SUPREME COURT OF THE UNITED STATES

No. 91–164

UNITED STATES, PETITIONER *v.* THOMPSON/ CENTER ARMS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[June 8, 1992]

JUSTICE SOUTER announced the judgment of the Court and delivered an opinion in which THE CHIEF JUSTICE and JUSTICE O'CONNOR join.

Section 5821 of the National Firearms Act (NFA or Act), see 26 U. S. C. §5849, levies a tax of $200 per unit upon anyone "making" a "firearm" as that term is defined in the Act. §5821. Neither pistols nor rifles with barrels 16 inches long or longer are firearms within the NFA definition, but rifles with barrels less than 16 inches long, known as short-barreled rifles, are. §5845(a)(3). This case presents the question whether a gun manufacturer "makes" a short-barreled rifle when it packages as a unit a pistol together with a kit containing a shoulder stock and a 21-inch barrel, permitting the pistol's conversion into an unregulated long-barreled rifle,[1] or, if the pistol's barrel is left on the gun, a short-barreled rifle that is regulated. We hold that the statutory language may not be construed to require payment of the tax under these facts.

The word "firearm" is used as a term of art in the NFA. It means, among other things, "a rifle having a barrel or barrels of less than 16 inches in length . . . ." §5845(a)(3). "The term `rifle' means a weapon designed or redesigned, made or remade, and

[1]Unregulated, that is, under the NFA.

intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge." §5845(c).

The consequence of being the maker of a firearm are serious. §5821(a) imposes a tax of $200 "for each firearm made," which "shall be paid by the person making the firearm," §5821(b). Before one may make a firearm, one must obtain the approval of the Secretary of the Treasury, §5822, and §5841 requires that the "manufacturer, importer, and maker . . . register each firearm he manufactures, imports, or makes" in a central registry maintained by the Secretary of the Treasury. A maker who fails to comply with the NFA's provisions is subject to criminal penalties of up to 10 years' imprisonment and a fine of up to $10,000, or both, which may be imposed without proof of willfulness or knowledge. §5871.

Respondent Thompson/Center Arms Company manufactures a single-shot pistol called the "Contender," designed so that its handle and barrel can be removed from its "receiver," the metal frame housing the trigger, hammer and firing mechanism. See 27 CFR §179.11 (1991) (definition of frame or receiver). For a short time in 1985 Thompson/Center also manufactured a carbine-conversion kit consisting of a 21-inch barrel, a rifle stock, and a wooden fore-end. If one joins the receiver with the conversion kit's rifle stock, the 21-inch barrel, and the rifle fore-end, the product is a carbine rifle with a 21-inch barrel. If, however, the shorter, pistol-length barrel is not removed from the receiver when the rifle stock is added, one is left with a 10–inch or "short-barreled" carbine rifle. The entire conversion, from pistol to long-barreled rifle takes only a few minutes; conversion to a short-barreled rifle takes even less time.

In 1985, the Bureau of Alcohol, Tobacco and Firearms advised Thompson/Center that when its conversion kit was possessed or distributed together with the Contender pistol, the unit constituted a firearm subject to the NFA. Thompson/Center responded by paying the $200 tax for a single such

firearm, and submitting an application for permission under 26 U. S. C. § 5822 "to make, use, and segregate as a single unit" a package consisting of a serially numbered pistol, together with an attachable shoulder stock and a 21-inch barrel. Thompson/Center then filed a refund claim. After more than six months had elapsed without action on it, the company brought this suit in the United States Claims Court under the Tucker Act, 28 U. S. C. §1491, arguing that the unit registered was not a firearm within the meaning of the NFA because Thompson/Center had not assembled a short-barreled rifle from its components. The Claims Court entered summary judgment for the Government, concluding that the Contender pistol together with its conversion kit is a firearm within the meaning of the NFA. 19 Cl. Ct. 725 (1990).

The Court of Appeals for the Federal Circuit reversed, holding that a short-barreled rifle "actually must be assembled" in order to be "made" within the meaning of the NFA. 924 F. 2d 1041, 1043 (1991). The Court of Appeals expressly declined to follow the decision of the Court of Appeals for the Seventh Circuit in *United States* v. *Drasen*, 845 F. 2d 731, cert. denied, 488 U. S. 909 (1988), which had held that an unassembled "complete parts kit" for a short-barreled rifle was in fact a short-barreled rifle for purposes of the NFA. We granted certiorari to resolve this conflict. 502 U. S. ___ (1991).

