

**IN THE TENTH DISTRICT COURT OF APPEALS  
FRANKLIN COUNTY, OHIO**

Ohioans for Concealed Carry, <i>et al.</i> ,	:	Case No. 18-AP-00605
	:	
Plaintiffs/Appellees/ Cross-Appellants,	:	On appeal from the Franklin County Court of Common Pleas
	:	Trial Case No. 18 CV 005216 (Judge Cain)
v.	:	
City of Columbus, <i>et al.</i> ,	:	
	:	
Defendants/Appellants/ Cross-Appellees	:	REGULAR CALENDAR

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**(PROPOSED) BRIEF OF *AMICUS CURIAE* GIFFORDS LAW  
CENTER TO PREVENT GUN VIOLENCE IN SUPPORT OF  
APPELLANT/CROSS-APPELLEE CITY OF COLUMBUS**

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## I. INTRODUCTION

*Amicus curiae* on behalf of Appellant City of Columbus, Ohio (“Columbus” or “the City”), urges this Court to either vacate pending a further hearing or reverse the trial court’s final judgment that Columbus Codified Ordinance § 2323.171 (“the Ordinance”), by banning rate-of-fire accessories such as bump stocks and trigger cranks, conflicts with Ohio Revised Code § 9.68 (“R.C. 9.68”) and is thereby unconstitutional.

The Home Rule Amendment of the Ohio Constitution expressly grants municipalities the authority to “adopt and enforce within their limits” police regulations like laws relating to safety “not in conflict with general laws.” Ohio Const. art. XVIII, § 3. The City banned possession of rate-of-fire accessories within city limits after a shooter used semi-automatic rifles equipped with bump stocks in Las Vegas, Nevada, to kill 58 people and wound another 489. *See* Alan Gomez and Kaila White, *Here are all the victims of the Las Vegas shooting*, USA Today (Oct. 8, 2017, 7:39 PM), <http://www.usatoday.com/story/news/nation/2017/10/06/here-all-victims-las-vegas-shooting/733236001/>. The safety concern speaks for itself, and the trial court did not question it.

The trial court determined, however, that Columbus’s ban was in conflict with state law. No Ohio statute refers to “bump stocks” or any analogous term. Yet the trial court determined that as a “purely [ ] legal” matter, a bump stock should be classified as a “component” of a firearm, which R.C. 9.68 bars cities from restricting. *See* Opinion at 4, 9.

The trial court was wrong for at least two reasons. First, the court erred in resolving this matter as a pure legal question at the preliminary injunction hearing. The question of how to classify a bump stock for statutory purposes requires reviewing how the bump stock is classified both in common usage and within the firearms industry—a factual inquiry on which the trial court erred by not permitting further factual development. Second, a fuller factual record would have shown that a bump stock is consistently referred to as an “accessory” across many authoritative sources, and is not a “component” of any legal firearm in either the colloquial or the technical sense of that term. On this point, this brief seeks to provide the Court with a sense of what a more complete factual record would establish by providing a survey of publicly available sources explaining what a bump stock is and how it is classified.

Without a full understanding of common classifications in the firearms industry, and based instead on its own general (and misguided) definition of “component,” the trial court improperly intruded on Columbus’s home rule authority to enact safety regulations within its borders. This Court should determine that the question whether bump stocks are accessories is not “purely a legal” one, Opinion at 4, and vacate and remand for further factual development. Alternatively, if this Court concludes that more facts are unnecessary, it should hold—consistent with the survey of materials below—that bump stocks are accessories and should reverse the trial court’s contrary conclusion.

## **II. STATEMENT OF *AMICUS* INTEREST**

*Amicus Curiae* Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit policy organization dedicated to researching, writing, enacting, and defending laws and programs proven to effectively reduce gun violence. The organization was founded 25 years ago following a gun massacre at a San Francisco law firm and was renamed Giffords Law Center in October 2017 after joining forces with

the gun-safety organization led by former Congresswoman Gabrielle Giffords.

Giffords Law Center provides free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement officials, and citizens who seek to improve the safety of their communities. The organization has provided informed analysis as an *amicus* in many important firearm-related cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc), *cert. denied*, 138 S. Ct. 469 (2017); and *United States v. One (1) Palmetto State Armory PA-15 Machinegun Receiver/Frame*, 822 F.3d 136 (3d Cir. 2016).

Giffords Law Center submits this brief to provide the Court with factual resources relevant to the classification of rapid-fire bump stock accessories, and to ensure that localities like Columbus are granted the flexibility allowed by law to tailor common-sense safety regulations to the needs of their own communities.

### **III. LAW AND ARGUMENT**

The Court should vacate the decision below and remand for a hearing as to whether bump stocks are, as a factual matter, properly considered a component or accessory. If the Court determines, however, that no further facts are needed to answer the question presented, it should hold that the Ordinance’s prohibition of bump stocks is the prohibition of a firearm accessory—a local measure allowed under state law.

