

**SCHEDULED TO BE ARGUED DECEMBER 3, 2001**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

No. 00-5409

---

SPRINGFIELD, INC.,  
Plaintiff-Appellant,

v.

BRADLEY A. BUCKLES, DIRECTOR  
BUREAU OF ALCOHOL TOBACCO AND  
FIREARMS, U.S. DEPARTMENT OF THE  
TREASURY,  
Defendant-Appellee.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

BRIEF OF *AMICUS CURIAE* THE BRADY CENTER TO PREVENT  
GUN VIOLENCE *ET AL.*

---

Of Counsel:

Dennis A. Henigan  
Brian J. Siebel  
Leslie Rubin Klein  
BRADY CENTER TO PREVENT GUN  
VIOLENCE  
1250 Eye Street, N.W., Suite 802  
Washington, D.C. 20005  
(202) 289-7319

Stuart J. Land  
Robert S. Litt  
Robert J. Katerberg  
ARNOLD & PORTER  
555 Twelfth Street, N.W.  
Washington, D.C. 20004-1206  
(202) 942-5000

*Counsel for the Brady Center to Prevent  
Gun Violence*

**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

A. PARTIES AND *AMICI*

All parties, intervenors, and *amici* appearing before the district court are listed in the Brief for Appellant. The corporate disclosure statement for *amici* pursuant to Circuit Rule 26.1 is included below.

B. RULINGS UNDER REVIEW

References to the rulings at issue appear in the Brief for Appellant.

C. RELATED CASES

There are no related cases.

**CORPORATE DISCLOSURE STATEMENT PURSUANT TO CIRCUIT RULE 26.1**

Pursuant to Circuit Rule 26.1, *amici* state as follows: None of *amici* have any parent company, and no publicly held company holds a 10% or greater ownership interest in any of *amici*. The Brady Center to Prevent Gun Violence does have a sister organization called the Brady Campaign to Prevent Gun Violence, formerly known as Handgun Control, Inc. The general nature and purpose of each of *amici* is described below in the section entitled “Interest of *Amici Curiae*.”

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iv
GLOSSARY .....	vii
INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	3
PERTINENT STATUTES.....	4
ARGUMENT.....	4
I. INTRODUCTION AND REGULATORY HISTORY .....	4
II. THE FACTUAL BACKGROUND FOR THE TREASURY DEPARTMENT’S REASONABLE DECISION.....	6
A. Assault Rifles With Detachable Large Capacity Military Magazines Are Military Weapons, Not Sporting Devices.....	6
B. Semiautomatic Assault Rifles With Detachable Large Capacity Military Magazines Threaten Public Safety .....	8
III. STANDARD OF REVIEW .....	11
IV. THE TREASURY DEPARTMENT’S APPLICATION OF THE SPORTING PURPOSES TEST TO LCMM-COMPATIBLE FIREARMS WAS CONSISTENT WITH THE STATUTORY LANGUAGE AND WELL WITHIN ITS DISCRETION .....	12
A. <i>Chevron</i> Deference Applies Here .....	12
B. The Secretary’s Determination Is in Total Harmony With the Statute and an Appropriate Exercise of Regulatory Authority .....	14
C. Springfield’s Statutory Interpretation Arguments Are Strained and Lack Merit.....	17
D. An Affirmance Would be Consistent With Prior Case Law in This Area.....	20
V. THE AGENCY WAS ENTITLED TO MODIFY ITS POLICY ON LCMM-COMPATIBLE FIREARMS IN ACCORDANCE WITH CHANGING FINDINGS AND CIRCUMSTANCES .....	20
VI. CONCLUSION.....	22

## TABLE OF AUTHORITIES

### CASES

<u>American Trucking Ass'ns v. Atchison, Topeka &amp; Santa Fe R.R. Co.</u> , 387 U.S. 397 (1967).....	21
<u>Assoc. Builders &amp; Contractors, Inc. v. Herman</u> , 166 F.3d 1248 (D.C. Cir. 1999).....	12
* <u>Chevron, U.S.A., Inc. v. Natural Resources Defense Council</u> , 467 U.S. 837 (1984).....	12, 13
<u>Christensen v. Harris County</u> , 529 U.S. 576 (2000) .....	12, 13, 14
<u>Commercial Union Ins. Co. v. United States</u> , 999 F.2d 581 (D.C. Cir. 1993) .....	19
<u>FDA v. Brown &amp; Williamson Tobacco Corp.</u> , 529 U.S. 120 (2000) .....	17, 18, 21
* <u>Gilbert Equip. Co., Inc. v. Higgins</u> , 709 F. Supp. 1071 (S.D. Ala. 1989), <u>aff'd mem.</u> , 894 F.2d 412 (11th Cir. 1990) .....	19, 20
<u>Greater Boston Television Corp. v. FCC</u> , 444 F.2d 841 (D.C. Cir. 1970) .....	21
* <u>Gun South, Inc. v. Brady</u> , 877 F.2d 858 (11th Cir. 1989) .....	5, 10, 20, 22
<u>Heckler v. Community Health Servs. of Crawford County, Inc.</u> , 467 U.S. 51 (1984).....	21
<u>Kasi v. Virginia</u> , 508 S.E.2d 57 (Va. 1998).....	11
<u>Kasler v. Lockyer</u> , 2 P.3d 581 (Cal. 2000), <u>cert. denied</u> , 121 S. Ct. 1090 (2001) .....	11
<u>National Rifle Ass'n v. Brady</u> , 914 F.2d 475 (4th Cir. 1990) .....	17
<u>Natural Res. Def. Council v. Daley</u> , 209 F.3d 747 (D.C. Cir. 2000).....	11
<u>Skidmore v. Swift &amp; Co.</u> , 323 U.S. 134 (1944).....	13, 14
<u>Troy Corp. v. Browner</u> , 120 F.3d 277 (D.C. Cir. 1997) .....	12
<u>United States v. Mead Corp.</u> , 121 S. Ct. 2164 (2001) .....	13, 14

---

\* Authorities upon which we chiefly rely are marked with asterisks.