The NFA provides that "[t]he term `make', and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm." 26 U. S. C. §5845(i).[2]

---

[2]The phrase "other than by one qualified to engage in such business under this chapter," apparently refers

But the provision does not expressly address the question whether a short-barreled rifle can be "made" by the aggregation of finished parts that can readily be assembled into one. The Government contends that assembly is not necessary; Thompson/Center argues that it is.

The Government urges us to view the shipment of the pistol with the kit just as we would the shipment of a bicycle that requires some home assembly. "The fact that a short-barrel rifle, or any other `firearm,' is possessed or sold in a partially unassembled state does not remove it from regulation under the Act." Brief for United States 6.

The Government's analogy of the partially assembled bicycle to the packaged pistol and conversion kit is not, of course, exact. While each example includes some unassembled parts, the crated bicycle parts can be assembled into nothing but a bicycle, whereas the contents of Thompson/Center's package can constitute a pistol, a long-barreled rifle, or a short-barreled version. These distinctions, however, do define the issues raised by the Government's argument, the first of which is whether the aggregation and segregation of separate parts that can be assembled only into a short-barreled rifle and are sufficient for that purpose amount to "making" that firearm, or whether the firearm is not "made" until the moment of final assembly. This is the issue on which the Federal and

---

to those manufacturers who have sought and obtained qualification as a firearms manufacturer under 26 U. S. C. §5801(a)(1), which requires payment of a $1,000 occupational tax. Rather than seek such qualification, Thompson/Center applied for permission to make a firearm as a nonqualified manufacturer under §5822 which requires payment of the $200 per firearm "making tax" under §5821(a).

Seventh Circuits are divided.

We think the language of the statute provides a clear answer on this point. The definition of "make" includes not only "putting together," but also "manufacturing . . . or otherwise producing a firearm." If as Thompson/Center submits, a firearm were only made at the time of final assembly (the moment the firearm was "put together"), the additional language would be redundant. Congress must, then, have understood "making" to cover more than final assembly, and some disassembled aggregation of parts must be included. Since the narrowest example of a combination of parts that might be included is a set of parts that could be used to make nothing but a short-barreled rifle, the aggregation of such a set of parts, at the very least, must fall within the definition of "making" such a rifle.

This is consistent with the holdings of every Court of Appeals, except the court below, to consider a combi- nation of parts that could only be assembled into an NFA-regulated firearm, either under the definition of rifle at issue here or under similar statutory language. See *United States* v. *Drasen, supra; United States* v. *Endicott*, 803 F. 2d 506, 508–509 (CA9 1986) (unassembled silencer is a silencer); *United States* v. *Luce*, 726 F. 2d 47, 48–49 (CA1 1984) (same); *United States* v. *Lauchli*, 371 F. 2d 303, 311–313 (CA7 1966) (unassembled machineguns are machineguns).[3] We thus reject the broad language of the Court of Appeals for the Federal Circuit to the extent that it

[3]In *Drasen*, a complete-parts kit was sold with a flash suppressor which, if affixed to the rifle barrel, would have extended it beyond the regulated length. See *Drasen,* 845 F. 2d, at 737. Because the *Drasen* court concluded that such a flash suppressor was not a part of the rifle's barrel, see *ibid.*, its holding is consistent with ours.

would mean that a disassembled complete short-barreled rifle kit must be assembled before it has been "made" into a short-barreled rifle. The fact that the statute would serve almost no purpose if this were the rule only confirms the reading we have given it.[4]

We also think that a firearm is "made" on facts one step removed from the paradigm of the aggregated parts that can be used for nothing except assembling a firearm. Two courts to our knowledge have dealt in some way with claims that when a gun other than a firearm was placed together with a further part or parts that would have had no use in association with the gun except to convert it into a firearm, a firearm was produced. See *United States* v. *Kokin*, 365 F. 2d 595, 596 (CA3 1966) (carbine together with all parts necessary to convert it into a machinegun is a machinegun), cert. denied, 385 U. S. 987 (1966); see also *United States* v. *Zeidman*, 444 F. 2d 1051, 1053

---

[4]We do not accept the Government's suggestion, however, that complete-parts kits must be taxable because otherwise manufacturers will be able to "avoid the tax." Brief for United States 11. Rather, we conclude that such kits are within the definition of the taxable item. Failure to pay the tax on such a kit thus would amount to evasion, not avoidance. In our system, avoidance of a tax by remaining outside the ambit of the law that imposes it is every person's right. "Over and over again courts have said that there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everybody does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands: taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant." *Commissioner* v. *Newman*, 159 F. 2d 848, 850–851 (CA2) (L. Hand, J., dissenting), cert. denied, 331 U. S. 859 (1947).

