

No. 20-855

In the
Supreme Court of the United States

MARYLAND SHALL ISSUE, INC., ET AL.,
Petitioners,

v.

LAWRENCE HOGAN,
Respondent.

On Petition for Writ of Certiorari to the United
States Court of Appeals for the Fourth Circuit

**BRIEF OF *AMICI CURIAE* DAVID CODREA,
SCOTT HEUMAN AND OWEN MONROE IN
SUPPORT OF PETITIONERS**

ALAN ALEXANDER BECK
LAW OFFICE OF
ALEXANDER BECK
2692 Harcourt Drive
San Diego, CA 92123
(619) 905-9105
Alan.Alexander.Beck@gmail.com

STEPHEN D. STAMBOULIEH
Counsel of Record
STAMBOULIEH LAW, PLLC
P.O. Box 428
Olive Branch, MS 38654
(601) 852-3440
Stephen@sdslaw.us

Counsel for Amici Curiae

January 21, 2021

CORPORATE DISCLOSURE STATEMENT

The amici curiae are not corporations and thus they have no parent corporations, and do not issue stock.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

INTEREST OF THE AMICI CURIAE 1

SUMMARY OF THE ARGUMENT. 2

ARGUMENT 3

I. Maryland’s Law (and the ATF’s Final Rule)
Mandates Dispossession of Previously
Lawfully Owned Private Property 3

II. The Taking of This Property is a Cost for
Which They Should be Compensated. 4

III. Equity Requires Prior Owners of Bumpstocks
and Rapid Fire Trigger Activators be Made
Whole 7

IV. “Rapid Fire Trigger Activators” are not
Dangerous 8

CONCLUSION. 10

TABLE OF AUTHORITIES

Cases

<i>District of Columbia v. Heller</i> , 554 U.S. 570, 128 S. Ct. 2783 (2008)	9
<i>Horne v. Dep’t of Agric.</i> , 135 S. Ct. 2419 (2015).	7
<i>Loretto v. Teleprompter Manhattan CATV Corp.</i> , 458 U.S. 419 (1982).	4
<i>Lucas v. South Carolina Coastal Council</i> , 505 U.S. 1003 (1992).	4
<i>Murr v. Wisconsin</i> , 137 S. Ct. 1933 (2017).	6, 8
<i>Nixon v. United States</i> , 978 F.2d 1269 (D.C. Cir. 1992).	4
<i>Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency</i> , 535 U.S. 302 (2002).	4

Regulations

83 Fed. Reg. 66514 (Dec. 26, 2018)	<i>passim</i>
--	---------------

Other Authorities

Executive Order, https://www.theverge.com/2020/ 9/23/21452825/california-ban-combustion-gas- vehicles-cars-2035	7
https://www.cnn.com/2017/10/04/us/bump-stock-las- vegas-shooting/index.html	9

INTEREST OF THE AMICI CURIAE

David Codrea, Scott Heuman and Owen Monroe owned bumpstocks.¹ None of them live in Maryland or were affected by Maryland’s ban on “rapid fire trigger activators” as the Petitioners here, however, the substance of the inequitable premise of taking heretofore lawfully owned and acquired private property for public use is present both in the Amici’s federal case regarding bumpstocks and the instant case regarding Petitioners’ “rapid fire trigger activators.”

In the Amici’s case, they relied on the Bureau of Alcohol, Tobacco, Firearms and Explosives’ (“ATF”) repeated approval and legality of so-called bumpstock-type devices. President Trump demanded the ATF ban bumpstocks and the ATF did what was demanded of it. So, despite the ten-plus years of approval, the ATF reimagined and redefined terms in an unambiguous criminal statute to outlaw bumpstocks under penalty of prison, fines, and loss of Second Amendment rights. Mr. Codrea, Mr. Heuman and Mr. Monroe had no choice but to fight the ruling in the courts, but they first had to relinquish possession of their private property and received no compensation for the government’s taking. As such, they have an interest in the outcome of this case because a positive ruling in the instant matter will assist them in their efforts to be

¹ No counsel for any party authored this brief in whole or in part, nor did any counsel or party make any monetary contribution intended to fund the preparation or submission of this brief. All parties’ counsel of record received timely notice of the intended filing of this brief, and all consented to its filing.

compensated for the government's illegitimate taking of their bumpstocks.