## STATUTES AND RULES

5 U.S.C. § 706(2)(A).....	12
18 U.S.C. § 921(a)(30)(A)(iv) .....	10
18 U.S.C. § 921(a)(30)(D)(iii) .....	5
18 U.S.C. § 921(a)(31).....	6
18 U.S.C. § 922(l).....	14
18 U.S.C. § 922(w)(1).....	5, 16
18 U.S.C. § 922(w)(2).....	17
* 18 U.S.C. § 925(d)(3) .....	<u>passim</u>
Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified in principal part at 18 U.S.C. § 922(v)-(w)).....	5

## LEGISLATIVE HISTORY

H.R. Rep. No. 103-489 (1994), <u>reprinted in</u> 1994 U.S.C.C.A.N. 1820.....	4, 7, 16
H.R. Rep. No. 90-1577 (1968), <u>reprinted in</u> 1968 U.S.C.C.A.N. 4410.....	14
S. Rep. No. 90-1097 (1968), <u>reprinted in</u> 1968 U.S.C.C.A.N. 2112 .....	15, 18
S. Rep. No. 90-1501 (1968).....	15
Public Safety and Recreational Firearms Use Protection Act: Hearing on H.R. 3527 Before the House Subcomm. on Crime and Criminal Justice, Comm. on the Judiciary, 103d Cong. (1994) (Statement of John Pitta, Executive Vice President, Federal Law Enforcement Officers Association).....	9
Assault Weapons: A View from the Front Lines: Hearing Before the Senate Comm. on the Judiciary, 103d Cong. (1993) (statement of Kenneth T. Lyons, National President, International Brotherhood of Police Officers) .....	9
114 Cong. Rec. 13,324 (1968).....	15
114 Cong. Rec. 27,461-62 (1968).....	18

## MISCELLANEOUS

Wendy Chris Adler et al., <u>Cops Under Fire: Law Enforcement Officers Killed with Assault Weapons or Guns with High Capacity Magazines</u> (1995).....	9
Jaxon Van Derbeken, <u>Sources Reveal Who Slain Gunmen Were</u> , San Diego Union & Tribune, Mar. 2, 1997, at A1 .....	11
<u>Gunfire at the Office</u> , Wash. Post, Dec. 29, 2000, at A32.....	10
Ed Hayward & Mark Mueller, <u>A Fiery End - Killer's Stockpile of Bomb Materials Set Ablaze</u> , Boston Herald, Aug. 21, 1997, at 1 .....	10
<u>Sniper Was a White Supremacist</u> , St. Louis Post-Dispatch, Apr. 14, 1996, at 9A.....	11
<u>Software Tester Indicted in Killings of 7 at Office</u> , Wash. Post, Feb. 16, 2001, at A9.....	10
Jenifer Warren & Richard C. Paddock, <u>Grudge Over Soured Deal May Have Led to Rampage Crime</u> , L.A. Times, July 3, 1993, at 1.....	11
<u>Webster's II New College Dictionary</u> (1995).....	19

## GLOSSARY

### Term

### Abbreviation

ATF

Bureau of Alcohol  
Tobacco and Firearms

LCMM

Large capacity military magazine

## **INTEREST OF AMICI CURIAE**

This brief is submitted on behalf of seven national law enforcement or public health organizations and the Brady Center to Prevent Gun Violence. The law enforcement *amici*, taken together, represent hundreds of thousands of law enforcement officers and executives across the United States charged with protecting the public safety. These officers are on the front lines of the battle against crime and violence, and daily face the threat of rapid-fire military assault weapons. The public health *amici* work to guard the safety and health of individuals in this country against violence caused by assault weapons. All of the *amici* are committed to preventing firearm violence and to keeping violent criminals, drug traffickers, gangs, and other persons from purchasing and using assault weapons.

The *amici* are:

- The Brady Center to Prevent Gun Violence (formerly known as the Center to Prevent Handgun Violence) (the “Center”), a non-profit organization, chaired by Sarah Brady, that works to reduce firearm deaths and injuries through education, research, and legal advocacy. Through its Legal Action Project, the Center participates in key court cases throughout the nation, advocating legal principles that will reduce gun violence.
- The International Brotherhood of Police Officers, an affiliate of the Service Employees International Union of the AFL-CIO. It is the largest police union in the AFL-CIO, representing 50,000 members in federal, state and local jurisdictions nationwide.
- The National Association of Police Organizations, Inc. (“NAPO”), a national non-profit organization representing the interests of state and local law enforcement officers in the United States. NAPO represents 4,000 law enforcement organizations, with 230,000 sworn law enforcement officers (including police officers, deputy sheriffs, and state troopers) and 11,100 retired officers. NAPO’s members have a significant interest in the issues before this Court because the Court’s decision will affect the safety of law enforcement officers and their ability to carry out their responsibilities to protect the public.
- The Police Foundation, which engages in research and experimentation to test the practices of police agencies as a means of enhancing the ability of the police to control crime, maintain order and deliver services to citizens.