#### **A. The City’s Home Rule Authority Allows It to Ban Bump Stocks if They Are Not “Components” of Firearms**

Under the Ohio Constitution, Columbus has home rule authority to enact the Ordinance so long as it does not “directly conflict[]” with R.C. 9.68. *State ex rel. Rocky Ridge Dev., L.L.C. v. Winters*, 151 Ohio St. 3d 39, 42 (2017). Municipalities are authorized “to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Ohio Const. art. XVIII, § 3. “A state statute takes precedence over a local ordinance when ‘(1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is

a general law, and (3) the ordinance is in conflict with the statute.’” *Cleveland v. State*, 128 Ohio St. 3d 135, 137 (2010) (quoting *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 36 (2008)).

Because R.C. 9.68 is a general law and the Ordinance is an exercise of the City’s police power, the only question for home rule purposes is whether Plaintiffs have identified a genuine conflict with state law. *See Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St. 3d 96, 101 (2008) (ordinances related to public health or safety exercise police power); *Cleveland*, 128 Ohio St. 3d at 135 (holding that “R.C. 9.68 is a general law”). An ordinance conflicts with state law only where “the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.” *Am. Fin. Servs. Ass’n v. Cleveland*, 112 Ohio St. 3d 170, 177 (2006) (citation omitted). “No real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa.” *Mendenhall*, 117 Ohio St. 3d at 40 (quoting *Struthers v. Sokol*, 108 Ohio St. 263, 268 (1923)); *see State ex rel. Morrison v. Beck Energy Corp.*, 143 Ohio St. 3d 271, 286 (2015) (“the

state statute must *positively permit* what the ordinance prohibits, or vice versa” (emphasis added; citation omitted)).

The Ohio Supreme Court has made clear that a *direct* conflict—beyond mere tension between the general purposes of the state and local legislatures—is needed for the local law to give way. “The doctrine of preemption under [Ohio] state law is narrower than its federal counterpart. State law is preempted when Congress intends federal law to occupy the field, even if there is no direct conflict . . . [but] a local ordinance is preempted only when a general law of the state *directly* conflicts with it.” *Winters*, 151 Ohio St. 3d at 42 (emphasis added; citation omitted). In certain “more nuanced cases,” when “the General Assembly [has] indicated that the relevant state statute is to control a subject exclusively,” a plaintiff might argue “conflict by implication.” *Mendenhall*, 117 Ohio St. 3d at 40–41. That argument is not available in this case. The Ohio Supreme Court has already determined that R.C. 9.68 does not preclude laws that do not conflict with its text. *See Clyde*, 120 Ohio St. 3d at 100 (general intent of R.C. 9.68 “does not trump the constitutional authority of municipalities to enact legislation pursuant to the Home Rule



Amendment, provided that the local legislation is not in conflict with general laws” (citation omitted)).

In considering whether any such direct conflict exists, this Court must afford the Ordinance the ordinary presumption in favor of the constitutionality of legislative enactments. As the trial court recognized, to conclude that the Ordinance directly conflicts with R.C. 9.68 is to conclude that the Ordinance is unconstitutional because it exceeds the bounds of home rule authority under the Ohio Constitution. *See* Opinion at 12. And such a conclusion runs headlong into the “strong presumption of constitutionality” afforded all “legislative enactments, whether of a municipality or state.” *N. Ohio Patrolmen’s Benev. Ass’n v. City of Parma*, 61 Ohio St. 2d 375, 377 (1980); *accord Hilton v. City of Toledo*, 62 Ohio St. 2d 394, 396 (1980). A municipal ordinance “will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt.” *Arnold v. Cleveland*, 67 Ohio St. 3d 35, 39 (1993); *accord City of Rocky River v. State Emp’t Relations Bd.*, 43 Ohio St. 3d 1, 10 (1989) (referring to this standard as a “heavy burden”). Because state and local laws are equally presumed constitutional, “when

it is possible . . . to harmonize the general law and municipal ordinances, the same should be done.” *Parma*, 61 Ohio St. 2d at 377 (alteration in original; citation omitted); see *State ex rel. Taft v. Franklin Cty. Court of Common Pleas*, 81 Ohio St. 3d 480, 481 (1998) (“[C]ourts must apply all presumptions and pertinent rules of construction so as to uphold, if at all possible, [an] ordinance assailed as unconstitutional.” (citation omitted)).

