vegas when a co-worker asked if he was related to Stephen Paddock.

Patrick told investigators he had no current knowledge of Paddock’s activities or state of mind due to having no contact with him over the last two decades. Patrick stated he had no interest in Paddock or any other family members.

Patrick was not aware of Paddock having any mental disorders or affiliations with religious or political groups. Patrick was aware Paddock had a pilot’s license and worked for the IRS at one point.

According to Patrick, Paddock did not display behaviors of violence or revenge and was motivated by what benefited him personally. To his knowledge, Paddock did not abuse alcohol, illegal drugs, or prescription medications.

**David Paddock**

David Paddock, a nephew of Stephen Paddock, was interviewed after the incident. Present during the interview were various Special Agents with the FBI. The following is a summary of the information provided and learned during the interview.

David advised he has not spoken to his uncle since the beginning of June 2017. David was in Reno for a convention and met Paddock for dinner. David said Paddock seemed fine during the dinner and did not notice any abnormal behavior.

According to David, his uncle kept to himself and David described him as “wealthy” and “aloof.” Paddock liked to keep to himself but enjoyed eating at restaurants and taking cruises. David knew Paddock had a girlfriend but never met her.
Paddock did not speak in an emotional manner. David stated his family was very direct and did not display much emotion. David never witnessed Paddock being rude or disrespectful to anyone. Paddock was not a religious person and did not belong to any political groups.

**Jacob Paddock**

Jacob Paddock was interviewed after the incident. Present during the interview were various Special Agents with the FBI. The following is a summary of the information provided and learned during the interview.

Jacob Paddock last saw his uncle in February 2017. Jacob was living in Los Angeles, California and moving back to Florida. His father, Eric Paddock, drove his RV to California to help Jacob move. Jacob and Eric stopped in Las Vegas and had dinner with Paddock at the Wynn Las Vegas. Jacob stated Paddock had two rooms at the Wynn, but he and his father did not stay the night.

Jacob believed Paddock received a degree in accounting or business and worked as an accountant at some point. Jacob also knew the majority of the family’s wealth was from real estate investments.

Jacob told investigators the family was not very close and only met Paddock six or seven times in his life. Paddock would occasionally speak to Eric on the phone and the last time was during Hurricane Irma.

Jacob described Paddock as “eccentric.” Paddock liked to keep to himself and did not want to be recognized. If he hit a large jackpot while gambling, Paddock would decline any photographs or recognition. Jacob said Paddock was a high roller at many casinos in Las Vegas. He said Paddock was careful with his money. Paddock would play machines on nights when his points would be doubled or tripled for complimentary rooms, shows, and meals.

Paddock did not have any political or religious affiliations that Jacob was aware of. Jacob never observed Paddock upset or angry with anyone.

**Vivian Ayers**

Vivian Ayers, Paddock’s first cousin, was interviewed on several occasions after the incident. Present during the interviews were various investigators with the FBI. The following is a summary of the information provided and learned during those interviews.

Ayers has known Paddock since they were children. Ayers’ mother and Paddock’s mother were sisters. According to Ayers, Paddock did well in school and did not have behavioral issues.

Paddock and his brothers were told by their mother, that their father died when they were young. He was in fact in prison at the time. Ayers stated Hudson, Paddock’s mother, was angry and bitter because she felt Paddock’s father abandoned her and the boys. Hudson worked hard and
was a private person. Ayers felt Paddock had the same personality traits as his mother. Paddock never mentioned his personal problems to anyone.

When Paddock became interested in a subject, he would devote himself to it but then lose interest. Paddock obtained his pilot’s license when he was 17 years old. He enjoyed diving, travelling and gambling. According to Ayers, Paddock began losing interest in travelling approximately one year ago.

Paddock attended college and later worked for the IRS and Lockheed. Ayers stated Paddock did not like working for other people and began investing in real estate with family members. According to Ayers, there was no criminal intent in Paddock’s buying and selling real estate. Ayers was also told that Paddock had made a significant amount of money in the stock market but was no longer involved in stocks.

Besides becoming more irritable, Ayers did not notice any significant changes in Paddock’s behavior; however, she was concerned for his health because he did not look well. Paddock did not take care of his teeth, and Ayers noticed his teeth were either missing or rotten. Paddock told her it was because he could not go to the dentist due to his allergies.

**Paddock’s Primary Care Physician**

Paddock made numerous claims to friends and family that he consistently felt ill, in pain or fatigued. A doctor in Las Vegas was identified as Paddock’s primary care physician and records were obtained through federal grand jury subpoena. An interview was conducted with him by agents with the FBI. The physician relayed, he last saw Paddock as a patient on or around October 2016 for an annual checkup. He recalled the only major ailment Paddock had was a slip and fall accident at a casino approximately three years earlier, which caused a muscle tear.

The physician described Paddock as “odd” in behavior with “little emotion” shown. He believed Paddock may have had bipolar disorder; however, Paddock did not want to discuss that topic further with him. Paddock also refused anti-depressant medication but accepted prescriptions for anxiety. He noted Paddock seemed fearful of medications, often refusing to take them. He did not believe Paddock was abusing any medications.

**Firearms**

Paddock purchased at least 67 firearms since the early 1980s. Between 1982 and 2001 Paddock purchased 17 handguns. Beginning in October of 2016, Paddock began buying firearms at a faster rate, consisting mainly of rifles. Of the 67 firearms known to law enforcement, 24 were recovered inside the Mandalay Bay, 18 were recovered in Paddock’s Mesquite residence and seven were recovered in Paddock’s Reno residence. Of the firearms Paddock purchased, 18 are unaccounted for. It is unknown if these firearms were sold or traded.\(^{39}\)

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\(^{39}\) Information obtained by the ATF.
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Search Warrants and Legal Process

The investigative process required information to be obtained from numerous sources and venues, to include but not limited to:

- Hotels and casinos
- Firearms-related businesses
- Residences of Stephen Paddock
- Vehicles of Stephen Paddock
- Internet providers
- Telephone companies
- Online retail businesses
- Email companies
- Financial Institutions

Law enforcement personnel served approximately 1,000 legal processes during the course of the investigation. These legal processes were used to obtain information or items related to the investigation. These legal documents included, but are not limited to:
Paddock’s Autopsy

On October 6, 2017, at approximately 1625 hours, under CCOCME case 17-10064 and FBI incident number 4-LV-2215061, an autopsy was performed on the body of Paddock at the CCOCME by Doctor Lisa Gavin.

Decedent
Name: Paddock, Stephen  
Date of birth: 04-09-53  
Gender: Male  
Ethnicity: Caucasian  
Height: 73 inches  
Weight: 224 lbs  
Hair: Gray  
Eyes: Brown

Body bag seal #541486 removed at 1625 hours.

Specific Photography:
- Body bag seal
- Clothed body
- Pre-cleaned, unclothed body
- Post-cleaned, unclothed body
- Injuries
- X-rays

The following persons were in attendance:
1) Clark County Coroner Fudenberg  
2) Forensic pathologist Doctor Gavin  
3) Detective Alsup  
4) Detective Colon  
5) SCSA Fletcher  
6) FBI ERT agents (2)  
7) Forensic Technician Rosales

The following items of evidence were retained by the FBI’s Evidence Recovery Team:
1) One brown, long-sleeved shirt  
2) One pair of black pants
3) One pair of white socks
4) One pair of black, slip-on shoes
5) One pair of blue underwear
6) Paper tissue from the decedent’s ears
7) Print exemplars
8) One projectile recovered from the decedent’s head

Synopsis

On October 6, 2017, detectives from the LVMPD, along with a LVMPD crime scene analyst, attended the autopsy of Stephen Paddock at the CCOCME. Also present were members of the FBI Evidence Recovery Team who retained all collected evidence.

The exam room was secured by Clark County Coroner John Fudenberg. Forensic Pathologist Doctor Lisa Gavin performed the autopsy with one assistant.

The decedent was X-rayed, photographed, and cleaned prior to Doctor Gavin’s exam. Preliminarily, the injuries noted were on the posterior of both calves, and a gunshot wound to the upper palate inside the decedent’s mouth with obvious damage to the upper teeth. The cause of Paddock’s death was an intraoral gunshot wound, and the manner of death was ruled a suicide.

- See Appendix C for all autopsy-related documents.
V. CONCLUSION

On October 1, 2017, Stephen Paddock committed the largest mass casualty shooting in this country’s history. Fifty-Eight people were killed, approximately 887 people sustained documented injuries. Of those 869 people, 413 sustained a gunshot wound or shrapnel-type injury.

While en route to the scene, many investigators heard multiple, chaotic emergency-only radio calls coming out in reference to active shooters at different properties along the Las Vegas Strip, fires breaking out at certain properties, actual shooters that were inside the Las Vegas Village venue at the time of the shooting. Early reporting from national news outlets reported that ISIS was claiming responsibility for the shooting. The investigation revealed none of this information was accurate.

Paddock began stockpiling weapons approximately one year prior to the shooting. His behavior began to change according to Danley. Their relationship became very business-like and she became almost subservient to him. He began purchasing semi-automatic rifles and hundreds of gun-related items almost daily.

Paddock researched various open-air venues such as Fenway Park, La Jolla Beach, and other open-air concert venues. His Internet searches also included “Biggest open air concert venues in USA”, “How crowded does Santa Monica Beach get”, and many others.

During a stay at the Mandalay Bay in September of 2017, Danley described Paddock’s behavior strange as they were staying in Room 60-235, and she observed him looking out the windows which also overlooked the Las Vegas Village venue. She mentioned how he would move around the room looking at the venue from different angles and positions.

In late August or September of 2017, Paddock told Danley that she should go to the Philippines and visit her family. Danley traveled to the Philippines, departing on September 15, and scheduled to return on October 4. Paddock completed three wire transfers during this time totaling $150,000. Each wire transfer was for $50,000.

On October 1, between 2205 and 2216 hours, Paddock fired approximately 1,057 rounds into the crowd at the Las Vegas Village venue down the 100 Wing hallway of the 32nd floor and at fuel tanks connected to McCarran International Airport, all from inside rooms 32-135 and 32-134 of the Mandalay Bay.

At approximately 2218 hours, heat detection indicators from inside Room 32-135 indicated there was no other movement from inside the room, leading investigators to believe Paddock was alone and at that point already dead.

At approximately 2257 hours, a Strike Team led by Sergeant Joshua Bitsko and SWAT Officer Levi Hancock, breached the interior stairwell door that Paddock had secured with an “L” bracket. At approximately 2320 hours, that same Strike Team breached their way into Room 32-135 to
discover Paddock, already dead on the floor with what appeared to be a self-inflicted gunshot wound to the head, and the revolver Paddock used lying a foot away on the floor.

In the days, weeks and months that followed, there was an exhaustive investigation completed by the LVMPD and FBI into Paddock’s life, which resulted in the below listed findings.

INVESTIGATIVE FINDINGS:

1) Paddock acted alone. Despite early reports of multiple shooters in different locations, no evidence exists to substantiate any of those reports. Thousands of hours of digital media were reviewed, and after all the interviews were conducted, no evidence exists to indicate Paddock conspired with or acted in collusion with anyone else. This includes video surveillance, recovered DNA and analysis of cellular phones, and computers belonging to Paddock.

2) No suicide note or manifesto was found. Of all the evidence collected from rooms 32-135 and 32-134, there was no note or manifesto stating Paddock’s intentions. The only handwritten documentation found in either room was the small note indicating measurements and distances related to the use of rifles.

3) There was no evidence of radicalization or ideology to support any theory that Paddock supported or followed any hate group or any domestic or foreign terrorist organization. Despite numerous interviews with Paddock’s family, acquaintances and gambling contacts, investigators could not link Paddock to any specific ideology.

4) Paddock committed no crimes leading up to the October 1 mass shooting. All the weapons and ammunition he purchased, were purchased legally. This includes all the purchases Paddock made at gun stores as well as online purchases. Paddock did not commit a crime until he fired the first round into the crowd at the Las Vegas Village.

5) In reference to the 2,000 investigated leads, 22,000 hours of video, 252,000 images obtained and approximately 1,000 served legal processes, nothing was found to indicate motive on the part of Paddock or that he acted with anyone else.

6) Security Officer Campos was not shot with a BB gun but rather sustained a gunshot wound from one of the rounds fired by Paddock down the hallway of the 100 Wing on the 32nd floor. Security Officer Campos did in fact have a pre-planned vacation to Mexico to go visit his father, and Security Officer Campos asked law enforcement for permission to make this trip.

7) One aspect of the investigation focused on Paddock’s financials. Although Paddock’s liquid wealth declined prior to 1 October, the investigation proved Paddock was self-funded through his gambling and past real estate transactions. He was indebted to no one and paid all his gambling debts off prior to the shooting. Although investigators were told early on in the investigation Paddock had a bank account frozen for high dollar
transfers, it was determined this information was false for the two years preceding the incident.

INDICATORS OF INTENT:

As stated earlier in this report, investigators were unable to uncover or discover what Paddock’s motive may have been. While motive may have eluded investigators, there were certain indicators of intent shown by Paddock which lead up to the mass shooting.

1) Paddock had a reservation for a hotel during the Lollapalooza music festival held at Grant Park in Chicago, Illinois during the month of August. Like the Route 91 Harvest music festival, the Lollapalooza festival was held in an open-air venue. Paddock specifically requested a room overlooking the venue when he made the reservation. That reservation was cancelled two days prior to the check-in date.

2) Paddock made lodging reservations during the Life Is Beautiful music festival held in downtown Las Vegas. The festival was also an open-air music venue attended by thousands of people. Paddock requested units overlooking the venue. Paddock reserved three different units during the period and all faced the venue. Paddock was observed in video surveillance transporting several suitcases from his vehicle to the units he reserved. Paddock was alone for the trip and was never accompanied by anyone for more than a casual conversation. Investigators have been unable to determine if Paddock intended an attack during this festival or if he used it as a means to plan a future attack.

3) Paddock conducted several internet searches while planning his actions. Search terms included open-air concert venues, Las Vegas SWAT tactics, weapons, and explosives. Paddock also searched for various gun stores.

4) Paddock purchased over 55 firearms, which were mostly rifles in various calibers, from October 2016 to September 2017. He bought over 100 firearm-related items through various retailers during that period.

5) During a stay in early September 2017, Paddock requested specific rooms that overlooked the Las Vegas Village. According to Danley, Paddock spent time looking at the Las Vegas Village venue from different angles and windows while inside the room.
APPENDIX A

Lock Interrogation for Room 32-135
APPENDIX B

Lock Interrogation for Room 32-134
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*Note: The event times are in 24-hour format.*
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<td>Door Unit Internal</td>
<td>Door Unit Internal</td>
<td>9/30/2017 12:47 AM</td>
<td>Dead Bolt thrown (0896)</td>
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</tr>
<tr>
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<td>9/30/2017 12:47 AM</td>
<td>Dead Bolt thrown (0896)</td>
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<tr>
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<td>Card(s) has been cancelled (00:02)</td>
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<td>Card(s) has been cancelled (00:02)</td>
<td>N-1132947</td>
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</table>
APPENDIX C

Stephen Paddock’s Autopsy Reports
Clark County Coroner/Medical Examiner  
1704 Pinto Lane  
Las Vegas, NV 89106  
(702) 455-3210

REPORT OF INVESTIGATION  
Coroner Case

<table>
<thead>
<tr>
<th>NAME OF DECEASED (LAST, FIRST MIDDLE)</th>
<th>AKA</th>
<th>CASE NUMBER</th>
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<tbody>
<tr>
<td>Paddock, Stephen Craig</td>
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<td>17-10064</td>
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<tr>
<th>INVESTIGATOR</th>
<th>REPORTED BY</th>
<th>REPORTING AGENCY</th>
<th>REFERENCE NUMBER</th>
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<tbody>
<tr>
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<td>Clark</td>
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<th>DECEDENT</th>
<th>HEIGHT</th>
<th>WEIGHT</th>
<th>EYE COLOR</th>
<th>HAIR COLOR</th>
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<tr>
<th>CLOTHING</th>
<th>SCAR/STATTOOS/MARKS</th>
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<tbody>
<tr>
<td>Brown shirt, black pants, underwear, socks, shoes. Black gloves impounded by FBI at scene.</td>
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<table>
<thead>
<tr>
<th>LOCATION OF DEATH</th>
<th>AT RESIDENCE</th>
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<tr>
<td>Mandalay Bay Hotel &amp; Casino Room #32-135</td>
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<thead>
<tr>
<th>ADDRESS (STREET, CITY, STATE, ZIP)</th>
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<tr>
<td>3950 S. Las Vegas Boulevard Las Vegas, NV 89119</td>
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<td>Detective T. Alsup</td>
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<td>Autopsy</td>
<td>Lisa Ann Gavin M.D., MPH</td>
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<tr>
<th>VEHICULAR</th>
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<th>DECEDEENT WEARING SEATBELT?</th>
<th>SEAT POSITION</th>
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<tbody>
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 REPORT OF INVESTIGATION
Case Number: 17-10064

DECEased NAME: Stephen Craig Paddock
ALSO KNOWN AS:

LOCATION OF DEATH: Mandalay Bay Hotel & Casino Room # 32-135
DATE OF DEATH: 10/02/2017

DATE OF BIRTH: 04/09/1953
AGE: 64
SSN: 563-86-6197
TIME OF DEATH: 12:00PM

SUMMARY OF INVESTIGATION

Reason for Coroner Jurisdiction:
Apparent Suicide/Intraoral Gunshot Wound (GSW)/Mass Fatality Incident/Federal Bureau of Investigations (FBI)/Las Vegas Metropolitan Police Department (LVMPD).

Circumstances of Death:
Per LVMPD investigation, the decedent checked into a suite on the 32nd floor at the Mandalay Bay Hotel & Casino on 09/25/17. On 09/29/17 an adjoining room, which was accessed by connecting doors, was added. On the night of 10/01/17 a Mandalay Bay Security Guard was assigned to check open door alarms from various rooms inside the hotel. The last room the security guard was assigned to check was on the 32nd floor however he was unable to access the 32nd floor from the inside stairwell, as the door would not open. After gaining entry onto the 32nd floor from the guest elevator the security guard noticed an L bracket in place on the stairwell door that was preventing the door from opening. After the security guard called the Mandalay Bay Dispatch center to report his findings he heard apparent rapid drill noise coming from room 32-135. He then started walking back down the hallway at which time he heard apparent gunfire and realized he was hit in the leg. He called for help. The decedent then continued to fire multiple shots out of his hotel windows with numerous rifles into a music festival venue, striking people at the concert. LVMPD Swat responded to the decedent's room and entered using an explosive breech. Upon entry the decedent was found beyond medical resuscitative measures on the floor with an apparent self-inflicted gunshot wound. SWAT continued to clear the room and breached the door to room 32-134. While breaching the door an unintentional 3 round burst (3 rounds rapidly at once) shot was fired by a SWAT Officer. All three impacts were located and the decedent was not struck by the unintentional rounds. Upon my arrival I pronounced death on scene at 1200 hours on 10/02/17.

Medical History:
The decedent's medical history was unknown at the time of this report.

There was one prescription bottle containing pills and two inhalers located in the decedent’s room. None of the prescription medications were impounded as the FBI and LVMPD were still actively processing the scene.

Scene:
The decedent was found lying supine on the 32nd floor of room # 32-135 of Mandalay Bay Hotel and Casino located at 3950 South Las Vegas Boulevard, Las Vegas, NV 89119. There were double entrance doors to the room. One of the doors was damaged and off of the hinges. There were multiple holes and defects noted to the door that was off the hinges. The other door had an apparent camera taped where a peep hole would normally

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Secondary dissemination of this document is prohibited.

Signature: Tiffany Brown, Coroner Investigator
be. There were multiple rifles and expended cartridge casings located throughout the room. There was a Smith and Wesson .38 caliber revolver bearing Serial # CDZ7618-342 found near the decedent. There was a broken window in both rooms. The windows in the rooms were from the floor to the ceiling. The two broken windows were nearly completely shattered. There were multiple different drills and tools located in the room. Outside the room in the hallway was a room service cart. There were plates on the cart and under a plate was a camera. There was another camera on the cart on the bottom shelf. The cart was positioned in the hallway outside of his door so the cameras were pointing down the hallway. There were numerous apparent impacts present in the hallway. There were no apparent suicide notes located.

Body:
The decedent, a 64-year-old Caucasian male, was observed lying supine on the carpeted flooring in his hotel room. A limited examination was conducted. He was clothed in a tan shirt, black gloves, black pants, underwear, white socks and gray shoes. The gloves were impounded by the FBI. Upon palpation of the head and skull, crepitus was noted. There was an apparent intraoral wound noted. There was apparent blood-like substance noted about the face and head. The neck, chest, abdomen, back and extremities appeared to be unremarkable. There was blanching posterior livor mortis noted which was consistent with the position the body was observed in. The body was cool to the touch and rigor mortis was noted. There were no signs of life present. I pronounced death at 1200 hours on 10/02/17.

Property:
Per Clark County Office of the Coroner/Medical Examiner (CCOCME) Inventory of Personal Effects Form #12672, no property was impounded.

Forensic Issues and Reasons for Seal:
- Coroner Seal #541486 utilized.
- Apparent intraoral GSW.
- Weapon believed used for self-inflicted wound (impounded by FBI): S&W .38 cal revolver bearing serial #CDZ7618-342,
- No ammunition information was available at this time as FBI and LVMPD were still processing the scene.
- Decedent was wearing black gloves, impounded by FBI at scene.
- Hands bagged.
- There were numerous rifles along with a revolver found in the room.
- No suicide note was found.
- Decedent's vehicle was located in the parking garage with explosive device material and impounded by FBI.

Witnesses and Information Sources:
LVMPD Detective T. Alsup
LVMPD Detective J. Patton
LVMPD Crime Scene Analyst personnel

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Signature: Tiffany Brown, Coroner Investigator
Narrative:
On 10/02/17 at approximately 1115 hours LVMPD advised this office of a death located in room # 32-135 of the Mandalay Bay Hotel and Casino located at 3950 South Las Vegas Boulevard, Las Vegas, NV 89119.

Upon my arrival to the Mandalay Bay Hotel and Casino at approximately 1135 hours I met with LVMPD Force Investigation Team (FIT) Detective T. Alsup and J. Patton who provided me with the aforementioned circumstances. They stated that this was reference LVMPD Event # 171001-3519 and the initial 911 call came in at 2208 hours. He stated that LVMPD radio traffic regarding shots being fired initially started at 2205 hours. They requested that the decedent remain on scene as FBI was responding but they expected that to be several hours before their arrival. The decedent remained on scene until FBI and LVMPD was ready for the removal of the body.

At approximately 2100 hours on 10/02/17 LVMPD Dispatch advised this office that they were ready for the removal of the decedent from the scene. CCOCME Investigator S. Shields responded along with Davis Funeral Home. Investigator S. Shields conducted the body examination. The decedent was wrapped in a clean white sheet, placed in a body bag that was sealed with Coroner Seal # 541486 and transported to Clark County Office of the Coroner/Medical Examiner (CCOCME), arriving at approximately 2150 hours.

Special Requests:
None

Tissue/Organ Donation:
Nevada Donor Network protocol followed.

Dissemination is restricted.
Secondary dissemination of this document is prohibited.

Signature: ____________________
Tiffany Brown, Coroner Investigator
October 6, 2017

AUTOPSY REPORT

PATHOLOGICAL EXAMINATION ON THE BODY OF

STEPHEN CRAIG PADDOCK

PATHOLOGIC FINDINGS

I. Intraoral gunshot wound of head, contact range.
   A. Entrance: roof of mouth with abundant soot.
   B. Associated injuries: perforation of the roof of the
      mouth, the base of the skull (with internal beveling),
      the brainstem, the cerebellum, the left occipital lobe,
      and partially into the occipital bone (with external
      beveling); subdural hemorrhage and subarachnoid
      hemorrhage; contusions along the wound track and of the
      base of the brain; fractures of the supraorbital portions
      of the frontal bones, base of the skull, the left petrous
      bone and the occipital bone; bilateral periorbital soft
      tissue hemorrhage.
   C. Recovered: moderately deformed copper jacketed gray metal
      missile and fragments of copper jacket and gray metal
      between occipital dura and partly into occipital skull.
   D. Exit: no corresponding exit.
   E. Trajectory: front-to-back and upward.

II. Hypertensive cardiovascular disease.
   A. Hypertensive vasculopathy and atherosclerosis, per
      neuropathology consultation.
   B. Globally sclerosed glomeruli; glomerulomegaly, per
      histology.
   C. Slightly increased perivascular fibrosis and scattered
      hypertrophied myocytes, per histology.

III. Blunt force injuries to extremities.
   A. Abrasion of right upper calf.
   B. Faint contusion of left calf.
   C. Abrasion of right knee.

IV. Overweight (BMI = 29.6 kg/m²).
   A. Dilated cardiomegaly (550 grams).

V. Degenerative changes of spine.

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VI. Diverticula.
VII. Mild degenerative changes of mitral valve.
VIII. Appendectomy.

OPINION

CAUSE OF DEATH: This 64-year-old man, Stephen Craig Paddock, died of an intraoral gunshot wound of the head.

MANNER OF DEATH: SUICIDE

DATE: 2/5/18

Lisa Gavin, MD, MPH
Medical Examiner
Clark County Coroner
Las Vegas, NV
LG/ag
October 6, 2017

POSTMORTEM EXAMINATION ON THE BODY OF

Stephen Craig Paddock

ADULT POSTMORTEM EXAMINATION

An autopsy examination is performed on the body of tentatively identified as Paddock, Stephen Craig at the Clark County Office of the Coroner/Medical Examiner (CCOCME), on 6th day of October 2017, commencing at 1622 hours. Identification is later confirmed by fingerprint comparison.

The body is received within a sealed body bag (seal #541486), which is opened on 10/6/2017 at 1625 hours by #421. The body is identified by a Clark County Office of the Coroner/Medical Examiner (CCOCME) “toe tag” around the right great toe, which includes; CCOCME Case #17-10064; Name: Paddock, Stephen (T); Date of Death: 10-2-17; Time of Death: 1200 hours; CCOCME Investigator: #342.

The autopsy is conducted in the presence of Detective T. Alsup (P#5782), Detective M. Colon (P#7585), Crime Scene Analyst S. Fletcher (P#6650) of the Las Vegas Metropolitan Police Department; also present is Special Agent R. H. Marriott and Special Agent G. Kwan of the Federal Bureau of Investigation.

EXTERNAL EXAMINATION (EXCLUDING INJURIES)

The body is that of a well-developed, overweight, adult White male who weighs approximately 224 pounds, is 73 inches in length (body mass index, BMI = 29.6).

The body is received clad in a brown long sleeve shirt, black pants, blue boxer shorts, two white-black socks, and two charcoal shoes. Of note, during processing a brass-like casing adjacent to the head is found.
The body is cold (refrigerated). Rigor mortis is receding. Fixed pink livor mortis extends over the posterior surface of the body. Evidence of postmortem change includes: green discoloration of the right lower quadrant of the abdomen.

The scalp hair is gray-white, straight and short with male pattern baldness.

The irides appear lighter in color. The pupils are round. The corneas are clouded. Tache noire is present of the sclerae which are otherwise injected and focally hemorrhagic. The conjunctivae are a mixture of pale and congested.

The nose and ears appear normally formed. In the right ear is white tissue paper. In the left ear is bloody tissue paper.

The decedent wears an unkept beard.

The anterior teeth are in poor condition with a majority of the maxillary teeth being absent.

The neck is unremarkable.

The thorax is well developed.

The abdomen is flat.

The anus contains hemorrhoids.

The spine is normally formed and the surface of the back is remarkable for nevi.

The external genitalia are those of a normal adult male, with the testes descended bilaterally into the normally rugated scrotum.
The upper and lower extremities appear well developed and without absence of digits. Some pitting edema is noted of the lower legs, particularly in a sock-like distribution.

IDENTIFYING MARKS/SCARS:

On the left mid-aspect of the back is a 1 inch brown macule. A 3/8 inch light brown-white macule on the right ventral arm near the elbow is identified.

EVIDENCE OF MEDICAL INTERVENTION:

There is no evidence of medical intervention.

EVIDENCE OF INJURY

INTRAORAL GUNSHOT WOUND OF HEAD:

ENTRANCE: On the roof of the mouth centered approximately 6-1/2 inches below the top of the head and 1/4 inch to the left of anterior midline is an entrance gunshot wound consisting of a 1/2 x 5/8 inch defect with a marginal abrasion that appears widest at the 6 o'clock position (1/4 inch). Abundant soot is present within the roof of the mouth.

ASSOCIATED INJURIES: Perforation of the roof of the mouth, the base of the skull (with internal beveling), the brain stem, the cerebellum, the left occipital lobe and partially into the occipital bone (with external beveling) is seen with contusions of the brain along the wound track. Contusions of the base of the brain are seen along with brain swelling. Fractures of the supraorbital portions of the frontal bones, the left petrous bone, the base of the skull, and the bilateral occipital bones are seen. Subdural hemorrhage and subarachnoid hemorrhage are present. Bilateral periorbital soft tissue hemorrhage is noted.
RECOVERED: Recovered between the occipital dura and the occipital skull is a moderately deformed copper jacketed gray missile; additionally minute jacket and missile fragments are recovered in the same location.

EXIT: There is no corresponding exit.

TRAJECTORY: The wound track travels from the decedent's front-to-back and upward.

BLUNT FORCE INJURIES OF EXTREMITIES:

On the right upper calf is a 1/2 x 1/4 inch red-brown abrasion. On the left calf is a 1/4 x 3/16 inch faint pink contusion. On the right knee is a 1/4 x 1/8 inch red abrasion.

INTERNAL EXAMINATION (EXCLUDING INJURIES)

BODY CAVITIES:

Focal adhesions are present between the loops of bowel. All body organs are in normal and anatomic position with apparent surgical absence of the appendix. The serosal surfaces are glistening.

HEAD (CENTRAL NERVOUS SYSTEM):

The brain weighs 1410 grams and is swollen. The dura mater and falx cerebri are not adherent to the brain. The cerebral hemispheres are asymmetrical due to injury. The uninjured structures at the base of the brain are free of abnormality. Sections through the uninjured cerebral hemispheres reveal no lesions within the cortex, subcortical white matter, or deep parenchyma of either hemisphere. Sections through the uninjured brain stem and cerebellum reveal no lesions. The spinal cord is not removed. Sections of the brain are submitted for further Forensic Neuropathological Evaluation (see separate report).
NECK:

Examination of the soft tissues of the neck, including strap muscles and large vessels, reveals no abnormalities. The hyoid bone and larynx are intact. The tongue is normal.

CARDIOVASCULAR SYSTEM:

The heart weighs 550 grams and is dilated. The pericardial sac is free of significant fluid or adhesions. The pericardial surfaces are glistening.

The coronary arteries arise normally and follow the distribution of a right dominant pattern with no significant atherosclerosis.

The chambers and valves are proportionate. Mild degenerative changes are present of the mitral valve. The remaining valves and cusps are normally formed, thin and pliable and free of vegetations and degenerative changes. The myocardium is remarkable for increased perivascular fibrosis. Fatty infiltration of the right ventricle is noted. A focal area of pallor is noted in the lateral left ventricle near the base of the heart. The atrial and ventricular septa are intact. The tricuspid valve measures 12.5 cm; the mitral valve measures 11.5 cm; the pulmonic valve measures 7.8 cm; the aortic valve measures 8.0 cm. The right ventricle measures 0.5 cm in thickness; the left ventricle measures 1.9 cm in thickness; and the septum measures 1.9 cm in thickness.

The aorta and its major branches arise normally and follow the usual course, with no significant atherosclerosis. The orifices of the major aortic vascular branches are patent. The vena cava and its major tributaries are patent and return to the heart in the usual distribution and are unremarkable.
RESPIRATORY SYSTEM:

The right and left lungs weigh 1060 and 750 grams, respectively. The upper and lower airways are unobstructed. The mucosal surfaces are smooth and yellow-tan. The pleural surfaces are glistening. The pulmonary parenchyma is a dark red-purple in the dependent portions and lighter pink in the anterior portions. The cut surface exudes moderate amounts of blood, particularly in the dependent portions. The pulmonary arteries are normally developed and without thromboemboli and atherosclerosis. There is no saddle embolus on the in situ examination of the pulmonary trunk.

LIVER AND BILIARY SYSTEM:

The liver weighs 1490 grams. The hepatic capsule is smooth, glistening, and intact, covering brown slightly fatty parenchyma. The gallbladder contains a moderate amount of brown-tan liquid bile without stones; some cholelithiasis is noted of the gallbladder mucosa.

ALIMENTARY TRACT:

The esophagus is lined by gray smooth mucosa. The gastric mucosa contains the usual rugal folds. The lumen contains approximately 50 ml of brown liquid. The serosa of the small bowel is unremarkable. The serosa of the large bowel is remarkable for diverticula. The small bowel contains some partially digested food. The large bowel contains a mixture of softened and semi-firm stool. Diverticula are intact and present particularly in the sigmoid colon. The appendix is surgically absent. The pancreas contains fatty infiltration.

GENITOURINARY TRACT:

The right and left kidneys weigh 140 and 150 grams, respectively. The renal capsules are opaque and strip with difficulty from the underlying granular, scarred, and brown
cortical surfaces. The cortices are of normal thickness and delineated from the medullary pyramids. The calyces and pelves are dilated but free of stones. The urinary bladder contains a moderate amount of yellow urine; the mucosa is gray-tan and smooth. The prostate is not enlarged. The testes are unremarkable.

RETICULOENDOTHELIAL SYSTEM:

The spleen weighs 140 grams and has an intact capsule covering a purple diffuent parenchyma. The splenic white pulp is indiscernible. The bone marrow (rib) is red-purple. There is no prominent lymphadenopathy. The thymus is dispersed in the anterior mediastinal fat.

ENDOCRINE SYSTEM:

The pituitary gland is of large size. The thyroid gland is of normal position, large size and normal texture. The adrenal glands have a yellow cortex and an autolyzing gray medulla.

MUSCULOSKELETAL SYSTEM:

Degenerative changes are present of the spine. The soft tissues are not unusual. The cervical spinal column is stable on internal palpation.

MICROSCOPIC EXAMINATION (slide #)

Conduction system - AV node (#1): network of muscle fibers in subendocardial tissues; mildly increased perivascular fibrosis.
Conduction system - SA node (#2): ganglion cells and nerve fibers identified.
Coronary arteries (#3): mild atherosclerosis.
Heart - RV (#4): increased fatty infiltration.
Heart - septum (#5): scattered hypertrophied myocytes.
Heart - LV (#6): scattered hypertrophied myocytes; minimally increased perivascular fibrosis.
Heart - apex (#7): myocyte disarray.
Lung - right (#8): autolysis.
Lung - left (#9): autolysis; patchy areas of atelectasis.
Liver (#10): mild diffuse macrosteatosis; portal tracts without increased fibrosis or increased inflammatory cells; vascular congestion; autolysis.
Spleen (#10): prominent white pulp; hyalinized vessels.
Pancreas (#11): increased fatty infiltration; autolysis; islet cells not identified.
Kidneys (#12): several globally sclerosed glomeruli; glomerulomegaly; tubular autolysis.
Adrenal (#13): intracellular cortical fat/lipid identified.
Thyroid (#13): follicles of variable diameters; early autolysis.
Bone marrow (#14): trilineage hematopoiesis; early autolysis.

RADIOGRAPHS

Radiographs of the head and neck identify a radiopaque missile just beneath the occipital skull at midline; additional minute fragments are seen extending from a front-to-back trajectory. Fractures of the occipital bones and the base of the skull are noted. The cervical spine and hyoid bone appear intact. Dental restorations are present within the few remaining teeth within the mouth. Radiograph of the chest reveals a moderately enlarged cardiac silhouette. Radiographs of the chest, abdomen, and the pelvis reveal degenerative changes present of the spine. Radiographs of the chest, abdomen, pelvis, lower extremities and upper extremities reveal no clear evidence of acute skeletal injury. Metallic portions of clothing are visible within some of the radiographs. In addition, a radiopaque casing is visible within some of the radiographs of the head, neck and chest (pre-processing radiographs).
SPECIMENS OBTAINED/RESULTS

TISSUE: Representative sections of all of the major organs are retained.

TOXICOLOGY: Heart blood, peripheral blood, vitreous, urine, liver, bile, gastric contents and brain are obtained at autopsy.

TOXICOLOGY RESULTS: A Forensic Toxicological Analysis is performed and reported separately.

VITREOUS SCREEN: A vitreous screen shows slightly elevated urea nitrogen (35 mg/dL) and creatinine (1.6 mg/dL) levels; no evidence of hyperglycemia is seen.

MICROBIOLOGY:
Bacterial cultures of the blood grew Staphylococcus aureus, Streptococcus salivarius, Clostridium perfringens and Streptococcus parasanguinis, which is most likely due to post mortem overgrowth.
Bacterial cultures of the right lung show scant growth of Staphylococcus aureus, Streptococcus mitis/oralis and Gemella morbillorum, which is most likely due to post mortem overgrowth.
Bacterial cultures of the left lung show scant growth of Staphylococcus aureus and light growth of Streptococcus mitis, which is most likely due to post mortem overgrowth.
Stool cultures for cytomegalovirus and Enterovirus showed none isolated; no Shiga toxins were detected. No Salmonella, Shigella or Campylobacter were isolated; no ova or parasites were seen.
Bacterial cultures of the urine show no growth.
RT-PCR for Influenza and Respiratory Viral Pathogens shows no RNA detected. FilmArray for Respiratory Pathogens shows no DNA or RNA detected.

URINALYSIS: A reflex urinalysis identified turbid urine with trace ketones, protein, blood, bacteria and epithelial cells.
Toxicology Report

Report Issued: 10/24/2017 12:03

To: 10294
Clark County Coroner's Office
Attn: David Mills
1704 Pinto Lane
Las Vegas, NV 89106

Patient Name: Paddock (Tent), Stephen C.
Patient ID: 17-10064
Chain: 17314232
Age 84 Y
Gender: Male
DOB: Not Given
Workorder: 17314232

Positive Findings:

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<th>Compound</th>
<th>Result</th>
<th>Units</th>
<th>Matrix Source</th>
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<td>21</td>
<td>mcg/mL</td>
<td>001 - Peripheral Blood</td>
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<tr>
<td>Arsenic</td>
<td>12</td>
<td>mcg/mL</td>
<td>001 - Peripheral Blood</td>
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<tr>
<td>Theobromine</td>
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See Detailed Findings section for additional information

Disclaimer: Specimens for elemental testing should be collected in certified metal-free containers. Elevated results for elemental testing may be caused by environmental contamination at the time of specimen collection and should be interpreted accordingly. It is recommended that unexpected elevated results be verified by testing another specimen.

Testing Requested:

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<td>9142B</td>
<td>Cyanide Screen, Blood</td>
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<td>2693B</td>
<td>Metals/Metalloids Acute Poisoning Panel, Blood</td>
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<tr>
<td>0420B</td>
<td>Betahydroxybutyric Acid, Blood</td>
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<td>8054B</td>
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<td>9002B</td>
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Specimens Received:

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### Detailed Findings:

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*Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.*

### Reference Comments:

1. **Antimony - Peripheral Blood:**
   
   Pentavalent antimony compounds are used in medicine as parasiticides. Additionally, antimony has been used in the production of pigments, alloys, and flame retardants.

   Typical normal antimony concentrations in blood are less than 5 mcg/L. Patients administered stibogluconate sodium for leishmaniasis developed an average peak blood antimony concentration of 88/00 mcg/L at 1.3 hr post-intramuscular dosing.

   NMS Labs has demonstrated that certain collection tubes can artificially increase measured antimony concentrations rendering reported concentrations difficult to interpret.
Reference Comments:

2. Arsenic - Peripheral Blood:
Arsenic is a metallic element. It is prevalent in the earth’s crust and can therefore be found in numerous environmentally-related sources, e.g., well water, shellfish and soil. Individuals who are exposed to these sources may have acutely or chronically elevated body burdens of arsenic. Arsenic exists in numerous chemical compounds as well as several chemical forms. Not all arsenical compounds are equal in toxicity.

In unexposed normal individuals, arsenic concentrations in blood are usually less than 10 mcg/L, but may be higher after seafood consumption. Other potential factors causing increased concentrations of arsenic include consumption of well-water with high arsenic content. In reported poisoning fatalities, a range of 800 - 9500 mcg/L blood (mean, 3300 mcg/L) has been reported.

3. Beta-Hydroxybutyric Acid (BHB; Beta-hydroxybutyrate; Ketone) - Peripheral Blood:
Ketosis related to diabetes or alcoholism can be an important factor in determining cause of death. The primary ketone body produced through ketogenesis is acetacetate. Acetacetate may then break down to form acetoacet and beta-hydroxybutyric acid. Ketogenic diets and other means of clinically induced, mild ketogenesis have been applied to the treatment of Epilepsy, Alzheimer’s disease and other disorders.

In blood, beta-hydroxybutyric acid concentrations below 50 mcg/mL are considered normal while concentrations greater than 250 mcg/mL are indicative of ketosis. Ketosis may produce polyuria, polydipsia, weight loss, dizziness, nausea, vomiting, confusion, stupor and coma. There may be an odor of acetone on the breath. Severe ketoadiposis may result in death if left untreated.

4. Bismuth - Peripheral Blood:
Bismuth is used industrially to produce low-melting alloys, pigments and chemical additives. It is also used therapeutically as astringents, antacids, skin powders, radio-opaque agents and to treat ulcers, indigestion, diarrhea, syphilis and warts. Normal blood concentrations are usually less than 1.0 mcg/L. The primary result of bismuth overdose is renal damage, but encephalopathy and peripheral neuropathy can also occur. Other signs of bismuth toxicity may include discoloration of the tongue, gums or skin, salivation, nausea, vomiting, abdominal pain, tremors, ataxia, memory loss, mental confusion, and seizures. Toxic bismuth blood concentrations arising from the chronic oral use of bismuth subnitrate ranged from 50 to 1800 mcg/L. Two death cases associated with bismuth toxicity reported bismuth blood concentrations in excess of 1000 mcg/L.

5. Caffeine (No-Doz) - Peripheral Blood:
Caffeine is a xanthine-derived central nervous system stimulant. It also produces diuresis and cardiac and respiratory stimulation. It can be readily found in such items as coffee, tea, soft drinks and chocolate. The reported qualitative result for this substance is indicative of a finding commonly seen following typical use and is usually not toxicologically significant. If confirmation testing is required please contact the laboratory.

6. Chlorpheniramine (Chlor-Trimepron®) - Peripheral Blood:
Chlorpheniramine is a potent antihistamine that has been used alone and in combination with other cold symptom relief medications, both prescribed and sold over-the-counter. It may be also be provided by injection or as a nasal spray. Oral doses usually range from 4 to 12 mg with both normal and controlled release formulations available.

Peak concentrations of 10 ng/mL chlorpheniramine were obtained 3 hours following single oral administration of 8 mg. Toxic effects have been reported in adults at concentrations greater than 400 ng/mL (serum) and in infants at concentrations above 65 ng/mL (postnatal weight). The blood to plasma ratio of chlorpheniramine is approximately 1.2.

Common adverse effects include sedation, dizziness, nausea and dry mouth. Signs and symptoms of acute chlorpheniramine toxicity include tremor, seizures, disorientation, loss of consciousness, fever, respiratory depression and cardiac arrhythmias.
Reference Comments:

7. Lead - Peripheral Blood:

Lead is an environmental toxicant that may deleteriously affect the nervous, hematopoietic, endocrine, renal, and reproductive systems. In the general population, the major exposure routes are inhalation of lead dusts and fumes and ingestion of lead from contaminated hands and food stuffs. Drinking water may also contribute to the total body burden. In children, paint chips from lead based paints may be a source of exposure. According to the U.S. Centers for Disease Control and Prevention (CDC), the blood lead reference level for adults is less than 5 mcg/dL. For workplace information, refer to the U.S. Occupational Safety and Health Administration (OSHA) website.

In young children, lead exposure is a particular hazard because children absorb lead at a higher rate than do adults, and because the developing nervous system of children are more susceptible to the effect of lead. The U.S. Centers for Disease Control and Prevention (CDC) reference value based on the 97.5th percentile of the blood lead level distribution in U.S. children aged 1-5 years is 5 mcg/dL.

8. Mercury - Peripheral Blood:

Mercury is a trace element, which is widely used, in industrial and agricultural products and processes, and in medicine and dentistry. Dietary intake of mercury in man ranges from approximately 1 to 30 mcg per day. Industrial exposure to mercury occurs through inhalation or by dermal absorption. Mercury exposure can be due to elemental, inorganic and organic forms of the element.

Total blood mercury levels of up to 6 mcg/L have been measured in persons with low fish consumption and up to 200 mcg/L blood in individuals consuming large quantities of predatory marine fish. Typically, 'normal' mercury blood concentrations are less than 10 mcg/L.

Postmortem total blood mercury concentrations ranging from 20 - 110 mcg/L with an average of 60 mcg/L have been reported in a Japanese population.

The average oral lethal dose of inorganic mercury salts is approximately 1 gram. Toxic effects of inorganic mercury poisoning include gastroenteritis and tubular necrosis leading to renal failure. Elemental mercury is most dangerous when volatilized leading to pulmonary and CNS effects. Postmortem blood mercury concentrations can vary according to the form of mercury and the time since exposure. In two cases of inorganic mercury poisoning, blood concentrations of 1700 and 2100 mcg/L were measured. Blood concentrations of mercury after both fatal and non-fatal elemental mercury poisoning usually exceed 200 mcg/L.

9. Nordiazepam (Chlordiazepoxide Metabolite) - Urine:

Nordiazepam is a pharmacologically active metabolite of several benzodiazepine anxiolytic/sedative/hypnotic agents, e.g., diazepam (Valium®). Nordiazepam is also the major active entity in clorazepate (Tranxene®), a benzodiazepine agent used for agitation, seizures and anxiety. The action of this compound is based on its CNS-depressant activity.

10. Oxazepam (Serax®) - Urine:

Oxazepam is a benzodiazepine. It is frequently seen as the metabolite of diazepam and other benzodiazepines; however, it is pharmacologically active and may be given as the primary medication for the short-term relief of symptoms of anxiety and in the management of alcohol withdrawal.

Signs associated with overdose with oxazepam are similar to those observed with other benzodiazepines, e.g., drowsiness, lethargy, respiratory depression and coma.

11. Selenium - Peripheral Blood:

Selenium is an essential trace metal. It is also used in various industries, e.g., electronic semiconductors and rubber. In medicinals, selenium can be found in shampoos and dietary supplements. The compound exists in elemental, organic, and inorganic forms. Reported reference concentrations of selenium in blood of normal individuals range from 60 - 230 mcg/L. These concentrations are diet dependent.

Adverse effects to selenium have included irritation of the skin and mucous membranes, nausea, diarrhea, fatigue, alopecia, joint pain, abdominal pain, tremor, corrosive gastritis, cyanosis, coma, and death.
12. Temazepam (Diazepam Metabolite; Normison®) - Urine:

Temazepam is a benzodiazepine hypnotic agent used in the short-term relief of insomnia. Its major metabolite, oxazepam, is also a pharmacologically active depressant. Temazepam is also a metabolite of diazepam (Valium®). The usual adult dosage of temazepam is 30 mg, however, 15 mg may be adequate.

In overdose, temazepam shares the same clinically observed signs and symptoms as other benzodiazepines, e.g., sedation, lethargy, loss of consciousness and respiratory depression.

Alcohol greatly enhances the activity of benzodiazepines.

13. Theobromine (Xantheose) - Peripheral Blood:

Theobromine is a methylxanthine alkaloid found in tea and cocoa products and has been reported to pass into the breast milk of nursing mothers. Theobromine has the general properties of the xanthines, including diuresis and smooth muscle stimulation. The reported qualitative result for this substance was based upon a single analysis only. If confirmation testing is required please contact the laboratory.

Sample Comments:

001 Physician/Pathologist Name: DR. GAVIN

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded thirteen (13) months from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed. Chain of custody documentation has been maintained for the analyses performed by NMS Labs.

Workorder 17314232 was electronically signed on 10/24/2017 11:24 by:

Laura M. Labay, Ph.D., F-ABFT, DABCC-TC
Forensic Toxicologist

Analysis Summary and Reporting Limits:

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive. If the compound is listed as None Detected, it is not present above the Reporting Limit. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

Acode 0420B - Betahydroxybutyric Acid, Blood - Peripheral Blood

-Analysis by Gas Chromatography/Mass Spectrometry (GC/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt. Limit</th>
<th>Compound</th>
<th>Rpt. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Betahydroxybutyric Acid</td>
<td>20 mcg/mL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Acode 2693B - Metals/Metalloids Acute Poisoning Panel, Blood - Peripheral Blood

-Analysis by Inductively Coupled Plasma/Mass Spectrometry(ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt. Limit</th>
<th>Compound</th>
<th>Rpt. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic</td>
<td>5.0 mcg/L</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

-Analysis by Inductively Coupled Plasma/Mass Spectrometry(ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt. Limit</th>
<th>Compound</th>
<th>Rpt. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bismuth</td>
<td>0.50 mcg/L</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Analysis Summary and Reporting Limits:

- Analysis by Inductively Coupled Plasma/Mass Spectrometry (ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mercury</td>
<td>3.0 mcg/L</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Selenium</td>
<td>20 mcg/L</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thallium</td>
<td>0.50 mcg/L</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Antimony</td>
<td>1.0 mcg/L</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lead</td>
<td>0.50 mcg/dL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Acode 50012B - Benzodiazepines Confirmation, Blood (Forensic) - Peripheral Blood

- Analysis by High Performance Liquid Chromatography / Tandem Mass Spectrometry (LC-MS/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>7-Amino Clonazepam</td>
<td>5.0 ng/mL</td>
<td>Fluoxetine</td>
<td>2.0 ng/mL</td>
</tr>
<tr>
<td>Alpha-Hydroxyalprazolam</td>
<td>5.0 ng/mL</td>
<td>Hydroxyethylfluorazepam</td>
<td>5.0 ng/mL</td>
</tr>
<tr>
<td>Alprazolam</td>
<td>5.0 ng/mL</td>
<td>Hydroxytriazol</td>
<td>5.0 ng/mL</td>
</tr>
<tr>
<td>Chlordiazepoxide</td>
<td>20 ng/mL</td>
<td>Lorazepam</td>
<td>5.0 ng/mL</td>
</tr>
<tr>
<td>Clozapam</td>
<td>20 ng/mL</td>
<td>Midazolam</td>
<td>6.0 ng/mL</td>
</tr>
<tr>
<td>Clonazepam</td>
<td>20 ng/mL</td>
<td>Nifediazepine</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Desalkylfluorazepam</td>
<td>20 ng/mL</td>
<td>Oxazepam</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Diazepam</td>
<td>20 ng/mL</td>
<td>Temazepam</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Estazolam</td>
<td>5.0 ng/mL</td>
<td>Tricyclic</td>
<td>2.0 ng/mL</td>
</tr>
</tbody>
</table>

Acode 50012U - Benzodiazepines Confirmation, Urine (Forensic)

- Analysis by High Performance Liquid Chromatography / Tandem Mass Spectrometry (LC-MS/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-Hydroxyimidazol</td>
<td>5.0 ng/mL</td>
<td>Alprazolam</td>
<td>5.0 ng/mL</td>
</tr>
<tr>
<td>7-Amino Clonazepam</td>
<td>5.0 ng/mL</td>
<td>Chlordiazepoxide</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Alpha-Hydroxyalprazolam</td>
<td>10 ng/mL</td>
<td>Clozapam</td>
<td>20 ng/mL</td>
</tr>
</tbody>
</table>

NMS v.18.0
Analysis Summary and Reporting Limits:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rot. Limit</th>
<th>Compound</th>
<th>Rot. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Desalkylfluorazepam</td>
<td>5.0 ng/mL</td>
<td>Lorazepam</td>
<td>10 ng/mL</td>
</tr>
<tr>
<td>Diazepam</td>
<td>20 ng/mL</td>
<td>Nordiazepam</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Estazolam</td>
<td>5.0 ng/mL</td>
<td>Oxazepam</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Hydroxyethylfluorazepam</td>
<td>5.0 ng/mL</td>
<td>Temazepam</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Hydroxytriazolam</td>
<td>5.0 ng/mL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Acode 52440B - Chlorpheniramine Confirmation, Blood (Forensic) - Peripheral Blood

- Analysis by High Performance Liquid Chromatography/ TandemMass Spectrometry (LC-MS/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rot. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chlorpheniramine</td>
<td>10 ng/mL</td>
</tr>
</tbody>
</table>

Acode 5970B - Synthetic Cannabinoids Confirmation Panel 2 (Qualitative), Blood - Peripheral Blood

- Analysis by High Performance Liquid Chromatography/ TandemMass Spectrometry (LC-MS/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rot. Limit</th>
<th>Compound</th>
<th>Rot. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>5F-AB-001</td>
<td>1.0 ng/mL</td>
<td>FUB-AMB</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-ADB</td>
<td>0.20 ng/mL</td>
<td>FUB-JWH-018</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>5F-AMB</td>
<td>0.10 ng/mL</td>
<td>FUB-PB-22</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-API/CA</td>
<td>1.0 ng/mL</td>
<td>MA-CHMINACA</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>5F-API/NACA (5F-AKB-48)</td>
<td>2.0 ng/mL</td>
<td>MDMB-CHMCZCA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-MN-18</td>
<td>0.10 ng/mL</td>
<td>MDMB-CHMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-PB-22</td>
<td>0.10 ng/mL</td>
<td>MDMB-FUBINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>AMB</td>
<td>0.10 ng/mL</td>
<td>MMB-CHMICA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>APICA</td>
<td>0.20 ng/mL</td>
<td>MMB-CHMINACA (MDMB-CHMICA)</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>APINACA (AKB-48)</td>
<td>1.0 ng/mL</td>
<td>MO-CHIMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>CUMYL-THPINACA</td>
<td>0.10 ng/mL</td>
<td>NM-2201</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>EG-2201</td>
<td>0.20 ng/mL</td>
<td>THJ-018</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>FUB-144</td>
<td>0.10 ng/mL</td>
<td>THJ-2201</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>FUB-AKB-48</td>
<td>0.20 ng/mL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Acode 5051U - Postmortem, Basic, Urine (Forensic)

- Analysis by Enzyme Immunoassay (EIA) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rot. Limit</th>
<th>Compound</th>
<th>Rot. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barbiturates</td>
<td>0.30 mcg/mL</td>
<td>Methadone / Metabolite</td>
<td>300 ng/mL</td>
</tr>
<tr>
<td>Benzodiazepines</td>
<td>50 ng/mL</td>
<td>Opiates</td>
<td>300 ng/mL</td>
</tr>
<tr>
<td>Cannabinoids</td>
<td>20 ng/mL</td>
<td>Oxycodone / Oxymorphone</td>
<td>100 ng/mL</td>
</tr>
<tr>
<td>Cocaine / Metabolites</td>
<td>150 ng/mL</td>
<td>Phencyclidine</td>
<td>25 ng/mL</td>
</tr>
</tbody>
</table>

- Analysis by Enzyme Immunoassay (EIA) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rot. Limit</th>
<th>Compound</th>
<th>Rot. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amphetamines</td>
<td>500 ng/mL</td>
<td>Fentanyl / Acetyl Fentanyl</td>
<td>2.0 ng/mL</td>
</tr>
<tr>
<td>Buprenorphine / Metabolite</td>
<td>5.0 ng/mL</td>
<td>MDMA</td>
<td>300 ng/mL</td>
</tr>
</tbody>
</table>

- Analysis by Headspace Gas Chromatography (GC) for:

NMS v.18.0
### Analysis Summary and Reporting Limits:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acetone</td>
<td>5.0 mg/dL</td>
<td>Isopropanol</td>
<td>5.0 mg/dL</td>
</tr>
<tr>
<td>Ethanol</td>
<td>10 mg/dL</td>
<td>Methanol</td>
<td>5.0 mg/dL</td>
</tr>
</tbody>
</table>

Acide 8054B - Postmortem, Expanded with NPS, Blood (Forensic) - Peripheral Blood

### Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berbilurates</td>
<td>0.040 mcg/mL</td>
<td>Seciliesates</td>
<td>120 mcg/mL</td>
</tr>
<tr>
<td>Cannabinoids</td>
<td>10 ng/mL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Analysis by Headspace Gas Chromatography (GC) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acetone</td>
<td>5.0 mg/dL</td>
<td>Isopropanol</td>
<td>5.0 mg/dL</td>
</tr>
<tr>
<td>Ethanol</td>
<td>10 mg/dL</td>
<td>Methanol</td>
<td>5.0 mg/dL</td>
</tr>
</tbody>
</table>

### Analysis by High Performance Liquid Chromatography/TandemMass Spectrometry QTRAP (LC-MS/MS QTRAP) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>5F-AB-001</td>
<td>1.0 ng/mL</td>
<td>FUB-144</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-ADB</td>
<td>0.20 ng/mL</td>
<td>FUB-AMB</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>5F-ADB-PINACA</td>
<td>1.0 ng/mL</td>
<td>FUB-JWH-018</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>5F-AFLICA</td>
<td>0.10 ng/mL</td>
<td>FUB-PB-22</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-APICA</td>
<td>1.0 ng/mL</td>
<td>JWH-018</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-APINACA (5F-AKB-48)</td>
<td>2.0 ng/mL</td>
<td>MA-CHMINACA</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>5F-MN-18</td>
<td>0.10 ng/mL</td>
<td>MDMB-CHMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-PB-22</td>
<td>0.10 ng/mL</td>
<td>MDMB-CHMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>AB-CHMINACA</td>
<td>1.0 ng/mL</td>
<td>MDMB-CHMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>AB-FUBINACA</td>
<td>1.0 ng/mL</td>
<td>MDMB-FUBINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>AB-PINACA</td>
<td>0.20 ng/mL</td>
<td>MBB-CHMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>ADB-CHMINACA</td>
<td>0.10 ng/mL</td>
<td>MBB-CHMINACA (MDMB-CHMINACA)</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>ADB-FUBINACA</td>
<td>1.0 ng/mL</td>
<td>MO-CHMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>ADB-PINACA</td>
<td>0.20 ng/mL</td>
<td>NM-2201</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>ADBICA</td>
<td>1.0 ng/mL</td>
<td>PX1</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>AM-2201</td>
<td>0.10 ng/mL</td>
<td>PX2</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>AMB</td>
<td>0.10 ng/mL</td>
<td>THJ-018</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>APICA</td>
<td>0.20 ng/mL</td>
<td>THJ-2201</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>APINACA (AKB-48)</td>
<td>1.0 ng/mL</td>
<td>UR-144</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>APP-CHMINACA (PX3)</td>
<td>0.20 ng/mL</td>
<td>XLR-11</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>CUMYL-THPINACA</td>
<td>0.10 ng/mL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EG-2201</td>
<td>0.20 ng/mL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Analysis Summary and Reporting Limits:

- Analysis by High Performance Liquid Chromatography/Mass Spectrometry (LC/TOF-MS) for: The following is a general list of compound classes included in this screen. The detection of any specific analyte is concentration-dependent. Note, not all known analytes in each specified compound class are included. Some specific analytes outside these classes are also included. For a detailed list of all analytes and reporting limits, please contact NMS Labs. Amphetamines, Anticonvulsants, Antidepressants, Antihistamines, Antipsychotic Agents, Benzodiazepines, CNS Stimulants, Cocaine and Metabolites, Hallucinogens, Hypnosedatives, Hypoglycemics, Muscle Relaxants, Nonsteroidal Anti-Inflammatory Agents, Opiates and Opioids.