- The National Black Police Association (“NBPA”), a national law enforcement organization that represents more than 35,000 African American police officers from police departments around the country. NBPA works to develop a bond between minority officers and the communities they serve.
- The American Public Health Association (“APHA”), the largest and oldest organization of public health professionals, representing more than 50,000 members from 50 public health occupations. APHA is concerned with a broad set of issues affecting personal and environmental health.
- The National Association of School Psychologists (“NASP”), which represents 22,000 school psychologists and related professionals throughout the United States and abroad. NASP advocates for positive welfare, mental health, and educational programs and services for youth.
- The National Spinal Cord Injury Association (“NSCIA”), a non-profit organization that seeks prevention of spinal cord injuries, assists in developing systems of treatment and rehabilitation, and supports research aimed at improving care and developing cures. NSCIA is particularly concerned about gun violence given that gunshot wounds account for nearly 30 percent of spinal cord injuries, a number that has been growing steadily since the early 1970’s, and a substantial number of NSCIA members have suffered spinal cord injuries from gun violence.

Both law enforcement and the public health *amici* have a strong interest in preserving the Treasury Department’s reasonable construction of the sporting purposes test, which is under attack in this case. Because statistics show that the weapons at issue in this case are disproportionately used in violence toward police officers, the very lives of the law enforcement *amici* are at stake. Likewise, the public health *amici* witness the carnage inflicted by these weapons in the course of their occupations. Thus, both law enforcement and public health *amici* are strongly in favor establishing principles that will confirm the government’s ability to enforce reasonable interpretations of gun laws.

*Amici* filed their motion for leave to participate as *amici curiae* in support of Defendant-Appellee on January 29, 2001.<sup>1</sup> This Court granted leave by order of March 15, 2001.

---

<sup>1</sup> *Amicus* Brady Center to Prevent Gun Violence filed this motion under its former name, the Center to Prevent Handgun Violence.

## SUMMARY OF ARGUMENT

The Secretary of the Treasury (the “Secretary”), relying on the policy announced in the Treasury Department’s April 1998 study, properly refused to allow Springfield, Inc. (“Springfield”) to import into the United States semiautomatic rifles that have the ability to accept large capacity military magazines (“LCMMs”). The government’s action was not arbitrary and capricious, it did not abuse its discretion, and it acted in accordance with law. Its interpretation of the “sporting purposes” exception of 18 U.S.C. § 925(d)(3) as not including LCMM-compatible rifles is both consistent with the statute and well supported by the factual record.

First, the ability of a semiautomatic rifle to accept an LCMM is, by its very nature, indicative of a military rather than sporting purpose. In reaching this conclusion, the government relied on extensive consultation with the industry, the hunting and competitive shooting community, and the law enforcement community, as well as on common sense. Second, high capacity assault weapons pose a major threat to public safety, as demonstrated by numerous examples of tragic killings, and the government properly took this background into account. Third, the government's interpretation is consistent with the structure and legislative history of the statute. Fourth, the reasonableness of the government's interpretation is bolstered by that interpretation’s harmonious relationship with the federal assault weapon ban passed by Congress in 1994.

Springfield’s arguments fail to undermine the government’s position. Its statutory interpretation arguments lead to untenable results that would gut the “sporting purposes” exception and deprive the government of any ability to draw meaningful lines. Similarly, its

contention that the government's interpretation seemingly must be frozen in time and cannot evolve to meet changing circumstances is without merit, because the statutory standard contemplates that the government will continually reevaluate its interpretation to ensure that it retains vitality and meaning in light of industry and societal conditions.

### **PERTINENT STATUTES**

All applicable statutes, etc. are contained in the addendum to the Brief for the Appellee.

### **ARGUMENT**

#### **I. INTRODUCTION AND REGULATORY HISTORY**

Throughout the 1980s and 1990s, law enforcement officers and citizens of the United States have been threatened by a cadre of well-armed and violent criminals wielding high-firepower assault weapons. As one congressional committee recognized, “[t]he carnage inflicted on the American people b[y] criminals and mentally deranged people armed with Rambo-style, semi-automatic assault weapons has been overwhelming and continuing.” H.R. Rep. No. 103-489, at 13 (1994), reprinted in 1994 U.S.C.C.A.N. 1820, 1821 (quoting H.R. Rep. No. 102-242, at 203 (1991)).

To begin to address this problem, in 1989, the Bureau of Alcohol Tobacco and Firearms (“ATF”) reviewed semiautomatic assault rifles that were being imported into the United States in accordance with 18 U.S.C. § 925(d)(3). That statutory section forbids importation of a firearm unless the Secretary determines that the firearm is “generally recognized as particularly suitable for or readily adaptable to sporting purposes” (the “sporting purposes test”). ATF found that many rifles imported pursuant to the sporting purposes test had a military configuration — they were “designed for killing and disabling the enemy.” See Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles 6 (1989) (J.A. 263).