In short, Columbus may ban bump stocks so long as R.C. 9.68 (or any other state law) does not directly declare bump stocks lawful with such clarity that the Ordinance cannot “possibl[y]” be “harmonize[d]” with the general law. *Parma*, 61 Ohio St. 2d at 377 (citation omitted). Neither the term “bump stock,” nor any synonym for that term, appears in Ohio law. Unless a bump stock is—as the trial court determined as a legal matter—a “component” of a firearm as that term is used in R.C. 9.68 (or a “part,” a term the trial court did not apply to bump stocks), there is no direct conflict, and the local law stands. The record developed below and the materials surveyed in this brief show that it is *at least* a matter of disputed fact whether the term “component” encompasses bump stocks. As a result, Plaintiffs have not borne their heavy burden to show the

Ordinance unconstitutional by means of direct conflict with the state statute.

**B. Whether a Bump Stock Is a Component or Accessory Is an Interpretive Question That Turns on the Common Usage of the Ordinance’s Terms**

R.C. 9.68 precludes ordinances that limit the possession or use of firearms. *See Cleveland*, 128 Ohio St. 3d at 135. Contrary to the State’s *amicus* brief below, however, the statute does not prevent localities from enacting any law “*relating to* firearms.” Amicus Brief of Ohio at 3 (June 22, 2018) (emphasis added); *see Clyde*, 120 Ohio St. 3d at 100 (General Assembly’s intent in passing R.C. 9.68 does not limit locality’s power to pass laws not in conflict with general laws). Rather, it only restricts municipalities from burdening the possession or sale of “any firearm, part of a firearm, its components, and its ammunition.” R.C. 9.68.

As a threshold matter, interpreting the scope of R.C. 9.68 must “begin, as always, with the text.” *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1568 (2017). This inquiry is guided by the “cardinal canon . . . that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat. Bank v.*

*Germain*, 503 U.S. 249, 253–54 (1992). “[I]t is quite mistaken to assume . . . that whatever might appear to further the statute’s primary objective must be the law.” *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017) (internal formatting and citations omitted). Because “[l]egislation is, after all, the art of compromise, the limitations expressed in statutory terms [are] often the price of passage, and no statute yet known pursues its stated purpose at all costs.” *Id.*

The General Assembly’s decision *not* to preclude municipalities from regulating (or banning) firearm accessories is significant here because Ohio’s codified rules of construction direct that the words of R.C. 9.68 are to be interpreted in light of their “common usage,” including any “technical or particular meaning” that the terms bear in the law or in the relevant field. Ohio Revised Code § 1.42; *see Klemas v. Flynn*, 66 Ohio St. 3d 249, 250 (1993). Where legislation regarding a particular industry “employs the technical language developed in the specialty,” the legislation “requires a technical interpretation in the light of the statutory purpose.” *State v. Rentex, Inc.*, 51 Ohio App. 2d 57, 59 (Ct. App. 1977) (footnote omitted). In *Rentex*, for instance, the Eighth District treated

“[t]he terms ‘listing’ and ‘procuring’” as “words of art in the real estate business” that “imply an agency relationship between the seller and broker.” *Id.* at 60–61; *see also Bohacek v. Adm’r, Bureau of Emp’t Servs.*, 9 Ohio App. 3d 59, 63 (1983) (noting that “[t]he term ‘file’ has a technical or specialized meaning within the legal world,” referring to “the presentation of papers” rather than mailing).

The meaning of the term “[firearm] components,” as used in R.C. 9.68, must therefore be interpreted in light of its use in the firearms industry. And how the term is used in the firearms industry is a factual question. Plaintiffs recognized as much before the trial court when they introduced a witness to testify to his understanding of how bump stocks, in his experience, are classified in the firearms industry. *See* July 9, 2018 Hearing Transcript at 26–27, 32–34. Whether a bump stock is a component of a firearm under R.C. 9.68 is thus a question warranting factual development in light of prevailing industry terminology—not, as the trial court stated, “purely a legal [question].” Opinion at 4. And such an approach is consistent not only with codified Ohio rules of construction, but parallel federal cases on questions of technical

definitions. *See, e.g., Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 838 (2015) (“question [ ] of how the art understood the term” in a patent is “plainly a question of fact” even if dispositive of the legal issue, quoting *Harries v. Air King Prod. Co.*, 183 F.2d 158, 164 (2d Cir. 1950) (L. Hand, C.J.)); *Order of Ry. Conductors of Am. v. Swan*, 152 F.2d 325, 327 (7th Cir. 1945) (deferring to district court on definition of term within railroad industry as “the definitions of words, either common or technical, involve questions of fact”).