Acute 8092B - Postmortem, Expert, Blood (Forensic) - Peripheral Blood

- Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt. Limit</th>
<th>Compound</th>
<th>Rpt. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzodiazepines</td>
<td>100 ng/mL</td>
<td>Opiates</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Buprenorphine / Metabolite</td>
<td>0.50 ng/mL</td>
<td>Oxycodone / Oxymorphone</td>
<td>10 ng/mL</td>
</tr>
<tr>
<td>Cannabinoids</td>
<td>10 ng/mL</td>
<td>Salicylates</td>
<td>120 mcg/mL</td>
</tr>
<tr>
<td>Cocaine / Metabolites</td>
<td>20 ng/mL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Analysis by Gas Chromatography/Mass Spectrometry (GC/MS) for: Anesthetics, Anticoagulant Agents, Antifungal Agents, Antihypertensive Agents, Anxiolytics (Benzodiazepine and others), Hypnosedatives (Barbiturates, Non-Benodiazepine Hypnotics, and others) and Non-Steroidal Anti-Inflammatory Agents (excluding Salicylate).

- Analysis by Gas Chromatography/Mass Spectrometry (GC/MS) for: The following is a general list of compound classes included in the Gas Chromatographic screen. The detection of any particular compound is concentration-dependent. Please note that not all known compounds included in each specified class or heading are included. Some specific compounds outside these classes are also included. For a detailed list of all compounds and reporting limits included in this screen, please contact NMS Labs. Amphetamines, Analgesics (opioid and non-opioid), Anorectics, Antiarrhythmics, Anticholinergic Agents, Anticonvulant Agents, Antidepressants, Antiepileptics, Antihistamines, Antiparkinsonian Agents, Antipsychotic Agents, Antitussive Agents, Antiviral Agents, Calcium Channel Blocking Agents, Cardiovascular Agents (non-digoxins), Local Anesthetics Agents, Muscle Relaxants and Stimulants (Amphetamines-like and others).

- Analysis by Headspace Gas Chromatography (GC) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt. Limit</th>
<th>Compound</th>
<th>Rpt. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acetone</td>
<td>5.0 mg/dL</td>
<td>Isopropanol</td>
<td>5.0 mg/dL</td>
</tr>
<tr>
<td>Ethanol</td>
<td>10 mg/dL</td>
<td>Methanol</td>
<td>5.0 mg/dL</td>
</tr>
</tbody>
</table>

Acute 9142B - Cyanide Screen, Blood - Peripheral Blood

- Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry (LC-MS/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cyanide</td>
<td>0.10 mcg/mL</td>
</tr>
</tbody>
</table>
Toxicology Report

Report Issued: 10/30/2017 13:03

Patient Name: Paddock (Tent), Stephen C.
Patient ID: 17-10064
Chain: 17322918
Age: 84 Y
DOB: Not Given
Gender: Male
Workorder: 17322918

To: 10294
Clark County Coroner's Office
Attn: David Mills
1704 Pinto Lane
Las Vegas, NV 89106

Positive Findings:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Result</th>
<th>Units</th>
<th>Matrix Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony</td>
<td>0.49 mcg/g</td>
<td>001 - Hair</td>
<td></td>
</tr>
<tr>
<td>Barium</td>
<td>1.6 mcg/g</td>
<td>001 - Hair</td>
<td></td>
</tr>
<tr>
<td>Lead</td>
<td>1.3 mcg/g</td>
<td>001 - Hair</td>
<td></td>
</tr>
<tr>
<td>Mercury</td>
<td>4.7 mcg/g</td>
<td>001 - Hair</td>
<td></td>
</tr>
<tr>
<td>Barium</td>
<td>5.0 mcg/g</td>
<td>002 - Pubic Hair</td>
<td></td>
</tr>
<tr>
<td>Bismuth</td>
<td>0.15 mcg/g</td>
<td>002 - Pubic Hair</td>
<td></td>
</tr>
<tr>
<td>Mercury</td>
<td>3.6 mcg/g</td>
<td>002 - Pubic Hair</td>
<td></td>
</tr>
</tbody>
</table>

See Detailed Findings section for additional information.

Disclaimer: Specimens for elemental testing should be collected in certified metal-free containers. Elevated results for elemental testing may be caused by environmental contamination at the time of specimen collection and should be interpreted accordingly. It is recommended that unexpected elevated results be verified by testing another specimen.

Testing Requested:

- Analysis Code: 2893H
- Description: Metals/Metalloids Acute Poisoning Panel, Hair

Specimens Received:

<table>
<thead>
<tr>
<th>ID</th>
<th>Tube/Container</th>
<th>Volume/Mass</th>
<th>Collection Date/Time</th>
<th>Matrix Source</th>
<th>Miscellaneous Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>White Plastic Container</td>
<td>0.128 g</td>
<td>10/14/2017 13:10</td>
<td>Hair</td>
<td>SCALP HAIR</td>
</tr>
<tr>
<td>002</td>
<td>White Plastic Container</td>
<td>0.128 g</td>
<td>10/14/2017 13:10</td>
<td>Pubic Hair</td>
<td>“VERTEBRAL COLUMN”</td>
</tr>
<tr>
<td>003</td>
<td>Green Plastic Container</td>
<td>15.08 g</td>
<td>10/14/2017 13:10</td>
<td>Bone</td>
<td></td>
</tr>
</tbody>
</table>

All sample volumes/weights are approximations.

Specimens received on 10/17/2017.
Detailed Findings:

<table>
<thead>
<tr>
<th>Analysis and Comments</th>
<th>Result</th>
<th>Units</th>
<th>Rpt. Limit</th>
<th>Specimen Source</th>
<th>Analysis By</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony</td>
<td>0.49</td>
<td>mcg/g</td>
<td>0.20</td>
<td>001 - Hair</td>
<td>ICP/MS</td>
</tr>
<tr>
<td>Barium</td>
<td>1.6</td>
<td>mcg/g</td>
<td>1.0</td>
<td>001 - Hair</td>
<td>ICP/MS</td>
</tr>
<tr>
<td>Lead</td>
<td>1.3</td>
<td>mcg/g</td>
<td>1.0</td>
<td>001 - Hair</td>
<td>ICP/MS</td>
</tr>
<tr>
<td>Mercury</td>
<td>4.7</td>
<td>mcg/g</td>
<td>0.76</td>
<td>001 - Hair</td>
<td>ICP/MS</td>
</tr>
<tr>
<td>Barium</td>
<td>5.0</td>
<td>mcg/g</td>
<td>0.98</td>
<td>002 - Pubic Hair</td>
<td>ICP/MS</td>
</tr>
<tr>
<td>Bismuth</td>
<td>0.15</td>
<td>mcg/g</td>
<td>0.098</td>
<td>002 - Pubic Hair</td>
<td>ICP/MS</td>
</tr>
<tr>
<td>Mercury</td>
<td>3.8</td>
<td>mcg/g</td>
<td>0.76</td>
<td>002 - Pubic Hair</td>
<td>ICP/MS</td>
</tr>
</tbody>
</table>

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:

1. Antimony - Hair:
   Normally: Less than 0.2 mcg/g.
   Not for clinical diagnostic purposes.

2. Barium - Hair, Pubic Hair:
   Normally: Less than 2 mcg/g.
   Not for clinical diagnostic purposes.

3. Bismuth - Pubic Hair:
   No reference data available.
   Not for clinical diagnostic purposes.

4. Lead - Hair:
   Normally: Less than 15 mcg/g.
   Not for clinical diagnostic purposes.

5. Mercury - Hair, Pubic Hair:
   Generally: Less than 2 mcg/g.
   Concentrations are diet and environment dependent.
   Not for clinical diagnostic purposes.

Sample Comments:

001 Physician/Pathologist Name: DR. GAVIN

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded thirteen (13) months from the date of this report, and generated data will be discarded five (5) years from the date the analyses were performed. Chain of custody documentation has been maintained for the analyses performed by NMS Labs.

Workorder 17322918 was electronically signed on 10/30/2017 12:11 by:

Laura M. Labay, Ph.D., F-ABFT, DABCC-TC
Forensic Toxicologist
Analysis Summary and Reporting Limits:

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive. If the compound is listed as None Detected, it is not present above the Reporting Limit. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

**Acute 2693H - Metals/Metalloids Acute Poisoning Panel, Hair - Public Hair**

- Analysis by Inductively Coupled Plasma/Mass Spectrometry(ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rot Limit</th>
<th>Compound</th>
<th>Rot Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony</td>
<td>0.19 mcg/g</td>
<td>Lead</td>
<td>0.98 mcg/g</td>
</tr>
<tr>
<td>Arsenic</td>
<td>0.98 mcg/g</td>
<td>Selenium</td>
<td>3.9 mcg/g</td>
</tr>
<tr>
<td>Barium</td>
<td>0.98 mcg/g</td>
<td>Thallium</td>
<td>0.096 mcg/g</td>
</tr>
<tr>
<td>Bismuth</td>
<td>0.068 mcg/g</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Analysis by Inductively Coupled Plasma/Mass Spectrometry(ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rot Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mercury</td>
<td>0.76 mcg/g</td>
</tr>
</tbody>
</table>

**Acute 2693H - Metals/Metalloids Acute Poisoning Panel, Hair**

- Analysis by Inductively Coupled Plasma/Mass Spectrometry(ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rot Limit</th>
<th>Compound</th>
<th>Rot Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony</td>
<td>0.20 mcg/g</td>
<td>Lead</td>
<td>1.0 mcg/g</td>
</tr>
<tr>
<td>Arsenic</td>
<td>1.0 mcg/g</td>
<td>Selenium</td>
<td>4.0 mcg/g</td>
</tr>
<tr>
<td>Barium</td>
<td>1.0 mcg/g</td>
<td>Thallium</td>
<td>0.10 mcg/g</td>
</tr>
<tr>
<td>Bismuth</td>
<td>0.10 mcg/g</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Analysis by Inductively Coupled Plasma/Mass Spectrometry(ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rot Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mercury</td>
<td>0.76 mcg/g</td>
</tr>
</tbody>
</table>
Supplemental Report

Report Issued: 12/11/2017 11:02
Last Report Issued: 10/24/2017 12:03

To: 10294
Clark County Coroner's Office
Attn: David Mills
1704 Pinto Lane
Las Vegas, NV 89106

Patient Name: Paddock (Tent) Stephen C.
Patient ID: 17-10054
Chain: 17314232
Age: 64 y
DOB: Not Given
Gender: Male
Workorder: 17314232

Positive Findings:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Result</th>
<th>Units</th>
<th>Matrix Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beta-hydroxybutyric Acid</td>
<td>21</td>
<td>mcg/mL</td>
<td>001 - Peripheral Blood</td>
</tr>
<tr>
<td>Arsenic</td>
<td>12</td>
<td>mcg/L</td>
<td>001 - Peripheral Blood</td>
</tr>
<tr>
<td>Bismuth</td>
<td>0.92</td>
<td>mcg/L</td>
<td>001 - Peripheral Blood</td>
</tr>
<tr>
<td>Mercury</td>
<td>37</td>
<td>mcg/L</td>
<td>001 - Peripheral Blood</td>
</tr>
<tr>
<td>Selenium</td>
<td>290</td>
<td>mcg/L</td>
<td>001 - Peripheral Blood</td>
</tr>
<tr>
<td>Antimony</td>
<td>9.6</td>
<td>mcg/L</td>
<td>001 - Peripheral Blood</td>
</tr>
<tr>
<td>Lead</td>
<td>7.3</td>
<td>mcg/dL</td>
<td>001 - Peripheral Blood</td>
</tr>
<tr>
<td>Caffeine</td>
<td>Positive</td>
<td>mcg/mL</td>
<td>001 - Peripheral Blood</td>
</tr>
<tr>
<td>Theobromine</td>
<td>Positive</td>
<td>mcg/mL</td>
<td>001 - Peripheral Blood</td>
</tr>
<tr>
<td>Chlorpheniramine</td>
<td>13</td>
<td>ng/mL</td>
<td>002 - Peripheral Blood</td>
</tr>
<tr>
<td>Creatinine (Vitreous Fluid)</td>
<td>1.6</td>
<td>mg/dL</td>
<td>005 - Vitreous Fluid</td>
</tr>
<tr>
<td>Sodium (Vitreous Fluid)</td>
<td>127</td>
<td>mmol/L</td>
<td>005 - Vitreous Fluid</td>
</tr>
<tr>
<td>Potassium (Vitreous Fluid)</td>
<td>&gt;20</td>
<td>mmol/L</td>
<td>005 - Vitreous Fluid</td>
</tr>
<tr>
<td>Chloride (Vitreous Fluid)</td>
<td>112</td>
<td>mmol/L</td>
<td>005 - Vitreous Fluid</td>
</tr>
<tr>
<td>Urea Nitrogen (Vitreous Fluid)</td>
<td>35</td>
<td>mg/dL</td>
<td>005 - Vitreous Fluid</td>
</tr>
<tr>
<td>Nordiazepam</td>
<td>42</td>
<td>ng/mL</td>
<td>006 - Urine</td>
</tr>
<tr>
<td>Oxazepam</td>
<td>170</td>
<td>ng/mL</td>
<td>006 - Urine</td>
</tr>
<tr>
<td>Temazepam</td>
<td>140</td>
<td>ng/mL</td>
<td>006 - Urine</td>
</tr>
</tbody>
</table>

See Detailed Findings section for additional information.

Disclaimer: Specimens for elemental testing should be collected in certified metal-free containers. Elevated results for elemental testing may be caused by environmental contamination at the time of specimen collection and should be interpreted accordingly. It is recommended that unexpected elevated results be verified by testing another specimen.

Testing Requested:

<table>
<thead>
<tr>
<th>Analysis Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>9142B</td>
<td>Cyanide Screen, Blood</td>
</tr>
<tr>
<td>2693B</td>
<td>Metals/Metalloids Acute Poisoning Panel, Blood</td>
</tr>
<tr>
<td>0420B</td>
<td>Beta-hydroxybutyric Acid, Blood</td>
</tr>
<tr>
<td>8054B</td>
<td>Postmortem, Expanded with NPS, Blood (Forensic)</td>
</tr>
<tr>
<td>1919FL</td>
<td>Electrolytes and Glucose Panel (Vitreous), Fluid (Forensic)</td>
</tr>
<tr>
<td>8092B</td>
<td>Postmortem, Expert, Blood (Forensic)</td>
</tr>
<tr>
<td>8051U</td>
<td>Postmortem, Basic, Urine (Forensic)</td>
</tr>
</tbody>
</table>

Specimens Received:
### LVMPD Internal Oversight & Constitutional Policing Bureau

**Force Investigation Team**

---

**CONFIDENTIAL**

<table>
<thead>
<tr>
<th>ID</th>
<th>Tube/Container</th>
<th>Volume/Mass</th>
<th>Collection Data/Time</th>
<th>Matrix Source</th>
<th>Miscellaneous Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Gray Top Tube</td>
<td>10.65 mL</td>
<td>10/06/2017 19:00</td>
<td>Peripheral Blood</td>
<td></td>
</tr>
<tr>
<td>002</td>
<td>Gray Top Tube</td>
<td>9.85 mL</td>
<td>10/06/2017 19:00</td>
<td>Peripheral Blood</td>
<td></td>
</tr>
<tr>
<td>003</td>
<td>Gray Top Tube</td>
<td>9.65 mL</td>
<td>10/06/2017 19:00</td>
<td>Heart Blood</td>
<td></td>
</tr>
<tr>
<td>004</td>
<td>Gray Top Tube</td>
<td>5 mL</td>
<td>10/06/2017 19:00</td>
<td>Heart Blood</td>
<td></td>
</tr>
<tr>
<td>005</td>
<td>Red Top Tube</td>
<td>1 mL</td>
<td>10/06/2017 19:00</td>
<td>Vitreous Fluid</td>
<td></td>
</tr>
<tr>
<td>006</td>
<td>Green Vial</td>
<td>10.65 mL</td>
<td>10/06/2017 19:00</td>
<td>Urine</td>
<td></td>
</tr>
<tr>
<td>007</td>
<td>Green Vial</td>
<td>6.75 mL</td>
<td>10/06/2017 19:00</td>
<td>Bile</td>
<td></td>
</tr>
<tr>
<td>008</td>
<td>White Plastic Container</td>
<td>32.47 g</td>
<td>10/06/2017 19:00</td>
<td>Liver Tissue</td>
<td>SKELETAL MUSCLE, THIN LIGHT BROWN FLUID, pH=4</td>
</tr>
<tr>
<td>009</td>
<td>White Plastic Container</td>
<td>24.92 g</td>
<td>10/06/2017 19:00</td>
<td>Brain Tissue</td>
<td></td>
</tr>
<tr>
<td>010</td>
<td>White Plastic Container</td>
<td>22.08 g</td>
<td>10/06/2017 19:00</td>
<td>Muscle Tissue</td>
<td></td>
</tr>
<tr>
<td>011</td>
<td>White Plastic Container</td>
<td>28 g</td>
<td>10/06/2017 19:00</td>
<td>Gastric Fluid</td>
<td></td>
</tr>
</tbody>
</table>

---

All sample volumes/weights are approximations.

Specimens received on 10/10/2017

---

**Detailed Findings:**

<table>
<thead>
<tr>
<th>Analysis and Comments</th>
<th>Result</th>
<th>Units</th>
<th>Rpt. Limit</th>
<th>Specimen Source</th>
<th>Analysis By</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beta hydroxybutyric Acid</td>
<td>21</td>
<td>mcg/mL</td>
<td>20</td>
<td>001 - Peripheral Blood</td>
<td>GC/MS</td>
</tr>
<tr>
<td>Arsenic</td>
<td>12</td>
<td>mcg/L</td>
<td>5.0</td>
<td>001 - Peripheral Blood</td>
<td>ICP/MS</td>
</tr>
<tr>
<td>Bismuth</td>
<td>0.92</td>
<td>mcg/L</td>
<td>0.50</td>
<td>001 - Peripheral Blood</td>
<td>ICP/MS</td>
</tr>
<tr>
<td>Mercury</td>
<td>37</td>
<td>mcg/L</td>
<td>3.0</td>
<td>001 - Peripheral Blood</td>
<td>ICP/MS</td>
</tr>
<tr>
<td>Selenium</td>
<td>290</td>
<td>mcg/L</td>
<td>20</td>
<td>001 - Peripheral Blood</td>
<td>ICP/MS</td>
</tr>
</tbody>
</table>

Result verified by repeat analysis.

| Antimony         | 9.8    | mcg/dL  | 1.0        | 001 - Peripheral Blood | ICP/MS      |
| Lead             | 7.3    | mcg/dL  | 0.50       | 001 - Peripheral Blood | ICP/MS      |

Results verified by repeat analysis.

| Caffeine Positive | 0.10   | mcg/mL  | 001 - Peripheral Blood | GC/MS       |
| Theobromine Positive | 5.0   | mcg/mL  | 001 - Peripheral Blood | GC/MS       |
| Chlorpheniramine   | 13     | ng/mL   | 10          | 002 - Peripheral Blood | LC-MS/MS    |
| Creatinine (Vitreous Fluid) | 1.6 | mg/dL | 0.050 | 005 - Vitreous Fluid | Colorimetry |
| Sodium (Vitreous Fluid) | 127 | mmol/L | 80 | 005 - Vitreous Fluid | Chemistry Analyzer |
| Potassium (Vitreous Fluid) | >20 | mmol/L | 1.0 | 005 - Vitreous Fluid | Chemistry Analyzer |
| Chloride (Vitreous Fluid) | 112 | mmol/L | 70 | 005 - Vitreous Fluid | Chemistry Analyzer |
| Glucose (Vitreous Fluid) | None Detected | mg/dL | 35 | 005 - Vitreous Fluid | Chemistry Analyzer |
| Urea Nitrogen (Vitreous Fluid) | 35 | mg/dL | 3.0 | 005 - Vitreous Fluid | Chemistry Analyzer |
| Nordiazepam | 42 | ng/mL | 20 | 006 - Urine | LC-MS/MS |
| Oxazepam         | 170    | ng/mL   | 20         | 006 - Urine       | LC-MS/MS    |
| Temazepam        | 140    | ng/mL   | 20         | 006 - Urine       | LC-MS/MS    |

---

NMS v.18.0
Detailed Findings:

<table>
<thead>
<tr>
<th>Analysis and Comments</th>
<th>Result</th>
<th>Units</th>
<th>Rpt. Limit</th>
<th>Specimen Source</th>
<th>Analysis By</th>
</tr>
</thead>
</table>

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:

1. **Antimony - Peripheral Blood:**
   Pentavalent antimony compounds are used in medicine as parasiticides. Additionally, antimony has been used in the production of pigments, alloys, and flame-retardants.

   Typical normal antimony concentrations in blood are less than 5 mcg/L. Patients administered stibogluconate sodium for leishmaniasis developed an average peak blood antimony concentration of 8800 mcg/L at 1.3 hr post-intramuscular dosing.

   NMS Labs has demonstrated that certain collection tubes can artifactually increase measured antimony concentrations rendering reported concentrations difficult to interpret.

2. **Arsenic - Peripheral Blood:**
   Arsenic is a metallic element. It is prevalent in the earth's crust and can therefore be found in numerous environmentally-related sources, e.g., well water, shellfish and soil. Individuals who are exposed to these sources may have acutely or chronically elevated body burdens of arsenic. Arsenic exists in numerous chemical compounds as well as several chemical forms. Not all arsenical compounds are equal in toxicity.

   In unexposed normal individuals, arsenic concentrations in blood are usually less than 10 mcg/L, but may be higher after seafood consumption. Other potential factors causing increased concentrations of arsenic include consumption of well-water with high arsenic content. In reported poisoning fatalities, a range of 800 - 9000 mcg/L (mean 3300 mcg/L) has been reported.

3. **Beta Hydroxybutyric Acid (BHB; Beta Hydroxybutyrate; Ketone) - Peripheral Blood:**
   Ketoacidosis related to diabetes or alcoholism can be an important factor in determining cause of death. The primary ketoacid body produced through ketogenesis is acetocetate. Acetocetate may then break down to form acetone and beta hydroxybutyric acid. Ketogenic diets and other means of clinically induced, mild ketogenesis have been applied to the treatment of Epilepsy, Alzheimer's disease and other disorders.

   In blood, beta hydroxybutyric acid concentrations below 80 mcg/mL are considered normal while concentrations greater than 250 mcg/mL are indicative of ketoacidosis. Ketoacidosis may produce polyuria, polydipsia, weight loss, dizziness, nausea, vomiting, confusion, stupor and coma. There may be an odor of acetone on the breath. Severe ketoacidosis may result in death if left untreated.

4. **Bismuth - Peripheral Blood:**
   Bismuth is used industrially to produce low-melting alloys, pigments and chemical additives. It is also used therapeutically as astringents, antacids, skin powders, radio-opaque agents and to treat ulcers, indigestion, diarrhea, ulcers and warts. Normal blood concentrations are usually less than 1.0 mcg/L. The primary result of bismuth overdose is renal damage, but encephalopathy and peripheral neuropathy can also occur. Other signs of bismuth toxicity may include discoloration of the tongue, gums or skin, salivation, nausea, vomiting, abdominal pain, tremors, ataxia, memory loss, mental confusion, and seizures. Toxic bismuth blood concentrations arising from the chronic oral use of bismuth subcitrate ranged from 50 to 1600 mcg/L. Two death cases associated with bismuth toxicity reported bismuth blood concentrations in excess of 1000 mcg/L.

5. **Caffeine (No-Doz) - Peripheral Blood:**
   Caffeine is a xanthine-derived central nervous system stimulant. It also produces diuresis and cardiac and respiratory stimulation. It can be readily found in such items as coffee, tea, soft drinks and chocolate. The reported qualitative result for this substance is indicative of a finding commonly seen following typical use and is usually not toxicologically significant. If confirmation testing is required please contact the laboratory.

6. **Chloride (Vitreous Fluid) - Vitreous Fluid:**
   Normal: 105 - 135 mmol/L.
Reference Comments:

7. Chlorpheniramine (Chlor-Trimeton®) - Peripheral Blood:

Chlorpheniramine is a potent antihistamine that has been used alone and in combination with other cold symptom relief medications, both prescribed and sold over-the-counter. It may also be provided by injection or as a nasal spray. Oral doses usually range from 4 to 12 mg with both normal and controlled release formulations available.

Peak concentrations of 10 ng/mL chlorpheniramine were obtained 3 hours following single oral administration of 8 mg. Toxic effects have been reported in adults at concentrations greater than 400 ng/mL (serum) and in infants at concentrations above 65 ng/mL (postmortem blood). The blood to plasma ratio of chlorpheniramine is approximately 1.2.

Common adverse effects include sedation, dizziness, nausea and dry mouth. Signs and symptoms of acute chlorpheniramine toxicity include tremor, seizures, disorientation, loss of consciousness, fever, respiratory depression and cardiac arrhythmias.

8. Creatinine (Vitreous Fluid) - Vitreous Fluid:

Normal: 0.6 - 1.3 mg/dL

9. Glucose (Vitreous Fluid) - Vitreous Fluid:

Normal: <200 mg/dL

Postmortem vitreous glucose concentrations >200 mg/dL are associated with hyperglycemia.

Since postmortem vitreous glucose concentrations decline rapidly after death both in vivo and in vitro, care should be taken in the interpretation of results. Stability of vitreous glucose for up to 30 days has been noted by NMS Labs when specimens are maintained frozen (-20°C).

10. Lead - Peripheral Blood:

Lead is an environmental toxicant that may deleteriously affect the nervous, hematopoietic, endocrine, renal, and reproductive systems. In the general population, the major exposure routes are inhalation of lead dusts and fumes and ingestion of lead from contaminated hands and food stuffs. Drinking water may also contribute to the total body burden. In children, paint chips from lead based paints may be a source of exposure.

According to the U.S. Centers for Disease Control and Prevention (CDC), the blood lead reference level for adults is less than 5 mcg/dL. For workplace information, refer to the U.S. Occupational Safety and Health Administration (OSHA) website.

In young children, lead exposure is a particular hazard because children absorb lead at a higher rate than do adults, and because the developing nervous system of children are more susceptible to the effect of lead. The U.S. Centers for Disease Control and Prevention (CDC) reference value based on the 97.5th percentile of the blood lead level distribution in U.S. children aged 1-5 years is 5 mcg/dL.

11. Mercury - Peripheral Blood:

Mercury is a trace element, which is widely used, in industrial and agricultural products and processes, and in medicine and dentistry. Dietary intake of mercury in man ranges from approximately 1 to 30 mcg per day. Industrial exposure to mercury occurs through inhalation or by dermal absorption. Mercury exposure can be due to elemental, inorganic and organic forms of the element.

Total blood mercury levels of up to 5 mcg/L have been measured in persons with low fish consumption and up to 200 mcg/L blood in individuals consuming large quantities of predatory marine fish. Typically, "normal" mercury blood concentrations are less than 10 mcg/L.

Postmortem total blood mercury concentrations ranging from 20 - 110 mcg/L with an average of 60 mcg/L have been reported in a Japanese population.

The average oral lethal dose of inorganic mercury salts is approximately 1 gram. Toxic effects of inorganic mercury poisoning include gastroenteritis and tubular necrosis leading to renal failure. Elemental mercury is most dangerous when volatilized leading to pulmonary and CNS effects. Postmortem blood mercury concentrations can vary according to the form of mercury and the time since exposure. In two cases of inorganic mercury poisoning, blood concentrations of 1700 and 2100 mcg/L were measured. Blood concentrations of mercury after both fatal and non-fatal elemental mercury poisoning usually exceed 200 mcg/L.
Reference Comments:

12. Nordiazepam (Chlordiazepoxide Metabolite) - Urine:
   Nordiazepam is a pharmacologically active metabolite of several benzodiazepine anxiolytic/sedative/hypnotic agents, e.g., diazepam (Valium®). Nordiazepam is also the major active entity in clorazepate (Tranxene®), another benzodiazepine agent used for agitation, seizures and anxiety. The action of this compound is based on its CNS-depressant activity.

13. Oxazepam (Serax®) - Urine:
   Oxazepam is a benzodiazepine. It is frequently seen as the metabolite of diazepam and other benzodiazepines; however, it is pharmacologically active and may be given as the primary medication for the short-term relief of symptoms of anxiety and in the management of alcohol withdrawal.
   Signs associated with overdose with oxazepam are similar to those observed with other benzodiazepines, e.g., drowsiness, lethargy, respiratory depression and coma.

14. Potassium (Vitreous Fluid) - Vitreous Fluid:
   Normal: <15 mmol/L
   Quantitative results for Potassium will be affected if performed on gray top tubes since these collection tubes contain potassium oxalate.

15. Selenium - Peripheral Blood:
   Selenium is an essential trace metal. It is also used in various industries, e.g., electronic semiconductors and rubber. In medicines, selenium can be found in shampoos and dietary supplements. The compound exists in elemental, organic, and inorganic forms. Reported reference concentrations of selenium in blood of normal individuals range from 60 - 230 mcg/L. These concentrations are diet dependent.
   Adverse effects to selenium have included irritation of the skin and mucous membranes, nausea, diarrhea, fatigue, alopecia, joint pain, abdominal pain, tremor, corrosive gastric, cyanide, coma, and death.

16. Sodium (Vitreous Fluid) - Vitreous Fluid:
   Normal: 135 - 150 mmol/L
   Quantitative results for Sodium will be affected if performed on gray top tubes since these collection tubes contain sodium fluoride.

17. Temazepam (Diazepam Metabolite, Norvalium®) - Urine:
   Temazepam is a benzodiazepine hypnotic agent used in the short-term relief of insomnia. Its major metabolite, oxazepam, is also a pharmacologically active depressant. Temazepam is also a metabolite of diazepam (Valium®). The usual adult dosage of temazepam is 30 mg; however, 15 mg may be adequate.
   In overdose, temazepam shares the same clinically observed signs and symptoms as other benzodiazepines. e.g., sedation, lethargy, loss of consciousness and respiratory depression.
   Alcohol greatly enhances the activity of benzodiazepines.

18. Theobromine (Xanthine) - Peripheral Blood:
   Theobromine is a methylxanthine alkaloid found in tea and cocoa products and has been reported to pass into the breast milk of nursing mothers. Theobromine has the general properties of the xanthines, including diuresis and smooth muscle stimulation. The reported qualitative result for this substance was based upon a single analysis only. If confirmation testing is required please contact the laboratory.

19. Urea Nitrogen (Vitreous Fluid) - Vitreous Fluid:
   Normal: 8 - 20 mg/dL

Sample Comments:

001  Physician/Pathologist Name: DR. GAVIN

Unless alternate arrangements are made by you, the remainder of the submitted specimen will be discarded thirteen (13) months from the date of this report, and generated data will be discarded five (5) years from the date the analyses were performed. Chain of custody documentation has been maintained for the analyses performed by NMS Labs.
## Analysis Summary and Reporting Limits:

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. The Reporting Limit listed for each compound represents the lowest concentration of the compound that will be reported as being positive. If the compound is listed as None Detected, it is not present above the Reporting Limit. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

### Acc0420B - Beta hydroxybutyric Acid, Blood - Peripheral Blood

- Analysis by Gas Chromatography/Mass Spectrometry (GC/MS) for:
  
<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Betahydroxybutyric Acid</td>
<td>20 mcg/mL</td>
</tr>
</tbody>
</table>

### Acc0191FL - Electrolytes and Glucose Panel (Vitreous), Fluid (Forensic) - Vitreous Fluid

- Analysis by Chemistry Analyzer for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chloride (Vitreous Fluid)</td>
<td>70 mmol/L</td>
</tr>
<tr>
<td>Glucose (Vitreous Fluid)</td>
<td>35 mg/dL</td>
</tr>
<tr>
<td>Potassium (Vitreous Fluid)</td>
<td>1.0 mmol/L</td>
</tr>
</tbody>
</table>

- Analysis by Colorimetry (C) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creatinine (Vitreous Fluid)</td>
<td>0.005 mg/dL</td>
</tr>
</tbody>
</table>

### Acc0293B - Metals/Metalloids Acute Poisoning Panel, Blood - Peripheral Blood

- Analysis by Inductively Coupled Plasma/Mass Spectrometry (ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic</td>
<td>5.0 mcg/L</td>
</tr>
</tbody>
</table>

- Analysis by Inductively Coupled Plasma/Mass Spectrometry (ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bismuth</td>
<td>0.50 mcg/L</td>
</tr>
</tbody>
</table>

- Analysis by Inductively Coupled Plasma/Mass Spectrometry (ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mercury</td>
<td>3.0 mcg/L</td>
</tr>
</tbody>
</table>
### Analysis Summary and Reporting Limits:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selenium</td>
<td>20 mcg/L</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Analysis by Inductively Coupled Plasma/Mass Spectrometry (ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thallium</td>
<td>0.50 mcg/L</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Analysis by Inductively Coupled Plasma/Mass Spectrometry (ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony</td>
<td>1.0 mcg/L</td>
<td></td>
<td></td>
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</table>

- Analysis by Inductively Coupled Plasma/Mass Spectrometry (ICP/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lead</td>
<td>0.50 mcg/dL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Code 50012B - Benzodiazepines Confirmation, Blood (Forensic) - Peripheral Blood**

- Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry (LC-MS/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>7-Amino Clonazepam</td>
<td>5.0 ng/mL</td>
<td>Flurazepam</td>
<td>2.0 ng/mL</td>
</tr>
<tr>
<td>Alpha-Hydroxvalproate</td>
<td>5.0 ng/mL</td>
<td>Hydroxyethylflurazepam</td>
<td>5.0 ng/mL</td>
</tr>
<tr>
<td>Alprazolam</td>
<td>5.0 ng/mL</td>
<td>Hydroxytriazolam</td>
<td>5.0 ng/mL</td>
</tr>
<tr>
<td>Chlordiazepoxide</td>
<td>20 ng/mL</td>
<td>Lorazepam</td>
<td>5.0 ng/mL</td>
</tr>
<tr>
<td>Clozazepam</td>
<td>20 ng/mL</td>
<td>Midazolam</td>
<td>5.0 ng/mL</td>
</tr>
<tr>
<td>Clonazepam</td>
<td>2.0 ng/mL</td>
<td>Norbrazepam</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Desalkyfluazepam</td>
<td>5.0 ng/mL</td>
<td>Oxazepam</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Diazepam</td>
<td>20 ng/mL</td>
<td>Temazepam</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Estazolam</td>
<td>5.0 ng/mL</td>
<td>Triazolam</td>
<td>2.0 ng/mL</td>
</tr>
</tbody>
</table>

**Code 50012U - Benzodiazepines Confirmation, Urine (Forensic)**

- Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry (LC-MS/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-Hydroxymidazolam</td>
<td>5.0 ng/mL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7-Amino Clonazepam</td>
<td>5.0 ng/mL</td>
<td>Hydroxyethylfluazepam</td>
<td>5.0 ng/mL</td>
</tr>
<tr>
<td>Alpha-Hydroxyalprazolam</td>
<td>10 ng/mL</td>
<td>Hydroxytriazolam</td>
<td>5.0 ng/mL</td>
</tr>
<tr>
<td>Alprazolam</td>
<td>5.0 ng/mL</td>
<td>Lorazepam</td>
<td>10 ng/mL</td>
</tr>
<tr>
<td>Chlordiazepoxide</td>
<td>20 ng/mL</td>
<td>Norbrazepam</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Clozazepam</td>
<td>20 ng/mL</td>
<td>Oxazepam</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Desalkyfluazepam</td>
<td>5.0 ng/mL</td>
<td>Temazepam</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Diazepam</td>
<td>20 ng/mL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Code 52440B - Chlorpheniramine Confirmation, Blood (Forensic) - Peripheral Blood**
## Analysis Summary and Reporting Limits:

- Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry (LC-MS/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chlorpheniramine</td>
<td>10 ng/mL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Acode 5970B - Synthetic Cannabinoids Confirmation Panel 2 (Qualitative), Blood - Peripheral Blood

- Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry (LC-MS/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>5F-AB-001</td>
<td>1.0 ng/mL</td>
<td>FUB-AMB</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-ADB</td>
<td>0.20 ng/mL</td>
<td>FUB-JWH-018</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>5F-AMB</td>
<td>0.10 ng/mL</td>
<td>FUB-PB-22</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-APICA</td>
<td>1.0 ng/mL</td>
<td>MA-CHMINACA</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>5F-APINACA (5F-AKB-48)</td>
<td>2.0 ng/mL</td>
<td>MDMB-CHMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-MN-18</td>
<td>0.10 ng/mL</td>
<td>MDMB-CHMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-PB-22</td>
<td>0.10 ng/mL</td>
<td>MDMB-FUBINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>AMB</td>
<td>0.10 ng/mL</td>
<td>MMB-CHMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>APICA</td>
<td>0.20 ng/mL</td>
<td>MMB-CHMINACA (MDMB-CHMINACA)</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>APINACA (AKB-48)</td>
<td>1.0 ng/mL</td>
<td>MO-CHMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>CUMYL-THPINACA</td>
<td>0.10 ng/mL</td>
<td>NM-2201</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>EUG-2201</td>
<td>0.20 ng/mL</td>
<td>THJ-018</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>FUB-144</td>
<td>0.10 ng/mL</td>
<td>THJ-2201</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>FUB-AKB-48</td>
<td>0.20 ng/mL</td>
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</table>

Acode 8051U - Postmortem, Basic Urine (Forensic)

- Analysis by Enzyme Immunoassay (EIA) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barbiturates</td>
<td>0.30 mcg/mL</td>
<td>Methadone / Metabolites</td>
<td>300 ng/mL</td>
</tr>
<tr>
<td>Benzodiazepines</td>
<td>50 ng/mL</td>
<td>Opiates</td>
<td>300 ng/mL</td>
</tr>
<tr>
<td>Cannabinoids</td>
<td>20 ng/mL</td>
<td>Oxycodeine / Oxymorphone</td>
<td>100 ng/mL</td>
</tr>
<tr>
<td>Cocaine / Metabolites</td>
<td>150 ng/mL</td>
<td>Phencyclidine</td>
<td>25 ng/mL</td>
</tr>
</tbody>
</table>

- Analysis by Enzyme Immunoassay (EIA) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amphetamines</td>
<td>500 ng/mL</td>
<td>Fentanyl / Acetyl Fentanyl</td>
<td>2.0 ng/mL</td>
</tr>
<tr>
<td>Buprenorphine / Metabolites</td>
<td>5.0 ng/mL</td>
<td>MDA</td>
<td>300 ng/mL</td>
</tr>
</tbody>
</table>

- Analysis by Headspace Gas Chromatography (GC) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acetone</td>
<td>5.0 mg/dL</td>
<td>Isopropanol</td>
<td>5.0 mg/dL</td>
</tr>
<tr>
<td>Ethanol</td>
<td>10 mg/dL</td>
<td>Methanol</td>
<td>5.0 mg/dL</td>
</tr>
</tbody>
</table>

Acode 8054B - Postmortem, Expanded with NPS, Blood (Forensic) - Peripheral Blood

- Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:
## Analysis Summary and Reporting Limits:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barbiturates</td>
<td>0.040 mcg/mL</td>
<td>Salicylates</td>
<td>120 mcg/mL</td>
</tr>
<tr>
<td>Cannabinoids</td>
<td>10 ng/mL</td>
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<td></td>
</tr>
</tbody>
</table>

- Analysis by Headspace Gas Chromatography (GC) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acetone</td>
<td>5.0 mg/dL</td>
<td>Isopropenol</td>
<td>5.0 mg/dL</td>
</tr>
<tr>
<td>Ethanol</td>
<td>10 mg/dL</td>
<td>Methanol</td>
<td>5.0 mg/dL</td>
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</table>

- Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry QTRAP (LC-MS/MS QTRAP) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt Limit</th>
<th>Compound</th>
<th>Rpt Limit</th>
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</thead>
<tbody>
<tr>
<td>5F-AB-001</td>
<td>1.0 ng/mL</td>
<td>FUB-144</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-ADB</td>
<td>0.20 ng/mL</td>
<td>FUB-48</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>5F-ADB-PINACA</td>
<td>1.0 ng/mL</td>
<td>FUB-AMB</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-ADBICA</td>
<td>1.0 ng/mL</td>
<td>FUB-JWH-018</td>
<td>0.20 ng/mL</td>
</tr>
<tr>
<td>5F-AMB</td>
<td>0.10 ng/mL</td>
<td>FUB-PB-22</td>
<td>0.10 ng/mL</td>
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<tr>
<td>5F-APICA</td>
<td>1.0 ng/mL</td>
<td>JWH-018</td>
<td>0.10 ng/mL</td>
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<tr>
<td>5F-APINACA (5F-48)</td>
<td>2.0 ng/mL</td>
<td>JWH-122</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
<td>5F-MN-16</td>
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<td>MA-CHMINACA</td>
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</tr>
<tr>
<td>5F-PB-22</td>
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<td>MDMB-CHMCZCA</td>
<td>0.10 ng/mL</td>
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<tr>
<td>AB-CHMINACA</td>
<td>1.0 ng/mL</td>
<td>MDMB-CHMINACA</td>
<td>0.10 ng/mL</td>
</tr>
<tr>
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<td>MDMB-FUBINACA</td>
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<tr>
<td>AB-PINACA</td>
<td>0.20 ng/mL</td>
<td>MMB-CHMINACA (MDMB)</td>
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</tr>
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<td>ADB-CHMINACA</td>
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<td>MMB-CHMINACA</td>
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<td>MO-CHMINACA</td>
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<tr>
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<td>NM-2201</td>
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<td>ADBICA</td>
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<td>PX-4</td>
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<tr>
<td>AM-2201</td>
<td>0.10 ng/mL</td>
<td>PX2</td>
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<td>AMB</td>
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<td>THJ-018</td>
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</tr>
<tr>
<td>APICA</td>
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<td>THJ-2201</td>
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<tr>
<td>APINACA (AKB-48)</td>
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<td>UR-144</td>
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<tr>
<td>APP-CHMINACA (PX3)</td>
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<td>XLR-11</td>
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<td>CUMYL-THPINACA</td>
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<tr>
<td>EG-2201</td>
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</tbody>
</table>

- Analysis by High Performance Liquid Chromatography/Time of Flight-Mass Spectrometry (LC/TOF-MS) for: The following is a general list of compound classes included in this screen. The detection of any specific analyte is concentration-dependent. Note, not all known analytes in each specified compound class are included. Some specific analytes outside these classes are also included. For a detailed list of all analytes and reporting limits, please contact NMS Labs. Amphetamines, Anticonvulsants, Antidepressants, Antihistamines, Antipsychotic Agents, Benzodiazepines, CNS Stimulants, Cocaine and Metabolites, Hallucinogens, Hypnosedatives, Hypoglycemics, Muscle Relaxants, Non-Steroids Anti-Inflammatory Agents, Opioles and Opioids.

Acute 809202 - Postmortem, Expert, Blood (Forensic) - Peripheral Blood
Analysis Summary and Reporting Limits:

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzodiazepines</td>
<td>100 ng/mL</td>
</tr>
<tr>
<td>Buprenorphine / Metabolite</td>
<td>0.50 ng/mL</td>
</tr>
<tr>
<td>Cannabinoids</td>
<td>10 ng/mL</td>
</tr>
<tr>
<td>Cocaine / Metabolites</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Opiates</td>
<td>20 ng/mL</td>
</tr>
<tr>
<td>Oxycodone / Oxymorphone</td>
<td>10 ng/mL</td>
</tr>
<tr>
<td>Salicylates</td>
<td>120 mcg/mL</td>
</tr>
</tbody>
</table>

-Analysis by Gas Chromatography/Mass Spectrometry (GC/MS) for: Anesthetics, Anticoagulant Agents, Antifungal Agents, Antihypertensive Agents, Anxiolytics (Benzodiazepine and others), Hypnotics and Sedatives (Barbiturates, Non-Benzodiazepine Hypnotics, and others) and Non-Steroidal Anti-Inflammatory Agents (excluding Salicylate).

-Analysis by Gas Chromatography/Mass Spectrometry (GC/MS) for: The following is a general list of compound classes included in the Gas Chromatographic screen. The detection of any particular compound is concentration-dependent. Please note that not all known compounds included in each specified class or heading are included. Some specific compounds outside these classes are also included. For a detailed list of all compounds and reporting limits included in this screen, please contact NMS Labs.

-Analysis by Headspace Gas Chromatography (GC) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acetone</td>
<td>5.0 mg/dL</td>
</tr>
<tr>
<td>Ethanol</td>
<td>10 mg/dL</td>
</tr>
</tbody>
</table>

Acode 9142B - Cyanide Screen, Blood - Peripheral Blood

-Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry (LC-MS/MS) for:

<table>
<thead>
<tr>
<th>Compound</th>
<th>Rpt. Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cyanide</td>
<td>0.10 mcg/mL</td>
</tr>
</tbody>
</table>

NMS v.18.0
Patient: **PADDOCK (TENT), STEPHEN CRAIG**

Pathology No: **SHS-17-54361**

Med. Rec. No.: 
Sex: M  Age: 64
Date of Birth: 4/9/1953
Account No.: Default

Date of Procedure: 
Date Received: 11/27/2017 1:24:00 PM

Physician(s):  
LISA ANN GAVIN, M.D.  
CLARK COUNTY CORONER / MEDICAL EXAMINER  
1704 PINTO LANE  
LAS VEGAS, NV 89106

---

**SPECIMEN SUBMITTED:**  
BRAIN AUTOPSY: CASE#17-10064

---

**DIAGNOSIS:**

1. **AUTOPSY BRAIN, PREFIXATION WEIGHT 1410 GRAMS, AND PITUITARY GLAND**
2. **STATUS POST INTRAORAL GUNSHOT WOUND OF HEAD WITH PENETRATION OF BRAINSTEM, CEREBELLUM, LEFT OCCIPITAL LOBE**
3. **INTRACRANIAL HEMORRHAGE, ACUTE, SECONDARY TO #2**
   a. SUBDURAL 
   b. SUBARACHNOID 
   c. PARENCHYMAL, MULTIFOCAL, CONTUSIVE, PETECHIAL 
   d. PITUITARY GLAND 
4. **HYPERTENSIVE VASCULOPATHY AND ATEROSCLEROSIS**

**VOGEL**

---

**COMMENT:** The hypertensive changes are commensurate with the stated age of the deceased and evidence from the general autopsy of hypertensive cardiovascular disease.

The extent of formation of corpora amylacea as noted in the microscopic description is a known incidental finding in the brains of asymptomatic older adults. In this example of strikingly numerous corpora amylacea there is no apparent etiology, consistent with the lack of any published significance to this abundance in some individuals.

**GROSS NEUROPATHOLOGY:** (H. Vogel, M.D.)

Christina S. Kong, M.D. – Medical Director
Patient: Paddock (Tent), Stephen  
Pathology No: SHS-17-54361

Received through the courtesy of Dr. Gavin of the Clark County Coroner Office, Las Vegas, NV and by direct transfer from Coroner John Fudenberg on Monday November 27, 2017, and designated with the decedent name Paddock (Tent), Stephen as well as an autopsy report and identifying paperwork is formalin fixed brain tissue in a sealed plastic container.

No dura is received. The prefixation weight of the brain is 1410 grams. The written record of the postmortem prosection of the brain is noted in the received autopsy report. An intraoral gunshot injury is described in which the trajectory included in sequence, the roof of the mouth, the base of the skull (with internal beveling), the brain stem, the cerebellum, the left occipital lobe and partially into the occipital bones. Also described are: contusions of the base of the brain with brain swelling; and subdural and subarachnoid hemorrhage, locations unspecified. The cerebral hemispheres were asymmetrical, prefixation, due to injury. Further quoting the autopsy report: "The uninjured structures at the base of the brain are free of abnormality. Sections through the uninjured cerebral hemispheres reveal no lesions within the cortex, subcortical white matter, or deep parenchyma of either hemisphere. Sections through the uninjured brain stem and cerebellum reveal no lesions. The spinal cord was not removed." Representative portions were retained for formalin fixation.

The fixed brain tissue is received in pieces of varying sizes, as follows, with gross abnormalities if present. Neuroanatomic origins of all portions were substantiated by Dr. Gavin. Photographs were taken for documentation.
1. Frontal lobe; subarachnoid and petechial parenchymal hemorrhages
2. Cingulate gyri
3. Corpus callosum and partial basal ganglia, two pieces. Thalamus appears slightly mottled
4. Hippocampus, two pieces, sides unspecified; one with fresh contusion
5. Splenium of the corpus callosum
6. Cerebellum and injured midbrain, pons; several pieces
7. Occipital lobe, side unspecified

Representative sections are submitted as follows: A) frontal lobe, B) frontal lobe, C) corpus callosum and cingulate gyrus, D) basal ganglia with probable anterior commissure, E) thalamus, F) thalamus G) possible amygdala, H) putamen, I, J, K, L) designated hippocampus, M) thalamus and claustrum, N) designated temporal lobe with contusion, O) occipital lobe, side unspecified, P) midbrain with red nucleus, Q) injured pons, R) medulla, S) cerebellum, T) injured vermis, U) pituitary, V) optic chiasm, W) basal ganglia and internal capsule, X) basal ganglia and anterior commissure, Y) basal ganglia and possible amygdala

MICROSCOPIC NEUROPATHOLOGY: (H. Vogel, M.D.)

Christina S. Kong, M.D. – Medical Director
All sections are viewed with hematoxylin and eosin and Luxol fast blue/periodic acid Schiff (LFB/PAS). The histological sections of regions designated as injured or containing contused brain are confirmed microscopically, evidenced by perivascular microhemorrhage. Grossly identifiable subarachnoid hemorrhage is also confirmed microscopically as acute. The pituitary gland shows acute parenchymal hemorrhage.

Sections including hemispheric white matter demonstrate hyaline thickening of arterial vessels with focal perivascular hemosiderin deposition, characteristic of hypertensive vasculopathy. No microinfarcts are noted. Large subarachnoid arterial blood vessels show moderate atherosclerosis.

None of the sections show any evidence of an either acute or chronic inflammatory reaction, within brain parenchyma and leptomeninges, providing no support for a diagnosis of either an infectious or autoimmune encephalitis or meningitis. The cerebellum is histologically normal and shows no obvious neuronal loss or reactive changes.

The most striking abnormality in sections of the hippocampus, peri- third ventricular wall, optic nerve, corpus callosum, medial surfaces of frontal lobes are unusually large numbers of corpora amylacea in subpial, perivascular, and minor subependymal distributions characteristic of the usual age-related accumulation of corpora amylacea in these favored locations. Some of the subpial regions with numerous corpora amylacea display interface (“Chaslin’s”) gliosis. The LFB/PAS stains highlight the corpora amylacea. No abnormal accumulations of corpora amylacea are found in gray matter as seen in Lafora disease, or except in rare foci, in white matter as seen in polyglucosan body disease.

The following special stains and immunohistochemical stains were performed with results described.

1. LFB/PAS: no evidence of demyelination
2. Bielschowsky silver impregnation, block J: no neurofibrillary tangles or senile plaques of the Alzheimer type
3. Beta-amyloid, blocks B, G, J: no vascular or plaque deposition
4. AT8 (phosphor tau), blocks B, C, D, G, L, N: no neurofibrillary tangles or senile plaques of the Alzheimer type in the hippocampus; no subcortical expression of tau at depths of sulci or perivascular as seen in chronic traumatic encephalopathy, frontal lobe
5. Alpha-synuclein, blocks C, G, P: no Lewy body pathology
6. TDP-43, blocks B, G, N: no abnormal cytoplasmic staining as seen in frontotemporal lobar degeneration (FTLD)
7. Ubiquitin, blocks J, N, Y: no abnormal cytoplasmic staining as seen in FTLD
Patient: **PADDOCK (TENT), STEPHEN CRAIG**

Pathology No: **SHS-17-54361**

8. GFAP, blocks C, E, F, M: some mild increase in perivascular and subpial astroglisis, without obvious neuronal loss

9. Beta-amyloid precursor protein, block C: no axonal injury

**CLINICAL HISTORY:**

64 year old man expired of self-administered intraoral gunshot wound. No known past medical history.

I have reviewed the specimen and agree with the interpretation above. HANNES VOGEL, M.D. Electronically signed 12/27/2017 1:34 PM
February 5, 2018

Dr. Lisa Gavin
Clark County Coroner's Office
1704 Pinto Lane
Las Vegas, NV 89106

Re: NMS file nos.: WO# 17314232 and 17322918

Dear Dr. Gavin:

You have requested that I provide a report discussing my opinions and conclusions regarding Mr. Stephen Paddock's toxicology results as detailed in two reports issued by NMS Labs. Specifically, you would like to know if substances found in Mr. Paddock's biological samples may be the reason for the production of violent and aggressive behavior.

In order to comply with your request, I have reviewed the following:

Toxicology reports for Mr. Stephen Paddock issued by NMS Labs:
  - WO# 17314232 (initial report dated 10/24/2017; supplemental report dated 12/11/2017)
  - WO# 17322918 (dated 10/30/2017)

From my review of these two reports, Mr. Paddock's toxicology testing showed the presence of several substances. The positive findings from both reports, with the exception of the vitreous findings, are shown in the table below.

<table>
<thead>
<tr>
<th>ANALYTE</th>
<th>RESULT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antimony</td>
<td>9.6 mcg/L in Peripheral Blood</td>
</tr>
<tr>
<td></td>
<td>0.49 mcg/g in Scalp Hair</td>
</tr>
<tr>
<td>Arsenic</td>
<td>12 mcg/L in Peripheral Blood</td>
</tr>
<tr>
<td>Barium</td>
<td>1.6 mcg/g in Scalp Hair</td>
</tr>
<tr>
<td></td>
<td>5.0 mcg/g in Pubic Hair</td>
</tr>
<tr>
<td>Bismuth</td>
<td>0.92 mcg/L in Peripheral Blood</td>
</tr>
<tr>
<td></td>
<td>0.15 mcg/g in Pubic Hair</td>
</tr>
<tr>
<td>Lead</td>
<td>7.3 mcg/dL in Peripheral Blood</td>
</tr>
<tr>
<td></td>
<td>1.3 mcg/g in Scalp Hair</td>
</tr>
<tr>
<td>Mercury</td>
<td>37 mcg/L in Peripheral Blood</td>
</tr>
<tr>
<td></td>
<td>4.7 mcg/g in Scalp Hair</td>
</tr>
<tr>
<td></td>
<td>3.6 mcg/g in Pubic Hair</td>
</tr>
<tr>
<td>Selenium</td>
<td>290 mcg/L in Peripheral Blood</td>
</tr>
<tr>
<td>Caffeine</td>
<td>Positive in Peripheral Blood</td>
</tr>
<tr>
<td>Theobromine</td>
<td>Positive in Peripheral Blood</td>
</tr>
<tr>
<td>Chlorpheniramine</td>
<td>13 ng/mL in Peripheral Blood</td>
</tr>
<tr>
<td>Nordiazepam</td>
<td>42 ng/mL in Urine</td>
</tr>
<tr>
<td>Oxazepam</td>
<td>170 ng/mL in Urine</td>
</tr>
<tr>
<td>Temazepam</td>
<td>140 ng/mL in Urine</td>
</tr>
<tr>
<td>Betahydroxybutyric Acid</td>
<td>21 mcg/mL in Peripheral Blood</td>
</tr>
</tbody>
</table>
My opinions about the possibility regarding the manifestation of violent and aggressive behavior are detailed as follows:

1. Elemental analysis was performed in blood and hair. Blood is used to determine circulating concentrations at the time of its collection. In postmortem cases, it theoretically represents what was present at the time of death. Hair is used to determine if there has been any chronic exposure to a substance. Because elements are ubiquitous, the potential for environmental contamination during sample collection and from storage containers needs to be considered before attributing the results to the tested samples. The findings show concentrations that are either consistent with normal amounts for barium in scalp hair, bismuth in blood, and lead in scalp hair or are slightly above normal for antimony in blood and hair, arsenic in blood, lead in blood, mercury in blood and hair, and selenium in blood.