Following extensive research, the Secretary concluded that any rifle that contained any one of seven military features commonly found on semiautomatic assault rifles failed the sporting purposes test of 18 U.S.C. § 925(d)(3) and could no longer be imported into the United States.<sup>2</sup> The gun industry filed litigation similar to the present case to block implementation of this policy, but the United States Court of Appeals for the Eleventh Circuit upheld the Secretary's authority under the statute to halt the importation of certain rifles while undertaking this examination. See Gun South, Inc. v. Brady, 877 F.2d 858 (11th Cir. 1989).

In 1994, Congress, recognizing the danger of military-style rapid-fire rifles, shotguns, and pistols, prohibited the manufacture, transfer and possession of new semiautomatic assault weapons. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified in principal part at 18 U.S.C. § 922(v)-(w)) (the "assault weapon ban"). The banned semiautomatic assault weapons were defined in part by reference to various characteristics, including "an ability to accept a detachable magazine." 18 U.S.C. § 921(a)(30)(D)(iii). In the same law, Congress also banned "large capacity ammunition feeding devices" because of the extraordinary level of firepower they add to such weapons. 18 U.S.C. § 922(w)(1).

Four years later, at the behest of the President of the United States and the Secretary, the Treasury Department and the ATF again reviewed firearms imported to the United States pursuant to the sporting purposes test. The Treasury Department found that many of the rifles banned from importation following the 1989 review had been modified to remove the seven offending military features banned in 1989 and were again being imported. Despite these

---

<sup>2</sup> The seven features were: folding/telescoping stocks, separate pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights.

modifications, hundreds of thousands of rifles proposed for importation into the United States in 1998 had the ability to accept a detachable LCMM, originally designed for military assault rifles, even though new LCMMs had been banned by Congress in 1994.<sup>3</sup> The extraordinary firepower added by this capability is consistent with military conflict, and is not consistent with sporting purposes. Accordingly, following a comprehensive review of the 1989 decision, the Secretary concluded that “the ability to accept a detachable large capacity magazine originally designed and produced for a military assault weapon should be added to the list of disqualifying military configuration features identified in 1989.” See Department of The Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles 2 (1998) (“1998 Treasury Study”) (J.A. 98). Springfield, Inc. (“Springfield”) alleges this conclusion is improper or unlawful, and filed suit to overturn the Secretary’s reasonable exercise of his discretion. The district court rejected Springfield’s arguments and dismissed its lawsuit. See Springfield, Inc. v. Buckles, 116 F. Supp. 2d 85 (D.D.C. 2000). This Court should affirm the decision of the lower court.

## **II. THE FACTUAL BACKGROUND FOR THE TREASURY DEPARTMENT’S REASONABLE DECISION**

### **A. Assault Rifles With Detachable Large Capacity Military Magazines Are Military Weapons, Not Sporting Devices**

Semiautomatic assault rifles with detachable LCMMs are military weapons, not sporting weapons. The ability of a semiautomatic assault rifle to accept a detachable LCMM allows for two things — it gives a shooter the ability (1) to fire large quantities of ammunition and (2) to

---

<sup>3</sup> The 1994 ban applied to “large capacity ammunition feeding devices,” which were defined as “a magazine, belt, drum, feed strip, or similar device manufactured after [September 13, 1994] that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition.” 18 U.S.C. § 921(a)(31). This definition embraces LCMMs, which are consequently within the scope of the 1994 ban.

reload almost instantaneously. These qualities are neither necessary nor conducive for use in hunting or organized competitive target shooting. See 1998 Treasury Study at 21-30 (J.A. 117-26). The House of Representatives, in a report issued to support the domestic ban on LCMMs, explained that such magazines serve no legitimate sporting purpose, because they:

make it possible to fire a large number of rounds without re-loading, then to reload quickly when those rounds are spent. Most of the weapons covered by the proposed legislation come equipped with magazines that hold 30 rounds. Even these magazines, however, can be replaced with magazines that hold 50 or even 100 rounds. Furthermore, expended magazines can be quickly replaced, so that a single person with a single assault weapon can easily fire literally hundreds of rounds within minutes. . . . In contrast, hunting rifles and shotguns typically have much smaller magazine capabilities -- from 3-5.

See H.R. Rep. No. 103-489, at 19 (1994) (footnote omitted), reprinted in 1994 U.S.C.C.A.N.

1820, 1827 (quoted in 1998 Treasury Study at 23 (J.A. 119)). This same House Report finds that the assault rifles prohibited by the domestic assault weapon ban “represent[] a distinctive type of rifle characterized by certain military features which differentiate[] them from the traditional sporting rifles. These include the ability to accept large capacity detachable magazines . . . .”

See H.R. Rep. No. 103-489, at 18 (footnote omitted), reprinted in 1994 U.S.C.C.A.N. at 1826.

In the course of preparing the 1998 Treasury Study, the Secretary engaged in a comprehensive program of factual inquiry. This program included consultation with a number of affected communities, including hunting guides, editors of hunting and shooting magazines, interest and information groups, competitive shooting groups, ammunition manufacturers, and firearms importers. 1998 Treasury Study at 27-29 (J.A. 123-25). The Secretary also analyzed crime and gun tracing statistics and queried police departments about their experience with LCMM-compatible firearms. Id. at 32-35 (J.A. 128-31). After thorough and methodical examination of the facts that had been gathered, the Secretary concluded that rifles with the ability to accept an LCMM did not serve any sporting purpose, and that, instead, they had a

special appeal to criminals and “serve[d] a function in combat and crime.” Id. at 37-38 (J.A. 133-34).