(CA7 1971) (pistol and attachable shoulder stock found "in different drawers of the same dresser" constitute a short-barreled rifle). Here it is true, of course, that some of the parts could be used without ever assembling a firearm, but the likelihood of that is belied by the utter uselessness of placing the converting parts with the others except for just such a conversion. Where the evidence in a given case supports a finding of such uselessness, the case falls within the fair intendment of "otherwise producing a firearm." See 26 U. S. C. §5845(i).[5]

Here, however, we are not dealing with an

---

[5]Contrary to JUSTICE SCALIA's suggestion, see *post*, at 4, our understanding of these aggregations of parts — shared by a majority of the Court, those who join this opinion and the four Members of the Court in dissent, see *post,* p.1 (WHITE, J., joined by BLACKMUN, STEVENS, and KENNEDY, JJ., dissenting) (*any* aggregation of parts necessary to assemble a firearm is a firearm) — applies to all the provisions of the Act, whether they regulate the ``making'' of a firearm, *e.g.,* 26 U. S. C. §5821(a), or not, see, *e.g.,* §5842(b) (possession of a firearm that has no serial number); §5844 (importation of a firearm); §5811 (transfer of a firearm). Since, as we conclude, such a combination of parts, or of a complete gun and an additional part or parts, is ``made'' into a firearm, it follows, in the absence of some reason to the contrary, that all portions of the Act that apply to ``firearms'' apply to such a combination. JUSTICE SCALIA does not explain how we would be free to construe ``firearm'' in a different way for purposes of those provisions that do not contain the verb ``to make.'' Our normal canons of construction caution us to read the statute as a whole, and, unless there is a good reason, to adopt a consistent interpretation of a term used in more than one place within a statute.

aggregation of parts that can serve no useful purpose except the assembly of a firearm, or with an aggregation having no ostensible utility except to convert a gun into such a weapon. There is, to be sure, one resemblance to the latter example in the sale of the Contender with the converter kit, for packaging the two has no apparent object except to convert the pistol into something else at some point. But the resemblance ends with the fact that the unregulated Contender pistol can be converted not only into a short-barreled rifle, which is a regulated firearm, but also into a long-barreled rifle, which is not. The packaging of pistol and kit has an obvious utility for those who want both a pistol and a regular rifle, and the question is whether the mere possibility of their use to assemble a regulated firearm is enough to place their combined packaging within the scope of "making" one.[6]

---

[6]Thompson/Center suggests that further enquiry could be avoided when it contends that the Contender and carbine kit do not amount to a "rifle" of any kind, because, until assembled into a rifle they are not "`made' and `intended to be fired from the shoulder.'" Brief for Respondent 8. From what we have said thus far, however, it is apparent that, though disassembled, the parts included when the Contender and its carbine kit are packaged together have been "made" into a rifle. The inclusion of the rifle stock in the package brings the Contender and carbine kit within the "intended to be fired from the shoulder" language contained in the definition of rifle in the statute. See 26 U. S. C. §5845(c). The only question is whether this combination of parts constitutes a short-barreled rifle. Surely JUSTICE SCALIA's argument would take us over the line between lenity and credulity when he suggests that one who makes what would otherwise be a short-barreled rifle could escape liability by carving a

Neither the statute's language nor its structure provides any definitive guidance. Thompson/Center suggests guidance may be found in some subsections of the statute governing other types of weapons by language that expressly covers combinations of parts. The definition of "machinegun," for example, was amended by the Gun Control Act of 1968 to read that "[t]he term shall also include . . . 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." 26 U. S. C. §5845(b).[7] In 1986, the definition of "silencer" was amended by the Firearm Owners' Protection Act to "includ[e] any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer . . . ." See 26 U. S. C. §5845(a)(7); 18 U. S. C. §921(a)(24).