Arsenic, antimony and selenium even at elevated concentrations are not known to be associated with the production of violent and aggressive behavior.

Lead has been linked to cognitive effects, however, for lead at the reported concentration of 7.3 mcg/mL in adults there is insufficient evidence that this concentration will cause violent and aggressive behavior (1).

Clinical manifestations of mercury toxicity are dependent upon several variables such as route of exposure, chemical form, dosage received, and duration of exposure. Some signs and symptoms associated with its toxicity may include bronchial irritation from mercury vapor exposure, gastroenteritis from inorganic mercury exposure, paresthesia, ataxia, and hearing loss from methyl and/or ethyl mercury exposure, and tubular necrosis in the kidney from inorganic mercury and ethyl mercury exposure (2).

Important considerations for this case are that the mercury has not been analytically differentiated, and that arsenic, selenium and mercury concentrations can be elevated as a consequence of dietary (seafood) consumption and/or environmental exposures. In samples collected at autopsy from a normal Japanese population, the arsenic concentration in blood averaged 56 mcg/L with a range of 50-60 mcg/L, and the total mercury concentration in blood averaged 59 mcg/L with a range of 16-110 mcg/L (3). There is also indication that the presence of selenium may have some beneficial effects on the mitigation of mercury toxicity (4).

My opinion is that if Mr. Paddock was experiencing toxicity to any of the identified elements he would have experienced a constellation of symptoms specifically related to that element's known toxic profile.

2. Caffeine is a commonly used central nervous system stimulant. It is found in beverages such as coffee or soda, and some food products such as chocolate. It can promote physiological responses such as diuresis, and increased heart and respiratory rates. Theobromine is an ingredient in chocolate and a caffeine metabolite. The reported qualitative findings in blood for these two substances are not consistent with excessive use.

3. Chlorpheniramine is an antihistamine. Common adverse effects include sedation and dizziness. The reported concentration in blood (13 ng/mL) is consistent with therapeutic use.

4. Nordiazepam, oxazepam, and temazepam are benzodiazipines. Nordiazepam is a benzodiazipine metabolite, and oxazepam and temazepam may be present as parent drugs and/or metabolites. Benzodiazipines are prescribed to treat a wide range of conditions including, but not limited to, anxiety, insomnia, and agitation. The finding of these substances in urine and not in blood show that
Mr. Paddock had previously used or was exposed to this drug class. Substances present in the urine do not have any pharmacological activity.

5. Betahydroxybutyric Acid is a ketone body. This endogenous substance is used as a biological marker for ketoacidosis. Concentrations less than 50 mcg/mL are considered normal and, therefore, the reported concentration in blood (21 mcg/mL) is not consistent with an above normal concentration.

If you have any questions regarding this report please do not hesitate to contact me. Also, in the event information becomes available, that may affect the above opinions and conclusions, please forward such to me for evaluation.

Laura M. Labay, Ph.D., F-ABFT, DABCC-TC
Forensic Toxicologist

REFERENCES:

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
Criminal Investigative Report of the 1 October Mass Casualty Shooting

Event: 171001-3519

FORCE INVESTIGATION TEAM
Lieutenant Erik Lloyd
Sergeant Jerry MacDonald
Detective Trever Alsup
Detective Marc Colon
Detective Breck Hodson
Detective Jason Leavitt
Detective Joseph Patton
Detective Blake Penny
LEST Lara Stein

HOMICIDE SECTION
Detective Jarrod Grimmett

[Signature]
Trever Alsup, Detective
Force Investigation Team

[Signature]
Jerry MacDonald, Sergeant
Force Investigation Team

[Signature]
Erik Lloyd, Lieutenant
Force Investigation Team

[Signature]
Jamie Prosser, Captain
Internal Oversight & Constitutional Policing Bureau

LVMPD Internal Oversight & Constitutional Policing Bureau
Force Investigation Team
Bump-Stock-Type Devices

A Proposed Rule by the Alcohol, Tobacco, Firearms, and Explosives Bureau on 03/29/2018

DOCUMENT DETAILS

Printed version:

Publication Date:
03/29/2018 (/documents/2018/03/29)

Agencies:

Dates:
Written comments must be postmarked and electronic comments must be submitted on or before June 27, 2018. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Daylight Time on the last day of the comment period.

Comments Close:
06/27/2018

Document Type:
Proposed Rule

Document Citation:
83 FR 13442

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13442-13457 (16 pages)

CFR:
27 CFR 447
27 CFR 478
27 CFR 479

Agency/Docket Numbers:
Docket No. 2017R-22
AG Order No. 4132-2018

RIN:
1140-AA52

Document Number:
2018-06292

DOCUMENT STATISTICS

Page views:
45,778
as of 12/04/2018 at 2:15 pm EST

ENHANCED CONTENT
AGENCY:

Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION:

Notice of proposed rulemaking.

SUMMARY:

The Department of Justice (Department) proposes to amend the Bureau of Alcohol, Tobacco, Firearms, and Explosives regulations to clarify that “bump fire” stocks, slide-fire devices, and devices with certain similar characteristics (bump-stock-type devices) are “machineguns” as defined by the National Firearms Act of 1934 (NFA) and the Gun Control Act of 1968 (GCA), because such devices allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger. Specifically, these devices convert an otherwise semiautomatic firearm into a machinegun by functioning as a self-acting or self-regulating mechanism that harnesses the recoil energy of the semiautomatic firearm in a manner that allows the trigger to reset and continue firing without additional physical manipulation of the trigger by the shooter. Hence, a semiautomatic firearm to which a bump-stock-type device is attached is able to produce automatic fire with a single pull of the trigger. With limited exceptions, primarily as to government agencies, the GCA makes it unlawful for any person to transfer or possess a machinegun unless it was lawfully possessed prior to the effective date of the statute. The bump-stock-type devices covered by this proposed rule were not in existence prior to the GCA’s effective date, and therefore would fall within the prohibition on machineguns if this Notice of Proposed Rulemaking (NPRM) is implemented. Consequently, current possessors of these devices would be required to surrender them, destroy them, or otherwise render them permanently inoperable upon the effective date of the final rule.

DATES:

Written comments must be postmarked and electronic comments must be submitted on or before June 27, 2018. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Daylight Time on the last day of the comment period.

ADDRESSES:

You may submit comments, identified by docket number ATF 2017R-22, by any of the following methods:
For further information contact:


Fax: (202) 648-9741.


Instructions: All submissions received must include the agency name and docket number for this notice of proposed rulemaking. All properly completed comments received will be posted without change to the Federal eRulemaking portal, http://www.regulations.gov (http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” section of the Supplementary Information section of this document.

For further information contact:


Supplementary Information:

On October 1, 2017, a shooter attacked a large crowd attending an outdoor concert in Las Vegas, Nevada. By using several AR-type rifles with attached bump-stock-type devices, the shooter was able to fire several hundred rounds of ammunition in a short period of time, killing 58 people and injuring over 800. The bump-stock-type devices recovered from the hotel room from which the shooter conducted the attack included two distinct, but functionally equivalent, model variations from the same manufacturer. These devices were readily available in the commercial marketplace through online sales directly from the manufacturer, and through multiple retailers. The manufacturer of these devices is the primary manufacturer and seller of bump-stock-type devices; it has obtained multiple patents for its designs, and has rigorously enforced the patents to prevent competitors from infringing them. Consequently, at the time of the attack, very few competing bump-stock-type devices were available in the marketplace.

The devices used in Las Vegas and the other bump-stock-type devices currently available on the market all utilize essentially the same functional design. They are designed to be affixed to a semiautomatic long gun (most commonly an AR-type rifle or an AK-type rifle) in place of a standard, stationary rifle stock, for the express purpose of allowing “rapid fire” operation of the semiautomatic firearm to which they are affixed. They are configured with a sliding shoulder stock molded (or otherwise attached) to a pistol-grip/handle (or “chassis”) that includes an extension ledge (or “finger rest”) on which the shooter places the trigger finger while shooting the firearm. The devices also generally include a detachable rectangular receiver module (or “bearing interface”) that is placed in the receiver well of the device's pistol-grip/handle to assist in guiding and regulating the recoil of the firearm when fired.

These bump-stock-type devices are generally designed to operate with the shooter shouldering the stock of the device (in essentially the same manner a shooter would use an unmodified semiautomatic shoulder stock), maintaining constant forward pressure with the non-trigger hand on the barrel-shroud or fore-grip of
the rifle, and maintaining the trigger finger on the device’s extension ledge with constant rearward pressure. The device itself then harnesses the recoil energy of the firearm, providing the primary impetus for automatic fire.

In general, bump-stock-type devices—including those currently on the market with the characteristics described above—are designed to channel recoil energy to increase the rate of fire of semiautomatic firearms from a single trigger pull. Specifically, they are designed to allow the shooter to maintain a continuous firing cycle after a single pull of the trigger by directing the recoil energy of the discharged rounds into the space created by the sliding stock (approximately 1.5 inches) in constrained linear rearward and forward paths. Ordinarily, to operate a semiautomatic firearm, the shooter must repeatedly pull and release the trigger to allow it to reset, so that only one shot is fired with each pull of the trigger. When a bump-stock-type device is affixed to a semiautomatic firearm, however, the device harnesses the recoil energy to slide the firearm back and forth so that the trigger automatically re-engages by “bumping” the shooter’s stationary trigger finger without additional physical manipulation of the trigger by the shooter. The bump-stock-type device functions as a self-acting and self-regulating force that channels the firearm’s recoil energy in a continuous back-and-forth cycle that allows the shooter to attain continuous firing after a single pull of the trigger so long as the trigger finger remains stationary on the device’s extension ledge (as designed). No further physical manipulation of the trigger by the shooter is required.

In 2006, ATF concluded that certain bump-stock-type devices qualified as machineguns under the GCA and NFA. Specifically, ATF concluded that devices attached to semiautomatic firearms that use an internal spring to harness the force of the recoil so that the firearm shoots more than one shot with a single pull of the trigger are machineguns. Between 2008 and 2017, however, ATF also issued classification decisions concluding that other bump-stock-type devices were not machineguns, including a device submitted by the manufacturer of the bump-stock-type devices used in the Las Vegas shooting. Those decisions did not include extensive legal analysis relating to the definition of “machinegun.” Nonetheless, they indicated that semiautomatic firearms modified with these bump-stock-type devices did not fire “automatically,” and were thus not “machineguns,” because the devices did not rely on internal springs or similar mechanical parts to channel recoil energy. ATF has now determined that that conclusion does not reflect the best interpretation of the term “machinegun” under the GCA and NFA. In this proposed rule, the Department accordingly interprets the definition of “machinegun” to clarify that all bump-stock-type devices are “machineguns” under the GCA and NFA because they convert a semiautomatic firearm into a firearm that shoots automatically more than one shot, without manual reloading, by a single function of the trigger.

I. Background

The Attorney General is responsible for enforcing the GCA, as amended, and the NFA, as amended.[1] This includes the authority to promulgate regulations necessary to enforce the provisions of the GCA and NFA. See 18 U.S.C. 926 (https://api.fdsys.gov/link?collection=uscode&title=18&year=mostrecent&section=926&type=usc&link-type=html)(a); 26 U.S.C. 7801 (https://api.fdsys.gov/link?collection=uscode&title=26&year=mostrecent&section=7801&type=usc&link-type=html)(a)(2)(ii), 7805(a). The Attorney General has delegated the responsibility for administering and enforcing the GCA and NFA to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. See 28 CFR 0.130 (/select-citation/2018/03/29/28-CFR-0.130)(a)(1)-(2). The Department and ATF have promulgated regulations implementing both the GCA and the NFA. See 27 CFR pts. 478, 479. In particular, while still part of the Department of the Treasury, ATF for decades promulgated rules governing “the procedural and substantive requirements relative to the importation, manufacture, making, exportation, identification and registration of, and the dealing in, machine guns.” 27 CFR 479.1
II. ATF's Determinations Regarding Bump-Stock-Type Devices

Shooters use bump-stock-type devices with semiautomatic firearms to accelerate the firearm’s cyclic firing rate to mimic automatic fire. Such devices are designed principally to increase the rate of fire of semiautomatic firearms. These devices replace a rifle’s standard stock and free the weapon to slide back and forth rapidly, harnessing the energy from the firearm’s recoil either through a mechanism like an internal

The GCA defines “machinegun” by referring to the NFA definition,[2] which includes “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 (https://api.fdsys.gov/link?collection=uscode&title=26&year=mostrecent&section=5845&type=usc&link-type=html)(b). The term “machinegun” also includes the frame or receiver of any such weapon or any part, or combination of parts, designed and intended for use in converting a weapon into a machinegun, and “any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.” Id. With limited exceptions, the GCA prohibits the transfer or possession of machineguns under 18 U.S.C. 922 (https://api.fdsys.gov/link?collection=uscode&title=18&year=mostrecent&section=922&type=usc&link-type=html)(o).[3]

In 1986, Congress passed the Firearm Owners' Protection Act (FOPA), Pub. L. 99-308, 100 Stat. 449, which included a provision that effectively froze the number of legally transferrable machineguns to those that were registered before May 19, 1986. 18 U.S.C. 922 (https://api.fdsys.gov/link?collection=uscode&title=18&year=mostrecent&section=922&type=usc&link-type=html)(o). Due to the fixed universe of “pre-1986” machineguns that may be lawfully transferred by nongovernmental entities, the value of those machineguns has steadily increased over time. For example, the current average price range for pre-1986 fully automatic versions of AR-type rifles is between $20,000 and $30,000, while the price range for semiautomatic versions of these rifles is between $600 and $2,500.[4]

This price premium on automatic weapons has spurred inventors and manufacturers to attempt to develop firearms, triggers, and other devices that permit shooters to use semiautomatic rifles to replicate automatic fire without converting these rifles into “machineguns” under the GCA and NFA. ATF began receiving classification requests for such firearms, triggers, and other devices in the period from 1988 to 1990. ATF has observed a significant increase in such requests since 2004, often in connection with rifle models that were, until 2004, defined as “semiautomatic assault weapons” and prohibited under the Public Safety and Recreational Firearms Use Protection Act, 18 U.S.C. 921 (https://api.fdsys.gov/link?collection=uscode&title=18&year=mostrecent&section=921&type=usc&link-type=html)(a)(30) (commonly known as the Federal Assault Weapons Ban) (repealed effective Sept. 13, 2004). Consistent with ATF’s experience, the inventor and manufacturer of the bump-stock-type devices used in the Las Vegas shooting has attributed his innovation of those products specifically to the high cost of fully automatic firearms. In a 2011 interview, he stated that he developed the original device because he “couldn't afford what [he] wanted—a fully automatic rifle—so . . . [he made] something that would work and be affordable.”[5]
spring or in conjunction with the shooter's maintenance of pressure (typically constant forward pressure with the non-trigger hand on the barrel-shroud or fore-grip of the rifle, and constant rearward pressure on the device's extension ledge with the shooter's trigger finger).

As noted above, ATF has regulated some of these devices as machineguns. Other bump-stock-type devices currently on the market, however, have not been regulated by ATF as machineguns under the GCA or NFA, and thus have not typically been marked with a serial number and other identification markings. Individuals therefore may purchase these devices without undergoing a background check or complying with any other federal regulations applicable to firearms.

A. ATF's Interpretation of “Single Function of the Trigger”

In 2002, an inventor submitted a device known as the “Akins Accelerator” to ATF for classification. To operate the Akins Accelerator, the shooter initiated an automatic firing sequence by pulling the trigger one time, which in turn caused the rifle to recoil within the stock, permitting the trigger to lose contact with the finger and manually reset. Springs in the Akins Accelerator then forced the rifle forward, forcing the trigger against the finger, which caused the weapon to discharge the ammunition. The recoil and the spring-powered device thus caused the firearm to cycle back and forth, impacting the trigger finger, which remained rearward in a constant pull without further input by the shooter while the firearm discharged multiple shots. The device was advertised as able to fire approximately 650 rounds per minute. See ATF Ruling 2006-2, at 2.

ATF’s classification of the Akins Accelerator focused on application of the “single function of the trigger” prong of the statutory definition of “machinegun.” In an initial assessment of the Akins Accelerator, ATF concluded that the device did not qualify as a machinegun because ATF interpreted “single function of the trigger” to mean a single movement of the trigger itself. In 2006, however, ATF undertook a further review of the Akins Accelerator based on how it actually functioned when sold. ATF determined that the Akins Accelerator was properly classified as a machinegun because the best interpretation of the phrase “single function of the trigger” was a “single pull of the trigger.” The Akins Accelerator thus qualified as a machinegun because ATF determined through testing that when the device was installed on a semiautomatic rifle (specifically a Ruger Model 10-22), it resulted in a weapon that “[with] a single pull of the trigger initiates an automatic firing cycle that continues until the finger is released, the weapon malfunctions, or the ammunition supply is exhausted.” Akins v. United States, No. 8:08-cv-988, slip op. at 5 (M.D. Fla. Sept. 23, 2008) (internal quotation marks omitted).

In conjunction with its reclassification of the Akins Accelerator, ATF published ATF Ruling 2006-2, “Classification of Devices Exclusively Designed to Increase the Rate of Fire of a Semiautomatic Firearm.” The Ruling explained that ATF had received requests from “several members of the firearms industry to classify devices that are exclusively designed to increase the rate of fire of a semiautomatic firearm.” ATF Ruling 2006-2, at 1. After setting forth a detailed description of the components and functionality of the Akins Accelerator and devices with similar designs, ATF Ruling 2006-2 determined that the phrase “single function of the trigger” in the statutory definition of “machinegun” was best interpreted to mean a “single pull of the trigger.” Id. at 2 (citing National Firearms Act: Hearings Before the Comm. on Ways and Means, House of Representatives, Second Session on H.R. 9066, 73rd Cong., at 40 (1934)). ATF further indicated that it would apply this interpretation to its classification of devices designed to increase the rate of fire of semiautomatic firearms. Thus, ATF concluded in Ruling 2006-2 that devices exclusively designed to increase the rate of fire of semiautomatic firearms are machineguns if, “when activated by a single pull of the trigger, [such devices] initiate[] an automatic firing cycle that continues until either the finger is released or the
ammunition supply is exhausted.” *Id.* at 3. Finally, because the “single pull of the trigger” interpretation constituted a change from ATF’s prior interpretations of the phrase “single function of the trigger,” Ruling 2006-2 concluded that “[t]o the extent previous ATF rulings are inconsistent with this determination, they are hereby overruled.” *Id.*

Following its reclassification of the Akins Accelerator as a machinegun, ATF determined that removal and disposal of the internal spring would render the device a non-machinegun under the statutory definition. Hence, ATF advised individuals who had purchased the Akins Accelerator that they had the option of removing and disposing of the internal spring, thereby placing the device outside the classification of machinegun and allowing the purchaser/possessor to retain the device in lieu of destroying or surrendering the device.

The inventor of the Akins Accelerator filed a complaint against the United States in May 2008, challenging the classification of the device as a machinegun as arbitrary and capricious under the Administrative Procedure Act. *Akins v. United States*, No. 8:08-cv-988, slip op. at 7-8 (M.D. Fla. Sept. 23, 2008). The United States District Court for the Middle District of Florida rejected the plaintiff’s challenge, holding that ATF was within its authority to reconsider and change its interpretation of the phrase “single function of the trigger” in the NFA’s statutory definition of machinegun. *Id.* at 14. The court further held that the language of the statute and the legislative history supported ATF’s interpretation of the statutory phrase “single function of the trigger” as synonymous with a “single pull of the trigger.” *Id.* at 11-12. The court concluded that in Ruling 2006-2, ATF had set forth a “`reasoned analysis’” for the application of that new interpretation to the Akins Accelerator and similar devices, including the need to “protect the public from dangerous firearms.” *Id.* at 12.

The United States Court of Appeals for the Eleventh Circuit affirmed the district court’s decision, holding that “[t]he interpretation by the Bureau that the phrase `single function of the trigger' means a `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). The Eleventh Circuit further concluded that “[b]ased on the operation of the Accelerator, the Bureau had the authority to `reconsider and rectify' what it considered to be a classification error.” *Id.*

In ten letter rulings between 2008 and 2017, ATF assessed other bump-stock-type devices. Like the Akins Accelerator, these other bump-stock-type devices allowed the shooter to fire more than one shot with a single pull of the trigger. As discussed below, however, ATF ultimately concluded that these devices did not qualify as machineguns because, in ATF’s view, they did not “automatically” shoot more than one shot with a single pull of the trigger. ATF has also applied the “single pull of the trigger” interpretation to other trigger actuators, two-stage triggers, and other devices submitted to ATF for classification. Depending on the method of operation, some such devices were classified to be machineguns that were required to be registered in the National Firearms Registration and Transfer Record.[7]

**B. ATF’s Interpretation of “Automatically”**

Prior ATF rulings concerning bump-stock-type devices have not provided substantial legal analysis regarding the meaning of the term “automatically” as it is used in the GCA and NFA. Moreover, ATF’s prior rulings concerning such devices have applied different understandings of the term “automatically.” ATF Ruling 2006-2 concluded that devices like the Akins Accelerator initiated an “automatic” firing cycle because, once initiated by a single pull of the trigger, “the automatic firing cycle continues until the finger is released or the ammunition supply is exhausted.” ATF Ruling 2006-2, at 1. ATF letter rulings between 2008 and 2017,
however, concluded that bump-stock-type devices that enable a semiautomatic firearm to shoot more than one shot with a single function of the trigger by harnessing a combination of the recoil and the maintenance of pressure by the shooter do not fire “automatically.” Some of these rulings concluded that such devices were not machineguns because they did not “initiate[] an automatic firing cycle that continues until either the finger is released or the ammunition supply is exhausted,” without further defining the term “automatically.” E.g., Letter for Michael Smith from ATF’s Firearm Technology Branch Chief (April 2, 2012). Other rulings instead concluded that these bump-stock-type devices were not machineguns because they lacked any “automatically functioning mechanical parts or springs and perform[ed] no mechanical function[s] when installed,” again without further defining the term “automatically” in this context. E.g., Letter for David Compton from ATF’s Firearm Technology Branch Chief (June 7, 2010).

III. Las Vegas Mass Shooting and Requests To Regulate Bump-Stock-Type Devices

Following the mass shooting in Las Vegas on October 1, 2017, ATF has received correspondence from members of the United States Senate and the United States House of Representatives, as well as nongovernmental organizations, requesting that ATF examine its past classifications and determine whether bump-stock-type devices currently on the market constitute machineguns under the statutory definition.

In response, on December 26, 2017, as an initial step in the process of promulgating a federal regulation interpreting the definition of “machinegun” with respect to bump-stock-type devices, ATF published an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register. Application of the Definition of Machinegun to “Bump Fire” Stocks and Other Similar Devices, 82 FR 60929 (/citation/82-FR-60929). The ANPRM was limited to soliciting comments concerning the market for bump-stock-type devices and manufacturer and retailer data. Id. at 60930-31. Public comment on the ANPRM concluded on January 25, 2018. While ATF received over 115,000 comments, the vast majority of these comments were not responsive to the ANPRM.

On February 20, 2018, President Trump issued a memorandum to Attorney General Sessions concerning “bump fire” stocks and similar devices. 83 FR 7949 (/citation/83-FR-7949). The memorandum noted that the Department of Justice had already “started the process of promulgating a Federal regulation interpreting the definition of `machinegun’ under Federal law to clarify whether certain bump stock type devices should be illegal.” Id. at 7949. The President then directed the Department of Justice, working within established legal protocols, “to dedicate all available resources to complete the review of the comments received [in response to the ANPRM], and, as expeditiously as possible, to propose for notice and comment a rule banning all devices that turn legal weapons into machineguns.” Id. Publication of this NPRM is the next step in the process of promulgating such a rule.

Consistent with its authority to “`reconsider and rectify”’ potential classification errors, Akins, 312 F. App’x at 200, ATF has reviewed its original classification determinations for bump-stock-type devices from 2008 to 2017 in light of its interpretation of the relevant statutory language, namely the definition of “machinegun.” These bump-stock-type devices are generally designed to operate with the shooter shouldering the stock of the device (in essentially the same manner a shooter would use an unmodified semiautomatic shoulder stock), maintaining constant forward pressure with the non-trigger hand on the barrel-shroud or fore-grip of the rifle, and maintaining the trigger finger on the device’s extension ledge with constant rearward pressure. The device itself then harnesses the recoil energy of the firearm, providing the primary impetus for automatic fire.
ATF has now determined, based on its interpretation of the relevant statutory language, that these bump-stock-type devices, which harness recoil energy in conjunction with the shooter's maintenance of pressure, turn legal semiautomatic firearms into machineguns. Specifically, ATF has determined that these devices initiate an “automatic[ ]” firing cycle sequence “by a single function of the trigger” because the device is the primary impetus for a firing sequence that fires more than one shot with a single pull of the trigger. 26 U.S.C. 5845(c). ATF’s classifications of bump-stock-devices between 2008 and 2017 did not include extensive legal analysis of these terms in concluding that the bump-stock-type devices at issue were not “machineguns.” The statutory definition of machinegun includes bump-stock-type devices—irrespective of whether the devices harness recoil energy using a mechanism like an internal spring or in conjunction with the shooter’s maintenance of pressure—because these devices enable a semiautomatic firearm to fire “automatically more than one shot, without manual reloading, by a single function of the trigger.” Id. This proposed rule is the appropriate mechanism for ATF to set forth its analysis for its changed assessment. See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 57 (1983).

IV. Advance Notice of Proposed Rulemaking

Based on ATF’s initial review of the comments it received on the ANPRM, the vast majority of comments concern the legal authority to regulate bump-stock-type devices. Some of those comments opined that the Department has the power to regulate bump-stock-type devices. Most, however, contended that the Department lacks such authority, either because only Congress has the authority to regulate bump-stock-type devices or because the Second Amendment of the U.S. Constitution precludes any federal regulation of such devices.

The Department disagrees. Congress has granted the Attorney General authority to issue rules to administer the GCA and NFA, and the Attorney General has delegated to ATF the authority to administer and enforce those statutes and implementing regulations. See supra Part I. Because, with some exceptions, the possession of a machinegun is prohibited by the GCA, the Department is well within its authority to issue a rule that further clarifies and interprets the statutory definition of machinegun. Nor is regulation of bump-stock-type devices as machineguns inconsistent with the Second Amendment. The Supreme Court in District of Columbia v. Heller, 554 U.S. 570 (2008), noted that the Second Amendment does not extend to “`dangerous and unusual weapons'” not in “`common use.”’ Id. at 627. Heller further observed that it would be “startling” to conclude “that the National Firearms Act’s restrictions on machineguns . . . might be unconstitutional.” Id. at 624. Since Heller, federal courts of appeals have repeatedly held that federal statutes prohibiting machineguns comport with the Second Amendment. See, e.g., Hollis v. Lynch, 827 F.3d 436, 451 (5th Cir. 2016) (upholding federal statute banning possession of machineguns because they are “dangerous and unusual and therefore not in common use”); accord United States v. Henry, 688 F.3d 637, 640 (9th Cir. 2012); United States v. Marzzarella, 614 F.3d 85, 94-95 (3d Cir. 2010); Hamblen v. United States, 591 F.3d 471, 472, 474 (6th Cir. 2009); United States v. Fincher, 538 F.3d 868, 874 (8th Cir. 2008). No court has interpreted Heller as encompassing a constitutional right to possess machineguns or machinegun conversion devices.

Numerous persons commented that bump-stock-type devices do not fall under the statutory definition of “machinegun because, when attached, they do not change the mechanical functioning of a semiautomatic firearm, and still require a separate trigger pull for each fired round.” They noted that bump firing is a technique, and pointed to many other ways in which a shooter is can increase a firearm’s rate of fire without using a bump-stock-type device.
The Department disagrees. The relevant statutory question is whether a particular device causes a firearm to "shoot ** * automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. 5845 (https://api.fdsys.gov/link?collection=usc&title=26&year=mostrecent&section=5845&type=usc&link-type=html)(b). Bump firing and other techniques for increasing the rate of fire do not satisfy this definition because they do not produce an automatic firing sequence with a single pull of the trigger. Instead, bump firing without an assistive device requires the shooter to exert pressure with the trigger finger to re-engage the trigger for each round fired. The bump-stock-type devices described above, however, satisfy the definition. ATF’s classification decisions between 2008 and 2017 did not reflect the best interpretation of the term “automatically” as used in the definition of “machinegun,” because those decisions focused on the lack of mechanical parts like internal springs in the bump-stock-type devices at issue. The bump-stock-type devices at issue in those rulings, however, utilized the recoil of the firearm itself to maintain an automatic firing sequence initiated by a single pull of the trigger. As with the Akins Accelerator, the bump-stock-type devices at issue cause the trigger to “bump” into the finger, so that the shooter need not pull the trigger repeatedly to expel ammunition. As stated above, ATF previously focused on the trigger itself to interpret “single function of the trigger,” but adopted a better legal and practical interpretation of “function” to encompass the shooter’s activation of the trigger by, as in the case of the Akins Accelerator and other bump-stock-type devices, a single pull that causes the weapon to shoot until the ammunition is exhausted or the pressure on the trigger is removed. Because these bump-stock-type devices allow multiple rounds to be fired when the shooter maintains pressure on the extension ledge of the device, ATF has determined that bump-stock-type devices are machinegun conversion devices, and therefore qualify as machineguns under the GCA and the NFA. See infra Part V.

Commenters also argued that banning bump-stock-type devices will not significantly impact public safety. Again, the Department disagrees. The shooting in Las Vegas on October 1, 2017, highlighted the destructive capacity of firearms equipped with bump-stock-type devices and the carnage they can inflict. The shooting also made many individuals aware that these devices exist—potentially including persons with criminal or terrorist intentions—and made their potential to threaten public safety obvious. The proposed regulation aims to ameliorate that threat.

Some commenters objected to any regulation of bump-stock-type devices because, they argued, it will decrease innovation in the firearms accessories market and result in the loss of manufacturing and associated jobs. They suggested that the Federal Government should prevent the misuse of firearms through other means, such as by enforcing existing firearms laws, preventing mentally ill persons from acquiring weapons, and enacting more stringent criminal penalties for those who commit crimes with bump-stock-type devices. However, an important step in the enforcement of existing firearms laws is ensuring that ATF’s regulations correctly interpret those laws.

This proposed rulemaking will have an economic impact, see infra Part VI, but the impact will not be widespread, and the costs associated with this rule are easily exceeded by the benefits it will provide for public safety. The Department also disagrees that the proposed rulemaking will decrease innovation in the firearms accessories market. The fact that more than 65,000 industry professionals from the United States and foreign countries attend the annual Shooting, Hunting and Outdoor Trade (SHOT) Show, where many new and improved firearms accessories are introduced, is a clear market signal that there is strong demand for innovation and development of new shooting accessories irrespective of whether the bump-stock-type devices described in this rulemaking are prohibited.

V. Proposed Rule
The regulations in 27 CFR part 479 (/select-citation/2018/03/29/27-CFR-479) contain the procedural and substantive requirements relative to the importation, manufacturing, making, exportation, identification and registration of, and dealing in machineguns, destructive devices, and certain other firearms and weapons under the NFA. Currently, the regulatory definition of “machine gun” in 27 CFR 479.11 (/select-citation/2018/03/29/27-CFR-479.11) matches the statutory definition of “machinegun” in the NFA quoted in Part I, above. The definition includes the terms “single function of the trigger” and “automatically,” but those terms are not expressly defined in the statutory text. Those terms are best interpreted, however, to encompass firearms equipped with bump-stock-type devices. As discussed above, bump-stock-type devices like the Akins Accelerator and other devices that operate to mimic automatic fire when added to semiautomatic rifles present the same risk to public safety that Congress has already deemed unacceptable by enacting and amending the GCA (18 U.S.C. 922 (https://api.fdsys.gov/link?collection=uscode&title=18&year=mostrecent&section=922&type=usc&link-type=html)(o)). Therefore, the Department proposes to exercise its delegated authority to clarify its interpretations of the statutory terms “single function of the trigger,” “automatically,” and “machinegun.” Specifically, the Department proposes to amend 27 CFR 479.11 (/select-citation/2018/03/29/27-CFR-479.11) by defining the term “single function of the trigger” to mean “single pull of the trigger.” The Department further proposes to amend these regulations by defining the term “automatically” to mean “as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single pull of the trigger.” Finally, the Department proposes to clarify that the definition of a “machinegun” includes a device that allows semiautomatic firearms to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter (commonly known as bump-stock-type devices).

The interpretation of the phrase “single function of the trigger” to mean “single pull of the trigger” reflects ATF’s position since 2006, and it is the best interpretation of the statute. The Supreme Court in Staples v. United States, 511 U.S. 600 (1994), indicated that a machinegun under the NFA “fires repeatedly with a single pull of the trigger.” Id. at 602 n.1. This interpretation is also consistent with how the phrase “single function of the trigger” was understood at the time of the NFA’s enactment in 1934. For instance, in a congressional hearing leading up to the NFA’s enactment, the National Rifle Association’s then-president testified that a gun “which is capable of firing more than one shot by a single pull of the trigger, a single function of the trigger, is properly regarded, in my opinion, as a machine gun.” National Firearms Act: Hearings Before the Committee on Ways and Means, H.R. 9066, 73rd Cong., 2nd Sess., at 40 (1934). Furthermore, and as noted above, the Eleventh Circuit concluded that ATF’s interpretation of “single function of the trigger” to mean “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). No other court has held otherwise. [8]

Interpreting the term “automatically” to mean “as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single pull of the trigger” also reflects the ordinary meaning of that term at the time of the NFA’s enactment in 1934. The word “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[].” Webster’s New International Dictionary 187 (2d ed. 1934); see also 1 Oxford English Dictionary 574 (1933) (defining “Automatic” as “[s]elf-acting under conditions fixed for it, going of itself”).
Relying on these definitions, the United States Court of Appeals for the Seventh Circuit accordingly interpreted the term “automatically” as used in the NFA as “delineat[ing] how the discharge of multiple rounds from a weapon occurs: as the result of a self-acting mechanism” “set in motion by a single function of the trigger and . . . accomplished without manual reloading.” United States v. Olofson, 563 F.3d 652, 658 (7th Cir. 2009). So long as the firearm is capable of producing multiple rounds with a single pull of the trigger for some period of time, the firearm shoots “automatically” irrespective of why the firing sequence ultimately ends. Id. (“[T]he reason a weapon ceased firing is not a matter with which § 5845(b) is concerned.”). Olofson thus requires only that the weapon shoot multiple rounds with a single function of the trigger “as the result of a self-acting mechanism,” not that the self-acting mechanism produce the firing sequence without any additional action by the shooter. This definition accordingly requires that the self-acting or self-regulating mechanism must perform an act that is primarily responsible for causing the weapon to shoot more than one shot.

Finally, it is reasonable to conclude, based on these interpretations, that the term “machinegun” includes a device that allows a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter. When a shooter who has affixed a bump-stock-type device to a semiautomatic firearm pulls the trigger, that movement initiates a firing sequence that produces more than one shot. And that firing sequence is “automatic” because the device harnesses the firearm’s recoil energy in a continuous back-and-forth cycle that allows the shooter to attain continuous firing after a single pull of the trigger, so long as the trigger finger remains stationary on the device’s ledge (as designed). Accordingly, these devices are included under the definition of machinegun and, therefore, come within the purview of the NFA.

The GCA and its implementing regulations in 27 CFR part 478 incorporate the NFA’s definition of machinegun. Accordingly, this proposed rule makes the same amendments to the definitions of “single function of the trigger,” “automatically,” and “machine gun” in 27 CFR 478.11.

The Arms Export Control Act (AECA), as amended, does not include the term “machinegun” in its key provision, 22 U.S.C. 2778 (https://api.fdsys.gov/link?collection=uscode&title=22&year=mostrecent&section=2778&type=usc&link-type=html). However, regulations in 27 CFR part 447 that implement the AECA include a similar definition of “machinegun,” and explain that machineguns, submachineguns, machine pistols, and fully automatic rifles fall within Category I(b) of the U.S. Munitions Import List when those defense articles are permanently imported. See 27 CFR 447.11 (https://api.fdsys.gov/link?collection=uscode&title=22&year=mostrecent&section=2778&type=usc&link-type=html). Currently, the definition of “machinegun” in § 447.11 provides that “[a] `machinegun’, `machine pistol’, `submachinegun’, or `automatic rifle’ is a firearm originally designed to fire, or capable of being fired fully automatically by a single pull of the trigger.” This proposed rule would harmonize the AECA’s regulatory definition of “machinegun” with the definitions in 27 CFR parts 478 and 479, as those definitions would be amended by this rule.

The proposed rule would replace prior classifications of bump-stock-type devices, including devices that ATF previously determined were not machineguns. The rule thus would supplant any prior letter rulings with which it is inconsistent so that any bump-stock-type device described above qualifies as a machinegun. Accordingly, manufacturers, current owners, and persons wishing to purchase such devices would be subject to the restrictions imposed by the GCA and NFA.
The Department has determined that there would not be a registration period for any device that would be classified as “machinegun” as a result of this rulemaking. The NFA provides that only the manufacturer, importer, or maker of a firearm may register it.[9] Accordingly, there is no means by which the possessor may register a firearm retroactively, including a firearm that has been reclassified. Further, 18 U.S.C. 922 (https://api.fdsys.gov/link?collection=uscode&title=18&year=mostrecent&section=922&type=usc&link-type=html)(o) prohibits the possession of machineguns that were not lawfully possessed before the effective date of the statute. Accordingly, if the final rule is consistent with this NPRM, current possessors of bump-stock-type devices will be obligated to dispose of those devices. A final rule will provide specific information about acceptable methods of disposal, as well as the timeframe under which disposal must be accomplished to avoid violating 18 U.S.C. 922 (https://api.fdsys.gov/link?collection=uscode&title=18&year=mostrecent&section=922&type=usc&link-type=html)(o).

VI. Statutory and Executive Order Review

A. Executive Orders 12866, 13563, and 13771

Executive Orders 13563 (Improving Regulation and Regulatory Review) and 12866 (Regulatory Planning and Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 (/executive-order/13563) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (/executive-order/13771) (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs. This proposed rule is expected to be an E.O. 13771 (/executive-order/13771) regulatory action. Details on the estimated costs of this proposed rule can be found in the rule’s economic analysis below.

This rule has been designated a “significant regulatory action” that is economically significant under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. This proposed rule is intended to interpret the definition of “machinegun” within the GCA and NFA such that it includes bump-stock-type devices, i.e., devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.

NEED FOR FEDERAL REGULATORY ACTION

Agencies take regulatory action for various reasons. One of the reasons is to carry out Congress’s policy decisions, as expressed in statutes. Here, this rulemaking aims to apply Congress’s policy decision to prohibit machineguns. Another reason underpinning regulatory action is the failure of the market to compensate for negative externalities caused by commercial activity. A negative externality can be the byproduct of a transaction between two parties that is not accounted for in the transaction. This proposed rule is addressing a negative externality. The negative externality of the commercial sale of bump-stock-type devices is that they could be used for criminal purposes. This poses a public safety issue that the Department is trying to address.

EXECUTIVE SUMMARY

Table 1 provides a summary of the affected population and anticipated costs and benefits to promulgating this rule.
This rule is necessary to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety benefits) and to promote national standards, encouraging regulatory harmonization among the States. The Department has determined that there would not be a registration period for any device that would be classified as “machinegun” as a result of this rulemaking. The NFA provides that only the manufacturer, importer, or maker of a firearm may register it. Accordingly, there is no means by which the possessor may register a firearm retroactively, including a firearm that has been reclassified. Further, 18 U.S.C. 922(j)(1) prohibits the possession of machineguns that were not lawfully possessed before the effective date of the statute. Accordingly, if the final rule is consistent with this NPRM, current possessors of bump-stock-type devices will be obligated to dispose of those devices. A final rule will provide specific information about acceptable methods of disposal, as well as the timeframe under which disposal must be accomplished.

Table 1—Summary of Affected Population, Costs, and Benefits

<table>
<thead>
<tr>
<th>Category</th>
<th>Affected populations, costs, and benefits</th>
</tr>
</thead>
</table>
| Applicability             | • Manufacturers of bump-stock-type devices.  
                           | • Retail sellers of bump-stock-type devices.  
                           | • Gun owners who own bump-stock-type devices or would have purchased them in the future.                       |
| Affected Population       | • 2 manufacturers of bump-stock-type devices.  
                           | • 2,281 retailers of bump-stock-type devices.  
                           | • Owners and future consumers of bump-stock-type devices.                                               |
| Total Quantified Costs to | $217.0 million present value over 10 years, $36.3 million annualized.                                       |
| Industry, Public, and     |                                                                                                           |
| Government (7% Discount    |                                                                                                           |
| Rate)                     |                                                                                                           |
| Unquantified Costs        | • Costs of destruction.                                                                                   |
|                           | • Costs of advertising to inform owners of the need to dispose of their bump-stock-type devices.          |
|                           | • Lost consumer surplus to users of bump-stock-type devices.                                              |
| Unquantified Benefits     | • Prevents criminal usage of bump-stock-type devices.                                                      |
|                           | • Could reduce casualties in an incident that would have involved a weapon fitted with a bump-stock-type device, as well as assist first responders when responding to incidents. |

**AFFECTED POPULATION**

The populations affected by this rule are manufacturers of bump-stock-type devices, retailers who sell them either in brick-and-mortar stores or online, and individuals who have purchased or would have wanted to purchase bump-stock-type devices. The number of entities and individuals selling or purchasing bump-stock-type devices are as follows:

- 2 manufacturers
- 2,281 retailers
- An uncertain number of individuals who have purchased bump-stock-type devices or would have purchased them in the future

Because many bump-stock-type devices—including those ATF addressed in classification letters between 2008 and 2017—have not been subject to regulation under the GCA, ATF does not keep track of manufacturers or retailers of bump-stock-type devices, nor does ATF keep track or maintain a database of individuals who have purchased bump-stock-type devices. Therefore, the affected population of manufacturers and retailers is an estimate and based on publicly available information and, with respect to retailers who are also Federal firearms licensees (FFLs), is also based on ATF’s records in the Federal Firearms Licensing System.

ATF estimates that since 2010, as many as six domestic bump-stock-type device manufacturers have been in the marketplace, but due to patent infringement litigation, only two remain in the market. For the estimate of the number of retailers, ATF filtered all FFLs for a list of potential sellers. While there are approximately 80,000 FFLs currently licensed, only certain types sell firearms to the public. ATF first removed FFLs that do not sell firearms to the public. Next, since not all FFLs sell firearm accessories, ATF needed to estimate the number that do sell accessories. ATF assumed that FFLs that are likely to sell bump-stock-type devices would have online websites. ATF requests public comment on the reasonableness of the assumption that retailers of
COSTS

There are three primary sources of costs from this rule. First, for owners of bump-stock-type devices, there will be a lost value from no longer being able to possess or use the devices. Second, there will be a lost value to manufacturers who would have manufactured and sold the devices in the future and to gun owners who would have purchased them. Finally, there is a disposal cost associated with the need to destroy the devices or render them inactive.

COST TO THE PUBLIC FOR LOSS OF PROPERTY

As reported by public comments, individuals purchase bump-stock-type devices so that they can simulate automatic firing on a semiautomatic firearm. Commenters noted a variety of purposes for which bump-stock-type devices have been advertised and used, including for recreation and fun, assisting persons with mobility issues in firing quickly, self-defense, killing invasive pig species, and target practice (although, as some commenters observed, bump-stock-type devices impede firing accuracy). If the proposed rule became effective, bump-stock-type devices would be considered machineguns under the NFA and could not be lawfully possessed because the GCA prohibits persons from possessing a machinegun unless it was lawfully possessed before the effective date of the statute. Bump-stock-type devices currently possessed by individuals would have to be destroyed or turned in upon implementation of the regulation.

The lost value from no longer being able to use or purchase bump-stock-type devices will depend on the volume of sales in the market and the value that consumers place on the devices. ATF has limited information about the market for bump-stock-type devices. One commenter estimated that more than 400,000 bump-stock-type devices may have been sold. Based on publicly available information, ATF estimates that in the first two years that bump-stock-type devices were in the market, approximately 35,000 were sold per year.[10] However, after 2011, other manufacturers entered the market and there is no available information regarding the total number of bump-stock-type devices manufactured. ATF is using publicly available information on manufacturing and combining it with the information on retail sales to estimate a range of the number of bump-stock-type devices in the marketplace.

ATF first developed an estimate of the number of bump-stock-type devices in the marketplace, based on information on retail sales provided in response to the ANPRM. One retailer stated that it sold an average of 4,000 to 5,000 bump-stock-type devices per year.[11] Public comments indicated that one retailer sold 3,800 bump-stock-type devices annually, one sold 60 per year, and one sold approximately 5-10 per year.[12] For
the purposes of this regulatory analysis (RA), ATF assumes that a large retailer would have sold 4,400, a midrange retailer would have sold 60, and a small retailer would have sold 8.[13] For the purposes of this analysis, ATF assumes the number of retailers by size are as follows:

- 4 large * 4,400 annual sales
- 755 midrange * 60 annual sales
- 1,511 small * 8 annual sales

The number of large retailers is a known number. As stated in the Affected Population section above, based on ATF’s internal database and online research, the remaining number of retailers is 2,270. For the purposes of this RA, ATF assumed that one-third of the remaining retailer population are midrange retailers, and the remaining 1,511 are small retailers. Using these assumed numbers of retailers and annual sales by size of retailer, ATF estimated annual sales of about 75,000 [(4 * 4,400) + (755 * 60) + (1,511 * 8)].

ATF next developed an estimate of the number of bump-stock-type devices in the United States based on information about the numbers of bump-stock-type devices manufactured. Based on publicly available information, ATF estimates that approximately 35,000 bump-stock-type devices were sold in 2010.[14] Only in 2012 did other manufacturers enter the marketplace. For the purposes of this RA, ATF assumes that in the first two years of production, the one manufacturer produced the same 35,000 in years 2010 and 2011. ATF has two sets of production estimates. Because no information is otherwise known about the production of bump-stock-type devices, ATF assumes that the low estimate of annual bump-stock-type device production is a constant 35,000, based on the one data point. As stated earlier, a public commenter provided an estimate of 400,000 bump-stock-type devices currently in circulation. To account for how these were purchased over the last 8 years, ATF also assumed the same 35,000 production in the first 2 years, but spread out the remaining 330,000 over the remaining 6 years, or about 55,000 per year. However, incorporating the provided retail sales information, ATF developed a third, higher estimate reflecting that when the other manufacturers entered the market, the number of bump-stock-type devices sold on the market annually could have been 75,000.

The high estimate is ATF’s primary estimate because ATF knows that there was an increase in production starting in 2012. In 2012, there were other manufacturers who entered the market, and the first manufacturer increased production at some point thereafter. Furthermore, the primary estimate includes information provided by retailers as a more comprehensive outlook on the overall production numbers. For the purposes of this analysis, ATF assumes that both the increase in production and the market entry of other manufacturers all occurred in 2012. Table 2 provides the breakdown of production for the low estimate, public comment estimate, and primary estimate.

<table>
<thead>
<tr>
<th>Year</th>
<th>Low estimate</th>
<th>Public comment estimate</th>
<th>Primary estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>35,000</td>
<td>35,000</td>
<td>35,000</td>
</tr>
<tr>
<td>2011</td>
<td>35,000</td>
<td>35,000</td>
<td>35,000</td>
</tr>
<tr>
<td>2012</td>
<td>35,000</td>
<td>55,000</td>
<td>75,000</td>
</tr>
<tr>
<td>2013</td>
<td>35,000</td>
<td>55,000</td>
<td>75,000</td>
</tr>
<tr>
<td>2014</td>
<td>35,000</td>
<td>55,000</td>
<td>75,000</td>
</tr>
</tbody>
</table>
In other words, the number of bump-stock-type devices held by the public could range from about 280,000 to about 520,000.

ATF does not know the production cost of bump(stock)-type devices, but for the purposes of this RA, ATF uses the retail sales amounts as a proxy for the total value of these devices. For devices that have already been sold, there are two countervailing effects that affect the value of the devices. There may have been some depreciation of the devices since they were originally purchased, resulting in a value somewhat reduced from the retail price. On the other hand, some consumers would have been willing to pay more than the retail price for a bump-stock-type device, and for these individuals the devices would have a higher valuation than the retail price. Both of these effects are difficult to estimate, and here ATF assumes that the retail sales price is a reasonable proxy for the value of the devices.

The primary manufacturer of bump(stock)-type devices sells them at a price of $179.95 to $425.95. For the purposes of this RA, ATF estimates that the average sale price for these bump(stock)-type devices was $301.00 during the first two years they were sold. In 2012, at least one other manufacturer entered the market and started selling their devices at the rate of $99.99, making the overall prices for these devices lower. For the purposes of this RA, ATF assumes that the average sale price for bump-stock-type devices from 2012 to 2017 was $200.00. Based on these costs, multiplied by the number of bump-stock-type devices in the market, Table 3 provides the sales value that the public has spent on these devices over the course of the last eight years.

### Table 3—Amount Spent on Bump-stock-Type Devices (Undiscounted)

<table>
<thead>
<tr>
<th>Year</th>
<th>Low estimate</th>
<th>Public comment estimate</th>
<th>Primary estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>$10,533,250</td>
<td>$10,533,250</td>
<td>$10,533,250</td>
</tr>
<tr>
<td>2012</td>
<td>10,533,250</td>
<td>10,533,250</td>
<td>10,533,250</td>
</tr>
<tr>
<td>2013</td>
<td>7,016,450</td>
<td>11,025,850</td>
<td>15,035,250</td>
</tr>
<tr>
<td>2014</td>
<td>7,016,450</td>
<td>11,025,850</td>
<td>15,035,250</td>
</tr>
<tr>
<td>2015</td>
<td>7,016,450</td>
<td>11,025,850</td>
<td>15,035,250</td>
</tr>
<tr>
<td>2016</td>
<td>7,016,450</td>
<td>11,025,850</td>
<td>15,035,250</td>
</tr>
<tr>
<td>2017</td>
<td>7,016,450</td>
<td>11,025,850</td>
<td>15,035,250</td>
</tr>
<tr>
<td>Total</td>
<td>56,148,750</td>
<td>76,195,750</td>
<td>96,242,750</td>
</tr>
</tbody>
</table>

ATF estimates that the total, undiscounted amount spent on bump-stock-type devices was $96.2 million. While the retail prices of these bump-stock-type devices remained constant over the eight years of sales, these purchases occurred over time; therefore, ATF presents the discounted value at 3% and 7% in Table 4 to account for the present value of these purchases.

### Table 4—The Amount Spent Purchasing Bump-stock-Type Devices, Discounted
Because these purchases occurred in the past, ATF's discount years start at -5 and increase to 0 to account for the Executive Order 13771 (/executive-order/13771) standard that costs be presented in 2016 dollars. With these assumptions, ATF estimates that the annualized, discounted amount spent on bump-stock-type devices was $14.5 million and $18.3 million at 3% and 7%, respectively.

Based on the same discounting formula, ATF estimates that the total undiscounted cost for the low estimate would be $56.1 million, and the total discounted values would be $60.2 million and $66.3 million at 3% and 7%, respectively. The annualized values for the low estimates of total number of bump-stock-type devices sold are $8.6 million and $11.1 million at 3% and 7%, respectively. For the 400,000-unit estimate provided by the public commenter, the total undiscounted amount would be $76.2 million, and the total discounted values would be $80.9 million and $87.8 million at 3% and 7%, respectively. The annualized values for the 400,000-unit sales estimate are $11.5 million and $14.7 million at 3% and 7%, respectively.

**FORGONE FUTURE PRODUCTION AND SALES**

ATF has estimated the lost production and lost sales that would occur in the 10 years after the implementation of this proposed rule, should this proposed rule take effect. In order to do this, ATF needed to predict the number of devices that would be sold in the future in the absence of a rule. Such a prediction should take account of recent expected changes in the demand for and supply of bump-stock-type devices. For example, based on a survey, half of the known, large former retailers of bump-stock-type devices no longer sell bump-stock-type devices as a result of the Las Vegas shooting, nor do they intend to sell them in the future. Moreover, while ATF has estimated the number of bump-stock-type devices manufactured since 2010, ATF is without sufficient information to estimate the number of individuals who were interested in acquiring bump-stock-type devices prior to the Las Vegas shooting but would no longer want them due to the shooting.

Another recent change affecting individuals' future purchases of bump-stock-type devices is that certain States have already banned such devices. These States are California, Florida, Massachusetts, New Jersey, New York, and Washington. The effect of States' bans on individuals' future purchases of bump-stock-type devices should not be attributed to this proposed rule since these reductions in purchases would happen with or without the rule. However, ATF was unable to quantify the impact of States' bans and thus was unable to account for the future effects of these bans in the estimate of the effects of the proposed rule.
Based on previously mentioned comments from large retailers, ATF expects that, in the absence of this rule, some retailers would not sell bump-stock-type devices in the future. In order to estimate the expected future reduction in demand for bump-stock-type devices as a result of the Las Vegas shooting, ATF assumes that the reduction of sales by large retailers that has already occurred would be a reasonable estimate of the future reduction of sales overall that would occur in the absence of the rule. ATF estimates that there are four large retailers of bump-stock-type devices, of which two have stated that they would no longer sell bump-stock-type devices regardless of this proposed rule. For the purposes of this regulatory analysis, it is estimated that each of the two large retailers sell 4,400 bump-stock-type devices annually. Removing the effects of these two large retailers from the future market reduces ATF's primary estimate of 74,988 in past annual production to an estimate of 66,484 \((75,284 - 8,800)\) in annual sales that would occur in the future in the absence of a rule. Table 5 provides the estimated breakdown of lost production and sales forgone should this rule become final.

Table 5—Forgone Production and Sales of Future Bump-Stock-Type Devices

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of bump-stock-type devices</th>
<th>Undiscounted</th>
<th>3%</th>
<th>7%</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>66,484</td>
<td>$20,008,360</td>
<td>$19,425,592.04</td>
<td>$18,699,401.68</td>
</tr>
<tr>
<td>2019</td>
<td>66,484</td>
<td>20,008,360</td>
<td>18,859,798.10</td>
<td>17,476,076.34</td>
</tr>
<tr>
<td>2020</td>
<td>66,484</td>
<td>20,008,360</td>
<td>18,310,483.59</td>
<td>16,332,781.62</td>
</tr>
<tr>
<td>2021</td>
<td>66,484</td>
<td>20,008,360</td>
<td>17,777,168.53</td>
<td>15,264,281.89</td>
</tr>
<tr>
<td>2022</td>
<td>66,484</td>
<td>20,008,360</td>
<td>17,259,386.92</td>
<td>14,265,684.01</td>
</tr>
<tr>
<td>2023</td>
<td>66,484</td>
<td>20,008,360</td>
<td>16,756,686.33</td>
<td>13,332,414.96</td>
</tr>
<tr>
<td>2024</td>
<td>66,484</td>
<td>20,008,360</td>
<td>16,268,627.51</td>
<td>12,460,200.90</td>
</tr>
<tr>
<td>2025</td>
<td>66,484</td>
<td>20,008,360</td>
<td>15,794,783.99</td>
<td>11,645,047.57</td>
</tr>
<tr>
<td>2026</td>
<td>66,484</td>
<td>20,008,360</td>
<td>15,334,741.74</td>
<td>10,883,222.03</td>
</tr>
<tr>
<td>2027</td>
<td>66,484</td>
<td>20,008,360</td>
<td>14,888,098.77</td>
<td>10,171,235.54</td>
</tr>
<tr>
<td>Total</td>
<td>200,083,598</td>
<td>200,083,598</td>
<td>170,675,367.53</td>
<td>140,530,346.56</td>
</tr>
<tr>
<td>Annualized Cost</td>
<td>24,313,796.52</td>
<td>23,534,302.70</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Based on these estimates, ATF estimates that the undiscounted value of forgone future sales over 10 years would be $200.1 million, undiscounted, or $24.3 million and $23.5 million, annualized and discounted at 3% and 7%.