**B. Semiautomatic Assault Rifles With Detachable Large Capacity Military Magazines Threaten Public Safety**

As the 1998 Treasury Study recognizes, high capacity assault weapons pose a great threat to public safety. They have been used to carry out mass shootings in the United States with alarming frequency — from the 1989 gunning down of children in a Stockton, California schoolyard to the post-Christmas slaughter of seven employees in an office outside of Boston in December, 2000. A common thread among these tragedies is that the perpetrators had military-style rapid-fire rifles with high capacity magazines designed for the principal purpose of killing as many people as possible as quickly as possible. The extraordinary firepower of these weapons presents a public safety threat to the general public and to law enforcement officers.

The proliferation of LCMM rifles and their popularity with drug dealers and violent criminals put law enforcement officers in a dangerous situation, where criminals have arsenals of weapons capable of firing hundreds of rounds of ammunition in a matter of seconds and greatly surpassing the firepower of the firearms possessed by officers. A 1995 Brady Center report entitled Cops Under Fire concluded that “assault weapons and guns sold with high capacity magazines are disproportionately involved in the fatal shootings of law enforcement officers.” See Wendy Chris Adler et al., Cops Under Fire: Law Enforcement Officers Killed with Assault Weapons or Guns with High Capacity Magazines 2 (1995). Between January 1, 1994 and September 30, 1995, for example, assault weapons accounted for less than 1% of privately-owned firearms in the United States, but were involved in 13% of all fatal shootings of law enforcement officers. See id.

In recognition of the danger facing officers and the general public from the vast number of LCMM rifles on the streets, national and local law enforcement officials almost unanimously endorse measures to ban assault weapons with high capacity magazines.

- “[A]ssault weapons are also ideal for urban violence and drive-by shootings. Any so-called ‘sporting’ usage is clearly secondary and must be measured against the very real threat not only to the citizens of this country, but also to the law enforcement personnel who protect them.” Public Safety and Recreational Firearms Use Protection Act: Hearing on H.R. 3527 Before the House Subcomm. on Crime and Criminal Justice, Comm. on the Judiciary, 103d Cong. (1994) (Statement of John Pitta, Executive Vice President, Federal Law Enforcement Officers Association).
- “[P]olice officers are in a particularly dangerous and demanding profession. Each year, approximately 150 officers are killed in the line of duty. For every one officer killed, another 150 are assaulted. The increased destructive possibilities of semi-automatic assault weapons increase the risk to those officers who put their lives on the line every day. Each traffic stop, each pursuit of a dangerous felon, each knock on a door to serve a warrant can end in disaster for the officer.” Assault Weapons: A View from the Front Lines: Hearing Before the Senate Comm. on the Judiciary, 103d Cong. (1993) (statement of Kenneth T. Lyons, National President, International Brotherhood of Police Officers).
- “NAPO has been on record in support of a ban on military style semi-automatic assault weapons since 1989. We know first hand that assault weapons are the preferred weapon of drug dealers, gang members and mass killers. The only purpose of an assault weapon is to kill and wound as many people as possible as quickly as possible.” Assault Weapons: A View from the Front Lines: Hearing Before the Senate Comm. on the Judiciary, 103d Cong. (1993) (statement of Robert Scully, Executive Director, National Association of Police Organizations).

These views are well supported. Tragically, mass killings by assailants with assault weapons have become disturbingly common in the United States. Without a weapon that accommodates a detachable magazine, an assailant is limited to shooting 8, 10, or 12 rounds of ammunition before having to stop and reload. Guns that accept large capacity detachable magazines, by contrast, are capable of discharging hundreds of rounds of ammunition in a matter of seconds, making them highly lethal and a threat to public safety. The examples of mass shootings detailed below, which both supplement and overlap with lists compiled in the 1998

Treasury Study at pages 24 and 30-32 (J.A. 120, 126-28), illustrate why semiautomatic assault rifles that accept detachable LCMMs are not sporting rifles and why the Treasury Department's decision to ban their importation was neither arbitrary nor capricious:<sup>4</sup>

- On the day after Christmas in 2000, Michael McDermott shot and killed seven colleagues in his Boston-area workplace using, among other guns, an AK47-style assault rifle with a 60-round magazine. McDermott was able to shoot over 45 rounds in a matter of minutes, hitting his victims a combined 30 times.<sup>5</sup>
- Carl Drega, a man known for his violent outbursts, went on a shooting spree in northern New Hampshire on August 19, 1997 that left four people dead and seven others wounded. Drega used a Colt AR-15, a gun banned by name under the 1994 federal assault weapon ban, with a 30-round magazine. See 18 U.S.C. § 921(a)(30)(A)(iv).<sup>6</sup>
- On February 28, 1997, Emil Matasareanu and Larry Eugene Phillips wounded six officers and three civilians while trying to flee after a bank robbery in North Hollywood, California. The gunmen were using a Chinese-made AK47-style assault rifle, two other assault rifles, and 100-round ammunition magazines.<sup>7</sup>
- Using two AK47-style assault rifles and 3 large capacity magazines, in April 1996, white supremacist Larry Wayne Shoemake shot eight African-Americans in a shopping center, killing one.<sup>8</sup>
- On July 1, 1993, equipped with Hell-Fire trigger systems and multiple detachable large capacity magazines, Gian Luigi Ferri entered a high-rise office building in San Francisco, California armed with two TEC-DC9 assault pistols. He went to a law firm and began spray-firing into a conference room, killing eight people and wounding six others.<sup>9</sup>

---

<sup>4</sup> See Gun South, 877 F.2d at 866 (history of criminal use properly considered in determining whether a type of firearm meets the requirements of the sporting purposes exception).