SUMMARY OF THE ARGUMENT

Lawful prior owners of bumpstock-type devices and “rapid fire trigger activators” should not be made to bear all the public burdens of a taking. It is unfair, inequitable, and it is wrong. No matter the public policy arguments surrounding whether or not a bumpstock ban (or in this case, a “rapid fire trigger activator”) is good policy, banning them and mandating surrender or destruction without compensation violates our Constitutional protections against uncompensated takings. Because the taking was for a public purpose and dispossessed Petitioners (and with regards to bumpstocks, Mr. Codrea, Mr. Heuman and Mr. Monroe) of their lawfully owned and acquired property, this Court should hold that this kind of action results in a compensable taking.

This brief will be just that: brief. Mr. Codrea, Mr. Heuman and Mr. Monroe write to ask this Court to uphold all rights under our Constitution, not just the favored rights. Notwithstanding that the subject matter of this case elicits 180-degree reactions from gun rights activists or gun control activists, the Constitution must be upheld at the end of the day without regard to the subjects at issue.

ARGUMENT**I. MARYLAND’S LAW (AND THE ATF’S FINAL RULE) MANDATES DISPOSSESSION OF PREVIOUSLY LAWFULLY OWNED PRIVATE PROPERTY.**

There is no question that Maryland’s law dispossesses prior lawful owners of private property. Maryland’s law additionally “takes” this property without any regard to compensating the owners for the taking. The ATF’s Final Rule, published on December 26, 2018, banned bump stocks as machineguns in the Federal Register. *See* 83 Fed. Reg. 66514 (Dec. 26, 2018) (“Final Rule”). The ATF’s Final Rule clearly mandated that “[c]urrent possessors of bump-stock-type devices who properly destroy or abandon their devices will avoid criminal liability.” 83 FR 66514, 66530. Like the Maryland law at issue, the Final Rule offered no compensation to victims of the ATF’s reinterpretation of the federal machinegun statute and instead compelled dispossession by threat of fine, prison time and criminal prosecution, which, in a case of unlawful possession of a machinegun, is a felony.

In the case before this Court, Maryland just did it faster and through legislation instead of regulatory fiat. But in both the federal ban on bumpstocks and Maryland’s ban on “rapid fire trigger activators”, one thing remains the same: owners of previously lawful firearm accessories will not receive any compensation for the taking of their private property.

II. THE TAKING OF THIS PROPERTY IS A COST FOR WHICH THEY SHOULD BE COMPENSATED.

There can be no serious question Maryland's law (and the ATF Final Rule) are "takings" under this Court's precedent. There is no grandfather clause either. As such, the law at issue and the ATF's Final Rule both ban continued possession of personal property in which the owner has a vested interest and is a per se Taking under the Takings Clause of the Fifth Amendment, regardless of whether physical possession of the property is assumed by the government. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 324 n.19 (2002) (a physical taking "dispossess[es] the owner" of property); *Nixon v. United States*, 978 F.2d 1269, 1287 (D.C. Cir. 1992) (statute that "physically dispossessed" property owner "resulted in" a per se taking).

Under the Takings Clause of the Fifth Amendment, the government may not abrogate vested rights in private property without compensation, even in the exercise of its otherwise valid police powers. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1026 (1992) ("the legislature's recitation of a noxious-use justification cannot be the basis for departing from our categorical rule that total regulatory takings must be compensated. If it were, departure would virtually always be allowed"); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 425 (1982) (accepting the lower court's holding that the regulation at issue was "within the State's police power," but holding that "[i]t is a separate question, however,

whether an otherwise valid regulation so frustrates property rights that compensation must be paid”).