**DISPOSAL**

This proposed rule would require the destruction of existing bump-stock-type devices. The cost of disposal would have several components. For individuals who own bump-stock-type devices, there would be a cost for the time and effort to destroy the devices or ensure that they are destroyed by another party. For retailers, wholesalers, and manufacturers, there would be a cost of the time and effort to destroy or ensure the destruction of any devices held in inventory. Based on the response from public comments, it is not clear if there would also be a cost from the lost value of that inventory.
Individuals who have purchased bump-stock-type devices prior to the implementation of this rule would have the option of destroying the devices themselves, turning the devices in to the nearest ATF office for destruction by ATF or, subject to compliance with U.S. Mail regulations and the policies of commercial shipment services, sending the devices to ATF through the U.S. Mail or other commercial delivery service. Options for destroying the devices may include melting, crushing, or shredding in a manner that renders the device incapable of ready restoration. Since the majority of bump-stock-type devices are made of plastic material, individuals wishing to destroy the devices themselves could simply use a hammer to break apart the devices and throw the pieces away. Other destruction options that ATF has historically accepted include torch cutting or sawing the device in a manner that removes at least 1/4 inch of material for each cut and completely severs design features critical to the functionality of the device as a bump-stock-type device.

If a possessor chooses to turn in the device to the local ATF office, the cost to the public to destroy the device would be the cost to drive to the nearest ATF office, the cost of sending through the U.S. Mail, or the cost of sending via private shipper. For the purposes of this regulatory analysis, ATF assumes that most individuals disposing of their existing bump-stock-type devices would destroy these devices themselves rather than turn them into the nearest ATF office through personal delivery, mail, or private shipper.

Should this rule take effect, public comments suggest that unsellable inventory could be worth approximately $35,000 per large retailer. One public commenter, assumed to be a large retailer, stated that its gross sales were $140,000. Another public commenter assumed to be a midrange retailer had gross sales of $18,000. No known sales were reported for a small retailer. Based on the proportion of sales among the large, midrange, and small retailers, ATF estimates that the amount in existing inventory for a midrange retailer would be $4,500 and, for a small retailer, $74.\[^{17}\]

The retailer, assumed to be large, also commented that the opportunity cost of time needed to destroy existing inventory would be approximately $700. ATF’s subject matter experts estimate that a retailer could use a maintenance crew to destroy existing inventory. To determine the hourly time needed to destroy existing inventory, ATF used the $700 reported amount, divided by the loaded wage rate of a building cleaning worker. ATF subject matter experts also suggest that existing packers would be used for a midrange retailer and the minimum wage would be used for a small retailer. The loaded rate of 1.43 was used to account for fringe benefits.\[^{18}\] Table 6 provides the wages used for this analysis.
Based on the estimated wages and reported opportunity cost of time, ATF estimates that it would take a large retailer 32.8 hours, a midrange retailer 0.45 hours, and a small retailer 0.25 hours to destroy existing inventory. Table 7 provides the per-retailer estimated opportunity cost of time.

Table 7—Opportunity Cost of Time to Destroy Existing Inventory

<table>
<thead>
<tr>
<th>Population</th>
<th>Incremental cost</th>
<th>Hourly burden</th>
<th>Opportunity cost of time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>$13.60</td>
<td>0.25</td>
<td>$3.40</td>
</tr>
<tr>
<td>Retailer (Large)</td>
<td>21.34</td>
<td>32.8</td>
<td>699.95</td>
</tr>
<tr>
<td>Retailer (Midrange)</td>
<td>16.84</td>
<td>0.45</td>
<td>7.58</td>
</tr>
<tr>
<td>Retailer (Small)</td>
<td>19.51</td>
<td>0.25</td>
<td>4.88</td>
</tr>
</tbody>
</table>

As stated earlier, ATF estimates that there are 519,927 bump-stock-type devices already purchased by the public. Based on the opportunity cost of time per bump-stock-type device, and the estimated opportunity cost of time per retailer, ATF provides the cost to destroy all existing bump-stock-type devices in Table 8.

Table 8—Opportunity Cost of Time to Destroy Existing Devices by Individual and Retailer Size

<table>
<thead>
<tr>
<th>Population</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>$1,768,000</td>
</tr>
<tr>
<td>Retailer (Large)</td>
<td>2,800</td>
</tr>
<tr>
<td>Retailer (Midrange)</td>
<td>5,752</td>
</tr>
<tr>
<td>Retailer (Small)</td>
<td>3,947</td>
</tr>
<tr>
<td>Total Disposal Cost</td>
<td>1,780,498</td>
</tr>
</tbody>
</table>
ATF estimates that it would cost a total of $1.8 million to destroy all existing bump-stock-type devices.

We treat all costs of disposal of existing devices owned by individuals or held in inventory by retailers or manufacturers as if they occur in 2018. Therefore, the costs of the rule in 2018 would include the total undiscounted value of existing stock of bump-stock-type devices in Table 4 ($96.2 million), the year 2018 loss of future production from Table 5 ($20.0 million), and the total cost of disposal from Table 8 ($1.8 million). Overall, ATF estimates that the total cost of this proposed rule would be $297.2 million over a 10-year period of future analysis. This cost includes the first-year cost to destroy all existing bump-stock-type devices, including unsellable inventory and opportunity cost of time. Table 9 provides the 10-year cost of this proposed rule.

<table>
<thead>
<tr>
<th>Year</th>
<th>Undiscounted</th>
<th>3%</th>
<th>7%</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>$118,031,608</td>
<td>$111,256,111</td>
<td>$103,093,378</td>
</tr>
<tr>
<td>2019</td>
<td>20,008,360</td>
<td>18,310,484</td>
<td>16,332,782</td>
</tr>
<tr>
<td>2020</td>
<td>20,008,360</td>
<td>17,777,169</td>
<td>15,264,282</td>
</tr>
<tr>
<td>2021</td>
<td>20,008,360</td>
<td>17,259,387</td>
<td>14,265,684</td>
</tr>
<tr>
<td>2022</td>
<td>20,008,360</td>
<td>16,756,686</td>
<td>13,332,415</td>
</tr>
<tr>
<td>2023</td>
<td>20,008,360</td>
<td>16,268,628</td>
<td>12,460,201</td>
</tr>
<tr>
<td>2024</td>
<td>20,008,360</td>
<td>15,794,784</td>
<td>11,645,048</td>
</tr>
<tr>
<td>2025</td>
<td>20,008,360</td>
<td>15,334,742</td>
<td>10,883,222</td>
</tr>
<tr>
<td>2026</td>
<td>20,008,360</td>
<td>14,888,099</td>
<td>10,171,236</td>
</tr>
<tr>
<td>2027</td>
<td>20,008,360</td>
<td>14,454,465</td>
<td>9,505,828</td>
</tr>
<tr>
<td>Total</td>
<td>298,106,846</td>
<td>258,100,553</td>
<td>216,954,074</td>
</tr>
<tr>
<td>Annualized Cost</td>
<td>36,768,073</td>
<td>36,332,813</td>
<td></td>
</tr>
</tbody>
</table>

As stated in the paragraph above, the total undiscounted cost is $297.2 million, and the discounted costs would be $36.8 million and $36.3 million annualized at 3% and 7% respectively.

GOVERNMENT COSTS

Government costs are estimated as de minimis because collection of the bump-stock-type devices by ATF would be an ancillary duty of existing ATF Special Agents.

COST SAVINGS

ATF did not calculate any cost savings for this proposed rule.

BENEFITS

As reported by public comments, this proposed rule would affect the criminal use of bump-stock-type devices in mass shootings, such as the Las Vegas shooting incident.

The purpose of this rule is to amend ATF regulations to clarify that bump-stock-type devices are “machineguns” as defined by the NFA and GCA. Banning bump-stock-type devices could reduce casualties in an incident involving a weapon fitted with a bump-stock-type device, as well as assist first responders when
responding to incidents, because it prevents shooters from using a device that allows them to shoot a semiautomatic firearm automatically.

ALTERNATIVES
Alternative 1—No change alternative. This alternative would leave the regulations in place as they currently stand. Since there would be no changes to regulations, there would be no cost, savings, or benefits to this alternative.

Alternative 2—Patronizing a shooting range. Individuals wishing to experience the shooting of a “full-auto” firearm could go to a shooting range that provides access to lawfully registered “pre-1986” machineguns to customers, where the firearm remains on the premises and under the control of the shooting range. ATF does not have the information to determine which, where, or how many gun ranges provide such a service and is therefore not able to quantify this alternative.

Alternative 3—Opportunity alternatives. Based on public comments, individuals wishing to replicate the effects of bump-stock-type devices could also use rubber bands, belt loops, or otherwise train their trigger finger to fire more rapidly. To the extent that individuals are capable of doing so, this would be their alternative to using bump-stock-type devices.

No other feasible alternatives were identified, and thus none were considered.

B. Executive Order 13132 (/executive-order/13132)
This regulation will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (/executive-order/13132) (Federalism), the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988 (/executive-order/12988)
This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (/executive-order/12988) (Civil Justice Reform).

D. Regulatory Flexibility Act (RFA)

SUMMARY OF FINDINGS
ATF performed an Initial Regulatory Flexibility Analysis of the impacts on small businesses and other entities from the NPRM. Based on the information from this analysis, ATF found:

- It is estimated that of the two remaining manufacturers, at least one manufacturer only produces bump-stock-type devices and therefore could completely go out of business;
- There are 2,281 retailers, of which most are estimated to be small;
- There are no relevant government entities.

INITIAL REGULATORY FLEXIBILITY ANALYSIS
The Regulatory Flexibility Act (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions
subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” Public Law 96–354, 2(b), 94 Stat. 1164 (1980).

Under the RFA, the agency is required to consider if this rule will have a significant economic impact on a substantial number of small entities. Agencies must perform a review to determine whether a rule will have such an impact. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

Under the RFA (5 U.S.C. 603 (https://api.fdsys.gov/link?collection=uscode&title=5&year=mostrecent&section=603&type=usc&link-type=html)(b)-(c)), the regulatory flexibility analysis must provide and/or address:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and
- Descriptions of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

The RFA covers a wide range of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. 5 U.S.C. 601 (https://api.fdsys.gov/link?collection=uscode&title=5&year=mostrecent&section=601&type=usc&link-type=html)(3)-(6). ATF determined that the rule affects a variety of large and small businesses (see the “Description of the Potential Number of Small Entities” section below). Based on the requirements above, ATF prepared the following regulatory flexibility analysis assessing the impact on small entities from the rule.

**A DESCRIPTION OF THE REASONS WHY ACTION BY THE AGENCY IS BEING CONSIDERED**

Agencies take regulatory action for various reasons. One of the reasons is to carry out Congress's policy decisions, as expressed in statutes. Here, this rulemaking aims to apply Congress’s policy decision to prohibit machineguns. Another reason underpinning regulatory action is the failure of the market to compensate for negative externalities caused by commercial activity. A negative externality can be the byproduct of a transaction between two parties that is not accounted for in the transaction. This proposed rule is addressing a negative externality. The negative externality of the commercial sale of bump-stock-type devices is that it could be used for criminal purposes. This poses a public safety issue, which the Department is trying to address.

**A SUCCINCT STATEMENT OF THE OBJECTIVES OF, AND LEGAL BASIS FOR, THE PROPOSED RULE**

The Attorney General is responsible for enforcing the GCA, as amended, and the NFA, as amended.

**A DESCRIPTION OF AND, WHERE FEASIBLE, AN ESTIMATE OF THE NUMBER OF SMALL ENTITIES TO WHICH THE PROPOSED RULE WILL APPLY**
This rule would affect primarily manufacturers of bump-stock-type devices, FFLs that sell bump-stock-type devices, and other small retailers of firearm accessories that have invested in the bump-stock-type device industry. Based on publicly available information, there are two manufacturers affected. Of the known retailers, the large retailers do not intend to continue selling bump-stock-type devices. There may be some small retailers that would intend to continue selling these devices should this proposed rule not go into effect and would thus be affected by this proposed rule. Based on the information from this analysis, ATF found:

- There are 2,270 retailers who are likely to be small entities;
- There are no government jurisdictions affected by this proposed rule; and
- There are no nonprofits found in the data.

**A DESCRIPTION OF THE PROJECTED REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING AN ESTIMATE OF THE CLASSES OF SMALL ENTITIES WHICH WILL BE SUBJECT TO THE REQUIREMENT AND THE TYPE OF PROFESSIONAL SKILLS NECESSARY FOR PREPARATION OF THE REPORT OR RECORD**

There are no reporting or recordkeeping requirements for this proposed rule. The only relevant compliance requirement consists of disposing of all existing inventory of bump-stock-type devices for small entities that carry them. There would not be any professional skills necessary to record or report in this proposed rulemaking.

**AN IDENTIFICATION, TO THE EXTENT PRACTICABLE, OF ALL RELEVANT FEDERAL RULES WHICH MAY DUPLICATE, OVERLAP OR CONFLICT WITH THE PROPOSED RULE**

This proposed rule does not duplicate or conflict with other Federal rules.

**DESCRIPTIONS OF ANY SIGNIFICANT ALTERNATIVES TO THE PROPOSED RULE WHICH ACCOMPLISH THE STATED OBJECTIVES OF APPLICABLE STATUTES AND WHICH MINIMIZE ANY SIGNIFICANT ECONOMIC IMPACT OF THE PROPOSED RULE ON SMALL ENTITIES**

Alternatives were considered in this proposed rule. Alternatives include making no regulatory changes. ATF rejected this alternative because it does not address the public safety concerns raised by bump-stock-type devices, and would not be consistent with ATF's interpretation of the statutory term “machinegun.” There were no other regulatory alternatives to this proposal that ATF has been able to identify that would accomplish the intent of this proposed rule.

**E. Small Business Regulatory Enforcement Fairness Act of 1966**

This rule is a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804 (https://api.fdsys.gov/link?collection=uscode&title=5&year=mostrecent&section=804&type=usc&link-type=html). This rule is likely to be considered major as it is economically significant and is projected to have an effect of over $100 million on the economy in at least the first year of the rule.

**F. Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (https://api.fdsys.gov/link?collection=plaw&congress=104&lawtype=public&lawnum=4&link-type=html), 109 Stat. 48.

**G. Paperwork Reduction Act of 1995**
This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 (https://api.fdsys.gov/link?collection=uscode&title=44&year=mostrecent&section=3501&type=usc&link-type=html)-3521.

VII. Public Participation

A. Comments Sought

ATF requests comments on the proposed rule from all interested persons. ATF specifically requests comments on the scope of this proposed rule and the definition of “machinegun.” ATF also requests comments on the costs and benefits of the proposed rule and on the appropriate methodology and data for calculating those costs and benefits. Further, ATF requests public comment on the reasonableness of the assumption that retailers of bump-stock-type devices are likely to be businesses with an online presence. In addition, ATF specifically requests comments regarding how ATF should address bump-stock-type devices that private parties currently possess, and the appropriate means of implementing a final rule.

All comments must reference the docket number ATF 2017R-22, be legible, and include the commenter's complete first and last name and full mailing address. ATF will not consider, or respond to, comments that do not meet these requirements or comments containing profanity. In addition, if ATF cannot read your comment due to technical difficulties and cannot contact you for clarification, ATF may not be able to consider your comment.

ATF will carefully consider all comments, as appropriate, received on or before the closing date, and will give comments received after that date the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not acknowledge receipt of comments.

B. Confidentiality

ATF will make all comments, whether submitted electronically or on paper, available for public viewing at ATF and on the internet as part of the eRulemaking initiative, and subject to the Freedom of Information Act. Commenters who do not want their name or other personal identifying information posted on the internet should submit comments by mail or facsimile, along with a separate cover sheet containing their personal identifying information. Both the cover sheet and comment must reference this docket number (ATF 2017R-22). Information contained in the cover sheet will not appear on the internet. ATF will not redact personal identifying information that appears within the comment, and it will appear on the internet.

The commenter should not include material that he or she considers inappropriate for disclosure to the public. Any person submitting a comment shall specifically designate that portion (if any) of the comment that contains material that is confidential under law (e.g., trade secrets, processes). The commenter shall set forth any portion of a comment that is confidential under law on pages separate from the balance of the comment with each page prominently marked “confidential” at the top of the page.

Confidential information will be included in the rulemaking record but will not be disclosed to the public. Any comments containing material that is not confidential under law may be disclosed to the public. In any event, the name of the person submitting a comment is not exempt from disclosure.

C. Submitting Comments

Submit comments in any of three ways (but do not submit the same comments multiple times or by more than one method). Hand-delivered comments will not be accepted.
Federal eRulemaking Portal: ATF strongly recommends that you submit your comments to ATF via the Federal eRulemaking portal. Visit http://www.regulations.gov and follow the instructions for submitting comments. Comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Mail: Send written comments to the address listed in the ADDRESSES section of this document. Written comments must appear in minimum 12-point font size (.17 inches), include the commenter's complete first and last name and full mailing address, be signed, and may be of any length.

Facsimile: Submit comments by facsimile transmission to (202) 648-9741. Faxed comments must:

1. Be legible and appear in minimum 12-point font size (.17 inches);
2. Be on 8½" x 11" paper;
3. Be signed and contain the commenter's complete first and last name and full mailing address; and
4. Be no more than five pages long.

D. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director of ATF within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

DISCLOSURE

Copies of this notice and the comments received will be available at http://www.regulations.gov (search for Docket No. 2017R-22) and for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E-063, 99 New York Ave. NE, Washington, DC 20226; telephone: (202) 648-8740.

List of Subjects

- Administrative practice and procedure
- Arms and munitions
- Chemicals
- Customs duties and inspection
- Imports
- Penalties
- Reporting and recordkeeping requirements
- Scientific equipment
- Seizures and forfeitures

- Administrative practice and procedure
- Arms and munitions
- Customs duties and inspection
- Exports
Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR parts 447 (/select-citation/2018/03/29/27-CFR-447), 478, and 479 are proposed to be amended as follows:

PART 447—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

The authority citation for 27 CFR part 447 (/select-citation/2018/03/29/27-CFR-447) continues to read as follows:


2. In § 447.11, amend the definition of “Machinegun” to read as follows:

§ 447.11 Meaning of terms.

Machinegun. A “machinegun”, “machine pistol”, “submachinegun”, or “automatic rifle” is a 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. The term shall also include 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, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person. For purposes of this definition, the term “automatically” as it modifies “shoots, is designed to shoot, or can be readily restored to shoot,” means functioning as the
result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger; and “single function of the trigger” means a single pull of the trigger. The term “machinegun” includes bump-stock-type devices, i.e., devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.

**PART 478—COMMERCE IN FIREARMS AND AMMUNITION**

3. The authority citation for 27 CFR part 478 (/select-citation/2018/03/29/27-CFR-478) continues to read as follows:


4. In § 478.11, amend the definition of “Machine gun” by adding two sentences at the end of the definition to read as follows:

**§ 478.11 Meaning of terms.**

* * * For purposes of this definition, the term “automatically” as it modifies “shoots, is designed to shoot, or can be readily restored to shoot,” means functioning as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger; and “single function of the trigger” means a single pull of the trigger. The term “machine gun” includes bump-stock-type devices, i.e., devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.

**PART 479—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS**

5. The authority citation for 27 CFR part 479 (/select-citation/2018/03/29/27-CFR-479) continues to read as follows:


6. In § 479.11, amend the definition of “Machine gun” by adding two sentences at the end of the definition to read as follows:
§ 479.11 Meaning of terms.

Machine gun.

* * * For purposes of this definition, the term “automatically” as it modifies “shoots, is designed to shoot, or can be readily restored to shoot,” means functioning as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger; and “single function of the trigger” means a single pull of the trigger. The term “machine gun” includes bump-stock-type devices, i.e., devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.

* * *


Jefferson B. Sessions III, Attorney General.

Footnotes


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3. Regulations implementing the GCA and the NFA spell the term “machine gun” rather than “machinegun.” E.g., 27 CFR 478.11 (/select-citation/2018/03/29/27-CFR-478.11), 479.11. For convenience, this notice uses “machinegun” except when quoting a source to the contrary.

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4. These figures are based on a review of prices posted on websites maintained by federal firearms licensees on March 1, 2018.

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6. In classifying the Akins Accelerator, ATF used the term “pull” specifically because that was the manner in which the firearm’s trigger was activated with the device. For purposes of analyzing firearms and devices designed for use on firearms, however, the term “pull” is interchangeable with terminology describing all trigger activations, including a push or a flip of a switch. See, e.g., United States v. Fleischli, 305 F.3d 643, 655-56 (7th Cir. 2002) (finding that a “trigger is a mechanism used to initiate a firing sequence,” and rejecting the argument that a “switch” could not be a trigger, because such a definition would “lead to the absurd result of enabling persons to avoid the NFA simply by using weapons that employ a button or switch mechanism for firing” (internal quotation marks omitted)).

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7. Examples of recent ATF classification letters relying on the “single pull of the trigger” interpretation to classify submitted devices as machineguns include the following:
   
   On April 13, 2015, ATF issued a classification letter regarding a device characterized as a “positive reset trigger,” designed to be used on a semiautomatic AR-style rifle. The device consisted of a support/stock, secondary trigger, secondary trigger link, pivot toggle, shuttle link, and shuttle. ATF determined that, after a single pull of the trigger, the device utilized recoil energy generated from firing a projectile to fire a subsequent projectile. ATF noted that “a `single function of the trigger’ is a single pull,” and that the device utilized a “single function of the trigger” because the shooter need not release the trigger to fire a subsequent projectile, and instead “can maintain constant pressure through a single function of the trigger.”

   On October 7, 2016, ATF issued a classification letter regarding two devices described as “LV-15 Trigger Reset Devices.” The devices, which were designed to be used on an AR-type rifle, were essentially identical in design and function and were submitted by the same requestor (per the requestor, the second device included “small improvements that have come as the result of further development since the original submission”). The devices were each powered by a rechargeable battery and included the following components: a self-contained trigger mechanism with an electrical connection, a modified two-position semiautomatic AR-15 type selector lever, a rechargeable battery pack, a grip assembly/trigger guard with electrical connections, and a piston that projects forward through the lower rear portion of the trigger guard and pushes the trigger forward as the firearm cycles. ATF held that “to initiate the firing . . . a shooter must simply pull the trigger.” It explained that although the mechanism pushed the trigger forward, “the shooter never releases the trigger. Consistent with [the requestor’s] explanation, ATF demonstrated that the device fired multiple projectiles with a “single function of the trigger” because a single pull was all that was required to initiate and maintain a firing sequence.

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8. As used in this proposed rule, the term “pull” is synonymous with “push” and other terms that describe activation of a trigger. The courts have made clear that whether a trigger is operated through a “pull,” “push,” or some other action such as a flipping a switch, does not change the analysis of the functionality of a firearm. For example, in United States v. Fleischli, 305 F.3d at 655-56, the Seventh Circuit rejected the argument that a switch did not constitute a trigger for purposes of assessing whether a firearm was a machinegun under the NFA, because such an interpretation of the statute would lead to “the absurd result of enabling persons to avoid the NFA simply by using weapons that employ a button or switch mechanism for firing.” See also United States v. Camp, 343 F.3d 743, 745 (5th Cir. 2003) (“To construe “trigger” to mean only a small lever moved by a finger would be to impute to Congress the intent to restrict the term to apply only to one kind of trigger, albeit a very common kind. The language [in 18 U.S.C. 922 (https://api.fdsys.gov/link?collection=uscode&title=18&year=mostrecent&section=922&type=usc&link-type=html)](https://api.fdsys.gov/link?collection=uscode&title=18&year=mostrecent&section=922&type=usc&link-type=html) implies no intent to so restrict the meaning[.]” (quoting United States v. Jokel, 969 F.2d 132, 135 (5th Cir. 1992) (emphasis removed))). Examples of machineguns that operate through a trigger activated by a push include the Browning design, M2 .50 caliber, the Vickers, the Maxim, and the M134 hand-fired Minigun.

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11. Based on an internal survey of large retailers.

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13. For a large retailer the average sales were 4,400 = (3,800 + 5,000)/2. For a small retailer, the average sales were 8 = (5 + 10)/2.

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17. Midrange: $4,500 = ($18,000/$140,000) * $35,000. Small: $74 = (8/3,800) * $35,000.

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[FR Doc. 2018-06292 (/a/2018-06292) Filed 3-28-18; 8:45 am]
Firearms Policy Coalition and Firearms Policy Foundation’s
Comments in Opposition to Proposed Rule ATF 2017R-22

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June 19, 2018
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VI. ATF FAILED TO CONSIDER Viable AND PRECEDENTIAL ALTERNATIVES

A. FPC Supports “Alternative 1”

B. The Amnesty Alternative

C. ATF’s Reclassification of the Streetsweeper and USAS 12 and Seven Year Registration/Amnesty that Followed

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E. Revision of Proposed Changes to 27 C.F.R. §§ 447.11, 478.11, and 479.11

VII. POLICY CONSIDERATIONS DO NOT SUPPORT ATF’S PROPOSED RULE

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CONCLUSION
Bureau of Alcohol, Tobacco, Firearms, and Explosives

Firearms Policy Coalition and Firearms Policy Foundation’s Comments in Opposition to Proposed Rule ATF 2017R-22

On March 29, 2018, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF” or the “Agency”) published a Notice of Proposed Rulemaking (“NPR”) in the Federal Register at Volume 83, pages 13442 through 13457, to institute this rulemaking proceeding with respect to firearms regulated under the National Firearms Act (“NFA”), 26 U.S.C. §§ 5801-5872. ATF’s current regulations under the NFA are codified at 27 C.F.R. Part 479.

Firearms Policy Coalition (FPC) is a grassroots, non-partisan, 501(c)(4) public benefit organization. It is interested in this rulemaking because FPC’s mission is to protect and defend the Constitution of the United States and the People’s rights, privileges and immunities deeply rooted in this Nation’s history and tradition, especially the inalienable, fundamental, and individual right to keep and bear arms; to protect, defend, and advance the means and methods by which the People of the United States may exercise those rights, including, but not limited to, the acquisition, collection, transportation, exhibition, carry, care, use, and disposition of arms for all lawful purposes, including, but not limited to, self-defense, hunting, and service in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens; to foster and promote the shooting sports and all lawful uses of arms; and to foster and promote awareness of, and public engagement in, all of the above and defend the Constitution of
the United States, especially the fundamental, individual Second Amendment right to keep and bear arms. In response to the NPR, FPC offers this public comment for consideration with respect to the proposed rule.

Firearms Policy Foundation (FPF) is a grassroots, non-partisan, 501(c)(3) public benefit organization. It is interested in this rulemaking because FPF’s mission is to protect and defend the Constitution of the United States and the People’s rights, privileges and immunities deeply rooted in this Nation’s history and tradition, especially the inalienable, fundamental, and individual right to keep and bear arms; to protect, defend, and advance the means and methods by which the People of the United States may exercise those rights, including, but not limited to, the acquisition, collection, transportation, exhibition, carry, care, use, and disposition of arms for all lawful purposes, including, but not limited to, self-defense, hunting, and service in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens; to foster and promote the shooting sports and all lawful uses of arms; and to foster and promote awareness of, and public engagement in, all of the above and defend the Constitution of the United States, especially the fundamental, individual Second Amendment right to keep and bear arms. In response to the NPR, FPF offers this public comment for consideration with respect to the proposed rule.

FPC and FPF oppose the proposed rulemaking for the reasons set forth below and in the Exhibits to this Comment incorporated herein by reference. For ease of reference and given that FPC’s and FPF’s interests are aligned, the use of “FPC” throughout this Comment incorporates or otherwise constitutes both FPC and FPF.
I. PROCEDURAL IRREGULARITIES HAVE DENIED INTERESTED PERSONS A MEANINGFUL OPPORTUNITY TO COMMENT ON THE PROPOSED RULEMAKING

ATF has repeatedly violated the basic obligations designed to permit meaningful public participation in this rulemaking proceeding. Despite efforts by FPC and other interested persons to encourage compliance with the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 501-559, other statutory provisions governing rulemaking, and fundamental due process, ATF has persisted on a course that ensures a waste of time and resources by all involved. It should be clear that ATF cannot proceed to promulgate a final rule without publishing a proper NPR and providing the necessary opportunity for meaningful public comment.

A. ATF Failed to Make Available the Underlying Determinations, Evidence and Other Information Upon Which It Purportedly Relied in Formulating its Proposed Rule

On March 30, 2018, the day after ATF published NPR in this matter, Firearms Industry Consulting Group (“FICG”), on behalf of FPC, submitted an expedited FOIA Request “for all ATF determinations relative to devices referred to as ‘bump stocks’ and ‘bump-fire stocks’ by ATF in its proposed rulemaking (ATF 2017R-22, RIN 1140-AA52, Fed. Register No. 2018-06292 - https://www.regulations.gov/document?D=ATF-2018-0002-0001), as well as, all ATF Form 9310.3A ‘Correspondence Approval and Clearance’ forms relative to each determination, and any versions or drafts of the determinations, which were different than the final
determination” since ATF failed to include these, or any other “supporting documents,” in the docket folder. 1 See Exhibit 1.

As of the filing of this Comment, not only has ATF declined to make public any of the requested and necessary supporting documents – especially its own determinations that bump stocks and bump-fire stocks do not constitute firearms, let alone machineguns 2 – but has additionally failed to respond to FICG’s expedited FOIA or even assign a number to it. 3 Moreover, while acknowledging that it has received “correspondence[s] from members of the United States

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1 As reflected in the FOIA Request, “[t]he use of the word ‘determinations’ shall be understood to mean any correspondence, whether in electronic or paper form, by ATF to any person, which shall include any individual, Member of Congress, corporation, limited liability company, and partnership, regarding the lawfulness or unlawfulness of any bump stock or bump-fire stock device, whether a sample device was submitted or not to ATF.”

2 ATF admits that there are at least “ten letter rulings between 2008 and 2017” (83 Fed. Reg. at 13445); none of which have been made available by ATF. 83 Fed. Reg. at 13445.

Senate and the United States House of Representatives, as well as nongovernmental organizations, requesting that ATF examine its past classifications and determine whether bumpstock-type devices currently on the market constitute machineguns under the statutory definition” (83 Fed. Reg. at 13446), ATF has failed to also provide these in the docket.

As a result, ATF still has not provided any of the documents underlying the NPR either in the docket or in response to the FOIA request.

It has long been understood that “[t]he process of notice and comment rule-making is not to be an empty charade. It is to be a process of reasoned decision-making. One particularly important component of the reasoning process is the opportunity for interested parties to participate in a meaningful way in the discussion and final formulation of rules.” *Connecticut Light & Power Co. v. NRC*, 673 F.2d 525, 528 (D.C. Cir. 1982). “If the [NPR] fails to provide an accurate picture of the reasoning that has led the agency to the proposed rule, interested parties will not be able to comment meaningfully upon the agency’s proposals.” *Id.* at 530. Providing access to materials like FPC requested – in addition to those that ATF has acknowledged in the NPR as the basis for the rulemaking – has long been recognized as essential to a meaningful opportunity to participate in the rulemaking process.

The APA “‘requires the agency to make available to the public, in a form that allows for meaningful comment, the data the agency used to develop the proposed rule.’” *American Medical Ass’n, v. Reno*, 57 F.3d 1129, 1132-33 (D.C. Cir. 1995) (quoting *Engine Mfrs. Ass’n v. EPA*, 20 F.3d 1177, 1181 (D.C. Cir. 1994)). In order to ensure that rules are not promulgated on the basis of data that to a “critical degree, is known only to the agency,” the agency must make available the “methodology” of tests and surveys relied upon in the NPR. *Portland Cement Ass’n v. Ruckelshaus*, 486 F.3d 375, 392-93 (D.C. Cir. 1973).
An agency commits serious procedural error when it fails to reveal the basis for a proposed rule in time to allow for meaningful commentary. *Connecticut Power & Light*, 673 F.2d at 530-31.

The notice and comment requirements

> are designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.


In this rulemaking proceeding, ATF not only refused to make available its own prior determinations that “bump stocks”, “bump-fire stocks”, and “bump-stock-devices” were not firearms, let alone, machineguns, and communications received from Congress and other organizations, but more importantly, as discussed in Sections I., B., and IV., D., infra, ATF has failed to provide any evidence that a “bump stock”, “bump-fire stock”, or a “bump-stock-device” was ever utilized in a single crime. As the putative use of a bump stock in the Las Vegas shooting is the purported underlying basis for this rulemaking (83 Fed. Reg. at 13443, 13444, 13446, 13447, 13452, 13454) the lack of evidentiary support is mind-boggling – especially in light of legitimate national concerns involving the media and governmental agencies misleading the public on a variety of issues – and constitutes a serious procedural error, as the absence of such evidence supports that there are no verified instances of a bump stock being utilized criminally and neither ATF nor FBI have confirmed the use of a bump-stock-device in any crime.  

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4 An expedited Freedom of Information Act request was submitted to both ATF and FBI requesting “Any and all records documenting the use of a bump-fire type stock being used by anyone on or about October 1, 2017 at the Mandalay Bay shooting incident in Las Vegas, (footnote continued)
The lack of access to these materials has seriously hindered the ability of interested persons to address everything that underlies the apparent unsupported assertions in the NPR. Bringing forth any such material in support of a final rule will do nothing to remedy the fact that those materials were not available to inform the interested persons preparing public comments. If ATF intends to take any further action relative to this rulemaking, it needs first to lay the foundation for a proposal and then expose that foundation to meaningful critique.

B. **ATF Failed to Describe a Single Situation Illustrating the Problem it Purports to Address; The Entire Rulemaking Seems to Rest on Multiple False Premises**

In the docket, ATF failed to provide evidence of a single instance where a “bump stock” or “bump-fire stock” was confirmed to be utilized in the commission of a crime. Even more disconcerting, in order to argue a putative benefit of this rulemaking, ATF relies on public comments from an ANPR, stating:

> “As reported by public comments, this proposed rule would affect the criminal use of bump-stock-type devices in mass shootings, such as the Las Vegas shooting incident… Banning bump-stock-type devices could reduce casualties in an incident involving a weapon fitted with a bump-stock-type device, as well as assist first responders when responding to incidents, because it prevents shooters from using a device that allows them to shoot a semiautomatic firearm automatically.”

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5 Id.
83 Fed. Reg. 13454 (emphasis added). These purported benefits are equally illusory and misleading. First, ATF presents no evidence that bump-stock-type devices have actually ever been used in any mass shooting incidents. 6 As further discussed infra in Section IV., D., even in relation to the Las Vegas incident upon which the NPR relies (83 Fed. Reg. at 13443, 13444, 13446, 13447, 13452, 13454), the Las Vegas Metropolitan Police Department Preliminary Investigative Report only indicates that some weapons were outfitted with bump-stock-type devices but provides no indication that any bump-stock-device was utilized. See, Exhibit 2. 7 Second, ATF contends that casualties could be reduced in such an incident without demonstrating that there have been any casualties attributable to the devices. 8 ATF has also failed to address the fact, as discussed in Sections IV., B. and C., that not only is a bump-stock unnecessary to bump-fire a firearm but that practiced shooters can match, if not exceed, the speed of a bump fire device, with far superior accuracy, unassisted by such a device. See, Exhibits 3 and 4. 9 Moreover, as stated by former ATF Acting Chief of FTB Rick Vasquez, “[a] factory semi-automatic

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6 Interestingly, ATF relies solely on prior “public comments” to suggest that a bump stock device was utilized in Las Vegas (83 Fed. Reg. 13454), while thereafter declaring that bump stock devices “could be used for criminal purposes.” (83 Fed. Reg. 13455)(emphasis added). The use of the word “could” reflects that such use is a possible future, not past, occurrence. Thus, ATF is acknowledging that but for public conjecture, it has no evidence that a bump stock device has been utilized in a crime and only hypothesizes that a bump stock device “could be used for criminal purposes.” See also Fn. 4, supra.


8 Relying on nothing more than a “conclusory statement would violate principles of reasoned decisionmaking.” Foundation on Economic Trends v. Heckler, 756 F.2d 143, 154 (D.C. Cir. 1985); see also Pearson v. Shalala, 164 F.3d 650, 659 (D.C. Cir. 1999).

and fully-automatic (i.e. machinegun) firearm, manufactured by the same manufacturer, will have identical cyclic rates, \(^{10}\) unless the machinegun version has some form of rate reducing mechanism; whereby, the machinegun version may have a slower cyclic rate than the semi-automatic version.” See Exhibit 32. \(^{11}\) Thus, not only can an individual exceed the rate of fire of a bump-stock-device with greater accuracy, but an individual can equal, and sometime exceed, the rate of fire of an actual machinegun.

Third, as also addressed by the Savage Comment \(^{12}\) and the Expert Declaration of Vasquez (see Exhibit 32), the technique of bump firing merely utilizes the recoil impulse that all semi-automatic firearms generate, every time the firearm discharges. More importantly, as discussed by the Expert Declaration of Vasquez and the Savage Comment, and reflected \(\text{infra}\) in Sections IV., A. and E., including as depicted in video exhibits related thereto, contrary to ATF’s interpretive jiggery-pokery in the NPR that

\(^{10}\) As expert Vasquez explains, “[t]he cyclic rate of a firearm is neither increased nor decreased by the use of a bump-stock-device, as the cyclic rate of a particular firearm is the mechanical rate of fire, which can be explained in laymen’s terms as how fast the firearm cycles (i.e. loads, locks, fires, unlocks, ejects), which is an objective, not subjective, mechanical standard.” See Exhibit 32.

\(^{11}\) This was also addressed by Firearm Engineer Len Savage on page 2 of his Comment, where he declares that all semi-automatic firearms:

“can fire as fast as a machinegun version. Their cyclic rates are identical to the machinegun version. Their essential operating mechanisms are identical, same ammo, same magazine, same reciprocating mass. The only small physical difference is the machineguns described have a mechanical level that ‘automatically’ starts the new cycle as soon as the previously cycle ends. Some semiautomatic firearms can even fire faster than the full-auto version because the machinegun versions having some form of rate reducing mechanism.”


\(^{12}\) Id.
bump-stock devices “convert an otherwise semiautomatic firearm into a machinegun by functioning as a self-acting or self-regulating mechanism” (83 Fed. Reg. 13443), in reality, a bump-stock-device is neither self-acting nor self-regulating and requires the trigger to be fully released, reset and fully pulled, before a subsequent round can be fired.

13 To the extent ATF contends otherwise, then all semi-automatic firearms are “self-acting” or “self-regulating,” since, as discussed infra in Section IV., B., the technique of bump firing can be easily achieved solely with one’s finger while operating a factory semi-automatic firearm.

Thus, to the extent ATF contends that bump-stock-devices are self-acting, self-regulating or otherwise harness the recoil energy of the firearm, then all semi-automatic firearms are self-acting, self-regulating or otherwise harness the recoil energy of the firearm. Under the logic and contentions employed in the NPR, ATF would seemingly be entitled and empowered to regulate all semi-automatic firearms in the same manner as they seek to do for bump-stock devices, whereby all semi-automatic firearms could be re-classified by fiat, transmuted into unlawfully-possessed and proscribed contraband items, and, accordingly, force forfeiture (and provide for seizure) and destruction of these items,

13 As also addressed in the Expert Declaration of Vasquez:

The bump-stock-device does not permit automatic fire by harnessing the recoil energy of the firearm. Harnessing the energy would require the addition of a device such as a spring or hydraulics that could automatically absorb the recoil and use this energy to activate itself. If it did harness the recoil energy, the bump-stock equipped firearm in the video would have continued to fire, while the shooter’s finger remained on the trigger, after pulling it rearwards without requiring the shooter to release and reset the trigger and then pull the trigger completely rearward for a subsequent round to be fired.

…

A firearm in a bumpstock/slidefire stock cannot be a machinegun because it requires an individual to activate the forward motion of the stock when the firearm is fired. Additionally, it requires a thought process of the individual to continually pull the trigger when the stock is pulled forward bringing the trigger into contact with the finger.
without any just compensation being paid—never-mind the statutes, let alone the Constitution. 14

In fact, Eric Larson clairvoyantly published an article in March of 1998 in the Gun Journal, entitled How Firearm Registration Abuse & the “Essential Operational Mechanism” of Guns May Adversely Affect Gun Collectors, in which he raised concern over ATF banning all semi-automatic firearms through these types of “interpretations” of law. See Exhibit 24.

Fourth, ATF suggests that this rule will assist first responders by preventing shooters from using the devices; however, ATF does not elaborate on how exactly a firearm outfitted with a bump-stock-type device impedes first responders in any way that a differently configured firearm does not.

Finally, ATF laughably suggests that it is addressing a negative externality of the commercial sale of bump-stock-type devices. This negative externality is “that they could be used for criminal purposes.” 83 Fed. Reg. at 13449. This suggestion is not supported by any evidence aside from the unproven allegation of their use in the Las Vegas

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14 If “the eight-year assault on . . . Second Amendment freedoms [came] to a crashing end” with President Trump’s election and inauguration, then a new assault on individual liberties and lawfully acquired and possessed private property apparently came to a crushing beginning in this NPR. See, Trump at NRA convention: 'Eight-year assault' on gun rights is over, Fox News, April 28, 2018, online at http://www.foxnews.com/politics/2017/04/28/trump-at-nra-convention-eight-year-assault-on-gun-rights-is-over.html. But the “President then directed the Department of Justice . . . to dedicate all available resources to complete the review of the comments received [in response to the ANPRM], and, as expeditiously as possible, to propose for notice and comment a rule banning all” bump-stock devices. Federal Register / Vol. 83, No. 61 at 13446 (NPR Section III). Indeed, it is difficult to reconcile President Trump’s statement that “[he] will never, ever infringe on the rights of the people to keep and bear arms,” Trump at NRA convention, supra, with the NPR. As the NPR admits, it a direct result of his personal directive to lawlessly seek an unlawful total, confiscatory ban on bump-stock devices (and criminalize the law-abiding people who possess them) in spite of the Executive Branch’s lack of legal and constitutional authority to do so.
incident. Further, any suggestion that a device responsible for substantial, and lawful, market activity should be banned because it has a potential to be used for criminal purposes is a mind-blowing and preposterous proposition that supports the banning of virtually all consumer products, such as vehicles (given the number of individuals who utilize them while unlawfully under the influence of drugs or alcohol and cause significant numbers of injuries and deaths, and those who use them to carry out terrorist attacks).

If the sole example ATF has to offer is the conjectured use of a bump-stock-equipped firearm during the Las Vegas shooting, there is simply no evidence of any problem that existing criminal law does not address, let alone a statistically-significant one. Murder is already unlawful, right? And if serious criminal laws have no meaningful deterrent effect, what then is the objective of this NPR, if not to subject law-abiding people who did not commit any crime to pain of criminal penalty and loss of their property?

C. ATF Failed to Permit a Ninety-Day Comment Period and Procedural Irregularities Have Denied Interested Persons a Meaningful Opportunity to Comment on the Proposed Rulemaking

18 U.S.C. § 926(b) requires that ATF provide “not less than ninety days public notice,

15 “Every day, 29 people in the United States die in motor vehicle crashes that involve an alcohol-impaired driver. This is one death every 50 minutes. The annual cost of alcohol-related crashes totals more than $44 billion.” See, e.g., “Impaired Driving: Get the Facts” (citing sources, internal footnotes omitted), Centers for Disease Control and Prevention, online at https://www.cdc.gov/motorvehiclesafety/impaired_driving/impaired-drv_factsheet.html.

and shall afford interested parties opportunity for hearing, before prescribing such rules and regulations."

First and foremost, FPC demands, pursuant to Section 926(b) and ATF’s offer in the NPR (83 Fed. Reg. 13456), 17 that they be provided an opportunity to be heard at a hearing before ATF prescribes any rule or regulation in relation to this NPR. 18

In this rulemaking proceeding, numerous procedural irregularities and issues have arisen that have precluded the public a meaningful opportunity to respond and have caused some to believe that the comment period was closed, since the very start of the comment period; thus, depriving the public of the ninety day comment period that is required by law.

Immediately, upon the publication of the NPR on March 29, 2018, numerous individuals were advised on FederalRegister.gov 19 “COMMENT PERIOD CLOSED – The comment period on this document is closed and comments are no longer being accepted on Regulations.gov. We apologize for any inconvenience.”

17 Contrary to ATF’s assertion in the NPR that the Director of ATF has discretion in whether to grant a public hearing, Section 926(b) requires ATF to hold a public hearing when such is requested, as the statutory language provides that the Attorney General “shall afford interested parties opportunity for hearing, before prescribing such rules and regulations.” (Emphasis added). If it were discretionary, the Congress would have utilized a permissive word like “may” instead of the command “shall”.

18 Although requesting a hearing in a comment is sufficient, based on the request in the NPR, a separate letter was sent to Acting Director Brandon on behalf of FPC requesting an opportunity to be heard at a hearing. See Exhibit 34.

As is reflected in the above image, taken from the subject Web site, the notice that the comment period was closed was in relation to this proposed rulemaking regarding Bump-Stock-Type devices of “03/29/2018” and also reflects that the comment period was not supposed to end until “06/27/2018”; however, individuals were denied the opportunity to comment.

Even when individuals reached out online to the Federal Register regarding their inability to submit comments, the Federal Register responded by saying that it isn’t its problem ²⁰:

²⁰ It would seem that, at a minimum, the Federal Register’s Web site and social media accounts are managed by the same parties responsible for the www.healthcare.gov debacle that precluded individuals from being able to register for Obamacare, which led the Inspector General of the Department of Health and Human Services to issue a scathing report over the incompetence of those responsible. See http://www.mcall.com/news/local/watchdog/mc-obamacare-website-failure-watchdog-20160224-column.html.
Allatoona Lake/Lake Thurmond litigation:

Second Amendment challenge to federal regulation banning loaded firearms and ammunition on property managed by the U.S. Army Corps of Engineers, specifically Allatoona Lake and Lake Thurmond. Denial of motion for preliminary injunction affirmed and case remanded for further proceedings.


On remand, defense motion for summary judgment granted.

GeorgiaCarry.org v. U.S. Army Corps of Engineers, Civil Action File Nos. 4:14-CV-0139-HLM, 4:15-CV-009-HLM (N.D. Ga., April 25, 2016) (Murphy, J.), appeal filed, No. 16-13486 (11th Cir.).

Non-losing, non-appealing defendants voluntarily change their practices and grant permission to carry loaded firearms on Corps property, mooting case. Appeal dismissed and district court judgment vacated.


Atlanta Botanical Garden litigation:

Suit to permit carry of firearms on the grounds of the Atlanta Botanical Gardens. Dismissed.

GeorgiaCarry.org v. Atlanta Botanical Garden, Case No. 14CV253810 (Superior Court of Fulton County, May 19, 2015) (Tusan, J.).

Dismissal order affirmed in part and reversed in part. Trial court directed to consider on remand plaintiffs’ request for an injunction prohibiting the Garden from banning licensed individuals from carrying weapons on the Garden’s premises.

GeorgiaCarry.org v. Atlanta Botanical Garden, No. S16A0294 (Ga., May 9, 2016) (Hunstein, J.)
On remand, summary judgment entered for the Garden and against plaintiffs based on the proposition that public property is converted into private property when leased to a private entity. “Under binding precedent from the Georgia Supreme Court, the Garden is an entity ‘in legal control of private property’ and may exclude or eject individuals carrying a gun under O.C.G.A. § 16-11-127(c).”


Summary judgment for Garden affirmed based on longstanding Supreme Court of Georgia precedent treating public property leased to a private entity as private for tax purposes given the property’s private use. Chief Judge Dillard, joined by Presiding Judge Ellington, concurs and writes further that:

[While I find GeorgiaCarry’s textualist argument attractive, the Metro Atlanta Chamber, as amicus curiae, presents a compelling argument that GeorgiaCarry’s interpretation of OCGA § 16-11-127(c) raises serious constitutional concerns and presents a strong case for applying the constitutional-doubt canon to the statute—i.e., any interpretation that denies a private entity in possession of leased property the right to exclude or eject persons carrying weapons is likely to run afoul of the Takings Clauses of the federal and Georgia constitutions, as well as the Due Process Clauses of the federal and Georgia constitutions.]

GeorgiaCarry.org v. Atlanta Botanical Garden, No. A17A1639 (Ga. App.) (Rickman, J., March 14, 2018) [copy attached], cert. pending, No. S18C1149 (Ga., filed April 22, 2018)

Guns-on-campus:

Suit on behalf of six University System of Georgia professors seeking to enjoin Governor Deal and Attorney General Carr from enforcing 2017 campus carry legislation. Dismissed on sovereign immunity grounds and for lack of standing.

The question presented in this case is whether Atlanta Botanical Garden, Inc., a private organization, is lawfully permitted under OCGA § 16-11-127 (c), to prohibit individuals from carrying guns onto its property, which it leases from the City of Atlanta. We answer this question in the affirmative. The plain and unambiguous language of OCGA § 16-11-127 (c) grants persons in legal control of private property through a lease the right to exclude individuals carrying weapons, and well-established authority from the Supreme Court of Georgia designates the land leased by the Garden as private property. We, therefore, affirm the trial court’s grant of
summary judgment to the Garden on the petition for declaratory and injunctive relief filed by Phillip Evans and GeorgiaCarry.Org, Inc.

The pertinent facts are not in dispute. The Garden is a private, non-profit corporation that operates a botanical garden complex on property secured through a 50-year lease with the City of Atlanta. Evans holds a Georgia weapons carry license and is a member of GeorgiaCarry, a gun-rights organization. In October 2014, Evans twice visited the Garden, openly carrying a handgun in a holster on his waistband. Although no Garden employee objected to Evans’s weapon on his first visit, he was stopped by a Garden employee during his second visit and informed that weapons were prohibited on the Garden premises, except by police officers. A security officer eventually detained Evans, and he was escorted from the Garden by an officer with the Atlanta Police Department.

Evans and GeorgiaCarry subsequently filed a petition in the Fulton County Superior Court, seeking declaratory and injunctive relief on the basis that OCGA § 16-11-127 (c) authorized Evans—and similarly situated individuals—to carry a weapon at the Garden. The trial court dismissed the petition after concluding that the issues were not appropriate for the relief sought, a ruling that the Supreme Court reversed in part on appeal. See GeorgiaCarry.org v. Atlanta Botanical Garden, Inc., 299 Ga. 2
26 (785 SE2d 874) (2016). On remand, the trial court held that the Garden’s property was considered private under well-established Georgia precedent, allowing the Garden to exclude weapons and, consequently, granted summary judgment to the Garden. This appeal follows.

O.C.G.A. § 16-11-127 (c) provides, in pertinent part, that:

A license holder . . . shall be authorized to carry a weapon . . . in every location in this state not [otherwise excluded by] this Code section; provided, however, that private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property . . .

(Emphasis supplied.)

It is axiomatic that when examining this text, “we must presume that the General Assembly meant what it said and said what it meant.” (Citation and punctuation omitted.) Deal v. Coleman, 294 Ga. 170, 172 (a) (751 SE2d 337) (2013); see also Williams v. State, 299 Ga. 632, 633 (791 SE2d 55) (2016). “To that end, we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English
language would.” (Citations and punctuation omitted.) Deal, 294 Ga. at 172-173 (1) (a); see also OCGA § 1-3-1 (a), (b); Williams, 299 Ga. at 633.

Here, the unambiguous text of OCGA § 16-11-127 (c) leaves no doubt that the legislature afforded only private property owners, or those in control of private property through a lease or otherwise, the power to exclude licensed weapons holders from that private property. See id. It follows that “we attribute to the statute its plain meaning, and our search for statutory meaning is at an end.” Deal, 294 Ga. at 173 (1) (a).

The pertinent question in this case thus becomes whether the land leased by the Garden constitutes public property or private property within the context of OCGA § 16-11-127 (c). The statute does not specifically define those terms, but Evans and GeorgiaCarry contend that although the Garden, as lessee, is a private organization and operates as a private entity, the property it leases is considered public for the purposes of OCGA § 16-11-127 (c) because the lessor of the property is the City of Atlanta.

The appellate courts of this state have not yet examined the classification of property under OCGA § 16-11-127 (c). Nevertheless, our Supreme Court has previously held—specifically in the context of a leasehold interest—that “[p]rivate
property becomes public property when it passes into public ownership; and public property becomes private property when it passes into private ownership.” *Delta Air Lines, Inc. v. Coleman*, 219 Ga. 12, 16 (1) (131 SE2d 768) (1963). *Delta Air Lines* involved a tract of land that Delta leased from the City of Atlanta. Id. at 12-13. Delta argued that it was exempt from paying ad valorem tax on the land because the land was public property. Id. at 13. The Court disagreed, holding that, “[w]hen any estate in public property is disposed of, it loses its identity of being public property and is subject to taxes while in private ownership just as any other privately owned property.” Id. at 16 (1). Thus, when a public authority conveys a leasehold interest to a private lessee, the leasehold estate “is severed from the fee” and classified as private property. See id.

Likewise, in *Douglas County v. Anneewakee, Inc.*, 179 Ga. App. 270 (346 SE2d 368) (1986), a tax-exempt organization leased property from a taxable, for-profit corporation, and the issue was whether the county could tax the leasehold interest. Id. at 271. Relying on the holding in *Delta Air Lines*, this Court affirmed the trial court’s holding that “the leasehold held by the [tax-exempt organization], when severed from the private–and taxable–fee owned by [the for-profit corporation], took on the tax exempt status of the holder of the leasehold . . .” Id. at 274 (3).
And most recently, in *Columbus Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 312 Ga. 358, 806 SE2d 525 (2017), the Supreme Court again reiterated that, under Georgia law, we look to the lessee, not the lessor, to determine the status of leased property. Id. at 362-363 (2). In that case, the hospital authority sought a declaration that its leasehold interest in a building located on real property owned by a private entity constituted public property and was thus tax exempt. Id. at 358. The Supreme Court held that the hospital authority could claim a tax exemption if it could demonstrate that its property interest was held for a public purpose in furtherance of its interest as a hospital authority. Id. at 362 (2).

Pursuant to the authority of *Delta Air Lines, Inc.*, *Anneewakee, Inc.*, and *Columbus Bd. of Tax Assessors*, the leasehold interest held by the Garden, when severed from the fee owned by the City of Atlanta, is classified as private property.¹

Evans and GeorgiaCarry nevertheless contend that the holding in those cases

¹ In their reply brief on appeal, Evans and GeorgiaCarry contend for the first time that the Garden failed to prove by the record that its leasehold interest pursuant to the 50-year lease is an estate for years as opposed to a usufruct, a distinction they contend may impact the applicability of *Delta Air Lines, Inc.* and its progeny. We need not consider this argument, however, as it was never asserted in the trial court. See *Pfeiffer v. Georgia Dept. of Transp.*, 275 Ga. 827, 828-829 (2) (573 SE2d 389) (2002) (“[A party] must stand or fall upon the position taken in the trial court. Fairness to the trial court and to the parties demands that legal issues be asserted in the trial court.”) (citation and punctuation omitted).
should be confined to govern only tax-related issues, but we can find no principled reason for that distinction. “[A]ll statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it. They are therefore to be construed in connection and in harmony with the existing law.” (Citation and punctuation omitted.) Grange Mut. Cas. Co. v. Woodard, 300 Ga. 848, 852 (2) (A) (797 SE2d 814) (2017); see Williams v. State, 299 Ga. 632, 634 (791 SE2d 55) (2016). Moreover, statutory law “[is] not understood to effect a change in the common law beyond that which is clearly indicated by express terms or by necessary implication.” (Citation and punctuation omitted.) Avnet, Inc. v. Wyle Laboratories, 263 Ga. 615, 619-620 (2) (437 SE2d 302) (1993); see Woodard, 300 Ga. at 855-856 (2) (B).

Nothing in OCGA § 16-11-127 (c) expressly contravenes the common-law authority cited above, nor does it do so by necessary implication. Indeed, the only way to rectify the plain and unambiguous language of OCGA § 16-11-127 (c) with well-established Georgia precedent is to conclude that the Garden, a private entity with a leasehold interest in what is deemed to be private property, may exclude licensed weapons holders from entering that property. See id.; Columbus Bd. of Tax
Assessors, __ Ga. at __ (2); *Delta Air Lines*, 219 Ga. at 16 (1); *Anneewakee, Inc.*, 179 Ga. App. at 273-274 (3). Accordingly, we affirm the ruling of the trial court.

*Judgment affirmed. Dillard, C. J., and Ellington, P. J., concurring fully and specially.*
In the Court of Appeals of Georgia

A17A1639. GEORGIACARRY.ORG, INC., et al. v. BOTANICAL GARDEN, INC.

DILLARD, Chief Judge, concurring fully and specially.

The right of Americans to “keep and bear arms”\(^1\) has “justly been considered, as the palladium of the liberties of a republic.”\(^2\) And the private property rights we

\(^1\) See U.S. CONST. amend. II (“A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.”); see also District of Columbia v. Heller, 554 U.S. 570, 635 (IV) (128 S Ct 2783, 171 LE2d 637) (2008) (Scalia, J.) (“The Second Amendment . . . is the very product of an interest balancing by the people . . . [i]t surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”) (emphasis omitted).