<sup>5</sup> Software Tester Indicted In Killings of 7 at Office, Wash. Post, Feb. 16, 2001, at A9; Gunfire at the Office, Wash. Post, Dec. 29, 2000, at A32.

<sup>6</sup> Ed Hayward & Mark Mueller, A Fiery End – Killer's Stockpile of Bomb Materials Set Ablaze, Boston Herald, Aug. 21, 1997, at 1.

<sup>7</sup> Jaxon Van Derbeken, Sources Reveal Who Slain Gunmen Were, San Diego Union & Tribune, Mar. 2, 1997, at A1.

<sup>8</sup> Sniper Was a White Supremacist, St. Louis Post-Dispatch, Apr. 14, 1996, at 9A.

<sup>9</sup> Jenifer Warren & Richard C. Paddock, Grudge Over Soured Deal May Have Led to Rampage Crime, L.A. Times, July 3, 1993, at 1.

- On January 25, 1993, Mir Aimal Kasi fired on motorists as he walked among cars at the entrance of the CIA headquarters near Washington, D.C., killing two and wounding three others. Kasi used an AK47-style assault rifle with 30-round ammunition magazines.<sup>10</sup>
- On January 17, 1989, Patrick Purdy, a 26-year-old drifter, killed five children and wounded 29 other children and one teacher, at Cleveland Elementary School in Stockton, California. Purdy walked into the school yard during recess and opened fire with an AK47-style assault rifle and 50-round ammunition magazines. Purdy fired over 100 rounds of ammunition in less than two minutes.<sup>11</sup>

These are but a few examples of mass shootings using semiautomatic assault weapons with detachable LCMMs. They illustrate the lethal potential of the rifles that the Treasury Department has banned from importation under the sporting purposes test. Indeed, the 1989 California shooting incident is what prompted ATF's 1989 study and report. (J.A. 105.)

### **III. STANDARD OF REVIEW**

In an appeal from a district court reviewing agency action under the Administrative Procedure Act, this Court directly reviews the administrative action, see Natural Res. Def. Council v. Daley, 209 F.3d 747, 752 (D.C. Cir. 2000); Assoc. Builders & Contractors, Inc. v. Herman, 166 F.3d 1248, 1254 (D.C. Cir. 1999), which it must uphold unless this Court finds it to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A).

---

<sup>10</sup> Kasi v. Virginia, 508 S.E.2d 57, 59 (Va. 1998).

<sup>11</sup> Kasler v. Lockyer, 2 P.3d 581, 587 (Cal. 2000), cert. denied, 121 S. Ct. 1090 (2001).

**IV. THE TREASURY DEPARTMENT'S APPLICATION OF THE SPORTING PURPOSES TEST TO LCMM-COMPATIBLE FIREARMS WAS CONSISTENT WITH THE STATUTORY LANGUAGE AND WELL WITHIN ITS DISCRETION**

**A. Chevron Deference Applies Here**

The sole issue in this case is whether the Secretary's determination that rifles that accept detachable LCMMs do not satisfy the sporting purposes test of § 925(d)(3), following months of rigorous study, comports with the statute. Normally, this Court's review of an agency's interpretation of a statute that it is charged with enforcing is guided by Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984). The first task in the Chevron two-step process is to use statutory construction principles to determine whether Congress specifically determined the particular issue in question. See id. at 843. Where, as here, the text of the statute does not unambiguously provide the answer, the second step of Chevron is triggered: the agency's interpretation merits judicial deference, provided that the interpretation is "reasonable and consistent with the statutory purpose." Troy Corp. v. Browner, 120 F.3d 277, 285 (D.C. Cir. 1997).

Here, the court below actually applied a diminished type of deference, based on the Supreme Court's recent holding in Christensen v. Harris County, 529 U.S. 576 (2000), to the effect that certain agency determinations are not subject to full-fledged Chevron deference, but rather are entitled only to some lesser form of "respect," depending on whether the agency's interpretation has the "power to persuade." Id. at 587 (citing Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944)). The district court characterized the agency action here as a "study or letter" falling under Christensen.

This past Term (after the decision of the district court), the Supreme Court further clarified the principle laid out in Christensen. It held in United States v. Mead Corp., 121 S. Ct.

2164 (2001), that “administrative implementation of a particular statutory provision qualifies for Chevron deference when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority.” Id. at 2171. The agency action here fits this formulation because Congress in 18 U.S.C. § 925(d)(3) delegated to the Secretary the duty of deciding what firearms fall within the sporting purposes exception, and the agency promulgated its policy on LCMMs in the exercise of that authority. Moreover, the agency action here is distinguishable from the Customs Service’s action in Mead – which the Court held was entitled only to Skidmore “respect” – in several ways: (1) it is a single, unitary interpretation by the agency, in contrast to the “classifications” in Mead which were issued by “46 different Customs offices” in numbers of “10,000 to 15,000” per year (see Mead, 121 S. Ct. at 2174); (2) it is a policy of general applicability affecting others besides the agency and Springfield (see id.); and (3) it bore many of the hallmarks of a rulemaking, such as an extended study period and an opportunity for comment by the regulated community<sup>12</sup> (see 1998 Treasury Study at 19-20 (J.A. 115-16) (agency surveyed over 2,000 knowledgeable persons or groups, and sought the views of industry members, trade associations, and various interest and information groups)).