Mr. Codrea was forced to surrender an original Akins Accelerator (with its spring removed so as to not be considered a machinegun after the first time it was declared a machinegun) which was still in its original box and signed by the inventor of the device. Mr. Codrea valued his original Akins Accelerator at a minimum of “\$1,100, up to a premium due to the chain of ownership and rarity of the item, it would be expected to sell for at least \$2,000 to \$3,000 at an auction.” See First Amended Complaint at p.23, ¶91; *Codrea, et al. v. Bureau of Alcohol, Tobacco, Firearms and Explosives, et al.*; Civil Action No. 18-cv-3086-DLF.² Mr. Monroe’s and Mr. Heuman’s bumpstocks are valued between “\$200 to \$400”. *Id.*

There are real costs associated with this taking. The ATF admitted as such in the Final Rule:

ATF estimates the total undiscounted cost of this rule at \$312.1 million over 10 years. The total 7% discount cost is estimated at \$245.5 million, and the discounted costs would be \$32.8 million and \$35.0 million, annualized at 3% and 7% respectively. The estimate includes costs to

² In terms of valuing Mr. Codrea’s Akins Accelerator, he required the ATF agent to sign a Receipt for Property and Other Items (ATF Form 3400.23) as his intent is to have his property returned if and when the Final Rule is struck as violative of the Constitution and/or Administrative Procedures Act. The value of said device will continue to increase in value given the nature of it and that it was the subject of federal court action.

the public for loss of property (\$102.5 million); costs of forgone future production and sales (\$198.9 million); costs of disposal (\$9.4 million); and government costs (\$1.3 million).

See 83 Fed. Reg. 66515. The ATF estimated that \$102.5 million dollars is attributable to this “loss of property”. This large sum of money is only incurred by those who owned bumpstocks, or in Maryland’s case, only those who owned “rapid fire trigger activators”. Those owners weren’t allowed to sell their property or enjoy any of the benefits of continued possession. Instead, the government mandated that lawful continued ownership, sale or acquisition of popular firearm accessories verboten and destroyed Petitioners’ bundle of rights in their property. This cannot stand.

This Court has previously stated that the “central purpose of the Takings Clause [is]: to ‘bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.’” *Murr v. Wisconsin*, 137 S. Ct. 1933, 1950 (2017) (*quoting Armstrong*, 364 U. S., at 49, 80 S. Ct. 1563, 4 L. Ed. 2d 1554). That the property at issue is a “rapid fire trigger activator” or a bumpstock doesn’t matter, unless one must disavow constitutional protections for property that is politically disfavored. This Court should grant Petitioner’s Writ and correct the Fourth Circuit’s erroneous holding.

III. EQUITY REQUIRES PRIOR OWNERS OF BUMPSTOCKS AND RAPID FIRE TRIGGER ACTIVATORS BE MADE WHOLE.

Horne v. Dep't of Agric., 135 S. Ct. 2419, 2426 (2015), holds that “[t]he Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home.” Yet the Fourth Circuit held differently despite this Court’s holding in *Horne* merely because the Maryland law at issue did not mandate a surrender to a third party or that the property was not physically turned over to the government. This turns the takings doctrine on its head and incentivizes states to “take” property that they don’t like by mandating destruction of said property instead of the government taking possession. Taking that to its logical conclusion, the states could get away with almost anything because they would not be mandating surrender to a third party and the states themselves wouldn’t take possession of said newly banned property. For example, take this outlandish hypothetical: a state could maneuver around *Horne* simply by banning all internal combustion engines, effective now, and mandate destruction of said property.³ Since the vehicle containing the internal combustion engine would not be turned over to a third party or to the government, it could bypass this Court’s explicit holding in *Horne*.

³ Perhaps this isn’t such an outlandish hypothetical given the Governor of California’s recent Executive Order purporting to ban new sales of internal combustion engines by 2035: <https://www.theverge.com/2020/9/23/21452825/california-ban-combustion-gas-vehicles-cars-2035> (last accessed 1/13/2021).