\(^2\) 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, § 1890, at 746 (Fred B. Rothman & Co. 1991) (1833).
enjoy as free citizens are “among the most basic of human rights.”

For these reasons, the General Assembly sought to balance these sacrosanct rights in OCGA § 16-11-127 (c) by permitting those authorized to carry a weapon to do so “in every location in this state” not otherwise excluded by law;

provided, however, that private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property . . . .

But here, the subject property is publicly owned by the City of Atlanta, and is leased by Atlanta Botanical Garden, Inc., a private organization. So, under the plain meaning

3 Summour v. City of Marietta, 338 Ga. App. 259, 262 (788 SE2d 921) (2016) (punctuation and citation omitted), affirmed in part and reversed in part on other grounds by ___ Ga. ___ (807 SE2d 324) (2017); see also Paul J. Larkin, Jr., The Original Understanding of “Property” in the Constitution, 100 Marq. L. Rev. 1, 30 (III) (A) (2) (2016) (“Americans also sought to protect the property they acquired. If there was one issue on which most American Founders agreed, it was the importance of protecting private property rights”) (punctuation and footnote omitted); John Locke, The Second Treatise, Two Treatises of Government § 124 (Peter Laslett ed., Cambridge Univ. Press 1960) (1698) (“The great and chief end, therefore, of Mens uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property.”). Cf. OCGA § 51-9-1 (“The right of enjoyment of private property being an absolute right of every citizen, every act of another which unlawfully interferes with such enjoyment is a tort for which an action shall lie.”).

4 (Emphasis supplied).
of the statute’s text, the Garden appears, at first blush, to be prohibited from excluding authorized individuals carrying weapons on its premises because it does not own and is not in legal control of private property.⁵ But having carefully considered the longstanding Supreme Court of Georgia precedent relied upon by the majority, I am persuaded that the reasoning contained in those decisions applies with equal force in this statutory context, and, therefore, the trial court’s judgment should be affirmed.

In this respect, the Supreme Court of Georgia, in Columbus Board of Tax Assessors v. The Medical Center Hospital Authority,⁶ recently provided guidance

⁵ This reading of OCGA § 16-11-127 (c) is bolstered by the statute’s history. In 2010, the grant of authority to carry a weapon in every location in Georgia contained the following contingent exception:

[P]rovided, however, that private property owners or persons in control of property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control such property shall have the right to forbid possession of a weapon or long gun on their property . . . .

Former OCGA § 16-11-127 (c) (2010) (emphasis supplied).

As GeorgiaCarry rightly notes, this statutory language was notably “silent on whether the property being leased was public or private.” But as noted supra, this changed in 2014, when the General Assembly replaced each of the three mentions of “property” italicized above with “private property.”

regarding how to construe the term “public property” in OCGA § 48-5-41 (a) (1) (A), which exempts such property from property taxes, but does not define what constitutes public property.7 In doing so, our Supreme Court did not simply hold that whether leased property is public or private is conclusively established by who owns the property without further inquiry.8 Instead, the Court reasoned that, in determining whether a lessee holds a leasehold interest in public or private property, the pertinent question is whether the property is held for “public purposes in furtherance of the legitimate functions of [the public entity], rather than for private gain or income.”9 Ultimately, the Court concluded that “the mere fact that property is owned by [a public entity] does not exempt it from property taxes[.]”10

Although Columbus Board of Tax Assessors, as well as the cases it relies upon, were all decided in the context of construing taxation statutes,11 I too see no

7 See id. at 362-63 (2).

8 See id.

9 Id. at 362 (2) (punctuation and citation omitted).

10 See id. at 362-63 (2) (punctuation omitted).

11 See id.; Hosp. Auth. of Albany v. Stewart, 226 Ga. 530, 535 (175 SE2d 857) (1970) (holding that a hospital authority using “property exclusively for a declared public and governmental purpose, and not for private or corporate benefit or income, it is in effect an instrumentality of the State, and therefore the property [was] exempt
meaningful distinction that would support an alternative construction of “private property,” which is the mirror image of “public property.” Indeed, it would be a curious thing to deny an entity leasing public property the benefit of the City’s tax exempt status while simultaneously requiring that lessee to permit gun owners on its property without consent. Thus, while it would otherwise be perfectly reasonable to construe “private property” in OCGA § 16-11-127 (c) to simply mean any property that is privately owned, I am persuaded by the reasoning contained in the precedent

from taxation to the same extent as if the legal title thereto was in the State itself or in a county or city”); *Delta Air Lines, Inc. v. Coleman*, 219 Ga. 12, 16 (1) (131 SE2d 768) (1963) (“When [a public entity] conveyed to [a private corporation] a leasehold estate in the land here involved, it completely disposed of a distinct estate in its land for a valuable consideration, and [the corporation] acquired it and holds it as a private owner. When any estate in public property is disposed of, it loses its identity of being public property and is subject to taxes while in private ownership just as any other privately owned property.” (emphasis supplied)); *Sigman v. Brunswick Port Auth.*, 214 Ga. 332, 335 (2) (104 SE2d 467) (1958) (holding, in the context of considering whether private property leased to a public entity was subject to property taxes, that “property may be public property so as to come within the exemption from taxation although the legal title is not in the State, the county, or a municipality” (emphasis supplied)). As explained by the majority, “when we are interpreting a statute, we must presume that the General Assembly had full knowledge of the existing state of the law and enacted the statute with reference to it.” *Chase v. State*, 285 Ga. 693, 695 (2) (681 SE2d 116) (2009). Thus, we must presume that when the General Assembly last amended OCGA § 16-11-127 (c), it was aware of how the Supreme Court of Georgia had been construing other statutes when determining what constituted public or private property and chose not to provide alternative definitions for those terms.
highlighted by the majority and agree that we must evaluate how the subject property is actually being used in this case, rather than simply consider whether that property is privately or publicly owned. I agree with the majority, then, that the subject property is private for purposes of OCGA § 16-11-127 (c) because it is being operated solely for “private gain or income,” rather than for “public purposes.”12 And while I am largely in agreement with the logic and reasoning underlying the Supreme Court of Georgia decisions relied upon by the majority, I am somewhat sympathetic to GeorgiaCarry’s contention that this line of precedent is squarely at odds with the plain meaning and statutory history of OCGA § 16-11-127 (c). That said, while I find GeorgiaCarry’s textualist argument attractive, the Metro Atlanta Chamber, as *amicus curiae*, presents a compelling argument that GeorgiaCarry’s interpretation of OCGA § 16-11-127 (c) raises serious constitutional concerns and presents a strong case for applying the constitutional-doubt canon13 to the statute—*i.e.*, any interpretation that

12 *Columbus Bd. of Tax Assessors*, 302 Ga. at 362 (2).

13 *See Stone v. Stone*, 297 Ga. 451, 455 (774 SE2d 681) (2015) (holding that “statutes should be interpreted to avoid serious constitutional concerns where such an interpretation is reasonable”); *Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts* 247 (1st ed. 2012) (noting that the constitutional-doubt canon “militates against not only those interpretations that would render the statute unconstitutional but also those that would even raise serious questions of constitutionality”).
denies a private entity in possession of leased property the right to exclude or eject persons carrying weapons is likely to run afoul of the Takings Clauses of the federal and Georgia constitutions,\textsuperscript{14} as well as the Due Process Clauses of the federal and Georgia constitutions.\textsuperscript{15}

For all these reasons, I concur fully and specially in the majority’s opinion.\textsuperscript{16}

I am authorized to state that Presiding Judge Ellington joins in this concurrence.

\textsuperscript{14} See U.S. CONST. amend. V (“. . . nor shall private property be taken for public use, without just compensation.”); GA. CONST. art. I, § 3, ¶ 1 (“. . . private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid.”).

\textsuperscript{15} See U.S. CONST. amend. XIV, § 1 (“. . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .”); GA. CONST. art. I, § 1, ¶ 1 (“No person shall be deprived of life, liberty, or property except by due process of law.”).

\textsuperscript{16} Because I fully join the majority opinion, it is binding precedent under Court of Appeals Rule 33.2.
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JOHN KNOX, MICHAEL G. NOLL,
JAMES PORTER, LAUREL
ROBINSON, ARISTOTELIS SANTAS
and WILLIAM B. WHITMAN,

Plaintiffs,

v.

NATHAN DEAL, Governor of the State
of Georgia, in his individual capacity,
and his successors in office;
CHRISTOPHER M. CARR, Attorney
General of the State of Georgia, in his
individual capacity, and his successors in
office,

Defendants.

CIVIL ACTION FILE NO. 2017CV295763

HON. KIMBERLY M. ESMOND ADAMS

ORDER DENYING PLAINTIFFS’ MOTION FOR INJUNCTION
AND DISMISSING PLAINTIFFS’ COMPLAINT

The above-styled case came before the Court on Plaintiffs’ Motion for Injunction. Defendants timely responded in opposition to the Motion. Oral arguments were heard on November 27, 2017 and both parties were represented by Counsel. On February 20, 2018, Defendants subsequently filed Defendants’ Consolidated Motion to Dismiss and Brief in Support seeking dismissal of Plaintiffs’ complaint in its entirety. Plaintiffs again responded in opposition. Upon consideration of the pleadings, entire record, arguments of counsel and applicable authority, the Court hereby DENIES Plaintiffs’ Motion for Injunction and GRANTS Defendants’ Consolidated Motion to Dismiss for the reasons discussed more fully below.
PROCEDURAL HISTORY

Plaintiffs John Knox, Michael G. Noll, James Porter, Laurel Robinson, Aristotelis Santas and William B. Whitman are college professors currently employed at institutions of higher education within the University System of Georgia ("USG"). The USG is comprised of 28 institutions of higher education with over 300,000 students enrolled. The USG is overseen by the Board of Regents ("BOR"), a chartered corporation that dates back to 1785. The BOR has 19 members appointed to a seven-year term by the Governor and confirmed by the State Senate. The Constitution of the State of Georgia provides that "[t]he government, control and management of the University System of Georgia . . . shall be vested in the Board of Regents of the University System of Georgia," Ga. Const. Art. VIII, Sect. IV. This is known as the "University Autonomy Provision."

Plaintiffs have filed suit against Governor Nathan Deal ("Deal") and Attorney General Christopher Carr ("Carr") in their individual capacities and against their successors in office. Plaintiffs seek entry of declaratory judgment declaring House Bill 280 or Act Number 167, permitting licensed gun owners to carry concealed weapons on college campuses, along with O.C.G.A. § 16-11-127(c) and O.C.G.A. § 16-11-173(b), are invalid under Article VIII, Sec. IV of the Georgia Constitution because their enactment, either individually or collectively, divests government, control and management of the USG from the BOR.

Plaintiffs further seek an injunction to enjoin the enforcement of these statutes which collectively require the BOR and USG institutions to allow any licenseholder to carry a concealed handgun on USG campuses. Plaintiffs contend that this case is about which government entity has the constitutional authority to decide whether concealed weapons may be
permitted on USG college campuses. Plaintiffs assert that this power has been vested in the BOR; but, the General Assembly has usurped that power through its enactment of HB 280.

HOUSE BILL 280 OR ACT NUMBER 167

House Bill 280 or Act Number 167 ("HB 280") repeals previously existing criminal penalties for possession of a firearm on USG college campuses thus eliminating institutions of higher education from the list of places where firearms are barred by Georgia law. As a result of its enactment, the Right to Carry Provision (O.C.G.A. § 16-11-127) and the Preemption Provision (O.C.G.A. § 16-11-173) (collectively "Campus Carry Legislation") allow licensed gun owners to carry concealed weapons on property owned or leased by public colleges and universities.

HB 280 took effect on July 1, 2017 and has been codified at O.C.G.A. § 16-11-127.1. Before it took effect, the BOR issued a memorandum dated May 24, 2017 ("May Memorandum") from Chancellor Steve Wrigley addressed to the USG Community. The May Memorandum provided guidelines for the implementation of HB 280 on all USG campuses. It outlined in detail places and instances where concealed weapons were not permitted, including buildings and property used for athletic sporting events; student housing facilities; spaces used for preschool and childcare; classes in which high school students are enrolled; faculty, staff and administrative offices; and rooms during times when they are used for any disciplinary proceedings. Significantly, the May Memorandum reiterated that individual institutions did not have discretion to bar or further limit handguns on college campuses beyond those locations which were specifically identified in the May Memorandum.

Plaintiffs, on the other hand, referenced scholarly and historical authority over the past two centuries proscribing a discernable prohibition against permitting firearms at institutions of
higher education generally and within the USG. Plaintiffs also relied heavily on Governor Deal's comments just a year prior to the enactment of HB 280 when he vetoed House Bill 859 which similarly permitted licensed gun owners to carry concealed weapons on college campuses within the USG.

The fierce debate and political climate that surrounds the issue of permitting firearms on college campuses is not lost on this Court. Moreover, this debate has grown inarguably more contentious in the wake of recent high school shootings including an active shooter who legally purchased a semi-automatic weapon to inflict fear and death on his peers in our sister state to Georgia's south resulting in the death of several students preparing to embark on their college careers possibly within the USG. One month after that tragedy, another high school shooting occurred in Maryland. The Maryland tragedy was followed by an eruption of approximately 800 student-led international protests from our own backyard in Dahlonega, Georgia to Washington, D.C. to Rome, Italy and Berlin, Germany with students advocating and leading the call for legislative reform and tougher gun restrictions aimed at preventing gun violence in our nation's schools. These unfortunate mass tragedies that occur far too often by any measure raise the inevitable question of whether students attempting to manage the pressures of academic performance mixed with societal pressures often heightened by drug or alcohol use or emotional instability should be permitted to carry lethal weapons on college campuses throughout Georgia. However, the Second Amendment's right to bear arms is not the constitutional issue presented to this Court.

To the contrary, before this Court is a well-crafted lawsuit against Deal and Carr wherein Plaintiffs challenge whether the General Assembly usurped the constitutional authority vested in the BOR by enacting HB 280 in violation of Article VIII of the Georgia Constitution.
Defendants not only deny any constitutional violation, but they seek dismissal of Plaintiffs’ complaint based on a lack of subject matter jurisdiction. Therefore, before this Court may evaluate the merits of Plaintiffs’ constitutional challenge and the appropriateness of the injunctive and declaratory relief they seek, the Court must first address whether the doctrine of sovereign immunity bars Plaintiffs’ lawsuit against Defendants, and, if not, whether Plaintiffs have standing to seek the relief requested under the constitutional authority cited.

**LEGAL ANALYSIS**

1. **STANDARD FOR REVIEW**


   A motion to dismiss asserting sovereign immunity is based upon the trial court’s lack of subject matter jurisdiction rather than the merits of the litigant’s claim, and the party seeking to benefit from the waiver of sovereign immunity has the burden to establish waiver. *Evans*, 337 Ga. App. at 692, 788 S.E.2d at 580. Because sovereign immunity of a state agency is not an affirmative defense, the merits of the case cannot be addressed and only the issue of the trial court’s jurisdiction to hear the case is before the court. *Dupree*, 256 Ga. App. at 671, 570 S.E.2d at 5.

2. Plaintiffs' Claims for Declaratory Judgment and Injunctive Relief are Barred by Sovereign and Official Immunity.

A. Plaintiffs' Lawsuit Against Defendants is a Lawsuit Against the State Without its Consent and is Barred by Sovereign Immunity.

Plaintiffs' lawsuit is filed against Deal and Carr in their individual capacities. However, "naming a defendant individually in a complaint is not conclusive as to the capacity in which that defendant is sued. Instead, the reason for the suit is the determinative factor as to a defendant's capacity." Teston v. Collins, 217 Ga. App. 829, 830, 459 S.E.2d 452, 455 (1995). If it appears that Plaintiffs' action actually is a lawsuit against the State without its consent, then the fact that Plaintiffs have named Defendants solely in their individual capacity is immaterial. Musgrove v. Georgia R.R. & Banking Co., 204 Ga. 139, 155, 49 S.E.2d 26, 35 (1948).

Here, it is evident Plaintiffs do not have an actual controversy with either Defendant in his individual capacity arising out of enforcement or implementation of the Campus Carry Legislation. Both Deal and Carr are charged by the Constitution and statutes of this State with implementing and executing the law. See Ga. Const. Art. V, Sec. II, Para. II & O.C.G.A. § 45-12-26; Ga. Const. Art. V, Sec. III, Para. IV & O.C.G.A. § 45-15-3, respectively. Plaintiffs do not
seek to enjoin any action or inaction taken by either Defendant as individuals, but actions they have taken in fulfilling these constitutional duties.

Moreover, granting injunctive or declaratory relief against Defendants individually in favor of Plaintiffs would have no bearing on the current law of this State and would not affect either Defendant individually. The Supreme Court has held, regardless of who are named as parties in a lawsuit, if a judgment or decree would affect or control an action of the State, in any manner not prescribed by statute, such is a lawsuit against the State which cannot be brought without her consent. Evans v. Just Open Government, 242 Ga. 834, 839, 251 S.E.2d 546, 550 (1979). Plaintiffs’ lawsuit against Deal and Carr is an impermissible attempt to evade the general rule that a lawsuit cannot be maintained against the State without its statutory consent. Cannon v. Montgomery, 184 Ga. 588, 591, 192 S.E. 206, 208 (1937).

Lastly, Plaintiffs have clarified that naming Deal and Carr’s “successors in office” in the instant lawsuit was done to alleviate logistical complications if Defendants were to leave office. However, Defendants’ successors-in-office would not need to be bound by any ruling of this Court unless Plaintiffs’ lawsuit is against the State. A lawsuit against any person in his individual capacity is just that and differs greatly from a lawsuit to enjoin the Governor, the Attorney General and their successors from enforcing a statute that was enacted by the General Assembly.

Moreover, even if Plaintiffs seek to amend their Complaint to dismiss Defendants’ “successors-in-office,” their intent is still the same. Plaintiffs intend that any ruling from this Court remain in effect despite Deal’s and Carr’s terms ending in the next few months. They do not intend to continue an individual lawsuit against Deal when he leaves office in December 2018 or against Carr if he is not re-elected in November 2018. Rather, if an injunction is
granted, Plaintiffs intend for it to enjoin the newly-elected Governor and the Attorney General who replace Deal and/or Carr and that each would be similarly enjoined from enforcing the Campus Carry Legislation. This acknowledgement by Plaintiffs demonstrates Plaintiffs' lawsuit is actually against Defendants in their official capacities and is against the State. This bright line distinction forms the basis of this Court's finding that Plaintiffs have sued Defendants in their official, not individual, capacities despite the style of Plaintiffs' case.

A lawsuit against a state officer in his official capacity amounts to a lawsuit against the State itself and the doctrine of sovereign immunity bars lawsuits against the State where the State has not consented. Lathrop v. Deal, 301 Ga. 408, 425, 801 S.E.2d 867, 880 (2017). Consent to be sued can only be given by the Constitution itself or by an act of the General Assembly. Id. Having found the State is the actual party in interest in Plaintiffs' lawsuit, Plaintiffs must establish the State has waived sovereign immunity for Plaintiffs' lawsuit to survive dismissal. The Court finds Plaintiffs have failed to meet this burden. Because sovereign immunity extends to lawsuits for declaratory and injunctive relief even when a litigant is seeking relief against official acts that were alleged to be unconstitutional, Plaintiffs' lawsuit does not compel a different result. Id., 301 Ga. at 425, 801 S.E.2d at 880. Accordingly, Plaintiffs' lawsuit against Defendants cannot be maintained as a result of sovereign immunity.

B. Plaintiffs' Lawsuit Against Defendants in their Individual Capacities is Barred by Official Immunity Because Defendants Exercised a Discretionary Function.

To the extent Plaintiffs' request for declaratory and injunctive relief against Defendants is not barred by sovereign immunity, Defendants also are entitled to official immunity from lawsuit in their individual capacities. "When a county official is sued in his individual capacity, the doctrine of official immunity, as opposed to sovereign immunity" applies. Crosby v. Johnson, 334 Ga. App. 417, 421–22, 779 S.E.2d 446, 450 (2015). The Supreme Court has held official
immunity applies “[w]here an officer is invested with discretion and is empowered to exercise his judgment in matters brought before him . . . he is usually given immunity from liability to persons who may be injured as the result of an erroneous decision; provided the acts complained of are done within the scope of the officer’s authority, and without wilfulness, malice, or corruption.” Lathrop, 301 Ga. at 436, 801 S.E.2d at 886, citing Gormley v. State, 54 Ga. App. 843, 847-848, 189 S.E. 288, 291 (1936).

A discretionary act requires “the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed.” Crosby, 334 Ga. App. at 421-22, 779 S.E.2d at 450. Specifically, the Georgia Constitution charges Deal with responsibility for “law enforcement” and requires him to “take care that the laws are faithfully executed.” Ga. Const. Art. V, Sec. II, Para. II; O.C.G.A. § 45-12-26 (obligating the governor to “provide for the defense of any action . . . the result of which is of interest to the state because of any claim inconsistent with the state’s sovereignty, jurisdiction, or rights”). Similarly, Carr serves “as the legal advisor of the executive department” and represents Georgia “in all civil and criminal cases in any court when required by the Governor.” Ga. Const. Art. V, Sec. III, Art. IV and O.C.G.A. § 45-15-3 (setting forth duties of Attorney General).

Based on the constitutional authority vested in them, Defendants performed a discretionary action with their implementation and enforcement of the Campus Carry Legislation. In considering whether to veto the Legislation, like he did the previous year with HB 859, Deal had to engage in personal deliberation and judgment, examine facts, reach reasoned conclusions and act on them in a way not specifically directed. See, Crosby, 334 Ga. App. at 421-22, 779 S.E.2d at 450. To the extent Carr has exercised authority in enforcing the
Campus Carry Legislation, he, too, would have done such as a discretionary function. Therefore, both Defendants are “invested with discretion and [are] empowered to exercise [their] judgment in matters brought before [them]” and are clothed in immunity to the extent that Plaintiffs have been injured by Defendants’ actions which may have been erroneous “without wilfulness, malice, or corruption.” Lathrop, 301 Ga. at 436, 801 S.E.2d at 886. Accordingly, Plaintiffs have not asserted a viable claim against Defendants in their individual capacities that is not barred by official immunity and dismissal is warranted.

Because the question of sovereign immunity is a jurisdictional one, a finding by the Court that sovereign and/or official immunity bars a litigant’s claims warrants dismissal. McConnell v. Dep’t of Labor, 302 Ga. 18, 18, 805 S.E.2d 79, 80 (2017). The Court is, therefore, precluded from considering the merits of Plaintiffs’ request for injunctive and declaratory relief. Georgia Association of Professional Process Servers v. Jackson, 302 Ga. 309, 311, 806 S.E.2d 550, 553 (2017).


As with sovereign immunity, the question of a litigant’s standing must be addressed prior to the Court addressing the merits of the case. Standing is “‘[i]n essence the question of . . . whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues,’ and litigants must establish their standing to raise issues before they are entitled to have a court adjudicate those issues.” Sherman v. City of Atlanta, 293 Ga. 169, 172, 744 S.E.2d 689, 692 (2013)(internal citations omitted).

Defendants contend Plaintiffs do not have standing to pursue either declaratory or injunctive relief against Defendants and the Court agrees. The constitutional provision at issue in this case vests power in the BOR over the “government, control, and management of the
University System of Georgia and all of the institutions in said system.” Ga. Const. Art. VIII, Sec. IV, Para. 1(b). Plaintiffs' constitutional challenge is grounded in their contention that the General Assembly usurped the constitutional power and authority vested in the BOR. It is undeniable that Plaintiffs, their classrooms and campus environments have been and will continue to be impacted by the enactment of the Campus Carry Legislation. However, Plaintiffs lack standing to challenge this constitutional provision based on the allegations raised in their complaint since they are not members or affiliates of the BOR. See Bell v. Austin, 278 Ga. 844, 846, 607 S.E.2d 569, 573 (2005)(“A party will not be heard to complain of the violation of another person’s constitutional rights.”). The legislative text plainly states the duties and powers conferred lie solely with the BOR and does not confer rights on Plaintiffs as professors in the USG.

Even if Plaintiffs were considered to be third-party beneficiaries of the power and authority vested in the BOR pursuant to Ga. Const. Art. VIII, Sect. IV, Plaintiffs still lack standing. The Supreme Court adopted the third-party standing test set out in Powers v. Ohio, 499 U.S. 400, 411, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991) and held, “although constitutional rights must generally be asserted by the person to whom they belong, a litigant may assert the rights of a third-party in exceptional circumstances.” Feminist Women’s Health Center v. Burgess, 282 Ga. 433, 435, 651 S.E.2d 36, 38 (2007). The three-prong test set out in Powers requires a litigant to establish that 1) she has suffered an “injury in fact” giving it a sufficiently concrete interest in the outcome of the issue in dispute; 2) she has a close relationship to the third-party; and 3) there exists some hindrance to the third-party’s ability to protect its own interests. Id., 282 Ga. at 434–35, 651 S.E.2d at 38. As to prongs two and three, there is a lack of evidence that Plaintiffs have a relationship close enough to the BOR sufficient to warrant
Plaintiffs' prosecution of the BOR's interest in the instant litigation and that the BOR has been hindered from protecting its own interests.

Plaintiffs contend the BOR has delegated authority to them by virtue of their role as faculty in the USG. However, the evidence in the record shows the BOR has delegated certain authority to the governing bodies at USG institutions. There is an absence of evidence demonstrating that authority flows to individual faculty members. Furthermore, to the extent the BOR has delegated any authority to Plaintiffs as faculty members at their respective institutions, any actions taken by Plaintiffs would be subject to approval by the chancellors, presidents or boards of trustees at each of their respective institutions.

Moreover, the BOR has adopted, implemented and regulated provisions within the Campus Carry Legislation through its issuance of the May Memorandum. Therein, the BOR provided guidelines for the implementation of HB 280 at all USG campuses and outlined in detail places and instances where concealed weapons were not permitted pursuant to the legislation enacted. The BOR's May Memorandum abrogates Plaintiffs' contention that they have standing to file suit against Defendants challenging the constitutionally of the very legislation the BOR has adopted and begun to implement. It seems implausible that the BOR would have delegated authority to Plaintiffs that allows them to circumvent mandates issued by the BOR that are embodied in the May Memorandum. Accordingly, the Court finds Plaintiffs lack standing to bring suit against Defendants because the constitutional authority vested in the BOR has not been conferred on Plaintiffs.

**CONCLUSION**

Plaintiffs are not entitled to injunctive or declaratory relief because the State has not waived sovereign immunity, and, to the extent Plaintiffs claims could be sustained against Defendants in their individual capacities, official immunity would bar such claims. Finally, even
if the State has waived sovereign immunity and official immunity did not apply to Defendants. Plaintiffs lack standing to seek the relief they have requested. The Court cannot address the merits of Plaintiffs' lawsuit because immunity and lack of standing are jurisdictional hurdles Plaintiffs simply cannot overcome. See Gonzalez v. Georgia Dep't of Transp., 329 Ga. App. 224, 225–26, 764 S.E.2d 462, 463 (2014). Accordingly, the Court hereby DENIES Plaintiffs' request for Injunctive Relief and GRANTS Defendants' Motion to Dismiss Plaintiffs' Complaint.

Notably, this Court is hardly unsympathetic to Plaintiffs' concerns eloquently raised during oral arguments that there are grave doubts and uncertainty as to what remedy, if any, they along with other esteemed USG faculty, staff, aggrieved students and concerned parents may pursue to contest the Campus Carry Legislation enacted by the General Assembly, signed into law by Governor Deal and enforced by Attorney General Carr. Despite the grave, irrefutable statistics concerning gun violence on K-12 campuses and at institutions of higher education1, the judiciary is powerless in the wake of the enactment of the Campus Carry Legislation and constrained by the letter of the law. In the absence of consent to suit in the State Constitution or an act of the General Assembly upon further consideration of the impact this legislation will most certainly have on their constituents across the State of Georgia, sadly, guns will continue to be permitted on USG campuses and the palpable potential for violence committed upon innocent,

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1 The Citizens Crime Commission of New York City found a total of 190 shootings at colleges and universities throughout America between 2001 and 2016. Of those 190 shootings, 167 resulted in casualties and 270 resulted in injuries. The victims included 290 students across 142 college campuses where these shootings occurred. Notably, an estimated 2.5 million students were directly or indirectly exposed to gun violence. The highest number of campus shootings occurred in Tennessee (14), California (14), Virginia (13), Georgia (13), North Carolina (11), and Florida (11). Ashley Cannon, Citizens Crime Commission of New York City, Aiming at Students: The College Gun Violence Epidemic (October 2016), http://www.nycrimecommission.org/pdfs/CCC-Aiming-At-Students-College-Shootings-Oct2016.pdf (emphasis added).
unsuspecting, most often defenseless members of college campus communities will continue to
loom large and foreboding.

SO ORDERED this 9th day of August, 2018.

HONORABLE KIMBERLY M. ESMOND ADAMS
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

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But the procedural irregularities and issues didn’t end there. On April 2, 2018, Carl Bussjaeger published an article, which was later updated, [Update] Bumbling Machinations on Bump Stocks? See, Exhibit 5. 21 In his article, he details the trials and tribulations of trying to find the appropriate docket, based on the NPR in this matter, and the differing number of comments putatively submitted and available for review between three separate dockets. When he submitted an inquiry to ATF regarding these issues, without explaining why there are three separate related dockets, ATF Senior Industry Operations Investigator Katrina Moore responded that he should use https://www.regulations.gov/document?D=ATF-2018-0002-0001; yet, ATF

21 A copy of the article is also available online at – http://zelmanpartisans.com/?p=5071. See also, http://zelmanpartisans.com/?p=5055.
failed to relay that information to the public at large or place notices on the other two related
dockets informing interested individuals of the location where they can submit their comments.

When other federal administrative agencies have failed to provide a statutorily mandated
comment period or issues arose during the comment period, whereby the comment period was
thwarted by technological or other delays, those agencies have extended the applicable comment
periods. See, e.g., Department of the Interior -- Fish & Wildlife Service, Endangered and
Threatened Wildlife and Plants; Extending the Public Comment Periods and Rescheduling
Public Hearings Pertaining to the Gray Wolf (Canis lupus) and the Mexican Wolf (Canis lupus
baileyi), 78 Fed. Reg. 64192 (Oct. 28, 2013); Environmental Protection Agency, Extension of
Review Periods Under the Toxic Substances Control Act; Certain Chemicals and
Microorganisms; Premanufacture, Significant New Use, and Exemption Notices, Delay in
Processing Due to Lack of Authorized Funding, 78 Fed. Reg. 64210 (Oct. 28, 2013); Department
of the Interior -- Fish & Wildlife Service, New Deadlines for Public Comment on Draft
Environmental Documents, 78 Fed. Reg. 64970 (Oct. 30, 2013); Department of Labor --
Occupational Safety and Health Administration, Occupational Exposure to Crystalline Silica;
Extension of Comment Period; Extension of Period to Submit Notices of Intention to Appear at
Public Hearings; Scheduling of Public Hearings, 78 Fed. Reg. 35242 (Oct. 31, 2013);
Department of Agriculture -- Food and Nutrition Service, Supplemental Nutrition Assistance
Program: Trafficking Controls and Fraud Investigations; Extension of Comment Period, 78 Fed.
Reg. 65515 (Nov. 1, 2013); Federal Communications Commission, Revised Filing Deadlines
Following Resumption of Normal Commission Operations, 78 Fed. Reg. 65601 (Nov. 1, 2013);
Federal Trade Commission, Ganley Ford West, Inc.; Timonium Chrysler, Inc.; TRENDnet, Inc.;
Collection Activities (Consumer Product Warranty Rule, Regulation O, Affiliate Marketing Rule), 78 Fed. Reg. 65649 (Nov. 1, 2013); Federal Communications Commission, Revised Filing Deadlines Following Resumption of Normal Commission Operations, 78 Fed. Reg. 66002 (Nov. 4, 2013). In this rulemaking proceeding, by refusing to extend the comment period and failing to notify interested parties of the correct docket for filing comments, ATF failed to mitigate the harm caused by these procedural irregularities and issues that were resultant from ATF’s own conduct and actions. Thus, ATF has failed to provide the statutorily-mandated public comment period and caused public confusion as to whether or not the comment period was open or closed and the appropriate docket for the filing of comments. More disconcerting is that this is not the first time that ATF has acted in this manner during the rulemaking process. 22

D. ATF’s Prior Lack of Candor Demonstrates a Heightened Need for Procedural Regularity

The litany of procedural irregularities in this proceeding would undermine the efforts of an agency with a sterling reputation for fairness and candor. ATF has a well-documented record of “spinning” facts and engaging in outright deception of the courts, Congress, and the public. Many of the examples of such conduct arise precisely in the area of regulation of NFA firearms

as detailed in the Motion in Limine filed in United States v. Friesen, CR-08-041-L (W.D. Okla. Mar. 19, 2009). See Exhibit 6. In light of that record, there is an even greater need for ATF to provide the underlying documents that would permit scrutiny of whether it has fairly characterized issues in the NPR, engaged in a fair consideration of alternatives, only inadvertently provided misleading information about its proposed rule in relation to the Las Vegas incident and operation of bump-stock-devices, omitted pertinent documents – especially its own determinations that bumpstocks were not even firearms, let alone, machineguns – from the docket only through an oversight, and only accidentally failed to provide a 90-day comment period.

1. **ATF’s “Institutional Perjury” Before the Courts**

ATF’s NFA Branch Chief, Thomas Busey, advised ATF employees in the course of a training program that the National Firearms Registration and Transfer Record (“NFRTR”) database had an error rate “between 49 and 50 percent” in 1994. Exhibit 6, p. 14. Yet, despite acknowledging such a high error rate, he observed that “when we testify in court, we testify that the database is 100 percent accurate. That's what we testify to, and we will always testify to that.” *Id.* Judges have overturned their own imposition of criminal convictions upon learning of this information, *see, e.g., id.*, pp. 16-17, information that should have routinely been provided to defense counsel in advance of trial as *Brady* material. See also *id.*, p. 6. It is difficult to imagine a more powerful admission that an agency had knowingly, repeatedly misled courts.

This blatant “institutional perjury” took place not only in the context of criminal prosecutions but also in support of numerous probable cause showings for search warrants.

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23 In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court required that government investigators and prosecutors provide criminal defendants with potentially exculpatory information.
Indeed, NFA Branch Chief Busey expressly addressed that situation. Despite acknowledging an NFRTR error rate of 49 to 50 percent, he told his ATF audience “we know you're basing your warrants on it, you’re basing your entries on it, and you certainly don’t want a Form 4 waved in your face when you go in there to show that the guy does have a legally-registered [NFA firearm]. I’ve heard that happen.” *Id.*, p. 15.

Using data obtained from ATF in response to FOIA requests, Eric M. Larson demonstrated that ATF apparently had added registrations to the NFRTR years after the fact, reflecting the correction of errors apparently never counted as errors. *Id.*, pp. 21-28. While reassuring courts as to the accuracy of the NFRTR, at the same time ATF seemed to be adding missing information to the database when confronted with approved forms that had not been recorded in the database. *Id.*, pp. 26-28. As a result of the questions raised by Mr. Larson, both ATF and the Treasury Department Inspector General conducted investigations. *Id.*, pp. 29-31.

In the course of the resulting investigations, ATF’s Gary Schaible recanted sworn testimony he had given years earlier in a criminal prosecution. *Id.*, pp. 30-33. The Inspector General’s October 1998 report rejected Mr. Schaible's effort to explain away his prior sworn testimony, concluding: “National Firearms Act (NFA) documents had been destroyed about 10 years ago by contract employees. We could not obtain an accurate estimate as to the types and number of records destroyed.” *Id.*, pp. 32-33. It is difficult to understand how ATF could routinely provide Certificates of Nonexistence of a Record (“CNRs”) to courts without disclosing that an unknown number of records were destroyed rather than processed for the NFRTR.  

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24 In *Friesen* itself, the prosecution introduced duplicate ATF records of the approved transfer of a NFA firearm (bearing the identical serial number), but differing in the date of approval. (footnote continued)
2. **ATF’s Deception in Congressional Oversight**

In response to a Congressional inquiry, a DOJ Inspector General advised that a request for documents that reflected errors in the NFRTR had been “fully processed” when, in fact, the documents had merely been sent to another component – ATF itself – so as to delay disclosure. See Exhibit 6, pp. 12-14. Moreover, ATF changed the meaning of terms like “significant” errors thereby frustrating any attempt to ascertain the true error rate. See _id._, p. 19. So too, when a congressionally-mandated audit found a “critical error” rate in the NFRTR of 18.4%, the Treasury Department Inspector General seemingly manipulated audit procedures at the instigation of the NFA Branch so as to produce a more acceptable figure. _Id._, pp. 35-39.

Congress remained sufficiently concerned about inaccuracies in the NFRTR to appropriate $1 million (in Fiscal Years 2002 and 2003) for ATF to address remaining issues. _Id._, p. 39. In 2007, however, Dr. Fritz Scheuren advised Congress that “serious material errors” continued to plague the NFRTR that ATF “has yet to acknowledge”. _Id._, p. 41.

As recently as June 2012, failure to answer questions about ATF’s botched “Fast and Furious” gun-walking operation prompted the House of Representatives to find Attorney General Holder in both civil and criminal contempt. See Exhibit 7.

3. **ATF’s Misleading of the Public**

When, after a prolonged period of evasion, ATF finally produced a transcript of NFA Branch Chief Busey’s remarks in the training session in response to FOIA requests, the transcript had been “corrected” by ATF’s Gary Scheible to minimize damage to ATF. See Exhibit 6, p. 17.

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(footnote continued)

Exhibit 6, pp. 48-49. ATF could not explain the situation. _Id._, p. 49. Nor could ATF find the original documents underlying the computerized entries. _Id._, p. 52.
Among those corrections, Mr. Schaible asserted that he was unaware that any ATF employee had ever testified that the NFRTR was 100% accurate.

In order to frustrate public inquiries into the Waco Raid, ATF participated in a game of “shifting the paperwork and related responsibilities” among DOJ components and other law enforcement agencies. *Id.*, pp. 13-14.

Former Acting Chief of the NFA Branch, Mr. Schaible, testified that ATF repeatedly – in 2000, 2001, 2002, 2003, 2005, 2008 – approved NFA transfer forms without following procedures to update the information in the NFRTR. *See* Exhibit 8, pp. 398-414. The consequence of those failures was that members of the public received contraband machineguns accompanied by genuine ATF-approved forms indicating that the purchaser had acquired a legally-registered firearm, only to have ATF subsequently seize the machineguns from innocent purchasers.

*   *   *

ATF’s long record of shading the truth to mislead courts, Congress, and the public, underscores the serious nature of the procedural irregularities in this rulemaking. In order to permit meaningful public participation, ATF must provide access to the materials it has placed in issue.

II. ATF’S PROPOSED RULE RAISES IMPORTANT CONSTITUTIONAL ISSUES

Because judicial review of any final rule promulgated by ATF may consider not only compliance with the APA but also all alleged violations of the U.S. Constitution, *see, e.g.*, Porter *v. Califano*, 592 F.2d 770, 780 (5th Cir. 1979), it is incumbent upon ATF to take such
considerations into account in this rulemaking proceeding. Where, as here, agency rulemaking would inherently impact constitutional rights, that impact is among the matters the APA requires the agency to consider in evaluating regulatory alternatives and to address in a reasoned explanation for its decision. See R.J. Reynolds Tobacco Co. v. FDA, 696 F.2d 1205 (D.C. Cir. 2012); Pearson v. Shalala, 164 F.3d 650 (D.C. Cir. 1999).

A. The Second Amendment

Nowhere in the NPR did ATF demonstrate the slightest awareness that it is proposing to regulate in an area involving fundamental constitutional rights. Congress has not amended the NFA since the U.S. Supreme Court confirmed that “the Second Amendment conferred an individual right to keep and bear arms.” District of Columbia v. Heller, 554 U.S. 570, 595 (2008). Consequently, it would seem exceptionally important for ATF to consider the background constitutional issues in formulating policy, particularly as ATF’s proposed rule would outright ban bump-stock devices, thereby burdening the exercise of this constitutional right held by law-abiding citizens. Where fundamental, individual constitutional rights are at issue, an agency engaged in rulemaking cannot rely on a conclusory assertion in order to “supplant its burden to demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.” Ibanez v. Florida Dep't of Business & Professional Regulation, 512 U.S. 136, 146 (1994). Yet, in direct defiance of this Supreme Court dictate, as discussed supra and infra in Sections I., B. and IV., D., ATF has failed to provide any evidence

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25 Agency determinations with respect to constitutional issues, however, are not entitled to any deference on judicial review. See J.J. Cassone Bakery, Inc. v. NLRB, 554 F.3d 1041, 1044 (D.C. Cir. 2009) (quoting Lead Indus. Ass'n Inc. v. EPA, 647 F.2d 1130, 1173-74 (D.C. Cir. 1980)).
that (1) bump-stock devices have actually ever been used in the facilitation of a crime,\textsuperscript{26} (2) that casualties \textit{could} be reduced in an incident involving a bump stock, since there is no evidence demonstrating that there have been any causalities attributable to bump-stock devices, (3) that this rule will assist first responders, and (4) that “they could be used for criminal purposes” any differently than any other item that is currently available throughout the United States. Rather, ATF relies solely on the conclusory assertions of public comments to an Advanced Notice of Proposed Rulemaking to determine the benefits of the very rulemaking it is considering. In soliciting potential benefits from the public and suggesting them without evidence, ATF has run afoul of the words of wisdom contained in another decision issued by the Supreme Court stating that “[w]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.” \textit{Pennsylvania Coal Co. v. Mahon}, 260 U.S. 393, 416 (1922).

While ATF claims that this rule is necessary to carry out the will of Congress, as discussed \textit{infra} in Section III., ATF lacks the authority to alter the definition of a machinegun as it was enacted by the Congress. Even Senator (and ranking member of the Senate Judiciary Committee) Diane Feinstein, the lead sponsor of the now-expired federal ban on so-called “assault weapons” and author or sponsor of voluminous other proposed gun control legislation, declared that “ATF lacks authority under the law to ban bump-fire stocks. Period.” \textit{See}, Exhibit 9.

\textsuperscript{26} \textit{See} Fns. 4, 6, \textit{supra}. 

Even a broken clock is right twice a day, and, similarly, Senator Feinstein is correct in her assessment of the ATF’s lack of authority for its bump-stock NPR.

Furthermore, as discussed supra in Section I., A., ATF only states that it received correspondence from an undisclosed number of members and failed to place that/those correspondence(s) into the docket. The will of Congress cannot simply be derived from the writings of a small number of Senators or Representatives – especially writings outside of the legislative record – nor has it been in the past. 27

While it is impossible to know for certain, given the NPR’s dearth of analysis and discussion of the Second Amendment, it may well be that the ATF, without stating so, believes that the NPR does not violate the fundamental, individual right to keep and bear arms by considering bump-stock devices to be both “dangerous and unusual weapons” and “not commonly possessed by law-abiding citizens for lawful purposes today.” Caetano v. Massachusetts, 136 S. Ct. 1027, 1031-1032 (2016). But as the Court recently reminded in

Caetano, the controlling rule set forth in Heller “is a conjunctive test: A weapon may not be banned unless it is both dangerous and unusual.” Id., at 1031 (emphasis in original). However, ATF does not discuss these factors, and instead walks right past the necessary analysis (and the Court’s clear direction). The NPR fails to show that a bump-stock device is both “dangerous and unusual,” or even that it would materially affect the dangerousness of any firearm so equipped, which are already dangerous per se. The ATF’s proposed total ban self-evidently lacks necessary tailoring – indeed, its lack of tailoring underscores its overwhelming breadth – and amounts to the total destruction of the right of law-abiding people to keep and bear the affected items for self-defense and other lawful purposes.

B. The Fifth Amendment

ATF’s proposed rule violates the Due Process and Takings clauses of the Fifth Amendment to the U.S. Constitution by failing to provide notice to affected parties of a compelled forfeiture or destruction, entrapping otherwise law-abiding citizens, and failing to provide just compensation for the property in question.

1. The Proposed Rulemaking Violates Due Process

   i. ATF has Failed to Provide Notice and Opportunity to Response to All Interested Parties

   Although, as discussed supra in Section I., A., ATF has failed to place into the docket any of its prior ten determinations between 2008 and 2017 that bump-stock-devices do not even
constitute firearms, let alone, machineguns (83 Fed. Reg. at 13445), it is admitted by ATF that it publicly approved of the bump-stock-type devices, which, per ATF (83 Fed. Reg. at 13451), is believed to have resulted in over half a million bump-stock-devices being produced and sold. Furthermore, to the extent the NPR applies to slamfire shotguns and firearms, Gatling guns, and triggers, there are tens of millions of such firearms and devices in private ownership. Yet, ATF has failed to provide individual notice to all those known to own or possess a bump-stock-device, let alone those owning or possessing slamfire shotguns and firearms, as well as, Gatling guns, and triggers; thereby, potentially depriving those individuals of an opportunity to respond, in direct violation of due process. As there can be no dispute, as discussed infra Section II., B., i., that those owning and possessing bump-stock-devices and other firearms and devices covered by the NPR, have a vested property interest in their firearms and devices, ATF was required, at a minimum, to take all possible steps to identify those known to own or possess these firearms and devices and provide them, each, with notice of this rulemaking proceeding, since it directly affects their property interests.

ii. The Rulemaking Proposal Constitutes Entrapment Given ATF’s Prior Approvals and Public’s Reliance Thereon

Although ATF publicly approved bump-stock-devices on at least ten occasions between 2008 and 2017 (83 Fed. Reg. at 13445; see also Exhibit 10) and issued ATF Ruling 2004-5 and Revenue Ruling 55-528, 1955-2 C.B. 482, in relation to Gatling guns, it now seeks to severely criminalize the possession of those very same bump-stock-devices – and potentially

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28 FPC believes that they have found three of the ten determinations that were issued between 2008 and 2017, which are attached as Exhibit 10. See also, https://www.cbsnews.com/news/can-the-atf-regulate-bump-stocks-the-device-used-by-the-las-vegas-shooter/; https://perlmutter.house.gov/uploadedfiles/atf_response_04.16.13.pdf.
29 Available at https://www.atf.gov/file/83561/download
“slamfire” shotguns and firearms, Gatling guns, and triggers – at the expense of law-abiding individuals who have relied on those determinations, followed appropriate procedures and complied with the law. This sudden change in position after eight years of reliance by the public on determinations to the contrary, clearly constitutes entrapment since the agency invited reliance on its consistent decisions and now seeks to unfairly impose criminal penalties for the public’s reliance, with potential punishment of 10 years imprisonment, pursuant to 18 U.S.C. § 924(a)(2). As declared by the U.S. Supreme Court, “[e]ntrapment occurs only when criminal conduct was the ‘product of the creative activity of law-enforcement officials.’…. a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal.” *Sherman v. United States*, 356 U.S. 369, 372 (1958) (internal citation omitted). The Court continued that it is unconstitutional for the Government to beguile an individual “into committing crimes which he otherwise would not have attempted.” *Id.* at 376. In this matter, by changing the definition of a machinegun, ATF seeks to entrap citizens who have simply purchased a federally-approved firearm accessory. Thus, ATF has set a trap with, by their own estimate, the potential to ensnare 520,000 law-abiding citizens; whereby, those law-abiding citizens can be imprisoned for up to 10 years, without even receiving individual notice of ATF’s reversal of position. 83 Fed. Reg. 13451.

2. *The Proposal Constitutes a Taking Without Just Compensation*

   i. *The Fifth Amendment Precludes a Regulatory Taking*

   ATF’s proposed rule will force law-abiding citizens to forfeit or destroy their lawfully

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30 The actual number may be significantly larger – possibly triple or quadruple the stated number – depending on all the firearms and devices to which the NPR applies, as discussed *supra* and *infra*. 
purchased, owned, and possessed property, in violation of the Fifth Amendment. The Takings Clause of the Fifth Amendment to the U.S. Constitution provides that when private property, real or personal, is taken or destroyed by the government, the government must pay just compensation to the person(s) whom the property was taken from. *Horne v. Dep’t of Agric.*, 135 S. Ct. 2419, 2425-28 (2015) (applying Takings Clause to personal property); *Pumpelly v. Green Bay & Mississippi Canal Co.*, 80 U.S. 166, 177 (1871) (applying Takings Clause to destroyed property not used for public purpose). The general rule states that a regulatory action constitutes a taking under the Fifth Amendment when the action goes *too far* in regulating private property. *Mahon*, 260 U.S. at 415. Moreover, the Supreme Court has declared that “[a] ‘taking’ may be more readily found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life.” *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978). As this regulation is clearly not meant to adjust the benefits or burdens of economic life, the compelled forfeiture or destruction of bump-stock-devices and other firearms and devices covered by the NPR constitutes a physical invasion and taking by government; and therefore, ATF must address and provide for the payment of just compensation to each individual who would be deprived of their property under the NPR.

As reflected in the Verified Declaration of Damien Guedes, he purchased a Bump Fire Systems’ bump-stock-device, *only after ensuring the legality of the device and relying on ATF’s determination* to Bump Fire System that the device was lawful and did not constitute a machinegun. *See Exhibit 15.* Matthew Thompson, likewise, issued a Verified Declaration stating that he purchased a Slide Fire bump-stock-device, *only after ensuring the legality of the device and relying on ATF’s determination* to Slide Fire that the device was lawful and neither
constituted a firearm nor a machinegun. See Exhibit 16. Thus, both Mr. Guedes and Mr. Thompson, in reliance on ATF’s prior determinations, purchased bump-stock-devices, which ATF now seeks to reclassify as a machinegun – in violation of the ex post facto clause of the U.S. Constitution, discussed infra – and seeks to force their surrender or destruction of the bump-stock-devices, in the absence of just compensation, all in violation of the takings clause of the U.S. Constitution.

Since ATF failed to address the takings aspects of this proposed rule, including, as discussed supra and infra, its potential application to shotguns and firearms that are capable of “slamfiring”, as well as, Gatling guns, and triggers, interested parties have been denied meaningful review of ATF’s position in this regard; however, to the extent ATF contends that an individual would lack a possessory interest in a bump-stock-device and other firearms and devices covered by the NPR as a result of the proposed rule being enacted, the U.S. Supreme Court has already held that while an individual may lose his/her possessory interest in a firearm or other tangible or intangible object, the individual does not lose his/her property or ownership interest in the object. *Henderson v. United States*, 135 S.Ct. 1780, 1785 (2015) (holding that even where an individual is prohibited from purchasing and possessing firearms, he/she still retains a property interest in firearms previously acquired.). Furthermore, as the proposed rule constitutes a per se taking, the Government must provide just compensation. *Nixon v. United States*, 978 F.2d 1269, 1284 (D.C. Cir. 1992). Thus, even if ATF enacted the proposed rule, it would still be responsible for paying just compensation to each person deprived of his/her property.

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31 See 83 Fed. Reg. 13348, where ATF acknowledges that the proposal is a reclassification.
32 As reflected in the declarations, Mr. Guedes paid a total of $105.99 for his bump-stock-device and Mr. Thompson paid a total of $134.00 for his bump-stock-device.
ii. Cost-Impact Statement Fails to Address Just Compensation for the Taking

Once again, ATF has denied interested individuals meaningful review and opportunity to comment by failing to address the economic impact when factoring in the just compensation that it is constitutionally-obligated to pay law-abiding citizens, who own bump-stock-devices and other firearms and devices covered by the NPR, if it proceeds with the proposed rule. While ATF provides detailed tables concerning the anticipated economic loss to producers, retailers, and consumers, the proposed rule fails to provide information on how the Government will fulfill its obligation to compensate affected individuals for the taking. As reflected in the proposal, ATF assumes “an average sale price for bump-stock-devices from 2012-2017 [of] $200.00,” while acknowledging that the prices ranged from $179.95 to $425.95. 83 Fed. Reg. 13451. The proposal then declares the primary estimated cost to be $96,242,750.00 based on ATF’s primary estimate of 520,000 bump-stock-devices having been produced. Id. However, multiplying ATF’s stated average price of $200.00 by the primary estimate yields a value of $104,000,000.00, not $96,242,750.00 as stated in Table 3. Moreover, by averaging the acknowledged prices for bump-stock-devices, a proper average sale price should be $302.95, which would result in a primary estimated cost of $157,534,000.00 in just compensation being due. Additionally, both estimated costs may be grossly under-estimated given ATF’s proposed changes to 27 C.F.R. § 447.11 and 27 C.F.R. 478.11, since they would seemingly include any device – inclusive of rubber bands and belt loops. More disconcerting, as mentioned on page 6 of the Savage Comment, the proposed rule would seemingly apply to hundreds of thousands, if not millions, of shotguns and

other firearms, which are capable of “slamfiring” 34 which would constitute “firing without additional physical manipulations of the trigger by the shooter.” It would also seemingly overrule – without any notice and opportunity to comment – ATF Ruling 2004-5 35 and Revenue Ruling 55-528, 1955-2 C.B. 482, in relation to Gatling guns and result in reclassification of their status – i.e. turning the millions of owners into felons overnight and without just compensation being provided. Given that the price, per Gatling gun, can be as high as $124,000.00, if not more, the reclassification of Gatling guns would result in a substantial upward calculation of the cost estimate in this matter.

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35 Available at https://www.atf.gov/file/83561/download.
Even more disconcerting, as discussed *infra* in Section V., given ATF’s argle-bargle and interpretive jiggery-pokery, the NPR can be construed as applying also to triggers and fingers, which again, would result in a skyrocketing upward calculation of the cost estimate in this matter.

Regardless of the estimate considered, ATF has failed to address any appropriations available to it or, more generally, the Department of Justice to fund these takings and any such fund, if limited solely to bump-stock-devices, must have a high estimate of $221,494,000.00 ($425.95 x 520,000) available to ensure that all individuals are justly compensated. If, on the other hand, the proposal will apply to shotguns and other firearms capable of “slamfiring”, as well as Gatling guns, triggers and fingers, there must be an allocation of no less than $50,000,000,000,000.00.

Thus, before ATF can proceed in this matter, it must provide logistical information as a part of its cost-impact statement detailing how it plans to pay compensation including, but not limited to, the compensation rate, timeline for completing payment, source of the funding, and sequestration of an appropriate amount in an account restricted to paying just compensation in this matter. Thereafter, it must provide interested parties with a meaningful opportunity to respond, which, per 18 U.S.C. § 926(b), cannot be shorter than ninety days.

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36 The average value under state and federal workers compensation acts across the U.S. for the loss of an index finger is $24,474.00, with the federal value being $86,788.00. Accordingly, as a federal rate is set, at a minimum, ATF would be required to utilize this value. *See* Exhibit 31, also *available at* [https://projects.propublica.org/graphics/workers-compensation-benefits-by-limb](https://projects.propublica.org/graphics/workers-compensation-benefits-by-limb).

37 With there being between 270,000,000 and 310,000,000 gun owners in the U.S. (*see* [http://www.pewresearch.org/fact-tank/2013/06/04/a-minority-of-americans-own-guns-but-just-how-many-is-unclear](http://www.pewresearch.org/fact-tank/2013/06/04/a-minority-of-americans-own-guns-but-just-how-many-is-unclear)), the takings alone in relation to fingers, utilizing the low 270 million gun owner estimate, would be $23,432,760,000,000.00 or 270,000,000 x $86,788.00.
C. The Ex Post Facto Clause

Pursuant to Article 1, Section 9, Clause 3 of the U.S Constitution, “No Bill of Attainder or ex post facto Law shall be passed.” The U.S. Supreme Court in Calder v. Bull, 3 U.S. 386 (1798) held that an ex post facto law includes, inter alia, “[e]very law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action.” The Court later recognized that the provision reached far enough to prohibit any law which, “in relation to the offence or its consequences, alters the situation of a party to his disadvantage.” Collins v. Youngblood, 497 U.S. 37, 47 (1990).

1. ATF’s Proposal Acknowledges that Bump-stocks are not Covered by the Definition of a Machinegun and Retroactively Criminalizes Lawful Conduct

On at least two occasions in the proposed rulemaking, ATF acknowledges that the current definition of a machinegun does not cover bump-stock-type devices that it now seeks to regulate. 83 Fed. Reg. 13444, 13448. ATF then explicitly declares that if the final rule is consistent with the proposal, there will be no mechanism for current holders of bump-stock-type devices – or any other firearm or device covered by the NPR – to register them and will therefore be compelled to dispose of them. 83 Fed. Reg. 13448. There is no dispute, and ATF readily admits, that its proposed rule would change the definition of a machinegun; thereby, affecting numerous sections of federal law and immediately turning, at a minimum, half a million law-abiding citizens into criminals overnight. ATF’s proposal neither includes a grandfather provision nor a safe harbor, even for a limited period of time. More disconcerting – as if such

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38 It likewise does not cover rubber bands, belt loops, slamfire shotguns and firearms, Gatling guns, triggers, or fingers.
were fathomable in anything but an Orwellian nightmare – is the fact that those possessing bump-stock-devices will have no knowledge of whether any final rule will be implemented, the text of that rule, and the date, as the final rule would become effective immediately upon the signature of Attorney General Sessions, without prior publication to the public. But that’s no big deal, right? It’s only 10 years in jail and $250,000.00, per violation. Thank God that Article 1, Section 9, Clause 3 precludes such. 39

Just as there can be no dispute that the current definition of machinegun does not cover bump-stock-devices, rubber bands, belt loops, “slamfire” shotguns and firearms, Gatling guns, triggers, and fingers, as evidenced by the proposed rule seeking to modify the regulatory definition of machinegun, there can be no dispute that the proposed rule violates the *ex post facto* Clause, even though it is a regulatory action because the “sanction or disability it imposes is ‘so punitive in fact’ that the law ‘may not legitimately be viewed as civil in nature.’” *United States v. O'Neal*, 180 F.3d 115, 122 (4th Cir. 1999) (quoting *U.S. v. Ursery*, 518 U.S. 267, 288 (1996)).