Other states’ laws provide context to the omission of “firearms accessories.” If the General Assembly intended to prohibit local regulation of firearm “accessories” in addition to prohibiting local regulation of firearm “parts” or “components,” it could have said so, using the language that many other jurisdictions have chosen to adopt.<sup>1</sup> Indeed,

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<sup>1</sup> *See, e.g.,* Ariz. Rev. Stat. § 13-3108(A) (prohibiting a “political subdivision” from restricting the possession or use of “firearms or ammunition or any firearm or ammunition components or related accessories”); Ky. Rev. Stat. § 65.870(1) (local government may not “occupy any part of the field of regulation of [possessing or otherwise using] firearms, ammunition, components of firearms, components of ammunition, firearms accessories, or combination thereof”); Wyo. Stat.

in light of the general recognition of bump stocks as firearm accessories rather than components, at least one state is debating extending its own preemption law to cover “accessories,” specifically in order to reach bump stocks.<sup>2</sup>

Because significant evidence shows the bump stock device is commonly classified as an accessory, not a component, Columbus should be given the opportunity for fuller factual development to demonstrate this classification.

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§ 6-8-401(c) (absent a statutory exception, local governments may not regulate “firearms, weapons, accessories, components or ammunition”).

<sup>2</sup> The South Carolina legislature is currently considering whether to expand its own preemption law—S.C. Code § 23-31-510, written similarly to R.C. 9.68—to preempt local laws banning “firearm accessories,” specifically to preempt local bump stock bans. *See Sarah Ellis, Columbia’s controversial bump stock ban could get shot down, The State* (Feb. 1, 2018, 5:54 PM), <https://www.thestate.com/news/local/article197931184.html> (noting the bill “would be an addition to a state law already prohibiting local governments from regulating firearms, ammunition, and firearm components”).

### **C. Authoritative Sources Confirm That Bump Stocks Are “Accessories” Rather Than “Components”**

Many authoritative sources—including bump stock manufacturers themselves, the federal government, public statements before federal entities, and Ohio and national news sources—confirm that bump stocks, in ordinary usage as well as in the technical parlance of the firearms industry, are considered “accessories.”

#### **1. Bump Stock Manufacturers**

Bump stock manufacturers and patent holders frequently refer to their products as “accessories” in patents and patent applications as well as in court proceedings.

For instance, three of the issued patents using the term “bump stock” explain in their background sections that “[t]he present invention relates generally to firearms, and more particularly toward a manually reciprocated bump-stock accessory for semi-automatic firearms.” U.S. Patent No. 9,546,836 (January 17, 2017); U.S. Patent No. 8,356,542



(January 22, 2013); U.S. Patent No. 8,607,687 (December 17, 2013).<sup>3</sup> Patent applications for other bump firing devices similarly refer to sliding stock devices as “accessories.” *See, e.g.*, U.S. Patent Application No. 2012/0311907 (December 13, 2012) (“The present invention relates . . . toward a manually reciprocated gun stock accessory for enabling rapid fire of a semi-automatic firearm.”); U.S. Patent Application No. 2012/0117843 (May 17, 2012) (“The present invention relates . . . toward a sliding interface for a sliding stock accessory used with semi-automatic firearms to enable sequential firing of ammunition rounds . . .”). And various patents for other devices that enable bump firing use the term “accessory” to describe the patented product. *See, e.g.*, U.S. Patent No. 9,885,531 (February 6, 2018) (patenting various “rapid-fire accessor[ies] for a semi-automatic firearm” using trigger guards); U.S. Patent No. 9,841,252 (December 12, 2017) (“The disclosed embodiments” for

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<sup>3</sup> The fourth patent using the term bump stock refers to a “bump stock assembly,” comprised in part of a stand that supports a gun and a frame mounted to that stand which also supports the firearm. This is no more a component of a firearm than any “mount and support for a conventional semi-automatic firearm” would be. *See* U.S. Patent No. 9,297,602 (Mar. 29, 2016).

trigger-and-bolt bump firing methods “relate to the field of firearms and more specifically to accessories for firearms”); U.S. Patent No. 8,448,562 (May 28, 2013) (reciprocating firearm stock patent “relates generally to an accessory stock assembly for semi-automatic firearms, and more particularly toward an improved interface between an [*sic*] reciprocating accessory stock and a firearm”).

Likewise, bump stock manufacturers, retailers, and patent holders have consistently referred to bump stocks as accessories in court filings. *See, e.g.*, Brief of Appellant William Akins, *Akins v. United States*, No. 08-15640-F, 2008 WL 5458835 (11th Cir. Nov. 19, 2008) (referring to himself as an “accessory manufacturer” and asserting “the government has no interest in regulating devices that are firearm accessories (and therefore not firearms at all),” such as Akins’s bump stock); Amended Complaint of Slide Fire Solutions, *Slide Fire Sols. v. Bump Fire Sys.*, No. 3:14-cv-3358-M, 2015 WL 8660835 (N.D. Tex. Aug. 21, 2015) (noting it sells “firearms and accessories to firearms including sliding rifle stocks, sometimes referred to as bump fire stocks”); Complaint of Fostech Outdoors, *Fostech Outdoors v. Slide Fire Sols.*, No. 1:12-cv-0289, 2012

WL 827222 (S.D. Ind. Mar. 5, 2012) (Plaintiff “is in the business of selling certain accessories to firearms. Such accessories include ‘bump fire stocks’—devices that allow certain firearms to lawfully fire multiple shots in rapid succession.”).