Thompson/Center stresses the contrast between these references to "any combination of parts" and the silence about parts in the definition of rifle, in arguing that no aggregation of parts can suffice to make the regulated rifle. This argument is subject to a number of answers, however. First, it sweeps so broadly as to conflict with the statutory definition of "make," applicable to all firearms, which implies that a firearm may be "made" even where not fully "put together." If this were all, of course, the conflict

---

warning into the shoulder stock. See *post,* at 5 (SCALIA, J., concurring in judgment).

[7]At the same time, the definition of "destructive device" was amended to include "any combination of parts either designed or intended for use in converting any device into a destructive device . . . and from which a destructive device may readily be assembled." 26 U. S. C. §5845(f). This appears to envision by its terms only combinations of parts for converting something into a destructive device.

might well be resolved in Thompson/Center's favor. We do not, however, read the machinegun and silencer definitions as contrasting with the definition of rifle in such a way as to raise a conflict with the broad concept of "making."

The definition of "silencer" is now included in the NFA only by reference, see 26 U. S. C. §5845(a)(7), whereas its text appears only at 18 U. S. C. §921(a)(24), in a statute that itself contains no definition of "make." Prior to 1986, the definition of "firearm" in the NFA included "a muffler or a silencer for any firearm whether or not such firearm is included within this definition." 26 U. S. C. §5845(a)(7) (1982 ed.). Two Courts of Appeals held this language to include unassembled silencers that could be readily and easily assembled. See *United States* v. *Endicott*, 803 F. 2d, at 508–509; *United States* v. *Luce*, 726 F. 2d, at 48–49.

In 1986, Congress replaced that language with "any silencer (as defined in Section 921 of title 18, United States Code)." Pub. L. 99–308, § 109(b), 100 Stat. 460. The language defining silencer that was added to 18 U. S. C. §921 at that same time reads: "The terms `firearm silencer' and `firearm muffler' mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication." Pub. L. 99–308, §101, 100 Stat. 451.

Thompson/Center argues that if, even before the amendment, a combination of parts was already "made" into a firearm, the "any combination of parts" language would be redundant. While such a conclusion of redundancy could suggest that Congress assumed that "make" in the NFA did not cover unassembled parts, the suggestion (and the implied conflict with our reading of "make") is proven

false by evidence that Congress actually understood redundancy to result from its new silencer definition. Congress apparently assumed that the statute reached complete parts kits even without the "combination" language, and understood the net effect of the new definition as expanding the coverage of the Act beyond complete parts kits. "The definition of silencer is amended to include any part designed or redesigned and intended to be used as a silencer for a firearm. This will help to control the sale of incomplete silencer kits that now circumvent the prohibition on selling complete kits." H. R. Rep. No. 99–495, p. 21 (1986). Because the addition of the "combination of parts" language to the definition of silencer does not, therefore, bear the implication Thompson/Center would put on it, that definition cannot give us much guidance in answering the question before us.[8]

We get no more help from analyzing the machinegun definition's reference to parts. It speaks

---

[8]JUSTICE SCALIA upbraids us for reliance on legislative history, his ``St. Jude of the hagiology of statutory construction.'' *Post*, at 3. The shrine, however, is well peopled (though it has room for one more) and its congregation has included such noted elders as Mr. Justice Frankfurter: ``A statute, like other living organisms, derives significance and sustenance from its environment, from which it cannot be severed without being mutilated. Especially is this true where the statute, like the one before us, is part of a legislative process having a history and a purpose. The meaning of such a statute cannot be gained by confining inquiry within its four corners. Only the historic process of which such legislation is an incomplete fragment — that to which it gave rise as well as that which gave rise to it — can yield its true meaning.'' *United States* v. *Monia*, 317 U. S. 424, 432 (1943) (dissenting opinion).

of "any combination" of them in the possession or control of any one person. Here the definition sweeps broader than the aggregation of parts clearly covered by "making" a rifle. The machinegun parts need not even be in any particular proximity to each other. There is thus no conflict between definitions, but neither is much light shed on the limits of "making" a short-barreled rifle. We can only say that the notion of an unassembled machinegun is probably broader than that of an unassembled rifle. But just where the line is to be drawn on short-barreled rifles is not demonstrated by textual considerations.

Thompson/Center also looks for the answer in the purpose and history of the NFA, arguing that the congressional purpose behind the NFA, of regulating weapons useful for criminal purposes, should caution against drawing the line in such a way as to apply the Act to the Contender pistol and carbine kit. See H. R. Rep. No. 1337, 83d Cong., 2d Sess. A395 (1954) (the adoption of the original definition of rifle was intended to preclude coverage of antique guns held by collectors, "in pursuance of the clearly indicated congressional intent to cover under the National Firearms Act only such modern and lethal weapons, except pistols and revolvers, as could be used readily and efficiently by criminals or gangsters").