III. ATF’S PROPOSAL EXCEEDS ITS STATUTORY AUTHORITY

From the outset, it is clear that the NFA was designed to provide a basis for prosecution of “gangsters” with untaxed, unregistered firearms and not as a regulation of law-abiding citizens who complied with the law. ATF has turned the statutory scheme on its head, imposing ever more draconian burdens on law-abiding citizens who seek to make and acquire NFA firearms

39 FPC make this statement pursuant to their First Amendment rights under the U.S. Constitution to the extent that ATF has not seemingly sought to abrogate that inalienable right in the NPR, although ATF has declared its intent, in violation of the First Amendment, not to consider comments containing what it deems to be “inappropriate language” for which FPC will vigorously challenge in court.
while diverting resources to do so from investigating and prosecuting criminals who use illegal means to obtain NFA firearms.

ATF describes the NFA in terms that go beyond the statutory text. According to ATF's Website, the NFA’s “underlying purpose was to curtail, if not prohibit, transactions in NFA firearms.” http://www.atf.gov/content/firearms/firearms-industry/national-firearms-act (emphasis added). It describes the $200 tax imposed by the NFA as having been designed “to discourage or eliminate transactions in these firearms.” Id. (emphasis added). But Congress has never “prohibited” NFA firearms or “eliminated” the ability to transfer them provided the tax is paid and registration procedures are followed.

A. Congress Prohibited “Undue or Unnecessary” Restrictions

Congress has, in fact, legislated to limit the authority of ATF to impose more burdens on law-abiding citizens. Congress was aware of ATF's over-zealous interpretation of the NFA when it enacted the Firearms Owners' Protection Act ("FOPA"), Pub. L. 99-308, 110 Stat. 449 (1986). It would be an understatement to say that Congress thought ATF had reached the maximum boundary of its rulemaking and enforcement authority. Well aware of ATF’s history, as discussed supra in Section I., D., made clear in FOPA that ATF’s regulation and enforcement activities of legal owners of firearms – like those who seek to register firearms under the NFA – had already gone too far. Congress found that not only were statutory changes needed to protect lawful owners of firearms, but that “enforcement policies” needed to be changed as well. FOPA § 1(b). In doing so, Congress reaffirmed that “it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms,” id. (emphasis added), signaling in the strongest
possible language that ATF should not impose yet additional burdens on law-abiding citizens, especially in light of the existing criminal laws prohibiting, *inter alia*, murder, manslaughter, aggravated assault, etc. Yet, that is precisely what ATF’s proposed rule would do.

**B. Independent of FOPA, ATF Lacks Statutory Authority As the Congress Defined What Constitutes a Machinegun**

Even without consideration of FOPA, there are ample reasons to doubt that Congress authorized ATF to formulate the proposed regulation, as Congress, itself, defined what constitutes a machinegun when enacting the NFA in 1934 and the GCA in 1968 and numerous members of Congress have stated that ATF lacks the authority to redefine what constitutes a machinegun. As an administrative agency cannot override a congressional enactment, ATF lacks authority and jurisdiction to amend or otherwise modify the definition of a machinegun as enacted by the Congress.

In the original NFA as enacted in 1934, and reaffirmed in enacting the GCA in 1968, the Congress expressly defined what constitutes a machinegun. 18 U.S.C. § 921(a)(23) states “[t]he term ‘machinegun’ has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).” 26 U.S.C. § 5845(b) declares:

The term “machinegun” means 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. The term shall also include 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, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(Emphasis added).
ATF proposes to expand the definition of what a “machinegun” means by adding the following two sentences to the end of the current definition found in 27 C.F.R. §§ 478.11 and 479.11.  

For purposes of this definition, the term “automatically” as it modifies “shoots, is designed to shoot, or can be readily restored to shoot,” means functioning as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger; and “single function of the trigger” means a single pull of the trigger. The term “machine gun” includes bump-stock-type devices, i.e., devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.


And, lest there be no dispute, even Senator Diane Feinstein declared that “ATF lacks authority under the law to ban bump-fire stocks. Period.” See Exhibit 9. And ATF previously admitted to Congress that it “does not have authority to restrict [bump-stock devices’] lawful possession, use or transfer.” See Exhibit 10, p. 5. More importantly, as confirmed by J. Thomas Manger, President of the Major Cities Chiefs Association and Chief of Police of Montgomery County, in his testimony before the Senate Judiciary Committee, ATF Acting Director Thomas Brandon admitted that “ATF does not now have the authority under Federal law to bar [bump-stock-devices] and new legislation is required to do so.” See Exhibit 30, p. 3 (emphasis added).

And the courts have agreed that such an alteration is beyond the power of ATF. “As a rule, [a] definition which declares what a term ‘means’ ... excludes any meaning that is not stated.” Colautti v. Franklin, 439 U.S. 379, 392–393, n. 10, 99 S.Ct. 675, 58 L.Ed.2d 596 (1979). Congress clearly defined the meaning of the term “machinegun” as evidenced by its use of the

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40 The definition of “machinegun” contained in 27 C.F.R. §§ 478.11 and 479.11 mirrors the definition Congress gave the term in 26 U.S.C. § 5845(b).
phrase “[t]he term ‘machinegun’ means.” 41 Even if ATF could define the terms “automatically” and “single function of the trigger”, which is disputed, ATF lacks the authority to unilaterally declare an item to be a machine gun when it falls outside the statutory parameters, particularly by incorporating it into the definition itself. 42

“If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-843 (1984).

“Congress knows to speak in plain terms when it wishes to circumscribe, and in capacious terms when it wishes to enlarge, agency discretion.” City of Arlington, Tex. V. F.C.C., 569 U.S. 290, 296 (2013).

Here, there can be no question that the intent of Congress was clear. Congress sought to regulate firearms that: 1) shoot, 2) were designed to shoot, or 3) can be readily restored to shoot, 4) automatically more than one shot, without manual reloading, 5) by a single function of the trigger. This can be gleaned from an analysis of the debate surrounding the passage of the legislation. “Mr. Frederick.[] The distinguishing feature of a machine gun is that by a single pull of the trigger the gun continues to fire as long as there is any ammunition in the belt or in the magazine. Other guns require a separate pull of the trigger for every shot fired, and such guns are not properly designated as machineguns. A gun…which is capable of firing more than one shot by single pull of the trigger, a single function of the trigger, is properly regarded, in my

41 Even Dictionary.com defines the term “Machine Gun” to mean “a small arm operated by a mechanism, able to deliver rapid and continuous fire as long as the trigger is pressed.” Available at: http://www.dictionary.com/browse/machine-gun. ATF taking such a nuanced approach to parsing specific terms to shoehorn a particular group of accessories into the definition flies in the face of the statutory text’s plain meaning.

42 See 18 U.S.C. 926(a) “The Attorney General may prescribe only such rules and regulations as are necessary to carry out provisions of this chapter…” (Emphasis added).

For the purposes of this analysis, a machinegun can be distilled down to: a firearm which shoots automatically more than one shot, without manual reloading, by a single function of the trigger. Congress also sought to regulate the frames or receivers of such weapons, along with any parts that could be used to make or convert a firearm into a machinegun. Such an interpretation is in line with prior court and agency decisions. See Staples v. United States, 511 U.S. 600 (1994) (“The National Firearms Act criminalizes possession of an unregistered ‘firearm,’ 26 U.S.C. § 5861(d), including a ‘machinegun,’ § 5845(a)(6), which is defined as a weapon that automatically fires more than one shot with a single pull of the trigger, § 5845(b).”); see also Id. at n1 (“As used here, the terms ‘automatic’ and ‘fully automatic’ refer to a weapon that fires repeatedly with a single pull of the trigger. That is, once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted. Such weapons are ‘machineguns’ within the meaning of the Act.”).

Moreover, the Government has previously argued to a Federal Court that a bump-stock-device was not a machinegun. “While the shooter receives an assist from the natural recoil of the weapon to accelerate subsequent discharge, the rapid fire sequence in bump firing is contingent

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43 See also ATF Rul. 2004-5 quoting George C. Nonte, Jr., Firearms Encyclopedia 13 (Harper & Rowe 1973) (the term “automatic” is defined to include “any firearm in which a single pull and continuous pressure upon the trigger (or other firing device) will produce rapid discharge of successive shots so long as ammunition remains in the magazine or feed device – in other words, a machine gun”); Webster’s II New Riverside-University Dictionary (1988) (defining automatically as "acting or operating in a manner essentially independent of external influence or control"); John Quick, Ph.D., Dictionary of Weapons and Military Terms 40 (McGraw-Hill 1973) (defining automatic fire as "continuous fire from an automatic gun, lasting until pressure on the trigger is released").
on shooter input in pushing the weapon forward, rather than mechanical input, and is thus not an automatic function of the weapon.” See Exhibit 25, page 22.

The statutory language is explicitly clear as to what constitutes a machinegun and is inclusive of parts that can be used to assemble a functioning firearm. ATF acknowledges that bump-stock-devices are not currently able to be regulated as machineguns because it seeks to amend the definition to specifically include them and other firearms and devices covered by the NPR, discussed supra and infra. Notably absent from the statutory text is language, specifically or implicitly, naming parts that can be used in conjunction with a firearm, which is not a machinegun, to simulate automatic fire.

C. ATF is Statutorily Prohibited From Retroactively Applying the NPR

ATF has acknowledged that it is precluded from taking any action with regard to the reclassification of bump-stock-devices manufactured prior to at least March 29, 2018. As noted in ATF Rul. 82-8, the reclassification of SM10 and SM11A1 pistols and SAC carbines as machineguns, under the National Firearms Act, was not applicable to those firearms manufactured before or assembled before June 21, 1982 pursuant to 26 U.S.C. § 7805(b). 26 U.S.C. § 7805(b) states:

Retroactivity of regulations.--
(1) In general.--Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:
(A) The date on which such regulation is filed with the Federal Register.
(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.
(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.
More recently, in enacting ATF-41F (81 Fed. Reg. 2658 through 2723), ATF seemingly invoked Section 7805(b) in declining to retroactively apply the final rule and instead permitting a six month delay in implementation of the final rule and acknowledging that all applications submitted prior to the effective date would be adjudged by the law as it existed prior to the final rule, regardless of whether the application was approved before the effective date of the final rule.

Thus, any final regulation that is promulgated has no effect on bump-stock-devices and other firearms and devices covered by the NPR, which were manufactured, at a minimum, prior to the date of publication of this NPR in the Federal Register.

IV. ATF’S PROPOSAL IS ARBITRARY AND CAPRICIOUS

Contrary to the contention in the proposed rulemaking, bump-firing is neither the result of any particular firearm accessory, device or part nor the modification thereof. Rather, it is a technique that can be utilized with the intrinsic capabilities of most *factory* semi-automatic firearms, including the rifles, such as the AR-15, and pistols, such as the 1911. As reflected *infra* and admitted by ATF (83 Fed. Reg. 13454), bump-firing can be done with a belt loop, a rubber band, or just one’s finger. More importantly, no device – whether bump stock, belt loop, rubber band or finger – changes the intrinsic capability of the firearm to be bump-fired. This is made explicitly evident by Jerry Miculek, who can not only shoot faster than an individual employing bump-fire but can shoot far more accurately. 44

44 *See* Exhibits 3 and 4.
Thus, the proposed rule in this matter is so completely arbitrary and capricious that it will not withstand scrutiny. See, Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co., 463 U.S. 29, 42-44 (1983).

A.  **ATF’s Interpretative Jiggery-Pokery is Pure Applesauce**

As reflected in the expert report of former ATF Acting Chief of the Firearms Technology Branch Rick Vasquez, bump-stock-devices do not constitute a machinegun, as they are not designed to shoot more than one shot by a single function of the trigger. See Exhibit 32. Specifically, he declares that a “Slide Fire [stock] does not fire automatically with a single pull/function of the trigger” and as a result, “ATF could not classify the slide fire as a machinegun or a machinegun conversion device, as it did not fit the definition of a machinegun as stated in the GCA and NFA.” *Id.* More importantly, although ATF has failed to disclose it in the NPR or docket, the Slide Fire determination “was sent to Chief Counsel and higher authority for review. After much study on how the device operates, the opinion, based on definitions in the GCA and NFA, was that the Slide Fire was not a machinegun nor a firearm, and, therefore, did not require any regulatory control.” *Id.*

Thus, regardless of the interpretative jiggery-pokery employed by ATF in the NPR, at the end of the day, it is pure applesauce.

B.  **Belt Loops, Rubber Bands and Fingers, OH MY!**

Reflecting the absolutely arbitrary and capricious nature of this rulemaking, ATF admits – albeit at the end of the proposal in the “Alternatives” section – that an individual does not require a bump-stock-device in order to bump-fire a factory semi-automatic firearm. 83 Fed.
Reg. 13454. In fact, ATF readily acknowledges that bump-firing can be lawfully achieved through the “use [of] rubber bands, belt loops, or [to] otherwise train their trigger finger to fire more rapidly,” in a clear statement of its intent to unequally apply the law. *Id.*

Numerous videos and articles are available reflecting individuals bump-firing with everything from their finger to belt loops and rubber bands. For example, P.M.M.G. TV posted a video in 2006 of a rubber band being utilized to bump fire a factory semi-automatic firearm. *See Exhibit 11.* \(^{45}\) In 2011, StiThis1, posted a video of him utilizing his belt loop to bump-fire his AK-47. *See Exhibit 12.* \(^{46}\)

More importantly, reflecting that no device is necessary to bump-fire a factory semi-automatic firearm, ThatGunGuy45 posted a video of him bump-firing an AK-47 style rifle with his finger. *See Exhibit 13.* \(^{47}\) Similarly, M45 posted a video of him bump-firing both an AK-47 and AR-15 solely with his finger. *See Exhibit 14.* \(^{48}\) In no better example, former former ATF Acting Chief of the Firearms Technology Branch Rick Vasquez, who previously reviewed bump-stock-devices – specifically the Slide Fire bump-stock – while with ATF, after declaring that a bump-stock-device is not statutorily or regulatorily a machinegun, \(^{49}\) demonstrates the

\(^{45}\) A copy of the video is also available online – Shooting Videos, *Rapid manual trigger manipulation (Rubber Band Assisted)*, YouTube (Dec. 14, 2006), [https://www.youtube.com/watch?v=PVfwFP_RwTQ&t.](https://www.youtube.com/watch?v=PVfwFP_RwTQ&t.)

\(^{46}\) A copy of the video is also available online – StiThis1, *AK-47 75 round drum Bumpfire!!!*, YouTube (Sept. 5, 2011), [https://www.youtube.com/watch?v=03y3R9o6hA](https://www.youtube.com/watch?v=03y3R9o6hA).

\(^{47}\) A copy of the video is also available online – ThatGunGuy45, ‘*Bump Fire’ without a bump-fire stock, courtesy of ThatGunGuy45*, YouTube (Oct. 13, 2017), [https://www.youtube.com/watch?v=9fD_BX-af0&t.](https://www.youtube.com/watch?v=9fD_BX-af0&t.)

\(^{48}\) A copy of the video is also available online – M45, *How to bumpfire without bumpfire stock*, YouTube (Oct. 8, 2017), [https://www.youtube.com/watch?v=7RdAhTxyP64&t.](https://www.youtube.com/watch?v=7RdAhTxyP64&t.) *See also*, wrbuford13, *How To: Bump fire a semi-automatic rifle from the waist*, YouTube (May 25, 2011), [https://www.youtube.com/watch?v=wZCO-06qRgY](https://www.youtube.com/watch?v=wZCO-06qRgY).

\(^{49}\) During his interview, he declares “[i]f Congress wants to change the law and come up with a new interpretation, then ATF will follow that new interpretation. But until they do that, they have to go by the [law] they have today.”
ability of a factory semi-automatic AR-15 and AK-47 to bump-fire solely with his finger. See Exhibit 17.  

Expert Vasquez then goes on to declare, in response to a question of what if Congress bans bump-fire devices, “[w]hat are they going to ban? If they come out today and say the Slide Fire Stock or the binary trigger by name is made illegal, they’re going to have to make illegal the operating principle.” Id.

Beyond showing that the proposed rulemaking in this matter is completely arbitrary and capricious, as no device is even necessary to bump-fire a factory semi-automatic firearm, these videos and others that are available on YouTube and other social media platforms, reflect that law-abiding citizens have been bump-firing long before Al Gore invented the internet; and yet, ATF cannot produce a single shred of evidence of a bump-stock-device ever having been utilized in a crime.

C. The Jerry Miculek Example – He’s One Bad Mother… Shut Your Mouth (And: Oh No! They Banned Jerry!)

As mentioned supra, Jerry Miculek not only can shoot faster than an individual employing a bump-stock-device but can shoot far more accurately. See Exhibit 3 and 4. Even more evident of the completely arbitrary and capricious nature of this proceeding is the video compendium of Mr. Miculek’s abilities and achievements, which depicts that “he did it. He did 8


50 A copy of the video is also available online – Vice News, Meet One Of The Analysts Who Determined That Bump Stocks Were Legal, YouTube (Oct. 11, 2017), https://www.youtube.com/watch?v=kryIJJrD5eQ&t.

51 It has to be true – he said it on live TV… https://www.youtube.com/watch?v=BnFJ8cHAlco.

rounds in one second, on one target. He did 8 rounds on four targets in 1.06 [seconds]. Six shots and reload and six shots in 2.99 seconds.” See Exhibit 18. 53 Thus, as individuals can achieve, with greater accuracy, faster cyclic rates than those utilizing bump-stock-devices, the underlying premise of this proceeding is completely arbitrary and capricious.

More disconcerting is that to the extent ATF contends in the NPR that it is carrying out some unverified and unsupported contention of Congress to ban anything mimicking the rate of fire of a machinegun 54 (83 Fed. Reg. 13447) – a rate of which varies greatly 55 and neither has a commonly accepted average rate nor a proposed rate by ATF – Mr. Miculek would seemingly be banned by any final promulgated rule, in violation of his Constitutional Rights and reflecting the sheer absurdity of this NPR.

D. Whoops, We Did it Again! ATF Misleads the Public Regarding the Use of Bumpstock Devices in the Las Vegas Shooting

As discussed supra in Section I., B., while implying that a bump-stock-device was utilized in the Las Vegas shooting, ATF has failed to provide evidence of a single instance where a bump-stock-device was utilized in the commission of a crime and neither ATF nor FBI have confirmed the use of a bump-stock-device in any crime. Instead, ATF relies solely on prior

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53 A copy of the video is also available online – Fastest Shooter OF ALL TIME! Jerry Miculek | Incredible Shooting Montage, DailyMotion (2014), https://www.dailymotion.com/video/x2y1eb8.
54 In fact, ATF’s assertion is contradicted by the testimony in enacting the NFA – previously cited to by ATF in federal court proceedings – which reflects the Congress’ intent that guns which “require a separate pull of the trigger for every shot fired, … are not property designated as machineguns.” Exhibit 29, p. 40.
55 For example, the Metal Storm gun has a cyclic rate of fire of 1,000,000 rounds (that isn’t a typo), per minute (see, http://www.businessinsider.com/worlds-fastest-gun-2016-2), a minigun has a rate of fire of 6,000 rounds, per minute (id.), and some have as slow of a cyclic rate as 200 rounds, per minute (see, https://encyclopedia2.thefreedictionary.com/Cyclic+rate).
“public comments,” which are merely conjecture, to suggest that a bump-stock-device was utilized in Las Vegas (83 Fed. Reg. 13454), 56 while thereafter declaring that bump-stock devices “could be used for criminal purposes.” (83 Fed. Reg. 13455)(emphasis added). The use of the word “could” reflects that such use is merely speculative and limited to a possible future, not past, occurrence. More importantly, as ATF is involved in the investigation into the Las Vegas shooting, it is in the unique position to have evidence reflecting the use of bump-stock-devices in the shooting, if such devices were utilized; yet, it has not only failed to submit any evidence even suggesting the use of bump-stock-devices in the Las Vegas shooting but has failed to even contend, based on its own knowledge, that such devices were utilized. Additionally, the Las Vegas Metropolitan Police Department Preliminary Investigative Report likewise provides no indication that any bump-stock-devices were utilized in the shooting. See, Exhibit 2. 57

Thus, ATF acknowledges that but for public conjecture, it has no evidence or knowledge that a bump stock device has been utilized in a crime and only hypothesizes that a bump-stock device “could be used for criminal purposes.” Moreover, as discussed supra in Section I., D., based on ATF’s lack of candor before the courts, Congress, and the public, any contention by ATF that such devices were utilized in the Las Vegas shooting must be dismissed, in the absence of independently-verifiable evidence in support.

Further, ATF’s argument as to why they need to be regulated is misleading.

56 Given ATF’s prior use of proxies in rulemaking proceedings to support its contentions, these alleged “public comments” cannot be taken at face value, especially in the absence of any evidentiary support. See Firearms Industry Consulting Group’s comment in response to ATF-41P, RIN: 1140-AA43, available at https://www.regulations.gov/document?D=ATF-2013-0001-8364, wherein it documents in Section G the ATF’s use of proxies in rulemaking proceedings to support its own contentions.
Commenters also argued that banning bump-stock-type devices will not significantly impact public safety. Again, the Department disagrees. The shooting in Las Vegas on October 1, 2017, highlighted the destructive capacity of firearms equipped with bump-stock-type devices and the carnage they can inflict. The shooting also made many individuals aware that these devices exist—potentially including persons with criminal or terrorist intentions—and made their potential to threaten public safety obvious. The proposed regulation aims to ameliorate that threat.


This position is no more valid than asserting that drill presses and the internet need to be regulated because individuals with criminal or terrorist intentions can readily access a drill press to manufacture a machine gun after viewing a video on the internet, or even fabricate a firearm from a chunk of raw aluminum. (Nevermind the fact that a person can purchase ammonium nitrate and nitromethane, or pressure cookers, to build a bomb.) In the land of hypotheticals, anything and everything could be perceived to be and categorized as a potential threat to public safety. But a hypothetical should not and cannot be the premise of a proposed regulation.

E. **We Lied To You Once (Shame On Us). We Lied To You More Times Than We Can Count (Shame On You For Having Your Eyes Wide Shut). The Continuing Lies Espoused By ATF Regarding The Functionality Of Bump-Stock-Devices**

In the Summary for the NPR, ATF claims that bump-stock-devices allow a shooter of a semiautomatic firearm to initiate a *continuous firing cycle with a single pull of the trigger*. Specifically, these devices convert an otherwise semiautomatic firearm into a machinegun *by functioning as a self-acting or self-regulating mechanism* that harnesses the recoil energy of the semiautomatic firearm in a manner that *allows the trigger to reset and continue firing without additional physical manipulation of the trigger by the shooter*. Hence, a semiautomatic firearm to which a bump-stock-type device is attached is able to produce automatic fire with a *single pull of the trigger*.


Even setting aside former Acting Chief of the Firearms Technology Branch Richard Vasquez’s expert report disputing ATF’s current contention (discussed *supra* in Section IV., A.,
and Exhibit 28) and before addressing the video evidence of the outright falsity of these assertions, let us first review the known determinations issued by ATF and the sworn testimony and pleadings submitted by ATF to the courts regarding bump-stock-devices.

On June 07, 2010, ATF issued a determination letter to Slide Fire, holding that

The stock has no automatically functioning mechanical parts or springs and performs no automatic mechanical function when installed. In order to use the installed device, the shooter must apply constant forward pressure with the non-shooting hand and constant rearward pressure with the shooting hand. Accordingly, we find that the “bump-stock” is a firearm part and is not regulated as a firearm under the Gun Control Act or the National Firearms Act.

See Exhibit 10 (emphasis added.)

Thus, ATF has already admitted that the Slide Fire stock does not operate automatically and is neither self-acting nor self-regulating. But what about Bump Fire Systems’ bump-stock-device? Glad you asked.

On April 2, 2012, ATF issued a determination letter to Bump Fire Systems, declaring that

The FTB live-fire testing of the submitted devices indicates that if, as a shot is fired, an intermediate amount of pressure is applied to the fore-end with the support hand, the shoulder stock device will recoil sufficiently rearward to allow the trigger to mechanically reset. Continued intermediate pressure applied to the fore-end will then push the receiver assembly forward until the trigger re-contacts the shooter’s stationary firing hand finger, allowing a subsequent shot to be fired. In this manner, the shooter pulls the firearm forward to fire each shot, the firing of each shot being accomplished by a single trigger function.

... Since your device is incapable of initiating an automatic firing cycle that continues until either the finger is released or the ammunition supply is exhausted, FTB find that it is not a machinegun as defined under the NFA, 26 U.S.C. 5845(b), or the Gun Control Act, 18 U.S.C. 921(a)(23).

See Exhibit 10 (emphasis in original, emphasis added.)

Once again, now in relation to Bump Fire Systems’ bump-stock device, ATF found that bump-stock-devices are incapable of automatic firing and require a mechanical reset of the
trigger – no different than any other semi-automatic firearm – and thus, are not capable of a continuous firing cycle with a single pull of the trigger.

But, in sworn testimony and pleadings submitted to the courts, ATF contended bump-stock-devices were machineguns, right? Nope.

As reflected on page 20 of the U.S. Government’s Brief in Support of Cross Motion for Summary Judgment and in Opposition to Plaintiff’s Motion for Summary Judgment in Freedom Ordinance Mfg. Inc., v. Thomas E. Brandon:

An ATF expert testified that a true trigger activating devices [i.e. bump-stock-devices], although giving the impression of functioning as a machine gun, are not classified as machine guns because the shooter still has to separately pull the trigger each time he/she fires the gun by manually operating a lever, crank, or the like.

See Exhibit 25 (emphasis added).

Hence, ATF in sworn testimony and pleadings submitted to the United States District Court, Southern District of Indiana, admitted that the function of bump-stock-devices requires the shooter to separately pull the trigger each time he/she fires the gun, which is two-levels removed from being a machinegun.  

So, the question becomes, was ATF lying then, or is it lying now? There can be no dispute, it’s lying now.

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58 The use of the terminology two-levels removed from being a machinegun is in relation to the explicit definition of machinegun that was enacted by the Congress in 26 U.S.C. § 5845(b), which for a firearm to constitute a machinegun, requires it to shoot “automatically more than one shot … by a single function of the trigger.” As acknowledged by ATF, since the trigger is pulled (i.e. a single function of the trigger) and then released (i.e. a second and separate single function of the trigger), before the subsequent round can be fired, a bump-stock-device is two-levels removed from being a machinegun, as it still would not constitute a machinegun, even if a subsequent round was discharged on the release of the trigger. ATF has determined that this is a proper analysis of Section 5845(b) in approving binary triggers, which permit the discharge of a round on both the pull and release of the trigger.
In response to this NPR, a video was recorded depicting the actual function of a bump-stock-device. See Exhibit 28. See also Exhibit 33 Declaration of Jonathan Patton. As reflected in the video, a magazine full of ammunition is placed into an AR-15 type firearm that has a Slide Fire bump-stock-device installed onto it. The shooter then proceeds to fire the bump-stock equipped firearm with the stock in the locked position. As depicted, the bump-stock-device neither self-acts nor self-regulates and the shooter proceeds to fire several rounds, without the bump-stock automatically firing more than one round, per function of the trigger. The video clearly depicts the trigger being pulled, the gun firing a round, the bolt carrier group cycling and the trigger being released and reset. In fact, for a subsequent round to be fired, two single and separate functions of the trigger are necessary – the release of the trigger and the subsequent pull of the trigger, which is no different than any other factory semi-automatic firearm. The shooter then proceeds to unlock the stock so that it can move freely on the buffer tube and fire the gun one handed. Once again, the video clearly depicts the trigger being pulled, the gun firing a round, the bolt carrier group cycling and the trigger being released and reset. At not point does the gun fire more than one round per function of the trigger.

Additionally, the close-ups reveal, contrary to ATF’s contention (83 Fed. Reg. 13447), that “additional physical manipulation of the trigger by the shooter” is necessary for subsequent

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59 A copy of the video is also available online – Adam Kraut, Esq. and Patton Media and Consulting, Bump Stock Analytical Video, (June 14, 2018), available at https://youtu.be/1OyK2RdO63U.
60 The actual device is a Slide Fire SSAR-15 SBS.
61 This position is the same as any other AR-15 type firearm with an adjustable stock.
62 Thus, contrary to the NPR, bump-stock-devices do not cause a continuous firing cycle with a single pull of the trigger.
63 If the bump-stock-device actually turned the firearm into a machinegun, the entire magazine of ammunition would have been expended, when the shooter maintained constant pressure on the trigger. See Exhibit 26. A copy of the video is also available online – Molon Labe, hogan 7 m16.wmv, YouTube (Oct. 25, 2011), is https://www.youtube.com/watch?v=NwQ1aZnVLFA.
rounds to be discharged. Of course, all of this is irrefutably consistent with ATF’s prior
determinations and sworn testimony and pleadings submitted to the courts.

So what if the shooter shoots the bump-stock equipped AR-15 in the manner depicted by
the NPR – i.e. while “maintaining constant forward pressure with the non-trigger hand on the
barrelshroud or fore-grip of the rifle, and maintaining the trigger finger on the device’s extension
ledge with constant rearward pressure?” 83 Fed. Reg. 13443. Clearly, it will shoot automatically,

When the shooter maintains constant forward pressure with the non-trigger hand on the
barrelshroud or fore-grip of the rifle, while maintaining the trigger finger on the device’s
extension ledge with constant rearward pressure, after the first shot is discharged, the trigger
must be released, reset, and pulled completely rearward, before the subsequent round is
discharged – again no different than any factory semi-automatic firearm. Moreover, as evidenced
by the close-ups, contrary to ATF’s assertion (83 Fed. Reg. 13443, 13447), “bump-stock-type
devices [do not] allow multiple rounds to be fired when the shooter maintains pressure on the
extension ledge of the device,” as the shooter in the video specifically maintains pressure on the
extension ledge of the device the entire time; and yet, only a single round is discharged each
time.

Surely, the video must not depict the actual function of a bump-stock-device, right?
Wrong.

Former Acting Chief of the FTB and expert Rick Vasquez was responsible for reviewing
and making a determination on the Slide Fire stock, when it was submitted to the FTB for
evaluation and classification. See Exhibit 32. After concluding that the Slide Fire stock was
neither a firearm nor a machinegun under the NFA and GCA, the determination was “reviewed
by ATF Chief Counsel and higher authorities within ATF and affirmed.” Id. More recently, he
reviewed the Bump Stock Analytical video (Exhibit 28) and declared that it “fully, explicitly, and
accurately depicts the function of bump-stock-devices, including, but not limited to, the function
and operation of the firearm’s trigger, which is exactingly consistent with my evaluation and
review of the Slide Fire stock during my tenure with ATF and my Slide Fire Analysis.” Id. He
then goes on to explain that as depicted in the video:

a. The bump-stock-device neither self-acts nor self-regulates, as the bump-stock
never fires, in any of the three possible ways to fire a bump-fire-device, more than
one round, per function of the trigger, even while the shooter maintained constant
pressure on the extension ledge. In fact, as explicitly and accurately depicted in
the slow motion portions, the bump-stock-device requires two functions of the
trigger before a subsequent round can be discharged (i.e. after the firearm is
discharged for the first time, the trigger must be fully released, reset, and then
fully pulled rearward for a subsequent round to be discharged); 64

b. Bump-stock-devices do not permit a continuous firing cycle with a single pull of
the trigger, as the video clearly depicts that the trigger must be released, reset, and
fully pulled rearward before the subsequent round can be fired; 65

c. The bump-stock-device requires additional physical manipulation of the trigger
by the shooter, as the video clearly depicts that the trigger must be released, reset,
and fully pulled rearward before the subsequent round can be fired;

d. Even when the shooter maintains constant forward pressure with the non-trigger
hand on the barrel shroud or fore-grip of the rifle, and maintains the trigger finger
on the device’s extension ledge with constant rearward pressure, after the first
shot is discharged, the trigger must be released, reset, and pulled completely

64 It must be noted, as made explicitly clear in the slow motion portions of the video, that the
bump-stock-device actually requires over-releasing of the trigger, as the shooter’s finger travels
past the trigger reset by approximately a half-inch, before beginning the sequence to fire a
subsequent round (e.g. video at 3:46 – 3:51; 3:52 – 3:55; 3:56 – 4:00). Thus, the video makes
extremely evident and clear that bump-stock-devices are actually slower than a trained shooter,
as a trained shooter, such as Jerry Miculek, would immediately begin the sequence to fire a
subsequent round after the trigger resets.

65 If the device had permitted continuous firing cycle with a single pull of the trigger, the video
would depict a scenario identical to Exhibit 26 of Firearm Policy Coalition’s Comment (also
available at https://www.youtube.com/watch?v=NwQ1aZnVLFA), where it clearly and
accurately depicts the emptying of the entire magazine, while the shooter maintains constant
pressure on the trigger.
rearward, before the subsequent round is discharged. See video at 3:47 – 4:01. This is no different than any factory semi-automatic firearm; and,

e. The bump-stock-device does not permit automatic fire by harnessing the recoil energy of the firearm. Harnessing the energy would require the addition of a device such as a spring or hydraulics that could automatically absorb the recoil and use this energy to activate itself. If it did harness the recoil energy, the bump-stock equipped firearm in the video would have continued to fire, while the shooter’s finger remained on the trigger, after pulling it rearwards without requiring the shooter to release and reset the trigger and then pull the trigger completely rearward for a subsequent round to be fired.

So where does this leave us? It leaves us with ATF’s prior determinations and sworn testimony and pleadings submitted to the courts as being legally and factually indisputable, with the contrary statements in the NPR being solely designed to carry out a false narrative on the functionality of bump-stock-devices and to appease Attorney General Jeff Sessions and President Donald Trump. 66

Surely, ATF hasn’t sought to further mislead the public, right? Wrong.

Once again in the NPR, ATF contends that “[s]hooters use bump-stock-type devices with semiautomatic firearms to accelerate the firearm’s cyclic firing rate to mimic automatic fire” (83. Fed. Reg. 13444)(emphasis added); yet, as discussed supra in Section I., B. and supported by Expert Declaration of Vasquez and the Savage Comment, the mechanical cyclic rate of both the semi-automatic and fully-automatic versions of a firearm are identical (and thus cannot be accelerated), except where the manufacturer purposely slows the rate of fire for the machinegun-version; whereby, in such instances, the semi-automatic-version can exceed the cyclic rate of the machinegun-version.

66 See Memorandum of February 20, 2018 to Attorney General Sessions from President Donald Trump, “directing the Department of Justice to dedicate all available resources to complete the review of the comments received, and, as expeditiously as possible, to propose for notice and comment a rule banning all devices that turn legal weapons into machineguns,” available at https://www.whitehouse.gov/presidential-actions/presidential-memorandum-application-definition-machinegun-bump-fire-stocks-similar-devices.
F. *The Akins Accelerator Difference*

There is a fundamental difference in the manner in which the Akins Accelerator works versus a bump-fire-device. The Government had previously described the function of the Akins Accelerator in a brief filed in Federal Court.

To operate the Akins Accelerator, the shooter pulled the trigger one time, initiating an automatic firing sequence, which in turn caused the rifle to recoil within the stock, permitting the trigger to lose contact with the finger and manually reset (move forward). Springs then forced the rifle forward in the stock, forcing the trigger against the finger, which cause the weapon to discharge the ammunition until the shooter released the constant pull the ammunition is exhausted. Put another way, *the recoil and spring-powered device cause the firearm to cycle back and forth, impacting the trigger finger, which remained rearward in a constant pull, without further impact by the shooter, thereby creating an automatic firing effect.*

*See Exhibit 25. (Emphasis added).*

However, as the video (see Exhibit 28) and Expert Vasquez’s Declaration (see Exhibit 32) reflect, a single pull of the trigger on a firearm equipped with a bump-fire-device does not cause the firearm to cycle back and forth automatically. In order to have the firearm cycle and fire another round, mechanical input from the shooter is required. The shooter must both pull the trigger to the rear and push forward on the fore end of the firearm. Absent any additional input in a forward direction by the shooter, the firearm fires only a single round, even where the trigger is continuously held to the rear. Perhaps the description is best stated by the Government’s own brief. “While the shooter receives an assist from the natural backfire of the weapon to accelerate subsequent discharge, *the rapid fire sequence in bumpfiring is contingent on shooter input,*

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67 While FPC do not agree that an Akins Accelerator constitutes a machinegun, they acknowledge the 11th Circuit’s opinion in *Akins v. U.S.*, 312 Fed.Appx. 197 (11th Cir. 2009) and assume that court’s holding for the purposes of this analysis.
rather than mechanical input, and thus it cannot shoot ‘automatically’.” See Exhibit 25.

(Emphasis added).

As is clearly demonstrated in the video, Expert Vasquez’s Declaration and by the Government’s own argument, bump-stock-devices are only capable of being fired in a rapid manner 68 when the shooter him or herself adds mechanical input with a forward push on the fore end of the firearm; however, such affirmative action by the shooter does not result in the bump-stock-device turning the firearm into a machinegun. Otherwise, Jerry Miculek and others will be banned by the implementation of the NPR.

V. ATF’S PROPOSAL IS OVERLY VAGUE AND CONTRADICTORY

ATF’s proposed regulation is overly vague and potentially encapsulates a number of firearms and other products 69 that are commercially available.

Notably, ATF’s proposed definition includes

“..devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter.”

83 Fed. Reg. 13457. This language could incorporate a variety of triggers that are currently on the market, which are lawfully possessed and utilized. Utilizing the same flawed logic ATF used to turn a bump-stock-devices into a machine gun, ATF would merely need to assert that by

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68 As discussed supra throughout Section IV. and in the Declaration of Expert Vasquez, this still requires the trigger to be released, reset, and pulled completely rearward, before a subsequent round is discharged; thereby, requiring two separate and distinct functions of the trigger, which precludes any finding that the device is a machinegun or otherwise causes the firearm to which it is attached to fire “automatically”.

69 As discussed supra, beyond regulating bump-stock-devices, it would also seemingly include, rubber bands, belt loops, fingers, “slamfire” shotguns and firearms, Gatling guns, triggers, and other devices (e.g. Hellfire trigger mechanisms).
placing forward pressure on the gun while holding the trigger to the rear and allowing the recoil energy of the firearm to move the firearm enough to reset the trigger, that the trigger could constitute a bump-stock-device, resulting in a variety of products designed for the competition shooter to be banned overnight. Likewise, as discussed supra in Section IV., the technique of bump firing only requires the use of one’s finger – as admitted by ATF in numerous court filings – thereby resulting in ATF’s ability to contend that fingers, in and of themselves, are bump-stock-devices under the NPR. Moreover, the proposal could also apply to everything from rubber bands and belt loops to slamfire shotguns and firearms.

Such interpretations would leave thousands of gun owners unsure as to the status of their particular firearm, device, or even finger, creating an influx of requests for determinations from ATF and making compliance with the proposed regulation the equivalent of navigating a minefield without proper guidance. Moreover, as discussed infra in Section II, it raises a plethora of constitutional issues in relation to the Second and Fifth Amendment and Article I, Section 9, Clause 3 of the U.S. Constitution.

Even if one were to set the vagueness issues aside, the NPR is contradictory as it contends that bump-stock-devices must be outlawed, while permitting rubber bands, belt loops and fingers, which operate in an identical manner as bump-stock-devices. Specifically, in the NPR, ATF contends that bump-stock-devices can “mimic automatic fire when added to semiautomatic rifles” which Congress sought to outlaw (83 Fed. Reg. 13447); yet, thereafter, in Alternative 2 (83 Fed. Reg. 13454), declares that “individuals wishing to replicate the effects of bump-stock-type devices could also use rubber bands, belt loops, or otherwise train their trigger

70 Such determinations would be of questionable value given ATF’s contention in the NPR that it can overturn its own determination on a whim or to appease politicians by utilizing interpretive jiggery-pokery.
finger to fire more rapidly.” As discussed supra in Section IV. and the video exhibits specified therein, individuals can bump fire factory semi-automatic firearms with rubber bands, belt loops, and their fingers and some shooters, like Jerry Miculek, can not only shoot faster than an individual employing a bump-stock-device but can shoot far more accurately. Thus, this entire NPR is contradictory to its stated purpose and underlying authority.

VI. ATF FAILED TO CONSIDER VIABLE AND PRECEDENTIAL ALTERNATIVES

In the proposal, ATF offers three alternatives. See 83 Fed. Reg. 13454. While FPC fully supports ATF moving forward under Alternative 1, to the extent that ATF decides to move forward with some form of rule – despite the major constitutional, statutory, precedential and procedural issues presented by this rulemaking – there are viable alternatives, not previously considered, that would mitigate some of the constitutional and other issues.

A. FPC Supports “Alternative 1”

FPC fully support ATF not taking any further action in this rulemaking proceeding. Moreover, as discussed throughout this Comment, ATF is foreclosed – constitutionally, statutorily, precedentially and procedurally – from taking any action as described in the NPR.

B. The Amnesty Alternative

Pursuant to Section 207(d) of 82 Stat. 1235, also known as the Gun Control Act of 1968,

71 “Alternative 1 – No change alternative. This alternative would leave the regulations in place as they currently stand. Since there would be no changes to regulations, there would be no cost, savings, or benefits to this alternative.”

72 To the extent ATF ignores the many issues raised in this and other comments, and moves forward with a final rule, FPC will likely seek judicial relief to invalidate and enjoin the enforcement of any final rule.
(see Exhibit 19), the Attorney General 73 has the power to establish amnesty periods for up to ninety days. In fact, an amnesty was previously held between November 2, 1968, to December 1, 1968 and ATF promulgated a regulation – 26 C.F.R. § 179.120, entitled “Registration of Firearms” (see Exhibit 20) – which established the amnesty and procedures relating to the registration of unregistered NFA firearms. Moreover, as discussed infra in Section VI., C., ATF more recently provided a seven-year registration and amnesty period for Streetsweepers and USAS-12 firearms, when it reclassified them under the NFA.

Thus, contrary to ATF’s assertion that “there is no means by which the possessor may register a firearm retroactively, including a firearm that has been reclassified” (83 Fed. Reg. 13348), the Attorney General can provide for an amnesty so that the 520,000-some-odd proscribed bump-stock-devices, and all other firearms and devices covered by the NPR, can be lawfully registered, thereby saving a minimum of $221,494,000.00 in just compensation being paid out by ATF while imposing its regulatory scheme under the NFA, which proponents of gun control, such as Senator Feinstein, desire. See Exhibit 21. 74 Given that the primary estimate suggests that around 520,000 bump-stock-devices are in circulation (not inclusive of other firearms and devices for which the NPR seemingly applies), the Attorney General should at least provide for a seven-year amnesty/registration period, as was provided when ATF reclassified the Streetsweeper and USAS-12 shotguns, which is discussed infra in Section VI., C. Alternatively, the Attorney General should issue an initial amnesty period of ninety days and provided 50 or

73 While the provision refers to the “Secretary of the Treasury,” the Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (2002), transferred the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(c)(1). Thus, it is now the Attorney General that has the authority to institute an amnesty.

more applications are received between the 30th and 60th days, the amnesty period should be extended in increments of ninety days, until such time that less than 50 applications are received during an extension period.

Furthermore, pursuant to the logical outgrowth doctrine\(^\text{75}\) and the numerous issues with the National Firearms Registration and Transfer Record (“NFRTR”) – especially the deprivation of due process in civil and criminal proceedings (see Exhibits 6, 21\(^\text{76}\) and 22\(^\text{77}\) – the amnesty should permit the registration of any unregistered NFA firearm, not just bump-stock-devices and those items subject to the instant NPR, since such is consistent with the Congress’ intent that all NFA firearms be registered to the individual possessing them.\(^\text{78}\)

### C. ATF’s Reclassification of the Streetsweeper and USAS 12 and Seven Year Registration/Amnesty that Followed

In the alternative, as ATF admits that the NPR is a reclassification of the definition of machinegun to include bump-stock-devices (83 Fed. Reg. 13448), it must treat the reclassification equally to how it treated its prior reclassifications of the Streetsweeper and USAS 12 shotguns, for which it provided a seven-year registration and amnesty period.


\(^{76}\) A copy of the article is available at – Joshua Prince, *Violating Due Process: Convictions Based on the National Firearms Registration and Transfer Record When its ‘Files are Missing’*, (Sept. 28, 2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2752028.


In a July 12, 2012, ATF Quarterly Roll Call Lesson Plan, the ATF Firearms Technology Branch admits that based on ATF’s March 1, 1994 reclassification of the Striker-12/Streetsewer and USAS-12 shotguns,79 individuals were provided from March 1, 1994 through May 1, 2001 – more than seven years – to register these reclassified NFA firearms. See Exhibit 23, p. 3.

Accordingly, to the extent ATF moves forward with a final rule, ATF must provide a seven-year amnesty/registration period for individuals to register their bump-stock-devices.

D. ATF’s Reclassification of Open Bolt Macs

As discussed by the Savage Comment on pages 3 – 480, ATF Ruling 82-8 held that ATF was reclassifying semi-automatic SM10 and SM11A1 pistols and SAC carbines as machineguns and as a result of the ruling:

“With respect to the machinegun classification of the SM10 and SM11A1 pistols and SAC carbines, under the National Firearms Act, pursuant to 26 U.S.C. § 7805(b), this ruling will not be applied to SM10 and SM11A1 pistols and SAC carbines manufactured or assembled before June 21, 1982. Accordingly, SM10 and SM11A1 pistols and SAC carbines, manufactured or assembled on or after June 21, 1982, will be subject to all the provisions of the National Firearms Act and 27 C.F.R. Part 179.”

Emphasis added.

Thus, as discussed supra in Section III., C., 26 U.S.C. § 7805(b) precludes – and ATF has acknowledged – ATF’s ability to retroactively reclassify firearms and devices as machineguns and require their registration and compliance with the NFA. Consistent with Section 7805(b), if

79 See, ATF Rulings 94-1 and 94-2.

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ATF reclassifies a firearm or device, it may only require compliance with the NFA in relation to those firearms and devices that were “manufactured or assembled on or after” the date of its reclassification ruling. Moreover, the existence of approximately 50,000 of these reclassified firearms and their lawful possession and transfer absent compliance with the NFA, \(^{81}\) was testified to by former ATF Acting Chief of the Firearms Technology Branch Rick Vasquez in *U.S. v. One Historic Arms Model54RCCS*, No. 1:09-CV-00192-GET. See Exhibit 27.

Accordingly, ATF is statutorily precluded from applying any final rule in this matter to any firearms or devices that were “manufactured or assembled” before at least March 29, 2018 – the date of publication of this NPR in the Federal Register.

Even if, *arguendo*, ATF were not statutorily prohibited, to ensure equal application of the law, its past actions and the public reliance thereon, it must likewise permit all firearms or devices covered by the NPR in this matter to be grandfathered without requisite compliance with the NFA.

**E. Revision of Proposed Changes to 27 C.F.R. §§ 447.11, 478.11, and 479.11**

Although FPC vigorously disputes ATF’s constitutional, statutory, regulatory, procedural and precedential authority to regulate bump-stock-devices and intends to challenge any final rule adopting any proposal other than Alternative 1, FPC contends that ATF must limit its proposed regulatory changes to the definition proposed by Congress in H.R. 4477. \(^{82}\)

In the NPR (83 Fed. Reg. 13457), ATF proposes amending to 27 C.F.R. §§ 447.11, 478.11, and 479.11 “by adding two sentences at the end of the definition to reads as follows:

\[^{81}\] *Id.*  
Machine gun. * * * For purposes of this definition, the term ‘automatically’ as it modifies ‘shoots, is designed to shoot, or can be readily restored to shoot,’ means functioning as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger; and ‘single function of the trigger’ means a single pull of the trigger. The term ‘machine gun’ includes bump-stock-type devices, i.e., devices that allow a semiautomatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semiautomatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter. * * * ”

As such, ATF’s proposal, as discussed throughout this Comment, is far more encompassing than the more limited definition proposed by Congress in H.R. 4477. Accordingly, ATF should revise its proposal to be consistent with the Congress’ proposal; whereby, the definition of machinegun in 27 C.F.R. §§ 447.11, 478.11, and 479.11 could, at the absolute most, be amended by adding one sentence at the end of the definition to read as follows:

Machine gun. * * * For purposes of this definition, the term ‘automatically’ as it modifies ‘shoots, is designed to shoot, or can be readily restored to shoot,’ means a device that—(1) attaches to a semiautomatic rifle (as defined in section 921(a)(28) of title 18, United States Code); (2) is designed and intended to repeatedly activate the trigger without the deliberate and volitional act of the user pulling the trigger each time the firearm is fired; and (3) functions by continuous forward pressure applied to the rifle’s fore end in conjunction with a linear forward and backward sliding motion of the mechanism utilizing the recoil energy when the rifle is discharged.
VII. POLICY CONSIDERATIONS DO NOT SUPPORT ATF’S PROPOSED RULE

In arguing that bump-stock devices are or create a machinegun, the proposed rule demonstrates a complete reversal of prior policy – prior policy, as discussed supra in Section 1., A., that ATF has failed to provide in the rulemaking docket and for which the absence of, precludes meaningful review and comment by interested persons.

But even if numerous procedural irregularities did not bar ATF from promulgating a final rule in this proceeding, and neither the U.S. Constitution nor the scope of statutory authority served as an obstacle, there are ample reasons ATF should not proceed with its proposed rule. First, ATF’s assumptions lack statistical validity. Second, ATF’s reasoning relies on false premises. Third, the costs of the proposed rule are much greater than ATF acknowledged.

A. ATF’s Assumptions Lack Statistical Validity

As pertinent to a statistical inquiry, the overarching basis asserted in the NPR – the putative use of a bump-stock-device in the Law Vegas shooting – demands investigation and reflects that at a maximum, 83 only one instance exists 84, where a bump-stock-device was utilized, while acknowledging that there is no quantifiable benefit to the proposal. Thus, to the extent ATF can proceed in this matter, the first, and most vital, issue is whether ATF identified a statistically significant basis to conclude that the existing system of regulation should be revised, especially in light of the absence of a quantifiable benefit. As discussed at length supra in Sections I., B. and IV., D., ATF relies solely on prior “public comments” – for which, those

83 As discussed supra in Section IV., D., FPC dispute that there exists any evidence even suggesting that a bump-stock-device was utilized in the Las Vegas incident and demands, given ATF’s lack of candor to the courts, Congress and the public, that any such contention by ATF be dismissed, in the absence of independently, verifiable evidence in support.
84 Which to date has neither been confirmed by ATF or FBI. See Fn. 4, supra.
“public comments” may be proxies of ATF\textsuperscript{85} – to suggest that a bump-stock-device was utilized in Las Vegas (83 Fed. Reg. 13454), while thereafter declaring that bump stock devices “could be used for criminal purposes.” 83 Fed. Reg. 13455 (emphasis added). The second issue, with respect to estimating the costs that would be imposed by ATF’s proposed rule, ATF fails to address the just compensation that is necessary for the proposed rule, as is discussed supra in Section II., B., 2.

Despite the number of bump-stock-devices grossly exceeding 520,000 (when including rubber bands, belt loops, fingers, triggers, Gatling guns, and “slamfire” shotguns and firearms), ATF’s entire rulemaking effort is apparently premised on no more than one unverified instance where a bump-stock-device was alleged to have been utilized unlawfully, even though such products have been on the market for over a decade. Even with ATF’s too-low estimate of bump-stock-devices in commerce, one alleged instance represents such a minute, statistically-insignificant fraction that no statistically-valid prediction could even be made about this putative problem. ATF has failed to make available in the docket any information regarding the Las Vegas shooting that would permit meaningful inquiry into whether it is at all representative of the problem ATF claims now requires attention, or that the NPR reflects a substantive, tailored, germane, or proportional response to any such problem.

If, nonetheless, ATF were to go forward with its effort to formulate and impose a new rule, whatever benefits ATF claims, would seem to require discount to reflect the sole instance in which there is any reason to believe the new rule would provide additional protection. That is, the *marginal* benefit of added restrictions would be on the order of 1/520,000 or, stated

\textsuperscript{85} See Section IV., D., and Fn. 56, \textit{supra}. 
otherwise, the marginal cost needs to be multiplied by a factor of at least $520,000/1$ to be measured against the total benefit.

*   *   *

There is no statistically-significant (if any at all) evidence of the problem ATF purports to address with the proposed rule, even if one credits the sole anecdote. In weighing costs and benefits of the proposed rule, ATF must discount the benefits (or multiply the costs) to reflect the sole example from the large population of individuals who own or have access to bump-stock-devices and the fact that based on ATF’s own proposal, individuals would still be able to bump fire with rubber bands, belt loops and their fingers.

B.   **ATF Relies On Multiple False Premises**

As discussed at length supra in Sections IV., D. and E., ATF’s proposed rule is based on multiple false premises. Other than one unsupported allegation, there is no evidence – let alone substantive statistical evidence – of misuse of bump-stock-devices. Moreover, as made explicitly clear by the video (Exhibit 28) and Vasquez’s Expert Declaration, a bump-stock-device does not self-act, self-regulate, nor harnesses energy and thus cannot meet the statutory definition of a machinegun. Thus, ATF has failed to explain, let alone demonstrate, the need for a change in regulations or shown sufficient authority to implement its desired changes. And perhaps worse, ATF appears to be purposely misleading the public on the actual function of bump-stock-devices, which cannot be countenanced.
CONCLUSION

ATF has, once again, made a mockery of rulemaking proceedings by engaging in numerous improper and bad-faith tactics that deny meaningful public participation. As shown in these and other comments, the instant NPR is terminally-ridden with procedural defects. As a result, ATF cannot promulgate any final rule that hopes to survive judicial review without starting anew. And ATF’s proposed legislation-by-fiat stretches far beyond its statutory authority, ignores important separation of powers principles, and attempts to usurp that which is solely the domain of Congress. But even if ATF were to somehow overcome those fundamental problems, the fact remains that its proposal is built upon a statistically-invalid assumption, a false premise, and flawed policy arguments. To be sure, ATF failed to quantify any benefit from the proposed rule, and substantially undercounted the cost it would impose, including a failure to consider (as is its duty) all related costs. The proposed rule is demonstrably un-workable, and many less-burdensome alternatives exist to address any legitimate concerns that might be identified in a proper and procedurally-sound rulemaking.

Finally, even if ATF did initiate a new, proper, and procedurally-sound proposed rulemaking about bump-stock devices, and even if there existed sufficient statutory authority and good cause to issue such a rule, there is ample reason to question whether a proposed reclassification of bump-stock-devices as machineguns is consistent with the U.S. Constitution, including but not limited to the Second and Fifth Amendments, as well as Article I, Section 9. ATF fails completely to consider, let alone provide for, the just compensation that would be due to those who would be affected by its proposed rule. Indeed, as discussed above, the proposed rule is unconstitutional, both facially and as applied to law-abiding people who possess and own devices subject to the ATF’s proposed rule.
For all of the reasons set forth above, the NPR should be withdrawn and summarily discarded, or, in the alternative, ATF should elect Alternative 1 and abandon the proposed rulemaking in its entirety.

Respectfully submitted on behalf of
Firearms Policy Coalition and
Firearms Policy Foundation

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June 19, 2018
Feinstein Statement on Regulation to Ban Bump Stocks

Mar 23 2018

Washington—Senator Dianne Feinstein (D-Calif.) today issued the following statement on the Justice Department’s regulation to ban bump stocks:

“Until today, the ATF has consistently stated that bump stocks could not be banned through regulation because they do not fall under the legal definition of a machine gun.

“Now, the department has done an about face, claiming that bump stocks do fall under the legal definition of a machine gun and it can ban them through regulations. The fact that ATF said as recently as April 2017 that it lacks this authority gives the gun lobby and its allies even more reason to file a lawsuit to block the regulations.

“Unbelievably, the regulation hinges on a dubious analysis claiming that bumping the trigger is not the same as pulling it. The gun lobby and manufacturers will have a field day with this reasoning. What’s more, the regulation does not ban all devices that accelerate a semi-automatic weapons rate of fire to that of a machine gun.

“Both Justice Department and ATF lawyers know that legislation is the only way to ban bump stocks. The law has not changed since 1986, and it must be amended to cover bump stocks and other dangerous devices like trigger cranks. Our bill does this—the regulation does not.”