Courts and other parties to litigation likewise refer to bump stocks as accessories. *See, e.g., Akins v. United States*, 312 F. App’x 197, 198 (11th Cir. 2009) (per curiam) (patented bump stock was “an accessory that increases the rate of fire of a semiautomatic rifle”); *Roberts v. Bondi*, No. 8:18-cv-1062-T-33TGW, 2018 WL 3997979 (M.D. Fla. Aug. 21, 2018) (quoting plaintiff challenging bump-stock ban that “the term ‘bump-fire stock’ as defined by the [ban] ‘includes a common firearm accessory for AR-15 and other semiautomatic rifles . . . .’”); Plaintiffs’ Opposition to Motion to Dismiss, *Prescott et al. v. Slide Fire Sols. et al.*, No. 2:18-cv-00296-GMN-GWF, 2018 WL 1773485 (D. Nev. Mar. 30, 2018) (product liability case) (“bump stock device” is “an after-market accessory . . . [that] enables a gun to fire hundreds of rounds of ammunition in seconds”).

*Amicus* is aware of only one decision to the contrary: a recent federal district court case in which bump stock manufacturer Slide Fire, in order to benefit from a federal anti-liability statute, had argued that its products should be viewed as component parts and not accessories. *Prescott v. Slide Fire Sols., LP*, No. 2-18-CV-00296, 2018 WL 4409369 (D. Nev. Sept. 17, 2018). Notwithstanding Slide Fire’s own filings in patent and other proceedings discussed above, the district court issued an opinion in Slide Fire’s favor that is distinguishable on two grounds. *Id.* at \*7–10. First and foremost, the Columbus Ordinance is entitled to a presumption of constitutionality that was inapplicable in *Prescott*. Second, the district court followed a Ninth Circuit interpretive rule that directed that “common meaning” should be “derived from dictionary definitions,” *Id.* at \*8 (citation omitted). This rule differs from the more expansive methodology of Ohio Revised Code § 1.42, which also sensibly takes into account how “component” and “accessory” are used in the relevant industry.

Aside from the distinguishable outlier decision in *Prescott*, the consensus position in court pleadings and decisions concerning bump

stocks is to consistently follow the industry’s lead and recognize the items as firearms accessories—not firearm components.

## **2. Federal Government**

The Bureau of Alcohol, Tobacco, & Firearms (“ATF”) regularly uses the word “accessory” to refer to bump stocks. For example, the Notice of Proposed Rulemaking for federal regulation of bump stocks acknowledged concerns that “any regulation of bump-stock-type devices . . . will decrease innovation in the firearms accessories market.” Notice of Proposed Rulemaking (“NPRM”), 83 Fed. Reg. 13,442, 13,447 (Mar. 29, 2018); *see id.* at 13,449 (estimate of potential sellers of bump-stock devices required ATF to “estimate the number [of firearms retailers] that do sell accessories” like bump stocks.); *cf.* Advance Notice of Proposed Rulemaking, 82 Fed. Reg. 60,929, 60,930 (Dec. 26, 2017) (“Since 2008, ATF has issued a total of 10 private letters in which it classified various bump stock devices to be unregulated parts or accessories.”).

## **3. Statements to Regulators**

Both organizations and individuals making statements before state and federal entities regularly refer to bump stocks as accessories.

*Amicus*'s own comment in response to ATF's NPRM—filed months before Columbus enacted its Ordinance—refers to bump stocks as “firearm accessories.” Giffords Comment to ATF NPRM at 1, <https://www.regulations.gov/document?D=ATF-2018-0001-27330>.

Other individuals and organizations providing statements on similar proposed laws before state legislatures likewise refer to bump stocks as accessories, whether advocating for or against their regulation. *See, e.g.*, Letter of Probation Officer (Ret.) Philip Davis to the Connecticut Senate Judiciary Committee (2018), <https://bit.ly/2oUPc9j> (discussing bump stocks as “dangerous accessories”); Letter of Troy Matias of 2A Hawaii to the Hawai'i Senate Judiciary Committee (Feb. 26, 2018), <https://bit.ly/2NADgrd> (urging legislature to not “outlaw a category of gun accessory that thousands of firearm owners have purchased”); Gun Owners of America Comment to ATF NPRM at 2–3, <http://www.regulations.gov/document?D=ATF-2018-0001-35564> (arguing “ATF has no generalized authority to regulate firearms or accessories,” and therefore “does not have the authority to regulate ‘bump stocks’ at all”).