Therefore, *amici* submit that, in light of Mead, the Secretary’s decision here is entitled to full Chevron deference, rather than lesser Skidmore “respect.” Indeed, Springfield appears to concede that Chevron supplies the controlling legal standard, as it cites Chevron twice as an authority “chiefly relied upon” (see Apt. Br. at iv, 9, 39), and nowhere cites Christensen or

---

<sup>12</sup> It is true that certain formalities that are sometimes attendant to agency rulemaking, e.g., formal publication in the Federal Register, did not occur here. However, Mead makes clear that such is not required in order for Chevron deference to apply. Mead, 121 S. Ct. at 2173.

Skidmore. However, this Court ultimately need not reach the question of which level of deference is proper, because, as explained below, the Secretary’s decision passes muster under either standard.

**B. The Secretary’s Determination Is in Total Harmony With the Statute and an Appropriate Exercise of Regulatory Authority**

18 U.S.C. § 925(d)(3) forbids the importation of a firearm unless the Secretary finds that it “is of a type that . . . is generally recognized as particularly suitable for or readily adaptable to sporting purposes,” subject to certain exceptions not relevant here. The Secretary’s determination that LCMM-compatible assault rifles did not fall under this provision both is reasonable and has the power to persuade, for a number of reasons.

First, the Secretary’s decision is consistent with the structure of the statute. It is important to remember that the “sporting purposes test” itself is an exception — a limitation on a general prohibition on importation of firearms into the United States. 18 U.S.C. § 922(l). The “sporting purposes” exception can only be read against this backdrop. When Congress passed the Gun Control Act of 1968, it was obviously concerned about the proliferation of dangerous firearms and the resultant potential for violence. See generally H.R. Rep. No. 90-1577 (1968) (“The increasing rate of crime and lawlessness and the growing use of firearms in violent crime clearly attest to a need to strengthen Federal regulation of interstate firearms traffic.”), reprinted in 1968 U.S.C.C.A.N. 4410, 4412. Nothing in the statute suggests that Congress intended that the Secretary’s discretion in interpreting the breadth of an exception to the general ban against imports be constrained by some invented principle of ensuring the public’s unfettered access to rapid-fire rifles.

Moreover, the Secretary's decision was consistent with congressional intent in passing § 925(d)(3). The legislative history of that statute illustrates that the sporting purposes test was intended to prevent the importation of weapons used by criminals, while allowing the importation of firearms used for sporting purposes. See 114 Cong. Rec. 13,324 (1968) ("The entire intent of the importation section is to get at those kinds of weapons that are used by criminals and that have no sporting purpose.") (statement of Sen. Dodd). The legislative history also indicates that "sporting purposes" refers to target shooting and hunting. See S. Rep. No. 90-1097, at 80 (1968), reprinted in 1968 U.S.C.C.A.N. 2112, 2167; S. Rep. No. 90-1501, at 24 (1968). In accordance with this manifest Congressional intent, the 1998 Treasury Study found that "LCMM rifles may be attractive to criminals because in some ways they remain akin to military assault rifles, particularly in their ability to accept a large capacity military magazine." 1998 Treasury Study at 35 (J.A. 131) (citing H.R. Rep. No. 103-489, at 13, 18, 19).

The Secretary's decision that weapons accepting detachable LCMMs do not meet the sporting purposes test is well supported by a plethora of factual evidence. As noted above (see supra at 10-11), the use of semiautomatic assault rifles that accept detachable LCMMs in mass shootings and other crimes, including confrontations with members of the law enforcement community, is well-documented. Moreover, the preparers of the 1998 Treasury Study undertook extensive surveys, polling various communities to get their impressions of how different types of firearms are predominantly used. See 1998 Treasury Study at 26-30 (J.A. 122-26). They found that LCMM-compatible rifles were not typically used for activities, such as hunting, which are traditionally considered to be within the ambit of "sporting purposes." Id. at 26-28 (J.A. 122-24). However, LCMM-compatible rifles were regularly used as the criminal's "weapon of

choice,” sometimes for shockingly violent activity. *Id.* at 30-35 (J.A. 126-31). The research informing the Secretary’s decision was thorough, considered, and more than adequate.