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Pursuant to Senate Policy (https://www.senate.gov/usage/internetpolicy.htm), petitions, opinion polls and unsolicited mass electronic communications cannot be initiated by this office for the 60-day period immediately before the date of a primary or general election.
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9:45   BREAK
America and the Second Amendment: The Past, Present and Future of Gun Rights and Regulation

Eric J. Segall, Georgia State University College of Law, Atlanta, hosts a conversation with: Adam Winkler, Professor of Law, UCLA School of Law and author, Gunfight: The Battle over the Right to Bear Arms in America, and Clark Neily, Cato Institute vice president for criminal justice and co-counsel in District of Columbia v. Heller
To Lynne, Jessica, Sara, and Katie, the women and girls in my life. You light my dark, warm my cold, and fill my heart with love and pride every single day.
It would be quite difficult to identify many modern cases where originalist analysis played a major role in the court's decisions. There is one case, however, that originalists of all stripes use to argue how far originalism has come among the justices—District of Columbia v. Heller. The next chapter explains why this conventional wisdom is incorrect, and why originalism without great deference to more accountable political decision makers simply cannot work.

8 ORIGINALISM WITHOUT STRONG DEFERENCE CANNOT WORK

Originalism has a way of subverting the constitutional principles it purports to uphold.

Scott Lerman

In District of Columbia v. Heller, the Supreme Court ruled for the first time in American history that the Second Amendment provides an individual right to own firearms in the home for self-defense. Justice Scalia's long majority opinion devoted substantial attention to both the original meaning of the Amendment and to the history of gun rights in this country, as did Justice Stevens's long dissent (which came to the opposite conclusions). The general storyline told by originalists about Heller is that it is not important whether one sides with the history of the Second Amendment as recounted by Scalia or Stevens. What is important is that both justices devoted their opinions to comprehensive reviews of originalist sources reflecting the ascendency of originalism as a method of constitutional interpretation. Non-originalists, by contrast, have argued that what Heller demonstrates is the bankruptcy of an originalist method of constitutional interpretation in the hands of judges, liberal, conservative, or moderate, who are not equipped to conduct serious historical analysis.

The Second Amendment provides the following: "A well-regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." From the Second Amendment's ratification until the Heller decision in 2008, the Supreme Court had never interpreted the Amendment to protect an individual right to own guns, and virtually every federal court to consider the issue assumed the Amendment only applied to official militia service (as its text seems to indicate).
The facts and background of *Heller* were summarized succinctly and accurately by Professor Jamal Greene:

Heller was a test case engineered by lawyers at the libertarian Cato Institute and the Institute for Justice in the wake of dramatic shifts in elite opinion in favor of an individual rights view of the Second Amendment. Dick Heller is a libertarian activist and a security guard at the Federal Judicial Center, which sits less than a half mile away from the Supreme Court building and serves in part as an annex for the Supreme Court’s library. From 1976 until *Heller* was decided, Washington, D.C. had among the strictest gun control laws in the country, essentially prohibiting possession of handguns, requiring that all other guns be either unloaded and disassembled or bound by a trigger lock, and preventing Dick Heller from registering a gun for use in his D.C. home.7

In a 5–4 opinion written by Justice Scalia, the Court held that the District’s law violated Heller’s right to keep a gun in his home for self-defense. Justices Scalia and Stevens both agreed that the central purpose of the Second Amendment was to stop the national government from disarmament of state militias.8 Unlike Stevens, however, Scalia did not believe that protecting state militias was the Amendment’s only purpose. Instead, along with the four other conservative justices, Scalia found that the Amendment also protected the right to self-defense and the right to hunt.

Although the majority found for *Heller* because the law completely banned the possession of an arm commonly in use (handguns), the Court did not decide what other weapons were protected by the Second Amendment, whether something less than a complete ban would be constitutional, or even what level of constitutional review applied to gun restrictions. In addition, in an important paragraph limiting the reach of its holding, the Court stated the following: “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws prohibiting the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”9

Two years after *Heller*, the Court held, in another 5–4 opinion divided along the same ideological lines, that the Second Amendment, though intended as a limitation on federal power like most of the Bill of Rights, also applies to the states, like most of the Bill of Rights.10 The *McDonald* case was the last Supreme Court decision interpreting the Second Amendment, and the lower courts have struggled with a wide array of gun control laws ever since.11

Both Justice Scalia’s and Justice Stevens’s opinions in *Heller* purported to be based on their review of history as opposed to balancing the importance of gun ownership against public safety concerns. Perhaps it is just a coincidence that all five conservatives voted to strike down the D.C. law, while all four liberals voted to uphold it (or perhaps not). The important point, however, is that both justices’ review of history has been lambasted by most historians. Thus, the *Heller* decision, rather than supporting originalism as a proper method of constitutional interpretation, reflects how dangerous, inconsistent, and misleading the doctrine can be in the hands of Supreme Court justices who are not competent at historical analysis.

Most legal scholars and historians agree with Professor Paul Pinto’s statement that *Heller*’s and *McDonald*’s holdings that “individual self-defense is the central component of the Second Amendment right... runs counter to the plain meaning of the text of the Amendment” and is contrary to “virtually all of the serious historical scholarship on the Founding.”12 Similarly, Saul Cornell, the Chair of Fordham University’s History Department, has written extensively on the *Heller* and *McDonald* decisions, originalism, and the implications of the holding that the Amendment guarantees an individual right to own guns. “*Heller* and *McDonald* cast aside more than 75 years of established precedent to hold that individual citizens have a right to bear arms for personal use... the two decisions [are] incoherent and historically dishonest. And lower courts have now heard more than a thousand cases generated by the confusion *Heller* wrought.”13 Another scholar has written that; Scalia’s historical analysis is “disingenuous and unprincipled” as well as “objectively untenable.”14 Yet, another probably said it best when he concluded that *Heller* represents “law office history” and “the strained efforts of advocates, and the legions of law clerks and researchers at the Court’s disposal, to find every shred of evidence that might support their position (as opposed to an unbiased search for all sources).”15 The reactions by other historians to *Heller*...
and McDonald are full of such statements while scholars supporting the historical analysis in the opinions, or for that matter supporting the historical analysis in Justice Stevens’s dissent in Heller, are truly rare.16

It is beyond the scope of this book to document all the poor research and historical analysis in both the Heller majority opinion and Justice Stevens’ dissent. The scholars cited earlier, along with many others, have already done that work. However, two examples supply all the proof needed to demonstrate that, if Heller is an example of originalist decision making, then originalist decision making is not something other judges should emulate.

Justice Scalia held that the Second Amendment applies to guns that are “commonly used” for self-defense and hunting. This formulation, however, in the words of Saul Cornell “has no foundation in the text, structure, or history of the Second Amendment. In fact, this view gives gun makers—not legislatures, or even courts—the power to determine public policy on guns. Which is exactly why the Founders would have spurned it.”17 According to Cornell, any market-driven interpretation of the Second Amendment is just historically wrong:

The Second Amendment was not designed to hobble government regulation. At the time, men arrived for military service already armed with guns the government required them to purchase ... the law did not command that Americans simply show up with whatever weapons they owned—that is, what was in common use. Without specific regulations ... most Americans would likely have shown up for active duty with flintlocks, which were more like shotguns than muskets, because these were better suited for putting food on the table. In other words, the Founders recognized that if left to the free market and people’s own preferences, America’s militias would be prepared to hunt turkeys, not fight a powerful European standing army. If the Founders had understood the Second Amendment in the way Scalia suggests, the United States would likely have lost the American Revolution.18

Not only did Scalia misinterpret the Second Amendment’s history to concoct the “common use” test, but also a major part of his holding has nothing at all to do with originalism. The law that Heller invalidated was a complete ban on handgun possession in the District of Columbia (with a few minor exceptions), and the Court’s holding was limited to such bans. However, as noted earlier, the majority opinion also explicitly stated that nothing in the ban precludes laws prohibiting “the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”19

Justice Scalia made up this list of “presumptively lawful regulatory measures” out of whole cloth without a single citation to any historical source, case, or study.20 He spent fifty-four pages of historical “analysis” supporting the view that the Militia language of the Amendment could be ignored in favor of a personal right to own guns, but not one word justifying the important list of exceptions he carved out from that so-called personal right. These exceptions demonstrate “more than judicial lawmaking.” In fact, it demonstrates that even the purest originalist cannot resist the tug to implement, nay, to transport, the “original meaning” into the context and experience of our living age.21 The list of exceptions shows that the majority opinion “draws on commonplace and modern-day experience... without any originalist analysis whatsoever. ...Indeed, it is accretive living constitutionalism” at its best: The Second Amendment must be interpreted to permit restrictions that America’s evolution has demonstrated are sensible and necessary. History must give way to reality. The dead hands of the Framers—whether or not their children took their hunting guns to school with them—cannot govern the living two centuries hence.22 Nelson Lund, a conservative supporter of Second Amendment rights argued that Scalia’s opinion, given the list of exceptions not justified by ratification-era sources, makes a “great show of being committed to the Constitution’s original meaning, but fails to carry through on that commitment.”23 Lund concluded that the “Court’s reasoning is at critical points so defective—and in some respects so transparently non-originalist—that Heller should be seen as an embarrassment for those who joined the majority opinion.”24

Judge Harvey Wilkinson of the US Court of Appeals for the Fourth Circuit compared the judicial aggression in Heller to the method of constitutional interpretation employed by the Court in Roe v. Wade:

The Constitution’s text, at least, has as little to say about restrictions on firearm ownership by felons as it does about the trimesters
of pregnancy. The *Heller* majority seems to want to have its cake and eat it too—to recognize a right to bear arms without having to deal with any of the more unpleasant consequences of such a right. In short, the Court wishes to preempt democracy up to point. But up to what point and why? \(^{23}\)

Judge Wilkinson also argues in his fine article that any objective person reading the historical arguments and counterarguments in the majority and dissenting opinions in *Heller* would have to conclude "...the arguments about the Second Amendment's meaning are in reasonably close balance and that given this indeterminacy, people's positions on the Second Amendment's meaning will have more to do with their ideas about policy than with legal principle."\(^{24}\) Even if Justice Scalia and Justice Stevens had conducted sound historical analysis, which most historians claim they did not do, the result would still be a standoff where something other than that analysis drives the result. If transparency is a substantial goal of judicial decision-making, *Heller* flunks that test.

Another aspect of *Heller* that shows the many flaws of originalism is the torrent of non-originalist questions the decision unleashed. Judge Wilkinson foresaw this problem just after the decision was issued. He predicted lawsuits about what types of weapons are covered by the Second Amendment, what kinds of people would be outside the reach of the Amendment (felons, just violent felons, people who commit violent misdemeanors); what places would be legally gun-free zones (schools, hospitals, sporting arenas, college campuses, post offices); whether states could limit who could carry a gun in public; and what restrictions could be placed on the commercial licensing of guns; among many other issues.\(^{25}\) All of these questions have been or are being litigated in the lower courts right now, and few if any of them can be usefully analyzed through an originalist or historical lens. How would one even go about trying to determine the original meaning of the Second Amendment as applied to small, dangerous weapons or semi-automatic weapons the Founding Fathers and the people living at the time could never have anticipated? How would the history of the Amendment possibly be relevant to balancing the supposed right to own guns with the government's interest in the safety of 100,000 people at a college football game? The list of public policy issues surrounding gun control measures grows every year, and they will not and cannot be decided according to the original public meaning of the Second Amendment. As Judge Wilkinson concluded back in 2009:

So now, predictably and inevitably, the litigation will take off. Courts across the country will face detailed questions about firearms regulations and will provide varied and often inconsistent answers. Circuit splits and open questions will plague for our lifetimes. And for what purpose? What justifies the judiciary assuming its primacy in yet another new arena? Surely not its greater expertise. Surely not, as in apportionment, a dysfunctional political process. As Justice Stevens observed in *Heller*, 'no one has suggested that the political process is not working exactly as it should,' in firearms regulation. Accordingly, the Court should honor the structure of our constitution, stay out of the thicket, and leave the highly motivated contestations in this field to press their agendas in the political process where the issue properly belongs and where for centuries it has remained.\(^{26}\)

These problems raised by an originalist approach to the Second Amendment are replicated in virtually every other area of constitutional law. Unless a historical inquiry includes a strong presumption that the challenged law is constitutional, a judge using original meaning as the primary method to resolve modern cases will find little that helps and will eventually apply her own modern sensibilities to the broad principles that underlie most constitutional litigation. This is not to say that the study of ratification-era evidence and history (from the Founding to the present) can't at times inform a judge's application of constitutional values. But contrary to what many originalists contend, the evaluation of history does not trump the justices' personal ideologies nor could it (absent strong deference). The important cases demonstrating this thesis could fill a treatise, but here are a few representative ones.

A First Amendment question that has long bothered the conservatives on the Court, including Justices Scalia and Thomas, is whether states may impose mandatory fees on public-sector workers who are represented by unions. Noncontributing employees who don't want to join unions argue that these fees fund ideological speech with which they disagree. Therefore, they contend that state laws requiring them to pay union fees against their will violate their right to free speech.
The states' counterargument is public-sector union activities redound to the benefit of all employees, and in any event, nonconsenting employees may engage in as much counter-speech as they want against the union's activities. In *Abood v. Detroit Board of Education*, decided in 1977, the Supreme Court held that imposing mandatory union fees on state employees does not violate their First Amendment rights if the fees are used for collective bargaining purposes related to workplace conditions, not political causes.

Just a few years ago, the Court limited *Abood*’s reach in a case involving quasi-state workers who provide end-of-life care in the home, and the conservatives on the Court made clear their desire to reverse *Abood* in an appropriate case. These justices seemed to be sympathetic to the argument, rejected in *Abood*, that all public-sector employer-union bargaining raises ideological issues. The Court granted certiorari the next year in a similar case probably to reverse *Abood*, but after Justice Scalia passed away, the Court denied cert, 4-4, which meant the lower court decision, which followed *Abood*, was affirmed. The justices recently decided to hear another case raising this question and placed it on the docket for the 2017-18 term.

Original meaning has not yet been a part of the Court’s discussions of this legal issue for an obvious reason: there were no public-sector unions in either 1787 when the Constitution was ratified or in 1868 when the Fourteenth Amendment (applying the First Amendment to the states) was ratified. We can’t begin to figure out the original public meaning of free speech as applied to union fees when the notion of collective bargaining for government workers would have been completely foreign to the framers. Moreover, even if we could somehow explain these ideas to the framers, they would also need to know the history of union/employer relationships in the twentieth and twenty-first centuries, and the growth of government bureaucracies to fully grasp the issues. By the time we pour that new information into a search for the First Amendment’s original public meaning, our biases and prejudices would substantially affect the story we tell. In other words, the supposed discovery of original public meaning in this context would simply lead to the application of our modern values to a distinctively contemporary problem, which is exactly what living constitutionalists would do.

These same difficulties arise for most other constitutional law cases. Take, for example, whether women should have a constitutional right to terminate their pregnancies, or whether gays and lesbians have a legal right to marry. A coherent posture for a judge to take in both cases would be to place a high burden of proof on plaintiffs to demonstrate with clear and convincing evidence that either unambiguous text or strong ratification-era evidence supports them (in which case the plaintiffs would likely lose both cases). Another coherent position for a judge to take would be that because society changes dramatically, and neither clear text nor history forbids the plaintiffs from winning those cases, the judge will do what he thinks best considering text, history, precedent, and likely consequences, and then he’d explain his decision as transparently as possible. What is an incoherent position for a judge to take, however, is to canvass originalist sources, try to figure out the best we can what the people living in 1787 or 1868 thought about the problem, or do what a hypothesized originalist “objective meaning” of the text requires.

The people who wrote and/or ratified the Fourteenth Amendment had views about women that are completely taboo in the United States today (I hope). Women didn’t have the right vote, were excluded from many professions, and were largely second-class citizens under the law and in practice. The issue of abortion, in 1868 or today, whether one is pro-life or pro-choice, is wrapped up in balancing many aspects of a woman’s individual autonomy with the rights, if any, of the fetus. We simply don’t know how people living in 1868 would balance those questions if they held our common assumptions about women and equality. Suggesting we have any way of translating those times to ours in the context of abortion is facetious, at best.

The same is true for same-sex marriage. The concept of a homosexual person (as opposed to homosexual conduct) barely existed in 1868, so how much valuable information could people living at that time offer us? Moreover, the institution of marriage was fundamentally different in many important ways. More generally, what does it even mean to try to define the “original meaning” of the word equal in the Fourteenth Amendment to a society and a people so radically different from our own? Historical analysis simply can’t help unless we place the burden on the plaintiffs to prove that the text or
universally agreed-upon assumptions about the text obviously forbid the practice at issue. It is the rare modern case, however, that satisfies that condition.

The problems with arguing that original meaning should play a primary role in constitutional interpretation are not just evident in high-profile constitutional cases like those implicating freedom of speech, abortion, and same-sex marriage. Our current administrative state, where executive agencies like the Environmental Protection Agency or the Department of Health and Human Services, and so-called independent agencies such as the Federal Election Commission wield so much authority would have been completely unknown to the Founding Fathers. As late as 1933, prior to the New Deal, there were less than twenty federal agencies while today there are hundreds. Virtually all areas of American life are governed not by laws passed by Congress but by administrative regulation. As Phillip Hamburger, among others, has written, the rise of these agencies, coupled with Supreme Court decisions legitimizing them and their broad powers, has allowed them to occupy "a sort of judicial monad that can interpret, execute, and legislate its statutory norms and facts in clear violation of the principle of the separation of powers." Whether or not we can justify this fundamental shift in power from Congress and the states through some method of living constitutionalism, the twin realities are that we are not going to go back to the preadministrative state (though there may be occasional slips), and more important, new questions of separation of powers must be analyzed through a realistic lens of an administrative world that no one living in 1787 could possibly have anticipated. In Hamburger's words, "although much administrative state power is economically inefficient, all of it is unconstitutional."

These problems were highlighted in the 1980s when the Court decided a series of important separation of powers cases in which plaintiffs challenged the constitutionality of new aspects of our federal regulatory practice. In these cases, the Court devoted little attention to the original meaning of the various constitutional provisions at issue, and for good reason. No one living in 1787 would have possibly expected the Executive Branch to function like it does today. Any opinions those people could have had on the various issues raised by these cases would be of little or no value.

For example, the question in *I.N.S. v. Canales*56 was whether Congress could pass a law, signed by the president, which allowed one branch of Congress to veto a decision by the president to suspend the deportation of a alien who stayed past the time allowed by his visa. The original law giving the president that discretion went through the constitutionally required process of bicameralism (both Houses of Congress must approve a bill) and presentment (all bills must be signed by the president or his veto must be overruled by two-thirds of both Houses). The argument made by the Executive Branch was that if Congress wanted to overrule the president's deportation decision, it had to do so through the normal requirements of bicameralism and presentment despite the authority given one House of Congress in the original and validly enacted immigration law. The Court's primary response to that argument was that, in the new Administrative State, the Executive makes law routinely through delegated authority from Congress. Thus, one House's authority to veto the suspension of a deportation was also constitutional if the president signed the original bill granting that discretion. Although the facts of Canales were relatively narrow, Congress had placed legislative vetoes in over two hundred laws as a way of controlling Executive Branch discretion, so the stakes of this case were extremely high.

The Court held that the legislative veto was unconstitutional because it violated the separation of powers. Although the majority opinion cited some history to support the broad requirements of bicameralism and presentment, there was no reliance on original meaning for the Court's conclusion that the legislative veto was different in substance than other examples of valid lawmaking that do not have to go through bicameralism and presentment. This absence of originalist authority makes sense because the Executive Branch in 1983 and the Executive Branch in 1787 have so little in common. The purpose of the legislative veto was to fix a problem (Executive Branch lawmaking) that barely existed prior to the 1930s. As Justice White explained in dissent:

"The prominence of the legislative veto mechanism in our contemporary political system and its importance to Congress can hardly..."
be overstated. It has become a central means by which Congress secures the accountability of executive and independent agencies. Without the legislative veto, Congress is faced with a Hobson's choice: either to refrain from delegating the necessary authority, leaving itself with a hopeless task of writing laws with the requisite specificity to cover endless special circumstances across the entire policy landscape, or, in the alternative, to abdicate its lawmaking function to the Executive Branch and independent agencies. ... Accordingly, over the past five decades, the legislative veto has been placed in nearly 200 statutes. The device is known in every field of governmental concern: reorganization, budgets, foreign affairs, war powers, and regulation of trade, safety, energy, the environment, and the economy.69

No amount of historical study, analysis, or investigation into original meaning could have led to a persuasive conclusion about the constitutional validity of the legislative veto, which is probably why the Court didn't go down that path. How can the world of 1787 possibly help us solve a problem that the people at the time did not contemplate? This is not to say that political practices over time and the actions of the three branches of the federal government are not highly relevant to the justices' considerations in separation of powers cases. In both NLRB v. Noel Canning60 and Zivotofsky v. Kerry,61 the Court's majority opinions strongly emphasized how much of a role prior political practices play in giving shape to the vague constitutional provisions that trigger most separation of powers cases.62 But the job of reviewing more than two hundred years of congressional, executive, and judicial reflections and actions regarding hard separation of powers issues is hardly an originalist task given how inevitable a role subjectivity (and modern considerations and balancing) must play in that enterprise.

The difficulty of applying original meaning to modern separation of powers issues can be seen by examining other contemporary problems. To provide just three examples: may the president constitutionally execute an American citizen who is likely a dangerous terrorist living in a foreign country without giving him any judicial due process; what are the limits of the provision in Article I, Section 8, giving Congress the power to declare war given the repeated use of military forces by numerous presidents without such authorization; and does the writ of habeas corpus apply to alleged terrorists who America holds for long periods of time outside the United States in places where the United States has de facto control?63 The resolution of these questions, whether by judges, scholars, or politicians simply cannot be substantially aided by canvassing 1787 sources and materials. These and most other constitutional law problems implicate broad and conflicting principles, and as Terrance Sandeau once wrote, "choice among the various [principles] is inescapable, and through that choice, contemporary values are given expression."64 Similarly, Judge Richard Posner said in a slightly different, but related context:

What would the framers of the [Fourth Amendment] have thought about [national security surveillance of people's emails]? That is a meaningless question. It is not an interpretive question, it is a creative question. ... The [Constitution] cannot resolve it... by thinking about the intentions, the notes of the constitutional convention, or other sources from the 18th century. This seems to be the standard problem for judges... it is not interpretation, it is just trying to find... a solution to a question that has not been solved by the legislature.65

Most constitutional questions revolving around the Fourth Amendment's prohibition on "unreasonable searches and seizures" cannot be usefully analyzed through any form of originalist analysis. Professor Matthew Tokar explains how little 1791 evidence can help with modern Fourth Amendment issues:

The Founders had little reason to specify the scope of the "search" concept, because most Founding-era searches were easy to identify - they involved physical violation of the home or other property. Modern search questions only arose in the radically changed context of the Twentieth Century, when police officers could use listening devices to record private activities or access intimate conversations transmitted through wires over long distances. Neither the telephone, nor the "bug," nor even the professional police officer existed in 1791.66

To recap, in most areas of nuanced constitutional law, originalism, whether defined as original meaning, original intentions, or some
Originalism as Faith

hybrid of the two., cannot be the primary method of constitutional interpretation if that means judges must reconstruct history to come up with the most accurate interpretation of vague constitutional text. The examination of originalist evidence can provide context and background to a hard problem and support judicial decisions reached on other grounds, but it will not decidedly point to one solution or another. The people living in the United States in 1787 or 1868 inhabited a substantially different country than ours today. Most constitutional law cases raise difficult issues of balancing governmental power against the asserted rights of people claiming they have been injured by official action. These issues will often bear scant resemblance to what the constitutional framers...envisioned, and thus the normative questions joined in today's litigation must typically draw on a host of considerations - a configuration of values - that have no real roots in the original meaning of the Constitution.\textsuperscript{67}

The Original Originalists argued that these asserting constitutional rights had a heavy burden of proof to justify those alleged rights through clear text or original intentions. This theory is coherent, but judges do not apply it, and it is most unlikely they will adopt it anytime soon. The New Originalists, while rejecting a heavy burden of proof for constitutional plaintiffs, implicitly recognized the futility of historical emphasis through their theory of constitutional construction, which admits that normative judgments not originalist materials inevitably drive constitutional litigation. Or, in the alternative, some New, New Originalists, dodge the futility of history by claiming that a decision is originalist if the judge first labels the relevant text as "general" not "specific" before applying a living constitutionalism approach to the controversy at hand.\textsuperscript{68}

Professor Robert Bennett has explained why in practice originalism is doomed to failure. He cites the following four reasons why "no plausible version of what is called originalism has the resources to stem a substantial flow of evolving values into our constitutional law, even if they are different from the original animating ones."\textsuperscript{69}

1) Most litigated constitutional text is general and ambiguous.
2) The text was debated by large numbers of people with different views on practical applications;

Originalism without Strong Deference Cannot Work

3) The problems judges face today bear "scant resemblance" to the problems those words were trying to address; and
4) Court decision making in the United States emphasizes consequences "in the here and now." Judicial responsibility propels judges "towards thinking in terms they can comfortably relate to today."\textsuperscript{50}

Originalism with great deference might make sense but fails miserably as a descriptive or, sadly, predictive account. Most other forms of originalism don't take ratification-era evidence seriously as a decision-generating device for the reasons given by Bennett. In fact, as Chapter 9 argues, no prior legal rule or theoretical precommitment, much less originalism, has ever successfully outweighed the role of personal ideology and values as drivers of constitutional adjudication. If people are going to retain faith in our Supreme Court, it must be for reasons separate from the belief that text and original meaning generate Supreme Court decisions.
Chapter 8


3. Jamin R. Birenbaum, "Heller’s Favorite Gun? The Future of Originalism" (2009) 125 Harv. L. Rev. 1365-1403 at 1374 (noting that in a separate opinion, Justice Breyer states that "Heller’s interpretation of the Second Amendment is consistent with the way the Amendment was understood by those who drafted it.")


5. U.S. Constitution Amendment II.


8. Ibid., 334-336.


13. Cornell, "Guns Have Always Been Regulated.

Notes to Pages 151-158

39. Ibid. at 967–8 (White J., dissenting).
43. The latter of these issues was addressed in Seminole Tribe v. Florida, 508 U.S. 421 (1993).
49. Bennett and Solum, Constitutional Originalism, p. 165.
50. Ibid., p. 142.

Chapter 9


Notes to Pages 158-163

10. Ibid. at 140 (citing Legal Tender Cases, 75 U.S. (2 Wh.) 457 at 626 (1870) (Field, J., dissenting).
11. Legal Tender Cases, 75 U.S. 457.
19. Ibid.
23. Ibid. at 54–55.
25. Ibid.
26. Ibid.
28. Ibid. at 784 (Rehnquist, J., dissenting).
30. Ibid. (quoting Frederick Schauer).
31. Ibid. (quoting Frederick Schauer).
OPINION

Goodbye Justice Kennedy And Goodbye Gun Control

Eric Segall
Guest Writer

June 27, 2017 06:04 PM ET
The news that Justice Anthony Kennedy has retired from the Supreme Court is sending liberals and progressives into a panic. Kennedy has of course been the key swing vote in abortion and gay rights cases. Whether those cases will withstand a new Supreme Court with five core conservatives is a serious question. But there is another area of Supreme Court jurisprudence that may also be dramatically affected by Kennedy's retirement: the Second Amendment.

The Supreme Court has only ruled in favor of an individual right to own guns in two decisions, and in neither one did Kennedy write his own opinion. He did, however, make up one of the five votes in both 2008's D.C. v. Heller, and 2010's McDonald v. City of Chicago. Both cases invalidated complete bans on possessing handguns in each city. The Supreme Court has not, however, returned to the Second Amendment since McDonald was decided, despite thousands of lower court cases wrestling with the balance between the right to keep and bear arms and public safety.

On the same day in 2014, the court refused to review three cases involving laws regulating the selling of guns to people across state lines as well as a Texas law prohibiting 18- to 20-year-olds from carrying guns in public. The justices have also declined to review cases upholding permitting procedures regulating guns in public in Maryland, New York and New Jersey, among many other laws and cases.

Justice Clarence Thomas has not been quiet about his anger over the court's refusal to hear any new Second Amendment cases. In a dissent from the court's refusal to hear a case challenging California's 10-day waiting period for gun sales, he wrote that the Second Amendment is a "disfavored right" and the Supreme Court's "constitutional orphan." Furthermore, he said that the lower court's sustaining of the waiting period was "symptomatic of the lower courts' general failure to afford the Second Amendment the respect due an enumerated constitutional right."
There has been a lot of speculation about why the five court conservatives, including Kennedy, have not reviewed any of the lower court cases upholding various gun restrictions. The most common theory is that neither the four conservatives other than Kennedy, nor the four liberals, knew how Kennedy was going to vote.

Adam Winkler, a UCLA law professor, and author of one of the most important books ever written on the Second Amendment, Gunfight: The Battle Over the Right to Bear Arms in America, speculated in 2014 that among the other justices that "there must be some concern about the way Kennedy is going to go" in future gun cases. Well, that concern is now moot.
The Supreme Court has not returned to the Second Amendment since McDonald v. City of Chicago was decided in 2010. (The Washington Post via Getty Images)

President Donald Trump has not been quiet about his support for gun rights, the gun lobby and the National Rifle Association. There is little doubt that whomever he nominates will be fully supported by the NRA. That organization was positively giddy when Trump nominated Neil Gorsuch to the Supreme Court, and that is unlikely to be different with Kennedy’s replacement.

What this likely means is that we can expect the Supreme Court to start reviewing a few of the more important gun control cases now percolating in the lower courts. Whether the issue is the validity of bans on so-called assault rifles, the length of waiting periods before people can buy guns or requirements for people to receive concealed-carry permits, our nation’s highest court may well start imposing its will on the gun measures of all 50 states and many cities and towns.

Kennedy’s uncertain swing vote is simply no longer an obstacle. Whether another conservative justice, most likely Chief Justice John Roberts, will step in to allow these difficult and complex issues to be decided at the state and local levels is anyone’s guess.

Sadly, I wouldn’t bet on it.

Eric Segal is the Kathy and Lawrence Ashe professor of law at Georgia State University College of Law. His forthcoming book, Originalism as Faith, will be published in September.
Hot Topics in Gun Rights and Regulation
A discussion of gun issues of the moment, including school safety and plastic guns, with presentations by:

Marvin Lim, Holcomb & Ward LLP, Atlanta
Timothy D. Lytton, Georgia State University College of Law, Atlanta
Georgia law on armed school personnel: what does the allow, mandate, and/or prohibit?

This section looks at what the law on armed school personnel states – and what local school community members can do, under the scope of that law, to ensure that armed school personnel policies are implemented narrowly.

Each local school board in Georgia has the power – but is not required to – pass a policy allowing school personnel to carry weapons. The statutory provision giving local school boards this power, O.C.G.A. § 16-11-130.1, reproduced below.1

If a local school board adopts such a program, Georgia law mandates that it must provide for:

- training (except where personnel has had law enforcement or military experience that involved similar weapons training);
- a list of approved weapons and ammunition, and quantities;
- screening out personnel who have a history of any type of mental or emotional instability (as determined by the local board of education);
- a prescribed method of securing weapons, including at minimum that the gun must be carried on the person (including in an accessory secured on the body), or in a safe lockbox;
- conducting a criminal history background check of the personnel annually, to determine whether they are (and remain) qualified to be a license holder;
- any costs associated with approving personnel to carry or possess weapons.

The Code also provides that the selection of approved personnel shall be done strictly by voluntary basis.

The provision also mandates confidentiality, stating that “documents and meetings pertaining to personnel” approved to carry weapons are considered employment and public safety records (and are exempt from disclosure by the Georgia Open Meetings Act). O.C.G.A. § 16-11-130.1(f).

**Ga. Code Ann. § 16-11-130.1**

(a) As used in this Code section, the term:

(1) “Bus or other transportation furnished by a school” means a bus or other transportation furnished by a public or private elementary or secondary school.

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1 This Code provision is an exception to the Georgia firearms preemption statute, which states that school districts cannot regulate firearms possession “by rule or regulation or by any other means . . . in any manner.” O.C.G.A. § 16-11-173(b)(1)(A).
(2) “School function” means a school function or related activity that occurs outside of a school safety zone for a public or private elementary or secondary school.

(3) “School safety zone” means in or on any real property or building owned by or leased to any public or private elementary or secondary school or local board of education and used for elementary or secondary education.

(4) “Weapon” shall have the same meaning as set forth in Code Section 16-11-127.1.

(b) This Code section shall not be construed to require or otherwise mandate that any local board of education or school administrator adopt or implement a practice or program for the approval of personnel to possess or carry weapons within a school safety zone, at a school function, or on a bus or other transportation furnished by a school nor shall this Code section create any liability for adopting or declining to adopt such practice or program. Such decision shall rest with each individual local board of education. If a local board of education adopts a policy to allow certain personnel to possess or carry weapons as provided in paragraph (6) of subsection (c) of Code Section 16-11-127.1, such policy shall include approval of personnel to possess or carry weapons and provide for:

(1) Training of approved personnel prior to authorizing such personnel to carry weapons. The training shall at a minimum include training on judgment pistol shooting, marksmanship, and a review of current laws relating to the use of force for the defense of self and others; provided, however, that the local board of education training policy may substitute for certain training requirements the personnel's prior military or law enforcement service if the approved personnel has previously served as a certified law enforcement officer or has had military service which involved similar weapons training;

(2) An approved list of the types of weapons and ammunition and the quantity of weapons and ammunition authorized to be possessed or carried;

(3) The exclusion from approval of any personnel who has had an employment or other history indicating any type of mental or emotional instability as determined by the local board of education; and

(4) A mandatory method of securing weapons which shall include at a minimum a requirement that the weapon, if permitted to be carried concealed by personnel, shall be carried on the person and not in a purse, briefcase, bag, or similar other accessory which is not secured on the body of the person and, if maintained separate from the person, shall be maintained in a secured lock safe or similar lock box that cannot be easily accessed by students.

(c) Any personnel selected to possess or carry weapons within a school safety zone, at a school function, or on a bus or other transportation furnished by a school shall be a license holder, and
the local board of education shall be responsible for conducting a criminal history background check of such personnel annually to determine whether such personnel remains qualified to be a license holder.

(d) The selection of approved personnel to possess or carry a weapon within a school safety zone, at a school function, or on a bus or other transportation furnished by a school shall be done strictly on a voluntary basis. No personnel shall be required to possess or carry a weapon within a school safety zone, at a school function, or on a bus or other transportation furnished by a school and shall not be terminated or otherwise retaliated against for refusing to possess or carry a weapon.

(e) The local board of education shall be responsible for any costs associated with approving personnel to carry or possess weapons within a school safety zone, at a school function, or on a bus or other transportation furnished by a school; provided, however, that nothing contained in this Code section shall prohibit any approved personnel from paying for part or all of such costs or using any other funding mechanism available, including donations or grants from private persons or entities.

(f) Documents and meetings pertaining to personnel approved to carry or possess weapons within a school safety zone, at a school function, or on a bus or other transportation furnished by a school shall be considered employment and public safety security records and shall be exempt from disclosure under Article 4 of Chapter 18 of Title 50.
ARMING SCHOOL PERSONNEL: COSTS AND ALTERNATIVES
Should schools arm teachers in our K-12 schools? In light of recent shootings, such as the shooting at Marjorie Stoneman Douglas High School in Parkland, FL, many have asked this question. By one estimate, before the Parkland shooting, at least 14 states had one school district or more where a teacher was armed – and with the Mar. 2018 passage of a bill authorizing the arming of school personnel in Florida, the state will become the next.¹

The Campaign to Keep Guns Off Campus is opposed to laws and policies that arm K-12 school teachers, staff, and other personnel. This brief is intended to provide information on this practice, including reasons that arming school personnel is a bad idea, and what alternatives exist to address to ensure a safe and secure learning environment.

**The costs of armed school personnel far outweigh the benefits**

- **Unarmed citizens have stopped more active shooters than armed citizens.** According to the FBI’s study of 160 incidents of active shooters from 2000 to 2013, 21 incidents were stopped by unarmed citizens, while only 7 incidents were stopped by armed citizens (including off-duty police officers).²

- **Extensive training is necessary for anyone armed to know how to confront active shooters successfully – and without endangering any of the potentially hundreds of students, faculty, and staff in the facilities.** According to the National Association of School Resource Officers (NASRO) – which trains armed school resource officers, and opposes arming school personnel more broadly – “most citizens’ highest level of handgun training will reach the level of self-defense . . . Police officers will have experience and intuition from numerous dangerous encounters. Very few citizens will be able to pull from that experience.”³

- **The risks of armed school personnel will increase the financial liability of schools.** As Bernard James, Pepperdine University Professor of Constitutional Law, “[t]he inadequacy of training and supervising armed school personnel will lead to liability under both federal and state tort standards. Under these laws, liability is based on a finding that the failure to train to train amounts to a deliberate indifference to the rights of the students.”⁴


⁴ Bernard James, Arming School Personnel: School Safety Reform & Liability, NASRO J. SCHOOL SAFETY 14-15 (Spring 2015) (“Once educators voluntarily assume a specific, additional safety policy by arming teachers or other school personnel, the law imposes a duty to exercise reasonable care in light of foreseeable and unreasonable risks.”).
Liability for school districts will likely also be affected by criminal laws governing the use of firearms in the state. Armed school personnel, depending on state law, are not police officers. Therefore, criminal provisions applicable to any citizens’ possession, carry, and use of firearms can apply – including, for example, the laws of self-defense that dictate when deadly force can and cannot be deployed.\(^5\) This may provide another reason against implementation of armed school personnel, considering that laws, “Stand Your Ground,” more liberally permit deadly force.\(^6\)

- Fundamentally, firearms on campus will increase anxieties and concerns about school safety, changing the learning environment of a school.

Alternatives to armed school personnel

- A school safety plan – with proper preventative and reactionary measures, covering all possible people and grounds – requires more careful consideration than arguably most schools have given. Just one example: the Texas School Safety Center, for example, has a “K-12 School Safety and Security Audit Toolkit,” a comprehensive, 58-page of list of measures, ranging from visitor policies, to surveillance and monitoring, to campus website security and privacy.\(^7\) These are measures that every school must consider and, to the extent applicable and practicable, implement.

- Schools must provide resources to all people, by way of addressing shortages in school social workers, psychologists, and other professionals to prevent and mitigate behavioral crises – including not only mass shootings, but also suicides and other self-crisis – long before a firearm may or may not be involved. The National Association of School Psychologists, for example (which also opposes firearms on campus), has recommended a list of policy measures that must be addressed to remedy the shortages in school psychology on the ground.\(^8\)

For these reasons, the Campaign to Keep Guns Off Campus is opposed to laws and policies that arm K-12 school teachers, staff, and other personnel.

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\(^5\) See e.g., id. §§ 16-5-1 through 16-5-4 (regarding homicide).
\(^6\) See id. § 16-3-21, 16-3-23.1, 16-3-24 (Stand Your Ground provision).
\(^7\) Texas School Safety Center, Texas State University, K-12 School Safety and Security Audit Toolkit (2006).
GEORGIA STATE SENATE

THE FINAL REPORT OF THE SENATE SCHOOL SAFETY STUDY COMMITTEE

COMMITTEE MEMBERS

Senator John Albers, Chair
District 56

Senator Valencia Seay, Vice Chair
District 34

Senator Kay Kirkpatrick
District 32

Senator Fran Millar
District 40

Senator Jeff Mullis
District 53

Senator Michael Rhett
District 53

Senator Bruce Thompson
District 14

Senator Ben Watson
District 1

Senator P.K. Martin (ex officio)
District 9

Prepared by the Senate Research Office
2018
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INTRODUCTION

The Senate School Safety Study Committee was created by the Georgia State Senate in 2018 through the passage of Senate Resolution 935. The Committee was established because children are Georgia’s most precious asset, and therefore it is of incalculable importance to ensure that they are educated in secure and positive environments and facilities which allow them to not only learn, but to thrive while doing so.

The Committee examined the current level of safety of Georgia’s K-12 schools, and explored possible programs, solutions, and safeguards to strengthen school safety in three key areas:

- The prevention of emergencies at or attacks on our schools from occurring in the first place;
- The physical security of school buildings, facilities, and buses themselves in the case of an actual emergency; and
- The responses of school authorities, state and local law enforcement and emergency services personnel, students, teachers and staff to active emergencies should they occur on campus.

The Committee heard from a range of speakers including students, teachers, parents, school officials, local and state law enforcement, emergency services personnel, and state agency officials, and also received and reviewed written commentary and suggestions submitted by attendees at its meetings held across the state, and on the Committee’s website found at https://www.gasenatek12safety.com/.

Senator John Albers of the 56th District chaired the Study Committee, and was joined by eight other Senators: Senator Valencia Seay of the 34th, who served as vice chair, Senator Kay Kirkpatrick of the 32nd, Senator Fran Millar of the 40th, Senator Jeff Mullis of the 53rd, Senator Michael ‘Doc’ Rhett of the 33rd, Senator Bruce Thompson of the 14th, Senator Ben Watson of the 1st, and Senator P.K. Martin of 9th who served as an ex officio member.

Mr. Trey Bennett and Ms. Megan Andrews, of the Senate Research Office, Ms. Ines Owens and Mr. Andrew Allison of the Senate Press Office, and Ms. Natalie Heath of the Senate Budget and Evaluation Office were assigned to assist the Committee.

The Committee held six public meetings: the first, at North Springs High School in Sandy Springs, Cobb County; the second, at Ringgold High School in Catoosa County; the third, at Lee County High School in Leesburg; the fourth, at Chamblee Charter High School in Chamblee, DeKalb County; the fifth, at Islands High School in Savannah, Chatham County; and the sixth, at the State Capitol in Atlanta.

June 8, 2018 — North Springs High School, Sandy Springs, Georgia
At its first meeting, the Committee received testimony from representatives of the Georgia Department of Education, the Fulton County Board of Education, the Sandy Springs Police and Fire Departments, and students, and a representative of a local Parent Teacher Association.

July 13, 2018 — Ringgold High School, Ringgold, Georgia
The second meeting of the Committee featured testimony from the Georgia State Patrol, the Georgia Trauma Commission, the Superintendent of Catoosa County Schools, the Trion and Ft. Oglethorpe Police Departments, the Catoosa County Fire Department, and a parent, teacher, and student.

August 24, 2018 — Lee County High School, Leesburg, Georgia
At the third meeting of the School Safety Study Committee, the members were presented with testimony from representatives of the Georgia Police Academy at the Georgia Public Safety Training Center, the Georgia National Guard, the Georgia Department of Veterans Affairs, the Lee County Sheriff’s Office, the Lee County Fire Department, and a local parent, teacher, and student.
September 17, 2018 — Chamblee Charter High School, Chamblee, Georgia
The Committee’s fourth meeting consisted of testimony from the Georgia Bureau of Investigation, the Data Quality Campaign, the Gwinnett County School Superintendent’s Office, the Alpharetta Department of Public Safety, and a local parent, teacher, and student.

October 26, 2018 — Island High School, Savannah, Georgia
At this meeting, the Committee heard presentations from the American Institute of Architects, Mental Health America, the Georgia School Counselors Association, and the Georgia Emergency Management Agency and Department of Homeland Security, along with testimony from a local school administrator, a parent, a teacher, and a student, and representatives from the Chatham County Board of Education Police Department, the Chatham County Police Department, and the Savannah Police Department.

November 13, 2018 — Georgia State Capitol, Atlanta, Georgia
The Committee held its final meeting on November 13\textsuperscript{th} to formally adopt the Final Report and Recommendations.
COMMITTEE RECOMMENDATIONS

After hearing extensive testimony at five meetings held across Georgia, receiving and reviewing hundreds of suggestions submitted by constituents at meetings and online via the Committee’s website, and examining vast amounts of data and information from both state and federal agencies and governments across America, the Senate School Safety Study Committee makes the following recommendations:

Crisis Prevention

- The Committee recommends that a strong priority be placed on the mental health of Georgia’s students, and especially upon those who show signs of instability or potential danger to themselves or their peers. The Committee has repeatedly been presented with testimony revealing that counselors currently working in Georgia’s schools are often relied upon to provide career and class counseling to students, as well as mental health counseling. Many of these counselors are overwhelmed by the dual responsibilities expected of them and/or are undertrained and even unqualified to provide mental health counseling for troubled or ill students. Therefore, while increased state funding for specialized mental health counselors may be one solution, another potential solution that the Committee would recommend that the Legislature explore, is that of creating legislation which would allow local governments to use ESPLOST funds to hire specifically trained mental health professionals to treat and serve students in schools.

- The Committee recommends that local school boards and the Georgia Department of Education place a strong emphasis on the provision of specified training for teachers, school staff, and students regarding the early recognition, detection, and reporting of signs of an impending attack in or upon schools.

- The Committee recommends that the recently created “See Something Send Something” mobile phone application be updated and modified to provide a single, unified statewide reporting system that students, faculty, and staff may use anonymously to notify state and local authorities of suspicious activity in, or threats to both public and private schools. In order to effectively operate this application, the Committee recommends that the Legislature appropriate additional funding for the Georgia Bureau of Investigation to modify the current application, and to hire additional staff for the Georgia Information Sharing and Analysis Center (GISAC).

- The Committee recommends that the Legislature explore potential legislation which would create a data-sharing system by which Georgia’s schools, social services, and law enforcement agencies are able to coordinate together to create, share, and curate secure individual student profiles throughout a student’s educational career. The purpose of such a system will be to better meet the mental, emotional, and educational needs of Georgia’s students, while allowing agencies to efficiently share information which may prove critical to the prevention of tragedies before they occur.

- The Committee Recommends that the Legislature consider legislation mandating that every K-12 Georgia school, whether public or private, undergo a third party threat assessment of its buildings, facilities, and grounds, and with the help and input of local law enforcement and emergency services create a detailed, written emergency response plan that is reviewed and updated on an annual basis. Such threat assessments may be conducted by the Georgia Emergency Management Agency and Department of Home Land Security. Additionally, the Committee further recommends that the Department of Education adopt a standard assessment model that may be used by schools throughout the state. (Expanding the requirements of O.C.G.A. § 20-2-1185).

- The Committee Recommends that the issue of media sensationalism of tragedies on school campuses be strongly reprimanded by the State Legislature. While the Committee highly values the American Institution of a Free Press, it believes that the Media have acted extremely irresponsibly in the style of reporting used in the wake of tragedies on school campuses. The nearly obsessive coverage of school shooters’ personalities,
The Committee recommends that parents take an active role in developing close and proper authority over their children. While the school system plays a crucial role in the lives of students, the majority of their training, either express or implied, is conducted at home. Georgia is great because Georgia’s families are strong. In the face of the ever-increasing complexity of the modern era, parents must take great care to engage, encourage, and discipline their children in order for them to grow into the healthy, happy, and responsible adults that our society so desperately needs.

In an era in which interaction between students via social media is every bit as prevalent as face-to-face interaction, the Committee recommends and acknowledges that Georgia’s students bear a unique responsibility to foster a positive environment for one another at school and online. Additionally, students must remain alert to spoken and written threats, and be willing to report them to the appropriate authorities in a timely manner.

The Committee recommends that the Legislature consider enacting legislation creating felony penalties for parents who act recklessly in allowing children to have access to dangerous materials or weapons.

Recognizing the absolute importance of stable, positive influences in every child’s life, the Committee recommends that the Legislature explore the possibility of allowing and incentivizing certain veterans, military reserve members, law enforcement officers, and first responders, to undergo training to act as “school safety coaches” within schools.

Physical Security of Buildings, Facilities, and Buses

The Committee recommends that each school system conduct a review of its respective campuses to identify potential weaknesses in the physical security of all buildings and facilities. Such evaluations should focus on the potential improvement or installation of the following:

- Single, secure points of entry into each building;
- Adequate speed bumps and concrete barriers in parking lots;
- Minimizing the amount of unfortified glass used in the construction of buildings;
- Installing locks on all windows and doors of school buildings;
- Increase the number of emergency exits when appropriate;
- Ensuring that room numbers, directional signs, and exit signs are highly visible in all school buildings by utilizing larger signs and fonts;
- Properly training bus drivers on how to recognize and respond to threats against buses both on and off of school property;
- Reconsidering the fire drill procedures and policy of each building to ensure that drills do not unnecessarily expose students, staff and teachers to the risk of false alarms being used to bait them into dangerous areas.

The Committee also recommends that the State revisit the current statewide building codes for schools to reflect today’s safety needs and take into account modern construction materials.
Emergency Response

- The Committee recommends that local law enforcement agencies and emergency services departments coordinate together to create and maintain emergency response plans of their own to establish efficient communication and execution in the event of an emergency.

- The Committee recommends that local law enforcement agencies and emergency services department consider the creation of special joint emergency response units to ensure that wounded victims receive triage and medical treatment as quickly as possible in the event of an attack rather than waiting for an entire building to be cleared.

- The Committee recommends that the entire state be equipped with one unified radio communications network in order to facilitate effective and efficient communication between state, local and federal law enforcement departments.

- The Committee recommends that each school participate in the Stop the Bleed Initiative provided by the Georgia Trauma Foundation.

- The Committee recommends that each school conduct regular emergency drills designed specifically to prepare students, teachers, and staff on the appropriate response to an attack.

- The Committee recommends that each school system regularly reevaluate and update its active shooter emergency drills to ensure that the most current and effective best practices are in place.
12:00    **BOX LUNCHEON** (Included in registration fee)
Looking Forward: Guns and the 2019 Georgia Legislature
Greg Bluestein, political reporter, The Atlanta Journal-Constitution, moderates a panel on the past and future of guns and the Georgia General Assembly, with panelists to include: 
Sen. Jennifer Jordan, District 6, Georgia State Senate, Attorney at Law, Atlanta
Rep. Scot Turner, District 21, Georgia House of Representatives, Holly Springs
Chief Stacey L. Cotton, Covington Police Department, Covington
Yes, there is a middle ground on guns

By Jack Bernard

The NRA Institute for Legislative Action issued (July 26, 2017) "The bottom line is that the Left already knows their gun control schemes don't work, criminals and terrorist can't be prevented, and they keep demanding that America submit to more and more restrictive gun laws. Perhaps it is a gun control they are seeking. Maybe they just seek a control?"

"Non sense! Not just gun violence. Not just crime. Not just guns, but just already-widely legal gun. All of them."


I own a rifle. And, I love to target shooting. But, that doesn't mean I believe everyone should have a gun, or that no one should.

After the town church massacre by a man with a gun, we found that guns was not the time for action to prevent gun violence. It was a time for contemplation. Well, that was before.

Now, you have had another shooting - this time in a school. In Tennessee last month, President Donald Trump's right wing secretary, Betsy McKeon, repeated that same old idea about our property go out to you. Isn't it our police officer's done enough contemplation and praying?

I am tired of politicians talking after each shooting that we should

...
Georgia House to direct $8 million toward improving school safety

By Greg Mountian
gmountian@ajc.com

The Georgia House will set aside $8 million in bond funding to pay for school security improvements in response to growing concerns about keeping public schools safe from mass shootings.

House Speaker David Ralston’s office said Thursday that the money would pay for capital improvements and not permanent sites.

The House leader’s decision comes amid a new scrutiny of Georgia’s gun laws after 17 people were killed in a Florida high school in one of the worst mass shootings in U.S. history.

More than 90 lawmakers gathered at the Georgia Capitol on Wednesday to call for stricter gun laws backed by Democratic lawmakers seeking to outline certain types of firearms and background checks.

The proposals are similar to gun control measures in the Senate, which failed to pass last year.

Representative Chris Todd, a candidate for lieutenant governor and Senate co-sponsor of the bill, said, “We are putting $10 million in the budget to specifically address school safety, and it’s a very positive step forward.”

McKoon, who is running for Georgia secretary of state, said, “It’s not certain how much his measure would cost the state, though it’s likely tens of millions of dollars. That’s the best-case scenario.”

Meanwhile, some conservatives say the bill would stifle free speech and infringe on the rights of gun owners.

“Gun owners are demanding action to protect our children and give them a safe environment,” said Representative John Lewis, a co-sponsor of the bill.

Lewis, who is running for governor, said the proposals would go too far.

“People who want to do things like this are going to figure out how to get the weapon.”

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A crowd rallies during the Moms Demand Action Advocacy Day event at Liberty Plaza on Wednesday in Atlanta. The protest came on the heels of the mass shooting at a school in Florida.

NRA money piles up for congressional delegation

Chris Joyner
AJC Watchdog

Last week’s mass shooting, killing 17 in Parkland, Fla., has put the spotlight on the National Rifle Association and its aggressive financial support of members of Congress.

“To every politician who is taking donations from the NRA, shame on you,” said Parkland student Emma Gonzalez at rally Saturday.

President Donald Trump pushed back on that narrative Thursday.

In a series of tweets, the president outlined legislative proposals, including beefed up background checks, a ban on bump stocks and raising the age to purchase a weapon to 21. But he also lent support to NRA CEO Wayne LaPierre and Chris Cox, the head of the group’s lobbying wing.

“What many people don’t understand, or don’t want to understand, is that Wayne, Chris and the folks who work so hard at the @NRA are Great People and Great American Patriots,” Trump tweeted. “They love our Country and will do the right thing.”

To bring some transparency to the debate, I’ve pulled the figures on how much NRA support Georgia’s members of Congress have received over the years, along with their grade from the NRA and what they’ve said about gun rights or gun control.

In total, the pro-gun lobby has spent $2,506,760 on Georgia’s congressional delegation, according to data from the Center for Responsive Politics. Here’s the rundown:

Sen. David Perdue, R-Ga.,

Watchdog continued on p2
GOP House bill aims to keep guns from mentally ill

Critics say names are removed from national database after 5 years.

By Rhonda Cook
rcook@ajc.com

A new Republican House bill, purported to make it harder for mentally ill people in Georgia to have access to guns, would do little to prevent them from obtaining firearms, judges and law enforcement officials said.

Under Georgia law, the names of those committed to hospitals for mental health treatment or to address alcohol or drug addictions are removed from the national firearms database five years after their involuntary commitments.

Federal law prohibits anyone committed to a hospital for treatment from ever buying or possessing a firearm. Georgia is the only state in the nation that purges mental health treatment records from National Information Crime Center, the FBI database used to check if someone is eligible to purchase a gun or obtain a firearms permit.

The legislation, proposed Thursday by Rep. Chris Coonts, R-Cartersville, would allow Georgia to continue to purge those records but provides a way for the judge who signed off on the initial commitment, usually a probate court judge, to order an individual’s name remain on NCIS for another five years if there is “clear and convincing evidence” that they remain to be a danger.

The deadly Valentine’s Day shooting at a South Florida high school has focused fresh attention on gun control measures, especially those dealing with the access of the mentally ill to weapons. Nikolas Cruz, 19, who is charged with 17 counts of murders, was reportedly depressed and allegedly had an explosive temper. He had been seeking mental health care but had not been involuntarily committed for treatment so his purchase of an AR-15 was legal.

Athens-Clarke County Probate Court Judge Susan Tate said Friday she was concerned that House Bill 999 doesn’t provide a mechanism for having an individual re-evaluated and would do nothing to keep guns out of the hands of those who, under federal law, are ineligible to possess them.

Guns continued on B5
Guns
continued from B1

“IT provides for us to hear new character evidence and testimony,” Tate said. “There is no provision that would allow us to order a new evaluation. So we might not have any current mental health evaluations. It does place a new burden on the court to decide whether public safety or public interest would be served by their names not being purged. I don’t know that we would have the ability to have any mental health professional do any evaluation.”

The Council of Probate Court Judges of Georgia said in a statement, “We understand the bill is evolving so we are evolving with it. Right now the council has no official position on the bill.”

Gooch, the bill’s sponsor, did not respond to telephone messages or email seeking comment.

But Vernon Keenan, director of the Georgia Bureau of Investigation which supports ending Georgia’s practice of purging names from the NCIS database, said legislators have said they will address the GBI’s concerns as the bill moves through committee and to the floor for debate.

“We want to do away with the purge requirement,” Keenan said. “It’s a public safety issue. I believe there is support in the Legislature to change the purge requirement.”

Sen. Elena Parent, D-Atlanta, has proposed a similar bill but hers says Georgia will never remove names from NCIS. Her bill passed the Senate last year and is pending in a House committee, which is chaired by one of the co-sponsors of HB 999.

“It’s an attempt to attack the same issue my legislation was,” Parent said. “I don’t like it but I want the policy to change. … That’s the most important thing. The rest is just political noise that most Georgians don’t care about.” Since 2013, Georgia has purged 2,014 names of people who were involuntarily hospitalized for mental health or abuse treatment from the FBI’s database. In that same time, Georgia has added 9,741 new names to the list.

Those numbers do not include people who were ordered to have an evaluation for mental health or addiction who volunteered to go into treatment rather than be committed long-term.

“They people never get reported and we don’t know who they are unless they answer the questions truthfully on the firearms application,” Tate said.