#### 4. Local and National News Articles

With striking consistency, state and national news articles refer to bump stocks as gun “accessories” or some analogous word, demonstrating that common usage supports the City.

Within Ohio, local and wire articles published before the current litigation in the Columbus Dispatch, the Cincinnati Enquirer, and the Cleveland Plain Dealer all refer to bump stocks as “firearms accessories.” *See, e.g.,* Sadie Gurman, *Sessions: Justice Department can ban bump stocks with regulation*, Columbus Dispatch (Feb 27, 2018, 1:25 PM), <http://www.dispatch.com/news/20180227/sessions-justice-dept-can-ban-bump-stocks-with-regulation> (“Sessions said top officials within the department believe gun accessories like the ones used in last year’s Las Vegas massacre can be banned through the regulatory process.”); Nicole Gaudiano & Eliza Collins, *Republicans may consider Democrats’ plan to ban gun “bump stocks” after Vegas shooting*, Cincinnati Enquirer (Oct. 4, 2017, 5:49 PM), <http://www.cincinnati.com/story/news/politics/2017/10/04/sen-dianne-feinstein-and-democrats-propose-narrow-gun-bill-ban-bump-stocks-after-vegas-shooting/731611001/> (proposed federal law

“would ban the . . . possession of bump stocks, trigger cranks and similar accessories that accelerate a semi-automatic rifle’s rate of fire”); Mike DeBonis *et al.*, *NRA supports push to regulate “bump stocks,” surpassing White House, GOP stand*, Cleveland Plain Dealer (Oct. 5, 2017), [http://www.cleveland.com/nation/index.ssf/2017/10/nra\\_supports\\_push\\_to\\_regulate.html](http://www.cleveland.com/nation/index.ssf/2017/10/nra_supports_push_to_regulate.html) (proposed federal bill “would ban the sale, transfer and manufacture of bump stocks, trigger cranks and other accessories that can accelerate a semiautomatic rifle’s rate of fire”).

Likewise, national news sources as diverse as the Washington Post, the Washington Times, the New Yorker, the Wall Street Journal, National Public Radio, and Fortune all use the term “accessory” to describe bump stocks. *See, e.g.*, Julie Vitkovskaya & Alex Horton, *Trump recommended outlawing bump stocks. Here’s what they are*, Wash. Post (last updated February 20, 2018), <https://www.washingtonpost.com/news/checkpoint/wp/2017/10/05/what-are-bump-stocks> (“Republican lawmakers in Congress also backed legislation to ban bump stocks, a rare moment of GOP politicians calling for restrictive measures on firearm accessories.”); Dave Boyer & David Sherfinski, *Trump orders ban on*



*“bump stock” gun modifications*, Wash. Times (Feb. 20, 2018), <https://www.washingtontimes.com/news/2018/feb/20/trump-pushes-bump-stock-ban/> (“President Trump announced Tuesday he is moving to ban ‘bump stock’ accessories for semi-automatic firearms, and that he’s considering other gun measures in the wake of last week’s mass school shooting in Florida.”); Miles Kohrman, *The Las Vegas Shooter’s Accessories*, New Yorker (Oct. 4, 2017), <https://www.newyorker.com/news/news-desk/the-las-vegas-shooters-accessories-bump-stocks> (“[O]f the twenty-three guns Paddock had in his room at the Mandalay Bay hotel, twelve were outfitted with “bump stock” devices—inexpensive gun accessories that enable semiautomatic firearms to mimic automatic gunfire. . . . These accessories are not subject to federal regulations and are legal in all but a handful of states.”); Peter Nicholas & Julie Bykowicz, *Trump Takes Step to Ban “Bump Stocks”*, Wall St. J. (Feb. 20, 2018, 7:07 PM), <https://www.wsj.com/articles/trump-takes-step-to-ban-bump-stocks-1519168128> (“While that [bump stock] accessory wasn’t used in last week’s Florida shooting, it was used in the Las Vegas gun massacre . . . .”); Vanessa Romo, *Bump Stock Manufacturer Is Shutting Down*

*Production*, Nat’l Public Radio (Apr. 18, 2018, 7:21 PM), <https://www.npr.org/sections/thetwo-way/2018/04/18/603623834/bump-stock-manufacturer-is-shutting-down-production> (noting bump stocks “have come under intense public and political scrutiny since the rapid-fire gun accessory was used in the Oct. 1, 2017, Las Vegas mass shooting . . . .”); Grace Donnelly, *What You Need to Know About Bump Stock Gun Accessories*, Fortune (Feb. 21, 2018), <http://fortune.com/2018/02/21/bump-stocks-ban-las-vegas-shooting/> (“A bump stock, also called a bump-fire stock, is an attachment that makes a semi-automatic weapon . . . shoot nearly as fast as fully-automatic machine guns. This accessory replaces the standard stock on a rifle with a piece of plastic or metal molded to the lower end of the gun.”).