It is of course clear from the face of the Act that the NFA's object was to regulate certain weapons likely to be used for criminal purposes, just as the regulation of short-barreled rifles, for example, addresses a concealable weapon likely to be so used. But when Thompson/Center urges us to recognize that "the Contender pistol and carbine kit is not a criminal-type weapon," Brief for Respondent 20, it does not really address the issue of where the line should be drawn in deciding what combinations of parts are "made" into short-barreled rifles. Its argument goes to the quite different issue whether the single-shot

Contender should be treated as a firearm within the meaning of the Act even when assembled with a rifle stock.

Since Thompson/Center's observations on this extraneous issue shed no light on the limits of unassembled "making" under the Act, we will say no more about congressional purpose. Nor are we helped by the NFA's legislative history, in which we find nothing to support a conclusion one way or the other about the narrow issue presented here.

After applying the ordinary rules of statutory construction, then, we are left with an ambiguous statute. The key to resolving the ambiguity lies in recognizing that although it is a tax statute that we construe now in a civil setting, the NFA has criminal applications that carry no additional requirement of willfulness. Cf. *Cheek* v. *United States*, 498 U. S. ____, ____ (1991) (slip op., at 7) ("Congress has . . . softened the impact of the common-law presumption [that ignorance of the law is no defense to criminal prosecution] by making specific intent to violate the law an element of certain federal criminal tax offenses"); 26 U. S. C. §§7201, 7203 (criminalizing willful evasion of taxes and willful failure to file a return). Making a firearm without approval may be subject to criminal sanction, as is possession of an unregistered firearm and failure to pay the tax on one, 26 U. S. C. §§5861, 5871. It is proper, therefore, to apply the rule of lenity and resolve the ambiguity in Thompson/Center's favor. See *Crandon* v. *United States*, 494 U. S. 152, 168 (1990) (applying lenity in interpreting a criminal statute invoked in a civil action); *Commissioner* v. *Acker*, 361 U. S. 87, 91 (1959).[9] Accordingly, we conclude that the Contender

[9]The Government has urged us to defer to an agency interpretation contained in two longstanding Revenue Rulings. Even if they were entitled to deference,

pistol and carbine kit when packaged together by Thompson/Center have not been "made" into a short-barreled rifle for purposes of the NFA.[10] The judgment of the Court of Appeals is therefore

Affirmed.

---

neither of the rulings, Rev. Rul. 61–45, 1961–1 Cum. Bull. 663, and Rev. Rul. 61–203, 1961–2 Cum. Bull. 224 (same), goes to the narrow question presented here, addressing rather the question whether pistols with short barrels and attachable shoulder stocks are short-barreled rifles. We do not read the Government to be relying upon Rev. Rul. 54–606, 1954–2 Cum. Bull. 33, which was repealed as obsolete in 1972, Rev. Rul. 72–178, 1972–1 Cum. Bull. 423, and which contained broader language that "possession or control of sufficient parts to assemble an operative firearm constitutes the possession of a firearm." Reply Brief for United States 10.

[10]JUSTICE STEVENS contends that lenity should not be applied because this is a ```tax statute,''' *post,* at 2, rather than a ``criminal statute,'' see *post*, at 1, n.1, quoting *Crandon* v. *United States*, 494 U. S. 152, 168 (1990). But this tax statute has criminal applications and we know of no other basis for determining when the essential nature of a statute is ``criminal.'' Surely, JUSTICE STEVENS cannot mean to suggest that in order for the rule of lenity to apply, the statute must be contained in the Criminal Code. See, *e.g., United States* v. *Universal C.I.T. Credit Corp.*, 344 U. S. 218, 221–222 (1952) (construing the criminal provisions of the Fair Labor standards Act, 29 U. S. C. §§215, 216(a)). JUSTICE STEVENS further suggests that lenity is inappropriate because we construe the statute today ```in a civil setting,''' rather than a ``criminal prosecution.'' *Post*, at 2. The rule of lenity, however,

---

is a rule of statutory construction whose purpose is to help give authoritative meaning to statutory language. It is not a rule of administration calling for courts to refrain in criminal cases from applying statutory language that would have been held to apply if challenged in civil litigation.