“These are often people who get sent for involuntary evaluation every two or three months on the basis of either a court order or a mental health professional’s certification, without ever being ordered to receive treatment even though they are among our most seriously mentally ill.”
Delta ending discounted rates for NRA members

Airline criticized from both sides before, after move

By Holly Dahl

Delta's decision to end its discounted rate program for National Rifle Association members has drawn criticism from both sides. Those opposed to the program argue it sends a message of support to gun rights groups, while those in favor say it's a business decision.

The NRA, which started the program in 2013, has faced growing opposition from some airlines over the past few years. Delta's move to end it is the latest in a series of decisions by airlines to discontinue discounts for members of gun rights groups.

Delta CEO Ed Bastian said in a statement that the airline had been working with the NRA to resolve concerns about the program, but ultimately decided it was no longer a good fit for the airline.

"We value our relationship with the NRA, but we believe it is not in the best interest of our customers," Bastian said.

The move by Delta comes after United Airlines, another major carrier, ended its discounted rate program for NRA members earlier this year.

Delta's decision is likely to be met with criticism from some Ash,
Delta tax cut at risk from NRA fallout

Conservatives lash out at airline for ending ties with gun rights group.

By Greg Bluestein
bluestein@ajc.com

Delta’s decision to sever marketing ties with the National Rifle Association sparked outrage from Georgia conservatives, complicating the Atlanta-based airline’s push to restore a lucrative fuel tax break it lost years ago.

Several conservative groups and high-profile GOP candidates for higher office called on Republican legislators to ground the tax break after the airline said Saturday it would end a discount for NRA members.

The airline’s decision put other leading Republican contenders in a vise as the Senate prepared to vote on the measure: risk alienating grass-roots conservatives who view Delta’s move as an insult to the NRA, or jeopardize a broader tax-cut package that benefits one of the state’s largest private employers.

Delta quickly tried to stanch the fallout. The airline’s top lobbyist in Georgia, David Werner, tried to temper concerns from

Delta continued on A4
Delta

registration

to travel.

The Atlanta Constitution (Atlanta, Georgia) · Mon, Feb 26, 2018 · Page A4

Downloaded on Dec 8, 2018
GUN OWNERSHIP

Some with guns giving them up

Web searches for ‘gun buyback’ and such spike since school massacre.

By Madeline McGee
madeline.mcgpee@ajc.com

Until last week, Cindy Wright never thought of herself as an assault-style rifle owner. The Peachtree Corners resident said she doesn’t shoot any of the five guns she owns, and in fact, doesn’t know much about guns at all. She does happen to be the daughter of an avid hunter, though, and when her father died, he left her more than just a menagerie of stuffed trophies: she now owns two shotguns, two antique guns and a Ruger Mini-14 semi-automatic rifle.

Ever since a gunman killed 17 people at Marjory Stoneman Douglas High School in Florida, Wright’s semi-automatic rifle has become a thorn in her side. She said the Ruger fires the same kind of bullets as an AR-15 — the same gun that was used in Parkland shooting and countless others. Now, the only thing she wants to do with her rifle is see it destroyed.

“I don’t think there’s any reason in the world why anyone needs an assault weapon,” she said. “I want to make sure mine can never be used.”

While some gun owners say the solution to preventing school shootings is more guns in the hands of law-abiding citizens, others — like Wright — are taking steps to make sure their firearms don’t fall into the wrong hands. She is one of many gun owners nationwide who are trying to take gun control into their own hands by voluntarily turning in their weapons.

Google searches for terms like “gun buyback” and “get rid of guns” have spiked since the shooting, reaching their highest levels since October 2017, when a gunman in Las Vegas opened fire at a concert and killed 58 people.

Guns continued on B2
Guns

Many law enforcement agencies offer programs to people to turn in unwanted guns or ammunition with no questions asked. A Facebook post written by a Florida man who did that with his AR-15 has been shared more than 200,000 times since it was posted Feb. 10.

"No one with a law enforcement badge needs these guns," he wrote in the post.

The "Gun Buyback" events aimed at reducing the number of guns on the street by paying gun owners for their weapons. These kinds of events have become more popular since the shooting at Sandy Hook Elementary School in 2012. Though their effectiveness is debated.

A group of organizations, including the Fulton County Sheriff's Office and the Atlanta Police Department, held a gun buyback last year. They bought guns that police say were stolen or lost.

According to the Fulton County Police Department, sufficient funds have been reserved to pay police officers for each firearm submitted.

But even while stories of people giving up their guns are circulating on social media under the hashtags #gundecrease and #safety4all, others argue流泪ing more restrictions on law abiding citizens," he wrote.

"Law abiding citizens are not gun owners," she said.

"I would love to see parking lots across Atlanta full of people bringing guns to be destroyed," she said.
Activist on gun control to run
Lucy McBath will challenge Sam Teasley for 6th District seat.

By Greg Bluestein
gbluestein@ajc.com

A prominent gun-control activist entered the race for Georgia's 6th Congressional District on Tuesday, deciding against a run for a lower-profile legislative seat because she's outraged over gridlock in Washington after the latest mass shooting in Florida.

Lucy McBath raised more than $100,000 to challenge state Rep. Sam Teasley, a Marietta Republican in a competitive district. But she said watching congressional leaders meet with President Donald Trump after the massacre in Parkland, Fla., led her to shift her focus to Congress.

"This is the time we need to capitalize on this," McBath said. "Whether I win or lose, it still helps to push the needle on this. We have the eyes and the ears of the nation on Georgia right now, and if we can mobilize here, there will be a domino effect."

McBath joins two other Democrats challenging Republican Rep. Karen Handel, who won last year's nationally watched special election to represent the suburban Atlanta district. Businessman Kevin Abel and former

McBath continued on B3
newscaster Bobby Kaple, both first-time candidates, filed paperwork to run for the seat.

Handel became one of the highest-profile freshman members of Congress after she defeated Democrat Jon Ossoff in the costliest U.S. House contest ever. That race was viewed nationally as a barometer for Democratic success in conservative-leaning areas, and Ossoff lost by about 4 percentage points.

Ossoff said last month that he would not make a second bid this year for the district, which spans from north DeKalb County to east Cobb County, and other elected officials have also dropped out. But McBath's plunge into the race adds another well-known candidate to the contest.

‘Tire that down’

Her announcement came as droves of other candidates filed paperwork to run for office during the week-long qualifying period, which sets a Friday deadline for hopefuls seeking state office to make a pilgrimage to the Gold Dome.

Lt. Gov. Casey Cagle, the GOP front-runner for governor, gathered about 100 supporters for a celebratory news conference shortly after he qualified. He's hoping his vow to “kill” a tax break for Delta Air Lines after it cut ties with the National Rifle Association boosts his conservative credentials.

Cagle said he's not going to reverse a record of “building industries” with tax cuts and other initiatives. But he also said he's not going to “run away from our conservative values.”

The two Democratic candidates for governor also qualified, launching their race for the party's nomination into a new phase.

Former state Rep. Stacey Abrams showed up for a quiet ceremony surrounded by her closest relatives and a few campaign aides. She and her mother shared a tearful embrace on the steps of the Capitol.

Stacey Abrams was met with a roar of applause as soon as she walked into the Gold Dome as dozens of supporters chanted her name. She, too, had an emotional reunion with her parents—surprised by her by driving in from Hattiesburg, Miss., for the occasion.

‘Tides have changed’

McBath, the 6th District candidate, is among a wave of office-seekers plunging into politics for the first time.

But she also has a national profile as an advocate for tougher gun restrictions after her 17-year-old son, Jordan Davis, was shot and killed while sitting in a car with friends in November 2012. The gunman, Michael Dunn, was sentenced to life in prison in 2014 for opening fire following a dispute with the teens over the volume of their music.

Soon after her son's death, McBath became an early member of Moms Demand Action for Gun Sense in America, a grassroots group that sprang up after 26 people were killed at Sandy Hook Elementary School in Connecticut in December 2012.

Her profile quickly grew: President Barack Obama invited her to the White House for a speech on gun violence; she spoke at the Democratic National Convention; and she traveled across the nation to support Hillary Clinton's presidential campaign. She testified in Congress on the dangers of “stand your ground” laws.

She also will be a major voice in another debate. She worked as a flight attendant for Delta for 30 years, and she has slammed the state GOP's decision to punish the Atlanta-based airline after it severed business ties with the NRA. She was seen as a formidable challenger to Teasley, a conservative real estate agent with an “A” rating from the NRA, when she launched her bid a few months ago.

His district is one of a string of suburban Atlanta territories where Trump struggled in 2016.

But she said the state GOP's decision to punish Delta for cutting ties with the NRA helped cement her decision to aim for higher office, in part because she said she could have wider influence in Washington.

“We need someone who can challenge Republicans,” she said. “We are mobilizing a whole generation of people. We have to outrun the GOP. That's why they continue to win. The tides have changed, and we have to move on this.”
Social issues still key for some voters

Abrams, Kemp tack to center, put hot-button themes in background.

By Greg Bluestein
gbluestein@ajc.com

The swirl of social issues that dominated the debate early this year may as well seem an afterthought now — and that’s exactly the way the candidates like it.

Republican Brian Kemp is more likely to talk about his law-and-order policies and his teacher pay raise plan than divisions over guns, abortion and “religious liberty” — or his edgy ads featuring shotguns and chain saws that he used to help distinguish himself from other GOP candidates.

And Democrat Stacey Abrams has upped her focus on the same themes she’s embraced since entering the race: expanding Medicaid and boosting school funding. She’s likely to only wade into debates over, say, abortion rights, if specifically asked about them by voters.

But that doesn’t mean those fights have disappeared. Although a recent Atlanta Journal-Constitution poll shows voters are most

issues continued on A11

We are 28 days away from the Nov. 6 election.
concerned about education and health care, there’s a deep undercurrent of concern about social issues.

At a Newnan barbecue, Kemp supporter Lani Scott was blunt. “I believe in the Constitution, and it’s critical we have someone who supports the conservative values.”

And Ashley Grice Noeke, an Alabamian backer from Senoia, was just as sharp: “I am very concerned that Kemp is part of Trump’s hateful agenda. I’m worried about all — every one — of the social issues.”

These types of fights have a knack for dominating conversations in Georgia, working up the oxygen around fights over other pressing issues, such as budget policy and infrastructure improvements.

Just ask Gov. Nathan Deal, who backed his own party’s base by vetoing a religious liberty proposal and vetoing a gun rights expansion — leading some enraged activists to call for his resignation.

Flashy fights

That religious liberty veto in 2016 will go down as one of Deal’s signature decisions, but it did little to quell the clamor among other Republicans for the legislation, which supporters see as a noncontroversial way to provide more legal protection in the faith-based.

It’s the reason why Kemp and most other Republican candidates for governor quickly signed a pledge to support the legislation if elected, even as Democratic critics assailed the measure as thinly veiled discrimination and pointed to threats of becoming from major corporations if such a measure becomes law.

Since securing his party’s nomination, though, Kemp has tried to add some nuance to his stance. He’s said he would veto any measure that veers from the federal version, known as the Religious Freedom and Restoration Act that became law in 2015 on a bipartisan vote and bears Bill Clinton’s signature.

It’s time to do that, put that behind us so we can move on,” he said, adding: “That’s all I’m committed to do. Anything else, I’ll veto it.”

A Abrams has sharpened her already razor-edged opposition to such legislation, telling crowds at business functions that no religious liberty bill “will ever become law in the state of Georgia” because it’s both “divisive and discriminatory.”

And she recently unveiled endorsements from business owners who warned of a devastating economic backlash if Kemp made good on his promise.

“This is not an idle threat,” said Andrew Feller, an artist and film industry entrepreneur. “We’ve spent two decades building the film industry, and KFPA would have directly affected our business.”

The divide is just as stark overseas, where Abrams has broken from decades of conventional Democratic strategy in Georgia by calling for new firearms restrictions. She often says such limits are now in the mainstream, pointing to polls that show broader support for new regulations.

Her proposals include support for universal background checks for private sales of firearms, a ban on high-powered assault rifles and a repeal of legislation that allows permit holders to carry weapons on college campuses.

Bring it!

Kemp, meanwhile, laid his vocal support for an expansion of gun rights to emerge from a crowded GOP field.

His ad showing him pointing a gun toward his daugh-
ter’s young son attracted national attention, and it helped him win endorsements from GadsdenCarry.
Gun rights a hot issue in Georgia races

Candidates respond to shifting attitudes with new strategies.

By Mike T. Findlay and Greg Bluestein

The government activists gathered at M notify Cleaner Park on one of the city's most prominent corners. Savannah's downtown, facing the U.S. Supreme Court. The is an old volition continued deep into the streets. Savannahians have been known to call the judges there "thieves" and "burglars.

Despite the high-voltage nature of the event, the atmosphere was relatively calm. Attendees wore their best suits, carrying signs that read "Save Our Rights!" and "Gun Rights Are Human Rights!"

An estimated 300 people attended the rally, which featured speeches by prominent gun rights advocates. Among the speakers were Representative Magie Smith, who is running for re-election in the 1st District, and Senator John Doe, who is seeking his fourth term in the Senate.

"We are here today to send a clear message to our elected officials," Smith said. "We will not be silenced by the naysayers who seek to undermine our Second Amendment rights."

Doe echoed Smith's sentiments, noting that the recent Supreme Court rulings have done little to quell the passion of gun owners across the country.

"The Supreme Court's recent decisions have only served to galvanize the movement," Doe said. "We will not back down."

The rally ended with a march through downtown Savannah, with attendees waving flags and holding signs.

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For minority gun owners, governor’s race tough call

Stacey Abrams’ stances on guns give pause to potential supporters.

By Max Blau
For the Atlanta Journal-Constitution

Near the outskirts of Atlanta, Robert Patillo slips a round into a rifle, points his barrel toward the sky, and stares off into the distance. His hands steadied and feet planted, he yells out to the skeet range operator. Pull! An orange clay pigeon flies overhead. He squeezes the trigger. Boom! The orange pieces spiral to the ground.

Minorities continued on A11

We are 10 days away from the Nov. 6 election
Minorities

Senator and Dr. M. D. B. Jones, The
The Atlanta Constitution (Atlanta, Georgia) · Sat, Oct 27, 2018 · Page A11

In her speech, Senator and Dr. M. D. B. Jones, the author of the legislation, emphasized the importance of including minority perspectives in the policy discussion. She highlighted the need to address the unique challenges faced by minority communities and the importance of ensuring that their voices are heard in the legislative process. Jones argued that by incorporating minority perspectives, the legislation would be more effective in addressing the systemic issues that minority communities face.

One of the key provisions of the legislation is the establishment of a commission to study and report on the issues affecting minority communities. The commission would be comprised of representatives from various minority groups and would be tasked with identifying the specific needs and challenges faced by each group. By providing a platform for minority voices to be heard, the commission would help to ensure that the legislation was inclusive and responsive to the needs of all communities.

In conclusion, Senator and Dr. M. D. B. Jones made a compelling case for the inclusion of minority perspectives in the legislative process. By incorporating minority perspectives, the legislation would be more effective in addressing the systemic issues that minority communities face. The establishment of the commission is a critical step in this process and will help to ensure that the legislation is inclusive and responsive to the needs of all communities.
Kemp makes rare visit to suburbs; Abrams appears on national TV

By Greg Bluestein
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CLAYMINING — It was something of a rare sight in the general election campaign: Republican Brian Kemp darting on Tuesday from one northern Atlanta suburb to another on an unscheduled trip to no up conservatives.

Though his campaign headquarters is in Atlanta, the briefness of his tour visits have centered on rural Georgia areas he needs to win in an election set to determine the state's next governor.

Less attention, from the candidate at least, has been devoted to the densely populatd and competitive suburbs near Atlanta. There were more than a few reports he personally expressed a sense of relief to see Kemp showing attention in the area.

Kemp's stop in Lawrenceville and Woodstock attracted hundreds of voters, and he had other visits in Marietta and Rome.

Democrats have put a bullseye on the close-in suburbs, which were once reliably conservative but transformed into areas of opportunity for the party. Thanks to Trump, that party's presidential victory in 2016.

It was the home to Georgia's two most competitive U.S. House seats, both Republican incumbents — U.S. Reps. Karen Handel of Roswell and Rob Woodall of Lawrenceville — joined Kemp at several of the stops.

So did U.S. Rep. Doug Collins of Gainesville, one of the chamber's top Republicans, who warned of energized Democratic turnout.

In Claymning, voters flocked to a free pork barbecue sponsored by the Claymning Republican Women's Club.

The guest of honor was the GOP ticket emerging from a pool of crowded buses that ran inside a large vacant field across the street from a gas station.

Voters waited patiently in line for selfies with Kemp and Gov. Nathan Deal, but one of the bigger attractions was Geoff Brockman's son Hyder, who stars in a TV ad promoting his father's bid for lieutenant governor.

Abrams said there needs to be a "national conversation" about gun rights, and said that "important with new restrictions don't infringe on Second Amendment protections."

It quickly became part of Kemp's attack on Abrams for appearing on national TV a week before the election.

Deal: New governor should not fear special session: The special legislative session set for the week after the election will not include any attempt to strip the executive powers of the new governor, the current governor said in an interview.

Deal called the special session last week to provide roughly $300 million in hurricane relief for hard-hit areas of southwestern Georgia, while potentially approving a tax break on jet fuel and funding a new airport training facility.

The rare maneuver sparked whispers that lawmakers could be asked to
Blue wave, red wall: Race roars to close

Expensive, closely watched contest brings out big names at end.

By Greg Bluestein

A race that quietly began nearly two years ago will come to a dealers-relenting crescendo Tuesday after a final full day that brought Oversight, Whirly, Barack Obama, Mike Pence and Donald Trump to Georgia.

Stacey Abrams hopes to ride a “blue wave” to wash away Republican rule in the state and make her the first Democrat elected governor since 1998 – and the first black female governor in U.S. history. Brian Kemp is trying to fortify a “red wall” in conservative areas to crush those dreams.

We are 2 days away from the Nov. 6 election

It seems fitting that the race closes with a close-up from a pair of presidents. The Abrams Kemp battle is a test for whether Democrats can win Republican-held territory by moving distinctly to the left, and the outcome could shape strategies into the next decade.

Abrams stated her campaign on that premise, mixing liberal stances on gun control and criminal justice policy with more mainstream demands for Medicaid expansion and increased K-12 funding. Along the way, she’s tied herself to national Democratic figures in a way her predecessors vigorously avoided.

Unlike past Democrats, the former House minority leader aimed to motivate the vast universe of self-identifying voters who often skip midterm votes and...
North Georgia Republican files bill to allow permitless carry of guns

AJC CONTINUING COVERAGE GUN CONTROL

By Maya T. Prabhu maya.prabhu@ajc.com

A North Georgia Republican is getting a head start on what could be a flurry of proposals to expand access to guns.

State Rep. Matt Gurtler, R-Tiger, filed legislation to let anyone who is legally allowed to own a gun carry it without paying for a state-issued license.

Felons and people who were involuntarily committed to a mental institution within the past five years are not allowed to own guns in Georgia.

Currently, Georgia gun owners must pay about $75 - depending on the
county probate court - to register with the state and pass a background check before being issued a license to carry a handgun in public.

“As it stands now, law-abiding Georgians are taxed millions of dollars annually for exercising their God-given natural rights of self-defense,” Gurtler said. “Under the (U.S.) Constitution and in accordance with our Founding Fathers, ‘shall not be infringed’ is a no-compromise statement.”

While chances of Gurtler’s legislation, House Bill 2, making it through the Legislature are less than slim - he has a reputation in the House as often being the lone Republican dissenter on many of the party-backed initiatives, making him a bit of a pariah in his own caucus - some form of the proposal could gain traction next year.

Gov.-elect Brian Kemp has said he supports permitless carry of weapons and has vowed to “support the Second Amendment.” Kemp was endorsed by gun rights groups Georgia Carry and the National Rifle Association.
2019-2020 Regular Session - HB 2
Georgia Constitutional Carry Act of 2019; enact

Sponsored By
(1) Gurtler, Matt 8th

Committees
HC:  SC:

First Reader Summary
A BILL to be entitled an Act to amend Article 1 of Chapter 3 of Title 12 of the O.C.G.A., relating to general provisions regarding parks, historic areas, memorials, and recreation, so as to revise provisions of law regarding the use or possession of any handgun in a park, historic site, or recreational area; to amend Part 3 of Article 4 of Chapter 11 of Title 16 of the O.C.G.A., relating to carrying and possession of firearms; to amend Part 2 of Article 4 of Chapter 12 of Title 16 of the O.C.G.A., relating to transportation passenger safety, so as to revise provisions of law regarding the carrying of firearms; to amend Title 27 of the O.C.G.A., relating to game and fish, so as to revise certain laws regarding the carrying of firearms; to amend Part 2 of Article 10 of Chapter 6 of Title 40 of the O.C.G.A., relating to parking for persons with disabilities, so as to revise certain laws regarding the carrying of firearms; to provide for related matters; to repeal conflicting laws; and for other purposes.

Status History
Nov/16/2018 - House Prefiled

Versions
LC 28 8940ER/pf
A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 3 of Title 12 of the Official Code of Georgia Annotated, relating to general provisions regarding parks, historic areas, memorials, and recreation, so as to revise provisions of law regarding the use or possession of any handgun in a park, historic site, or recreational area; to amend Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to carrying and possession of firearms, so as to provide a definition; to revise provisions of law regarding the carrying of firearms; to amend Part 2 of Article 4 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to transportation passenger safety, so as to revise provisions of law regarding the carrying of firearms; to amend Title 27 of the Official Code of Georgia Annotated, relating to game and fish, so as to revise certain laws regarding the carrying of firearms; to amend Part 2 of Article 10 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to parking for persons with disabilities, so as to revise certain laws regarding the carrying of firearms; to provide for a short title; to provide for legislative findings; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
This Act shall be known and may be cited as the "Georgia Constitutional Carry Act of 2019."

SECTION 2.
The Georgia General Assembly finds that:
(1) Our founding fathers, in the unanimous Declaration of Independence of the 13 United States of America, acknowledged that the purpose of civil government is to secure God-given rights;
(2) As such, civil governments are to punish the criminal acts that deprive their citizens of their God-given rights to life, liberty, and property;
(3) The mere potential to deprive someone of life, liberty, or property should never be considered a crime in a free and just society;
(4) Evil resides in the heart of the individual, not in material objects; and
(5) Since objects or instrumentalities in and of themselves are not dangerous or evil, in a free and just society, the civil government should not ban or restrict their possession or use.

SECTION 3.

Article 1 of Chapter 3 of Title 12 of the Official Code of Georgia Annotated, relating to general provisions regarding parks, historic areas, memorials, and recreation, is amended by revising subsection (o) of Code Section 12-3-10, relating to directing persons to leave parks, historic sites, or recreational areas upon their refusal to observe rules and regulations and prohibited acts generally, as follows:

(o)(1) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any fireworks, explosives, or firecrackers, unless stored so as not to be readily accessible or unless such use has been approved by prior written permission of the commissioner of natural resources or his or her authorized representative.
(2) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any firearms other than a handgun, as such term is defined in Code Section 16-11-125.1.
(3) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any handgun without a valid weapons carry license issued pursuant to Code Section 16-11-129 weapon or long gun unless such person is a lawful weapons carrier. As used in this paragraph, the terms 'weapon,' 'long gun,' and 'lawful weapons carrier' shall have the same meanings as provided for in Code Section 16-11-125.1.
(4) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any bows and arrows, spring guns, air rifles, slingshots, or any other device which discharges projectiles by any means, unless the device is unloaded and stored so as not to be readily accessible or unless such use has been approved within restricted areas by prior written permission of the commissioner of natural resources or his or her authorized representative.

SECTION 4.

Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to carrying and possession of firearms, is amended by revising Code Section 16-11-125.1, relating to definitions, as follows:

"16-11-125.1.
As used in this part, the term:
(1) 'Handgun' means a firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged by an action of an explosive where the length of the barrel, not including any revolving, detachable, or magazine breech, does not exceed 12 inches; provided, however, that the term 'handgun' shall not include a gun which discharges a single shot of 0.46 centimeter or less in diameter.

(2) 'Knife' means a cutting instrument designed for the purpose of offense and defense consisting of a blade that is greater than 12 inches in length which is fastened to a handle.

(2.1) 'Lawful weapons carrier' means any person who is not prohibited by law from possessing a weapon or long gun, any person who is licensed pursuant to Code Section 16-11-129, or any person licensed to carry a weapon in any other state whose laws recognize and give effect to a license issued pursuant to this part.

(3) 'License holder' means a person who holds a valid weapons carry license.

(4) 'Long gun' means a firearm with a barrel length of at least 18 inches and overall length of at least 26 inches designed or made and intended to be fired from the shoulder and designed or made to use the energy of the explosive in a fixed:

(A) Shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger or from which any shot, bullet, or other missile can be discharged; or

(B) Metallic cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger; provided, however, that the term 'long gun' shall not include a gun which discharges a single shot of 0.46 centimeter or less in diameter.

(5) 'Weapon' means a knife or handgun.

(6) 'Weapons carry license' or 'license' means a license issued pursuant to Code Section 16-11-129.

SECTION 5.

Said part is further amended by revising Code Section 16-11-126, relating to having or carrying handguns, long guns, or other weapons, license requirement, and exceptions for homes, motor vehicles, private property, and other locations and conditions, as follows:

"16-11-126.

(a) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry on his or her person a weapon or long gun on his or her property or inside his or her home, motor vehicle, or place of business without a valid weapons carry license.

(b) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry on his or her person a long gun without a valid weapons carry license;
provided that if the long gun is loaded, it shall only be carried in an open and fully exposed manner.

(c) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry any handgun provided that it is enclosed in a case and unloaded.

(d) Any person who is not prohibited by law from possessing a handgun or long gun who is eligible for a weapons carry license may transport a handgun or long gun in any private passenger motor vehicle; provided, however, that private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21, except as provided in Code Section 16-11-135.

(c)(1)(A) Any person licensed to carry a weapon in any other state whose laws recognize and give effect to a license issued pursuant to this part shall be authorized to carry a weapon in this state, but only while the licensee is not a resident of this state; provided, however, that:

(i) Such licensee licensed to carry a weapon in any other state shall carry the weapon in compliance with the laws of this state; and

(ii) No other state shall be required to recognize and give effect to a license issued pursuant to this part that is held by a person who is younger than 21 years of age.

(B) The Attorney General shall create and maintain on the Department of Law's website a list of states whose laws recognize and give effect to a license issued pursuant to this part.

(2) Any person who is not a weapons carry license holder in this state and who is licensed to carry a weapon in any other state whose laws recognize and give effect to a license issued pursuant to this part shall be authorized to carry a weapon in this state for 90 days after he or she becomes a resident of this state; provided, however, that such person shall carry the weapon in compliance with the laws of this state, shall as soon as practicable submit a weapons carry license application as provided for under Code Section 16-11-129, and shall remain licensed in such other state for the duration of time that he or she is a resident of this state but not a weapons carry license holder in this state.

(f)(1) Any person with a valid hunting or fishing license on his or her person, or any person not required by law to have a hunting or fishing license, who is engaged in legal hunting, fishing, or sport shooting when the person has the permission of the owner of the land on which the activities are being conducted may have or carry on his or her person a weapon or long gun without a valid weapons carry license while hunting, fishing, or engaging in sport shooting.
(2) Any person with a valid hunting or fishing license on his or her person, or any person
not required by law to have a hunting or fishing license, who is otherwise engaged in
legal hunting, fishing, or sport shooting on recreational or wildlife management areas
owned by this state may have or carry on his or her person a knife without a valid
weapons carry license while engaging in such hunting, fishing, or sport shooting.

(g) Notwithstanding Code Sections 12-3-10, 27-3-1.1, 27-3-6, and 16-12-122 through
16-12-127, any person with a valid weapons carry license may carry a weapon in all parks,
historic sites, or recreational areas, as such term is defined in Code Section 12-3-10,
including all publicly owned buildings located in such parks, historic sites, and recreational
areas, in wildlife management areas, and on public transportation; provided, however, that
a person shall not carry a handgun into a place where it is prohibited by federal law.

(h)(1) No person shall carry a weapon without a valid weapons carry license unless he
or she meets one of the exceptions to having such license as provided in subsections (a)
through (g) of this Code section.

(2) A person commits the offense of carrying a weapon without a license when he or she
violates the provisions of paragraph (1) of this subsection.

(i) Upon conviction of the offense of carrying a weapon without a valid weapons carry
license, a person shall be punished as follows:

(1) For the first offense, he or she shall be guilty of a misdemeanor; and

(2) For the second offense within five years, as measured from the dates of previous
arrests for which convictions were obtained to the date of the current arrest for which a
conviction is obtained, and for any subsequent offense, he or she shall be guilty of a
felony and, upon conviction thereof, shall be imprisoned for not less than two years and
not more than five years:

(j) Nothing in this Code section shall in any way operate or be construed to affect, repeal,
or limit the exemptions provided for under Code Section 16-11-130 Reserved.

SECTION 6.

Said part is further amended by revising Code Section 16-11-127, relating to carrying
weapons in unauthorized locations, as follows:

"16-11-127.

(a) As used in this Code section, the term:

(1) 'Courthouse' means a building occupied by judicial courts and containing rooms in
which judicial proceedings are held.

(2) 'Government building' means:

(A) The building in which a government entity is housed;
(B) The building where a government entity meets in its official capacity; provided, however, that if such building is not a publicly owned building, such building shall be considered a government building for the purposes of this Code section only during the time such government entity is meeting at such building; or

(C) The portion of any building that is not a publicly owned building that is occupied by a government entity.

(3) 'Government entity' means an office, agency, authority, department, commission, board, body, division, instrumentality, or institution of the state or any county, municipal corporation, consolidated government, or local board of education within this state.

(4) 'Parking facility' means real property owned or leased by a government entity, courthouse, jail, prison, or place of worship that has been designated by such government entity, courthouse, jail, prison, or place of worship for the parking of motor vehicles at a government building or at such courthouse, jail, prison, or place of worship.

(b) Except as provided in Code Section 16-11-127.1 and subsection (d) or (e) of this Code section, a person shall be guilty of carrying a weapon or long gun in an unauthorized location and punished as for a misdemeanor when he or she carries a weapon or long gun while:

(1) In a government building as a nonlicense holder without being a lawful weapons carrier;

(2) In a courthouse;

(3) In a jail or prison;

(4) In a place of worship, unless the governing body or authority of the place of worship permits the carrying of weapons or long guns by license holders persons who are lawful weapons carriers;

(5) In a state mental health facility as defined in Code Section 37-1-1 which admits individuals on an involuntary basis for treatment of mental illness, developmental disability, or addictive disease; provided, however, that carrying a weapon or long gun in such location in a manner in compliance with paragraph (3) of subsection (d) of this Code section shall not constitute a violation of this subsection;

(6) On the premises of a nuclear power facility, except as provided in Code Section 16-11-127.2, and the punishment provisions of Code Section 16-11-127.2 shall supersede the punishment provisions of this Code section; or

(7) Within 150 feet of any polling place when elections are being conducted and such polling place is being used as a polling place as provided for in paragraph (27) of Code Section 21-2-2, except as provided in subsection (i) of Code Section 21-2-413.

(c) A license holder or person recognized under subsection (c) of Code Section 16-11-126 Any lawful weapons carrier shall be authorized to carry a weapon as provided in Code
Section 16-11-135 and in every location in this state not listed in subsection (b) or prohibited by subsection (e) of this Code section; provided, however, that private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21, except as provided in Code Section 16-11-135. A violation of subsection (b) of this Code section shall not create or give rise to a civil action for damages.

(d) Subsection (b) of this Code section shall not apply:

(1) To the use of weapons or long guns as exhibits in a legal proceeding, provided that such weapons or long guns are secured and handled as directed by the personnel providing courtroom security or the judge hearing the case;

(2) To a license holder who approaches security or management personnel upon arrival at a location described in subsection (b) of this Code section and notifies such security or management personnel of the presence of the weapon or long gun and explicitly follows the security or management personnel's direction for removing, securing, storing, or temporarily surrendering such weapon or long gun; and

(3) To a weapon or long gun possessed by a license holder which is under the possessor's control in a motor vehicle or is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle and such vehicle is parked in a parking facility.

(e)(1) A license holder shall be authorized to carry a weapon in a government building when the government building is open for business and where ingress into such building is not restricted or screened by security personnel. A license holder who enters or attempts to enter a government building carrying a weapon where ingress is restricted or screened by security personnel shall be guilty of a misdemeanor if at least one member of such security personnel is certified as a peace officer pursuant to Chapter 8 of Title 35; provided, however, that a license holder who immediately exits such building or immediately leaves such location upon notification of his or her failure to clear security due to the carrying of a weapon shall not be guilty of violating this subsection or paragraph (1) of subsection (b) of this Code section. A person who is not a license holder and who attempts to enter a government building carrying a weapon shall be guilty of a misdemeanor.

(2) Any license holder who violates subsection (b) of this Code section in a place of worship shall not be arrested but shall be fined not more than
$100.00. Any person who is not a licensee lawful weapons carrier who violates subsection (b) of this Code section in a place of worship shall be punished as for a misdemeanor.

(f) Nothing in this Code section shall in any way operate or be construed to affect, repeal, or limit the exemptions provided for under Code Section 16-11-130."

SECTION 7.

Said part is further amended by revising paragraph (2) of subsection (b) and paragraphs (7), (8), and (20) of subsection (c) of Code Section 16-11-127.1, relating to carrying weapons within school safety zones, at school functions, or on a bus or other transportation furnished by a school, as follows:

"(2) Except as provided for in paragraph (20) of subsection (c) of this Code section, any licensee lawful weapons carrier who violates this subsection shall be guilty of a misdemeanor. Any person who is not a licensee lawful weapons carrier who violates this subsection shall be guilty of a felony and, upon conviction thereof, be punished by a fine of not more than $10,000.00, by imprisonment for not less than two nor more than ten years, or both."

"(7) A person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10, lawful weapons carrier when such person carries or picks up a student within a school safety zone, at a school function, or on a bus or other transportation furnished by a school or a person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10 lawful weapons carrier when he or she has any weapon legally kept within a vehicle when such vehicle is parked within a school safety zone or is in transit through a designated school safety zone;

(8) A weapon possessed by a licensee lawful weapons carrier which is under the possessor's control in a motor vehicle or which is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle which is being used by an adult over 21 years of age to bring to or pick up a student within a school safety zone, at a school function, or on a bus or other transportation furnished by a school, or when such vehicle is used to transport someone to an activity being conducted within a school safety zone which has been authorized by a duly authorized official or local board of education as provided by paragraph (6) of this subsection; provided, however, that this exception shall not apply to a student attending a public or private elementary or secondary school;"

"(20)(A) Any weapons carry license holder lawful weapons carrier when he or she is in any building or on real property owned by or leased to any public technical school,
vocational school, college, or university, or other public institution of postsecondary education; provided, however, that such exception shall:

(i) Not apply to buildings or property used for athletic sporting events or student housing, including, but not limited to, fraternity and sorority houses;

(ii) Not apply to any preschool or childcare space located within such buildings or real property;

(iii) Not apply to any room or space being used for classes related to a college and career academy or other specialized school as provided for under Code Section 20-4-37;

(iv) Not apply to any room or space being used for classes in which high school students are enrolled through a dual enrollment program, including, but not limited to, classes related to the 'Move on When Ready Act' as provided for under Code Section 20-2-161.3;

(v) Not apply to faculty, staff, or administrative offices or rooms where disciplinary proceedings are conducted; and

(vi) Only apply to the carrying of handguns which a licensee is licensed to carry pursuant to subsection (e) of Code Section 16-11-126 and pursuant to Code Section 16-11-129; and

(vii) Only apply to the carrying of handguns which are concealed.

(B) Any weapons carry license holder lawful weapons carrier who carries a handgun in a manner or in a building, property, room, or space in violation of this paragraph shall be guilty of a misdemeanor; provided, however, that for a conviction of a first offense, such weapons carry license holder lawful weapons carrier shall be punished by a fine of $25.00 and not be sentenced to serve any term of confinement.

(C) As used in this paragraph, the term:

(i) 'Concealed' means carried in such a fashion that does not actively solicit the attention of others and is not prominently, openly, and intentionally displayed except for purposes of defense of self or others. Such term shall include, but not be limited to, carrying on one's person while such handgun is substantially, but not necessarily completely, covered by an article of clothing which is worn by such person, carrying within a bag of a nondescript nature which is being carried about by such person, or carrying in any other fashion as to not be clearly discernible by the passive observation of others.

(ii) 'Preschool or childcare space' means any room or continuous collection of rooms or any enclosed outdoor facilities which are separated from other spaces by an electronic mechanism or human-staffed point of controlled access and designated for the provision of preschool or childcare services, including, but not limited to,
preschool or childcare services licensed or regulated under Article 1 of Chapter 1A of Title 20.”

SECTION 8.

Said part is further amended by revising subparagraph (b)(2)(H) of Code Section 16-11-129, relating to weapons carry license, gun safety information, temporary renewal permit, mandamus, and verification of license, as follows:

"(H) Any person who has been convicted of any of the following:
   (i) Carrying a weapon without a weapons carry license in violation of Code Section 16-11-126; or
   (ii) Carrying a weapon or long gun in an unauthorized location in violation of Code Section 16-11-127 and has not been free of all restraint or supervision in connection therewith and free of any other conviction for at least five years immediately preceding the date of the application;“.

SECTION 9.

Said part is further amended by revising Code Section 16-11-130, relating to exemptions from Code Sections 16-11-126 through 16-11-127.2, as follows:

"16-11-130.
(a) Except to the extent provided for in subsection (c.1) of this Code section, Code Sections 16-11-126 through 16-11-127.2 shall not apply to or affect any of the following persons if such persons are employed in the offices listed below or when authorized by federal or state law, regulations, or order:
   (1) Peace officers, as such term is defined in paragraph (11) of Code Section 16-1-3, and retired peace officers so long as they remain certified whether employed by the state or a political subdivision of the state or another state or a political subdivision of another state but only if such other state provides a similar privilege for the peace officers of this state;
   (2) Wardens, superintendents, and keepers of correctional institutions, jails, or other institutions for the detention of persons accused or convicted of an offense;
   (3) Persons in the military service of the state or of the United States;
   (4) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the weapon or long gun is necessary for manufacture, transport, installation, and testing under the requirements of such contract;
   (5) District attorneys, investigators employed by and assigned to a district attorney's office, assistant district attorneys, attorneys or investigators employed by the Prosecuting
Attorneys' Council of the State of Georgia, and any retired district attorney, assistant
district attorney, district attorney's investigator, or attorney or investigator retired from
the Prosecuting Attorneys' Council of the State of Georgia, if such employee is retired in
good standing and is receiving benefits under Title 47 or is retired in good standing and
receiving benefits from a county or municipal retirement system;
(6) State court solicitors-general; investigators employed by and assigned to a state court
solicitor-general's office; assistant state court solicitors-general; the corresponding
personnel of any city court expressly continued in existence as a city court pursuant to
Article VI, Section X, Paragraph I, subparagraph (5) of the Constitution; and the
corresponding personnel of any civil court expressly continued as a civil court pursuant
to said provision of the Constitution;
(7) Those employees of the State Board of Pardons and Paroles when specifically
designated and authorized in writing by the members of the State Board of Pardons and
Paroles to carry a weapon or long gun;
(8) The Attorney General and those members of his or her staff whom he or she
specifically authorizes in writing to carry a weapon or long gun;
(9) Community supervision officers employed by and under the authority of the
Department of Community Supervision when specifically designated and authorized in
writing by the commissioner of community supervision;
(10) Public safety directors of municipal corporations;
(11) Explosive ordnance disposal technicians, as such term is defined by Code
Section 16-7-80, and persons certified as provided in Code Section 35-8-25 to
handle animals trained to detect explosives, while in the performance of their duties;
(12) Federal judges, Justices of the Supreme Court, Judges of the Court of Appeals,
judges of superior, state, probate, juvenile, and magistrate courts, full-time judges of
municipal and city courts, permanent part-time judges of municipal and city courts, and
administrative law judges;
(12.1) Former federal judges, Justices of the Supreme Court, Judges of the Court of
Appeals, judges of superior, state, probate, juvenile, and magistrate courts, full-time
judges of municipal and city courts, permanent part-time judges of municipal courts, and
administrative law judges who are retired from their respective offices, provided that such
judge or Justice would otherwise be qualified to be issued a weapons carry license;
(12.2) Former federal judges, Justices of the Supreme Court, Judges of the Court of
Appeals, judges of superior, state, probate, juvenile, and magistrate courts, full-time
judges of municipal and city courts, permanent part-time judges of municipal courts, and
administrative law judges who are no longer serving in their respective office, provided
that he or she served as such judge or Justice for more than 24 months; and provided,
further, that such judge or Justice would otherwise be qualified to be issued a weapons
carry license;
(13) United States Attorneys and Assistant United States Attorneys;
(14) County medical examiners and coroners and their sworn officers employed by
county government;
(15) Clerks of the superior courts; and
(16) Constables employed by a magistrate court of this state.

(b) Except to the extent provided for in subsection (c.1) of this Code section, Code
Sections 16-11-126 through 16-11-127.2 shall not apply to or affect persons
who at the time of their retirement from service with the Department of Community
Supervision were community supervision officers, when specifically designated and
authorized in writing by the commissioner of community supervision.

(c)(1) As used in this subsection, the term 'courthouse' means a building or annex
occupied by judicial courts and containing rooms in which judicial proceedings are held.
(2) Except to the extent provided for in subsection (c.1) of this Code section, Code
Sections 16-11-126 through 16-11-127.2 shall not apply to or affect any:

(A) Sheriff, retired sheriff, deputy sheriff, or retired deputy sheriff if such retired
sheriff or deputy sheriff is eligible to receive or is receiving benefits under the Peace
Officers' Annuity and Benefit Fund provided under Chapter 17 of Title 47, the Sheriffs'
Retirement Fund of Georgia provided under Chapter 16 of Title 47, or any other public
retirement system established under the laws of this state for service as a law
enforcement officer;

(B) Member of the Georgia State Patrol, agent of the Georgia Bureau of Investigation,
retired member of the Georgia State Patrol, or retired agent of the Georgia Bureau of
Investigation if such retired member or agent is receiving benefits under the Employees'
Retirement System;

(C) Full-time law enforcement chief executive engaging in the management of a
county, municipal, state, state authority, or federal law enforcement agency in the State
of Georgia, including any college or university law enforcement chief executive who
is registered or certified by the Georgia Peace Officer Standards and Training Council;
or retired law enforcement chief executive who formerly managed a county, municipal,
state, state authority, or federal law enforcement agency in the State of Georgia,
including any college or university law enforcement chief executive who was registered
or certified at the time of his or her retirement by the Georgia Peace Officer Standards
and Training Council, if such retired law enforcement chief executive is receiving
benefits under the Peace Officers' Annuity and Benefit Fund provided under Chapter 17
of Title 47 or is retired in good standing and receiving benefits from a county, municipal, State of Georgia, state authority, or federal retirement system;

(D) Police officer of any county, municipal, state, state authority, or federal law enforcement agency in the State of Georgia, including any college or university police officer who is registered or certified by the Georgia Peace Officer Standards and Training Council, or retired police officer of any county, municipal, state, state authority, or federal law enforcement agency in the State of Georgia, including any college or university police officer who was registered or certified at the time of his or her retirement by the Georgia Peace Officer Standards and Training Council, if such retired police officer is receiving benefits under the Peace Officers' Annuity and Benefit Fund provided under Chapter 17 of Title 47 or is retired in good standing and receiving benefits from a county, municipal, State of Georgia, state authority, or federal retirement system; or

(E) Person who is a citizen of this state and:

(i) Has retired with at least ten years of aggregate service as a law enforcement officer with powers of arrest under the laws of any state of the United States or of the United States;

(ii) Separated from service in good standing, as determined by criteria established by the Georgia Peace Officer Standards and Training Council, from employment with his or her most recent law enforcement agency; and

(iii) Possesses on his or her person an identification card for retired law enforcement officers as issued by the Georgia Peace Officer Standards and Training Council; provided, however, that such person meets the standards for the issuance of such card as provided for by the council, including, but not limited to, maintenance of qualification in firearms training.

In addition, any such sheriff, retired sheriff, deputy sheriff, retired deputy sheriff, member or retired member of the Georgia State Patrol, agent or retired agent of the Georgia Bureau of Investigation, officer or retired officer of the Department of Natural Resources, active or retired law enforcement chief executive, person who is a retired law enforcement officer as provided for in paragraph (2) of this subsection, or other law enforcement officer referred to in this subsection shall be authorized to carry a handgun on or off duty anywhere within this state, including, but not limited to, in a courthouse except to the extent provided for in subsection (c.1) of this Code section, and Code Sections 16-11-126 through 16-11-127.2 shall not apply to the carrying of such firearms.

(c.1)(1) As used in the subsection, the term:

(A) 'Active' means nonretired.
(B) 'Courthouse' means a building or annex occupied by judicial courts and containing rooms in which judicial proceedings are held.

(C) 'Law enforcement agency' means sheriffs or any unit, organ, or department of this state, or a subdivision or municipality thereof, whose functions by law include the enforcement of criminal or traffic laws; the preservation of public order; the protection of life and property; the prevention, detection, or investigation of crime; or court security that is providing security for a courthouse.

(D) 'Law enforcement personnel' means sheriffs or deputy sheriffs or peace officers employed by a law enforcement agency.

(2)(A) Pursuant to a security plan implemented by law enforcement personnel, including as provided for under a comprehensive plan as provided for in subsection (a) of Code Section 15-16-10, the law enforcement agency with jurisdiction over a courthouse may provide for facilities or the means for the holding of weapons carried by persons enumerated under this Code section, except as provided for in paragraph (3) of this subsection, provided that ingress to such courthouse is actively restricted or screened by law enforcement personnel and such facilities or means are located in the immediate proximity of the area which is restricted or screened by such law enforcement personnel.

(B) If the requirements of this paragraph are met, the persons enumerated under this Code section shall, except as provided for in paragraph (3) of this subsection, upon request of law enforcement personnel place his or her weapons in such holding with law enforcement personnel while such persons are within the restricted or screened area. Upon request of any person enumerated under this Code section, in preparation for his or her exit from the restricted or screened area, law enforcement personnel shall immediately provide for the return of the person's weapons which are in holding.

(3) Notwithstanding a security plan implemented by law enforcement personnel, including as provided for under a comprehensive plan as provided for in subsection (a) of Code Section 15-16-10, active law enforcement officers referred to in subsection (c) of this Code section shall be authorized to carry their service handguns and weapons in any courthouse if they are wearing the assigned uniform of their law enforcement office or have the official badge and identification credentials issued to them by their law enforcement office displayed and plainly visible on their person while in the performance of their official duties.

(d) A prosecution based upon a violation of Code Section 16-11-126 or 16-11-127 need not negative any exemptions."
SECTION 10.
Said part is further amended by revising subsection (b) of Code Section 16-11-135, relating to public or private employer's parking lots, right of privacy in vehicles in employer's parking lot or invited guests on lot, severability, and rights of action, as follows:

"(b) Except as provided in this Code section, no private or public employer, including the state and its political subdivisions, shall condition employment upon any agreement by a prospective employee that prohibits an employee from entering the parking lot and access thereto when the employee's privately owned motor vehicle contains a firearm or ammunition, or both, that is locked out of sight within the trunk, glove box, or other enclosed compartment or area within such privately owned motor vehicle, provided that any applicable employees possess a Georgia weapons carry license such prospective employee is a lawful weapons carrier."

SECTION 11.
Said part is further amended by revising Code Section 16-11-137, relating to required possession of weapons carry license or proof of exemption when carrying a weapon and detention for investigation of carrying permit, as follows:

"16-11-137.
(a) Every license holder shall have his or her valid weapons carry license in his or her immediate possession at all times when carrying a weapon, or if such person is exempt from having a weapons carry license pursuant to Code Section 16-11-130 or subsection (e) of Code Section 16-11-127.1, he or she shall have proof of his or her exemption in his or her immediate possession at all times when carrying a weapon, and his or her failure to do so shall be prima-facie evidence of a violation of the applicable provision of Code Sections 16-11-126 through 16-11-127.2;
(b) A person carrying a weapon shall not be subject to detention for the sole purpose of investigating whether such person has a weapons carry license, whether such person is exempt from having a weapons carry license pursuant to Code Section 16-11-130 or subsection (e) of Code Section 16-11-127.1, or whether such person is a lawful weapons carrier as defined in Code Section 16-11-125.1.
(c) A person convicted of a violation of this Code section shall be fined not more than $10.00 if he or she produces in court his or her weapons carry license, provided that it was valid at the time of his or her arrest, or produces proof of his or her exemption."

SECTION 12.
Part 2 of Article 4 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to transportation passenger safety, is amended by revising subsection (b) of Code
Section 16-12-123, relating to bus or rail vehicle hijacking, boarding with concealed weapon, and company use of reasonable security measures, as follows:

"(b) Any person who boards or attempts to board an aircraft, bus, or rail vehicle with any explosive, destructive device, or hoax device as such terms are defined in Code Section 16-7-80; firearm for which weapon or long gun as such terms are defined in Code Section 16-11-125.1 if such person does not have on his or her person a valid weapons carry license issued pursuant to Code Section 16-11-129 unless possessing such firearm is prohibited by federal law is not a lawful weapons carrier as defined in Code Section 16-11-125.1; hazardous substance as defined by Code Section 12-8-92; or knife or other device designed or modified for the purpose of offense and defense concealed on or about his or her person or property which is or would be accessible to such person while on the aircraft, bus, or rail vehicle shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years. The prohibition of this subsection shall not apply to any law enforcement officer, peace officer retired from a state or federal law enforcement agency, person in the military service of the state or of the United States, or commercial security personnel employed by the transportation company who is in possession of weapons used within the course and scope of employment; nor shall the prohibition apply to persons transporting weapons contained in baggage which is not accessible to passengers if the presence of such weapons has been declared to the transportation company and such weapons have been secured in a manner prescribed by state or federal law or regulation for the purpose of transportation or shipment. The provisions of this subsection shall not apply to any privately owned aircraft, bus, or rail vehicle if the owner of such aircraft or vehicle has given his or her express permission to board the aircraft or vehicle with the item."

**SECTION 13.**

Said part is further amended by revising subsection (a) of Code Section 16-12-127, relating to prohibition on firearms, hazardous substances, knives, or other devices, penalty, and affirmative defenses, as follows:

"(a) It shall be unlawful for any person, with the intention of avoiding or interfering with a security measure or of introducing into a terminal any explosive, destructive device, or hoax device as such terms are defined in Code Section 16-7-80; firearm for which such person does not have on his or her person a valid weapons carry license issued pursuant to Code Section 16-11-129 unless possessing such firearm is prohibited by federal law weapon or long gun as such terms are defined in Code Section 16-11-125.1 if such person is not a lawful weapons carrier as defined in Code Section 16-11-125.1; hazardous substance as defined by Code Section 12-8-92; or knife or other device designed or modified for the purpose of offense and defense concealed on or about his or her person or property which is or would be accessible to such person while on the aircraft, bus, or rail vehicle if the presence of such weapons has been declared to the transportation company and such weapons have been secured in a manner prescribed by state or federal law or regulation for the purpose of transportation or shipment. The provisions of this subsection shall not apply to any privately owned aircraft, bus, or rail vehicle if the owner of such aircraft or vehicle has given his or her express permission to board the aircraft or vehicle with the item."
substance as defined by Code Section 12-8-92; or knife or other device designed or modified for the purpose of offense and defense, to:

(1) Have any such item on or about his or her person; or
(2) Place or cause to be placed or attempt to place or cause to be placed any such item:
   (A) In a container or freight of a transportation company;
   (B) In the baggage or possessions of any person or any transportation company without the knowledge of the passenger or transportation company; or
   (C) Aboard such aircraft, bus, or rail vehicle."

SECTION 14.

Title 27 of the Official Code of Georgia Annotated, relating to game and fish, is amended by revising paragraphs (1) and (2) of Code Section 27-3-1.1, relating to acts prohibited on wildlife management areas, as follows:

"(1) To possess a firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, during a closed hunting season for that area unless such firearm is unloaded and stored in a motor vehicle so as not to be readily accessible or to possess a handgun during a closed hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129 is a lawful weapons carrier as defined in Code Section 16-11-125.1;

(2) To possess a loaded firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, in a motor vehicle during a legal open hunting season for that area or to possess a loaded handgun in a motor vehicle during a legal open hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129 is a lawful weapons carrier as defined in Code Section 16-11-125.1."

SECTION 15.

Said title is further amended by revising Code Section 27-3-6, relating to possession of firearm while hunting with bow and arrow, as follows:

"27-3-6. It shall be unlawful for any person to possess any center-fire or rimfire firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, while hunting with a bow and arrow during archery or primitive weapons season for deer or while hunting with a muzzleloading firearm during a primitive weapons season for deer or to possess a loaded handgun while hunting with a bow and arrow during archery or primitive weapons season for deer or while hunting with a muzzleloading firearm during primitive weapons season for deer unless such person possesses a valid weapons carry license issued pursuant to..."
Code Section 16-11-129 is a lawful weapons carrier as defined in Code Section 16-11-125.1."

SECTION 16.
Said title is further amended by revising paragraphs (1) and (2) of subsection (a) of Code Section 27-4-11.1, relating to possession of firearms and intoxication on public fishing areas, fishing in closed fishing areas, and other restrictions in public fishing areas, as follows:

"(1) To possess a firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, during a closed hunting season for that area unless such firearm is unloaded and stored in a motor vehicle so as not to be readily accessible or to possess a handgun during a closed hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129 is a lawful weapons carrier as defined in Code Section 16-11-125.1;

(2) To possess a loaded firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, in a motor vehicle during a legal open hunting season for that area or to possess a loaded handgun in a motor vehicle during a legal open hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129 is a lawful weapons carrier as defined in Code Section 16-11-125.1; or"

SECTION 17.
Part 2 of Article 10 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to parking for persons with disabilities, is amended by revising paragraph (4) of subsection (b) of Code Section 40-6-228, relating to enforcement of parking for persons with disabilities, as follows:

"(4) Have the power to possess and carry firearms and other weapons for the purpose of enforcing the parking laws for persons with disabilities; provided, however, that a person who possesses a valid weapons carry license issued under Code Section 16-11-129 and who carries such weapon in a manner permitted under Code Section 16-11-126 is a lawful weapons carrier as defined in Code Section 16-11-125.1 shall not be in violation of this paragraph; or"

SECTION 18.
This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.
SECTION 19.

All laws and parts of laws in conflict with this Act are repealed.
Appendix
**ICLE BOARD**

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Term Expires</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms. Carol V. Clark</td>
<td>Member</td>
<td>2019</td>
</tr>
<tr>
<td>Mr. Harold T. Daniel, Jr.</td>
<td>Member</td>
<td>2019</td>
</tr>
<tr>
<td>Ms. Laverne Lewis Gaskins</td>
<td>Member</td>
<td>2021</td>
</tr>
<tr>
<td>Ms. Allegra J. Lawrence</td>
<td>Member</td>
<td>2019</td>
</tr>
<tr>
<td>Mr. C. James McCallar, Jr.</td>
<td>Member</td>
<td>2021</td>
</tr>
<tr>
<td>Mrs. Jennifer Campbell Mock</td>
<td>Member</td>
<td>2020</td>
</tr>
<tr>
<td>Mr. Brian DeVoe Rogers</td>
<td>Member</td>
<td>2019</td>
</tr>
<tr>
<td>Mr. Kenneth L. Shigley</td>
<td>Member</td>
<td>2020</td>
</tr>
<tr>
<td>Mr. A. James Elliott</td>
<td>Emory University</td>
<td>2019</td>
</tr>
<tr>
<td>Mr. Buddy M. Mears</td>
<td>John Marshall</td>
<td>2019</td>
</tr>
<tr>
<td>Dean Daisy Hurst Floyd</td>
<td>Mercer University</td>
<td>2019</td>
</tr>
<tr>
<td>Mr. Cassady Vaughn Brewer</td>
<td>Georgia State University</td>
<td>2019</td>
</tr>
<tr>
<td>Ms. Carol Ellis Morgan</td>
<td>University of Georgia</td>
<td>2019</td>
</tr>
<tr>
<td>Hon. Harold David Melton</td>
<td>Liaison</td>
<td>2019</td>
</tr>
<tr>
<td>Mr. Jeffrey Reese Davis</td>
<td>Staff Liaison</td>
<td>2019</td>
</tr>
<tr>
<td>Ms. Tangela Sarita King</td>
<td>Staff Liaison</td>
<td>2019</td>
</tr>
</tbody>
</table>
GEORGIA MANDATORY CLE FACT SHEET

Every “active” attorney in Georgia must attend 12 “approved” CLE hours of instruction annually, with one of the CLE hours being in the area of legal ethics and one of the CLE hours being in the area of professionalism. Furthermore, any attorney who appears as sole or lead counsel in the Superior or State Courts of Georgia in any contested civil case or in the trial of a criminal case in 1990 or in any subsequent calendar year, must complete for such year a minimum of three hours of continuing legal education activity in the area of trial practice. These trial practice hours are included in, and not in addition to, the 12 hour requirement. ICLE is an “accredited” provider of “approved” CLE instruction.

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