These sources provide abundant evidence that bump stocks are termed a “firearms accessory” in common parlance, as well as within the trade as discussed above. In light of the alignment of common and trade use, this Court should vacate and remand for the trial court to consider such evidence, rather than relying on its own intuition as to the meanings of “component” and “accessory.”

## D. The Trial Court’s Definition of “Component” Was Overbroad and Erroneous

Rather than examining the common and technical uses of the relevant terminology, the trial court relied on a definition of its own making: that “a component of a firearm” must include any item that “when installed, becomes an integral part of the safe operation of a firearm.” Opinion at 9.<sup>4</sup> This definition has at least two major flaws. First, it is unmoored from the technical definition of a firearms component actually offered by the Plaintiffs. And second, as a general definition, it is broad enough to incorporate items—associated with firearms or other

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<sup>4</sup> Many firearms—including firearms functioning like a rifle—can be handled safely without a stock. For example, most AR-15 pistols do not allow a traditional stock to be used, though they can be readily modified with an arm brace to resemble rifle handling (subject to some legal restrictions). See *Brace Yourself: ATF Reconsiders Obama-Era Policy on Stabilizing Braces*, National Rifle Association (Apr. 25, 2017), <https://www.nraila.org/articles/20170425/brace-yourself-atf-reconsiders-obama-era-policy-on-stabilizing-braces>. It is just that a *rifle*, by definition, includes a stock. See *Washington Hunter Ed Course: Parts of a Rifle*, Kalkomey Enterprises LLC, [https://www.hunter-ed.com/washington/studyGuide/Parts-of-a-Rifle/20105001\\_700046627/](https://www.hunter-ed.com/washington/studyGuide/Parts-of-a-Rifle/20105001_700046627/) (hunter license certification course).

technology—that are plainly not “components” of the device they support.

First, the Plaintiffs’ affidavit proffered below actually pointed (correctly) to a narrower definition of “component”—the one provided by federal law. *See* Affidavit of Rick Vasquez, Plaintiffs’ Motion for Temporary Restraining Order, at ¶ 12 (quoting 27 C.F.R § 53.61). Under the Code of Federal Regulations (“CFR”), an item is a component part of a firearm only where the item “would ordinarily be attached to a firearm during use and, in the ordinary course of trade, [is] packaged with the firearm at the time of sale by the manufacturer or importer.” 27 C.F.R. § 53.61(b)(2). Plaintiffs have never argued, and likely could not reasonably argue, that, “in the ordinary course of trade,” bump stock accessories are packaged with legal semi-automatic firearms at the time of sale. By contrast, an ordinary “butt stock” *is* customarily packaged with, and attached to, a semi-automatic rifle at the time of sale—which is why it, unlike a bump stock, is expressly included in the federal definition. *See* 27 C.F.R. § 53.61(b)(5).

This definition allays the trial court’s concern that the City’s position would classify all replacement parts as mere accessories. Opinion at 9.<sup>5</sup> Under the federal definition, a replacement for a component part that “would ordinarily be attached to a firearm” and that would, “in the ordinary course of trade,” be “packaged with the firearm at the time of sale” is a component part whether an end user or a manufacturer attaches it. 27 C.F.R. § 53.61(b)(2). This standard belies the trial court’s concern that “replacement spark plugs” in a car engine would be classified “mere accessories” if installed by the end user, whether standard or high-horsepower. *See* Opinion at 10. The better analogy with respect to firearms is a new butt stock installed by the rifle owner. Installing a new butt stock—perhaps of different material, weight,

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<sup>5</sup>The trial court believed that its conclusion that a conflict existed was “strengthened” by the fact that the Ordinance itself uses the word “component,” and that the City is therefore attempting to “turn[] parts and components into accessories.” Opinion at 11. But the Ordinance’s text makes the trial court’s error plain: It uses the terms “any part, combination of parts, component, device, attachment or accessory” to define a “rate-of-fire acceleration firearm accessory.” Columbus Codified Ordinance § 2323.171(C)(1). In other words, it refers to parts and components *of rate-of-fire acceleration items*, not parts and components *of firearms themselves*.

or design—does not change the character of a rifle, and might well have been packaged with the rifle. A bump stock, by contrast, is not simply a slightly modified or more effective butt stock; it materially changes the character of the rifle. Though it shares the word “stock” and can fill its role in operation, its obvious and primary function is to adapt a semi-automatic rifle to mimic automatic fire.

While the federal definition might leave some ambiguities in close cases, the trial court’s definition of component—any item that “when installed, becomes an integral part of the safe operation of a firearm”—is both inconsistent with ordinary rules of construction and unworkably broad. Opinion at 9.