Petitioners relied on the legality of their devices when they acquired them. Just like Mr. Codrea, Mr. Heuman and Mr. Monroe who relied on years and years of approval from the ATF in stating that bumpstocks were not machineguns and therefore not illegal. As noted by ATF's own admission, "rapid fire trigger activator" owners nationwide spent substantial real dollars on their firearm accessories. Petitioners, just like Mr. Codrea, Mr. Heuman and Mr. Monroe, are now forced to bear the entire burden of this new public policy despite this Court's holding in *Murr*. Because Petitioners' property was taken from them and they were not given the economic benefit of their dollar, they should be compensated for the taking.

IV. "RAPID FIRE TRIGGER ACTIVATORS" ARE NOT DANGEROUS.

The entire premise of the ban on "rapid fire trigger activators" and bumpstocks is that bumpstocks were used in a horrific crime in Las Vegas:⁴

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

⁴ Of note, during a FOIA request regarding the Las Vegas incident, a document was produced which stated that "[O]n-scene ATF personnel were not allowed to physically examine the interior of the weapons for machinegun fire-control components or known machinegun conversion devices such as Drop-In-Auto Sears, Lightning Links, etc."

of ammunition in a short period of time, killing 58 people and wounding approximately 500.

See 83 Fed. Reg. 66516. But, if criminal misuse of a firearm was the end which justified the means, then *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783 (2008) would have been decided the other way. “Handguns also appear to be a very popular weapon among criminals.” *Heller*, 554 U.S. at 698 (Breyer Dissenting). The *Heller* majority rejected the dissent’s position when it held that handguns were protected under the Second Amendment.

Bumpstocks and rapid fire trigger activators, unlike *actual* contraband, have lawful uses. Mr. Codrea, Mr. Heuman and Mr. Monroe did not use their bumpstocks in crimes. There is no evidence that any of the Petitioners used their “rapid fire trigger activators” in crimes either. The mere fact of ownership of bumpstocks was not a crime until President Trump ordered the ATF to make them machineguns and for Maryland, not until the legislature banned “rapid fire trigger activators”. Unlike, say, Schedule I narcotics which have no approved uses and are contraband because they have no lawful uses, bumpstocks have (had) lawful uses. The device was originally created to help people with disabilities bump-fire⁵ a rifle.⁶ To make the point further, the intended use of a bumpstock or rapid fire trigger activator is not to

⁵ Notwithstanding the ATF’s Final Rule declaring bumpstocks to be machineguns, bump-firing a rifle is still legal. For now.

⁶ <https://www.cnn.com/2017/10/04/us/bump-stock-las-vegas-shooting/index.html> (last visited 1/13/2021).

murder or cause physical harms. It is to make bump-firing a rifle easier for the shooter. Unlike cocaine or heroin, of which the intended use would be to make the user high and/or addicted to the substance, and which are contraband because they have no lawful use, bumpstocks don't fit that mold. And unlike, say, methamphetamine, the normal and intended use of a bumpstock or rapid fire trigger activator will not eventually kill the person using it.

As such, because both bumpstocks and rapid fire trigger activators are mere firearm accessories and have lawful, legitimate uses, they are not dangerous in and of themselves.

CONCLUSION

This Court should grant Maryland Shall Issue's petition for a writ of certiorari.

Respectfully submitted,

ALAN ALEXANDER BECK
LAW OFFICE OF
ALEXANDER BECK
2692 Harcourt Drive
San Diego, CA 92123
(619) 905-9105
Alan.Alexander.Beck@gmail.com

STEPHEN D. STAMBOULIEH
Counsel of Record
STAMBOULIEH LAW, PLLC
P.O. Box 428
Olive Branch, MS 38654
(601) 852-3440
Stephen@sdslaw.us

Counsel for Amici Curiae