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**Twenty States Among *Amici Curiae* Supporting NCLA’s *Chevron* Deference Cert. Petition at SCOTUS**

*Aposhian v. Garland, et al.*

**Washington, DC (September 7, 2021)** – Twenty states, fifteen organizations across the political spectrum, and six private citizens have filed *amici curiae* briefs in support of the New Civil Liberties Alliance’s [petition](#) for a *writ of certiorari* in *Aposhian v. Garland, et al.* NCLA, a nonpartisan, nonprofit civil rights group, is asking the Supreme Court to review the flawed [ruling](#) of the U.S. Court of Appeals for the Tenth Circuit in this case and consider fundamental questions about (1) whether courts may give *Chevron* deference to a government agency’s legal interpretations even when those agencies disclaim deference; and (2) whether courts may ever defer to an agency’s interpretation of criminal laws.

In March 2021, the Tenth Circuit held that Congress authorized the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to issue binding regulations implementing the National Firearms Act of 1934 and that ATF’s interpretation of a [2018 regulation](#) construing the meaning of “machinegun” to include bump stocks was reasonable. The lower court did so after ruling that ATF is entitled to deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, even though ATF declined to ask for deference to its interpretation of a criminal law. The Supreme Court should take up this case because a review of the Tenth Circuit’s decision is necessary to enforce limits on when courts defer to the interpretation of criminal laws by the very same agencies charged with enforcing those laws against the American people.

**NCLA released the following statement:**

“As the strong bipartisan support of our *amici* demonstrates, this case portends a potential watershed moment in constitutional law. When courts defer to prosecutors’ reading of criminal laws, a basic tenet of constitutional liberty is cast aside. The Court now has an opportunity to restore constitutional order.”

— **Caleb Kruckenberg, Litigation Counsel, NCLA**

**Excerpts from the seven briefs *amici curiae* submitted in support of NCLA’s *writ of certiorari*:**

“This Court’s intervention is necessary to resolve confusion among the lower courts regarding the proper application of *Chevron* deference to agency interpretations that criminalize otherwise lawful conduct. Multiple aspects of this problem have troubling implications for liberty interests.”

— [West Virginia, Montana, Alabama, Alaska, Arizona, Arkansas, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, and Wyoming](#)

“The court below failed to fulfill its responsibility to [‘]say what the law is[’] in the face of an agency-made regulation which contradicts both the statutory language and the agency’s prior interpretations made by apolitical experts.”

— [Gun Owners of America, Gun Owners Foundation, Virginia Citizens Defense League, Tennessee Firearms Association, Grass Roots North Carolina, Oregon Firearms Federation, Arizona Citizens Defense League, Heller Foundation, and Conservative Legal Defense and Education Fund](#)

“Even if there is ambiguity in the statute, it is inappropriate to apply *Chevron* deference because this is a criminal statute.”

— [The National Rifle Association of America, Inc.](#)

“This case presents an ideal opportunity to decide an important, unresolved, and recurring question: when *Chevron* deference and the rule of lenity conflict in the interpretation of an ambiguous statute with both criminal and civil applications, which should prevail?”

— [Due Process Institute](#)

“In this case where the government has never made a claim to *Chevron* deference for what it views as an interpretive rule, and affirmatively denies having or exercising delegated legislative discretion regarding the definition of a [‘]machinegun,[’] the result should be all the more obvious.”

— [Damien Guedes, Shane Roden, Firearms Policy Foundation, Madison Society Foundation, Inc., Florida Carry, Inc.](#)

“As before, the Petition ably sets forth the need for this Court to clarify the proper relationship between *Chevron* and the rule of lenity. ... Because the decision below upended ordinary principles of statutory interpretation embodied in that rule, it merits the Court’s review.”

— [The American Cornerstone Institute and its Founder/Chairman Dr. Benjamin S. Carson, Sr.](#)

“These bump stock cases have taken a bizarre turn. These cases present what should be a straightforward analysis by each of the courts, exercising its Article III power (and duty) [‘]to say what the law is[’] ... and decide if the government’s rule is the best reading of the statute.”

— [David Codrea, Scott Heuman, and Owen Monroe](#)

For more information visit the case page [here](#).

## ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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