First, ordinary rules of construction direct that statutes should be interpreted “in a manner that will give effect to every word and clause, avoiding a construction that will render a provision meaningless or inoperative.” *State ex rel. Nat’l Lime & Stone Co. v. Marion Cty. Bd. of Comm’rs*, 152 Ohio St. 3d 393, 396 (2017). In particular, “words in statutes should not be construed to be redundant.” *E. Ohio Gas Co. v. Pub. Utils. Comm’n of Ohio*, 39 Ohio St. 3d 295, 295 (1988). Here, R.C.

9.68 bars municipalities from burdening the possession and use of “components” of firearms, as well as “ammunition.” But if any item “integral” to the firearm’s actual “operation” were a component (or part) of the firearm, ammunition would readily fall into the trial court’s definition of “component”—and thus constitute surplusage in the text of 9.68.

The dictionary definition of “accessory” includes “a thing which can be added to something else in order to make it more useful, versatile, or attractive.” Oxford English Dictionary (2018), <https://en.oxforddictionaries.com/definition/accessory>. That definition perfectly describes a bump stock, which is added to a firearm to improve rapid fire capability at the expense of accuracy. And common synonyms for “accessory” further underscore that it is the appropriate term to describe bump stocks. The synonyms identified by the Merriam-Webster Thesaurus—“adapter,” “add-on,” and “attachment”—all describe the functioning of the bump stock, since it is an attachment replacing a stock

to adapt a semi-automatic rifle into something different.<sup>6</sup> Merriam-Webster Thesaurus, <https://www.merriam-webster.com/thesaurus/accessory>. By contrast, none of those words is listed as a synonym for “component.” Merriam-Webster Thesaurus, <https://www.merriam-webster.com/thesaurus/component> (listing words and phrases including “building block,” “constituent,” and “element”).

Further, the trial court’s definition of a component as an “integral part” to the “safe operation” of a device lacks a limiting principle as applied. The trial court did not find, and could not have found, that rifles require a bump stock to operate safely. Rather, the court found that the bump stock serves the safety role in the absence of a butt stock. And that is correct as far as it goes: If the standard stock is removed, something has to take its place for the rifle to function safely. But it does not follow

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<sup>6</sup> While Plaintiffs’ purported expert before the trial court took the position that a bump stock should be termed a component or part of a firearm, his full testimony suggests that he gave those words an unusually expansive definition that would cover any attachment—agreeing, for example, that a spoiler attachment (often primarily decorative on passenger vehicles) would constitute a car part or component. *See* July 9, 2018 Hearing Transcript at 48–49 (agreeing that this would be “the same type of thing with what we have been referring to as bump stock”).



that any conceivable replacement, particularly one with entirely different functionality, is a “component” of a firearm. After all, if any item that could serve as a replacement for any part of a firearm were considered a firearm *component*, then R.C. 9.68 would preclude local regulation of steel plumbing pipe, along with every other item do-it-yourself home manufacturers of guns can use to construct or modify a firearm. Anchoring the definition of firearm component with reference to the ordinary course of trade—as the federal definition does—provides a more workable and sensible limiting principle.

A comparison to accessories for cameras—another device that can be adapted for use with various attachments—is instructive. Take, for instance, a specialty telephoto-zoom lens for a digital single lens reflex (“DSLR”) camera. A camera of course requires *a* lens for functioning, and a telephoto-zoom lens may replace a standard lens in the camera’s functioning, just as a bump stock is attached in the butt stock’s place. But a DSLR camera is not sold with a lens exclusively designed for close zoom as a component part of the camera, particularly because a close-

zoom-only lens changes the functionality of the camera from its ordinary use.

This court need not define the precise boundaries of “firearms component” or “firearms accessory” to determine that a bump stock is so consistently and commonly classified as the latter that the trial court’s decision must, at a minimum, be vacated and remanded for further factual development. But if the court determines that guidance as to the definition of “component” in R.C. 9.68 is necessary, then it should adopt a definition like that in the federal regulation to which Plaintiffs themselves pointed—defined by the ordinary course of trade, and not encompassing any imaginable makeshift attachment that can be made integral to a firearm’s functioning.

#### **IV. CONCLUSION**

Because full factual development—as previewed in part in this brief—would demonstrate that bump stocks are properly considered firearms accessories rather than components, this Court should vacate the trial court’s permanent injunction of Columbus Codified Ordinance § 2323.171 and remand for further factual development. If the Court

determines that more facts are not needed, however, it should reverse and hold that R.C. 9.68 does not preclude the Ordinance because bump stocks are firearms accessories that the state law does not reach.

Respectfully submitted,

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**Certificate of Service**

I hereby certify that on October 1, 2018, the foregoing was electronically filed with the Clerk of the Court by using the e-Filing system, and a copy of the foregoing has been sent to the following via electronic mail and regular U.S. Mail:

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