Finally, the Secretary’s interpretation dovetails with the assault weapon ban passed by Congress in 1994. While the federal assault weapon ban exists independently of the sporting purposes test of § 925(d)(3), Congress’ decision to ban LCMMs and semiautomatic assault weapons domestically provides sufficient guidance for the Treasury Department’s conclusion that semiautomatic assault weapons with the ability to accept detachable LCMMs have no sporting purpose. The 1994 law makes it illegal to transfer or possess (subject to an exception for grandfathered devices) a “large capacity ammunition feeding device.” 18 U.S.C. § 922(w)(1). Thus, Congress clearly recognized that LCMMs themselves, and by extension LCMM-compatible firearms, contribute to violence and mayhem. *See* H.R. Rep. No. 103-489, at 13 (these firearms are “the weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder”), 18-19 (LCMMs serve “combat-functional ends” and “make it possible to fire a large number of rounds quickly without reloading, then to reload quickly when the rounds are spent”), *reprinted in* 1994 U.S.C.C.A.N. 1820, 1821, 1826-27. For the Secretary to endorse Springfield’s distorted interpretation of the sporting purposes test (i.e., as allowing importation of LCMM-compatible rifles) would run directly counter to the goal Congress pursued in the assault weapon ban. Surely the Secretary has ample discretion under the statute to avoid the anomaly of allowing importation of firearms specially designed to work with domestically banned high capacity magazines.<sup>13</sup> *Cf. FDA v.*

---

<sup>13</sup> As noted in the 1998 Treasury Study, because pre-September 13, 1994 large capacity ammunition feeding devices are exempt from the ban pursuant to the grandfather provision (18 U.S.C. § 922(w)(2)), vast numbers of LCMMs remain lawfully in circulation and could be used in conjunction with an LCMM-compatible rifle. 1998 Treasury Study at 22 n.61 (J.A. 118).

*(footnote continued on next page)*

Brown & Williamson Tobacco Corp., 529 U.S. 120, 137-39, 143 (2000) (holding that FDA erred in asserting jurisdiction over tobacco pursuant to its organic statute because, inter alia, it failed to take into account various subsequent congressional enactments setting up regimes that would be inconsistent with FDA authority to regulate tobacco).

**C. Springfield’s Statutory Interpretation Arguments Are Strained and Lack Merit**

Springfield basically makes two statutory interpretation arguments in this appeal.<sup>14</sup> First, it says that LCMM-compatible rifles are importable under 18 U.S.C. § 925(d)(3) because they could be used in conjunction with small, non-military magazines, and therefore are “readily adaptable to sporting purposes” – even if not “particularly suitable” for such purposes. See Apt. Brief at 9-16. That argument, however, ignores the true statutory standard: a firearm must be “generally recognized as particularly suitable . . . or readily adaptable.” 18 U.S.C. § 925(d)(3) (emphasis added). The LCMM-compatible rifles at issue here are not “generally recognized” as either. Moreover, to read the words “readily adaptable” in total isolation, as Springfield invites, would eviscerate the sporting purposes exception as Congress intended it to operate. See FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000) (“A court must interpret the statute as a symmetrical and coherent regulatory scheme, and fit, if possible, all parts into a harmonious whole.” (internal quotation marks and citation omitted)). Obviously, any firearm –

---

*(footnote continued from previous page)*

Therefore, the LCMM ban, in and of itself, does not alleviate the danger posed by LCMM-compatible firearms.

<sup>14</sup> Springfield also invokes the rule of lenity. The rule of lenity is inapplicable in an administrative law case where no criminal sanctions are at issue and Springfield is on clear notice of what is prohibited going forward. See National Rifle Ass’n v. Brady, 914 F.2d 475, 479 n.3 (4th Cir. 1990) (criminal precedents involving rule of lenity “inapposite to questions of deference to agency regulations”).

no matter how intrinsically military in nature – could theoretically be adapted to be usable for some sporting purpose. By Springfield’s logic, even a quintessentially military firearm would be deemed “adaptable” to sporting purposes merely by virtue of the fact that the user could load just a single bullet in the magazine rather than utilizing its full capacity. Springfield’s interpretation is so expansive that it would overwhelm any attempt by ATF at meaningful line-drawing. It substitutes hypothetical supposition (a firearm might be made usable for sporting purposes in the future) for ascertainable facts (a firearm has not been so adapted yet, and remains distinctly capable of purely military-type use).

Second, Springfield claims that the agency’s view of “sporting purposes” under the statute is unduly narrow. See Apt. Brief at 16-23. LCMMs — devices designed purely for shooting as many targets as possible, as many times as possible, as quickly as possible — are fundamentally inconsistent with any reasoned conception of “sporting purposes.” The nomenclature itself betrays the flaws in Springfield’s tortured interpretation. LCMM stands for “large capacity military magazine.” The very juxtaposition of “military” and “sporting” illustrates the fundamental inconsistency between LCMM-compatible assault rifles and the type of guns whose importation Congress intended to authorize. Cf. S. Rep. No. 90-1097 (1968) (intent of statutory section to “curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting” (emphasis added)), reprinted in 1968 U.S.C.C.A.N. 2112, 2167; 114 Cong. Rec. 27,461-62 (1968) (statement of Sen. Dodd) (contrasting “sporting” with “military”).

Springfield and others have suggested that “plinking” and “practical shooting”<sup>15</sup> should suffice as “sporting purposes” for which LCMM-compatible rifles are “particularly suitable” or to which they are “readily adaptable.” See Apt. Brief at 20-22. But glossing over Congress’s chosen language with this type of artificial elasticity merely begs the question. Indeed, for any firearm — however dangerous or devastating — some putative “sport” could presumably be imagined. For example, one could target shoot with a bazooka or play catch with hand grenades (without releasing the pin). Obviously, Congress intended its use of the term “sporting purpose” to serve some meaningful function in distinguishing importable firearms from non-importable firearms, so that type of limitless construction cannot possibly be correct. See Commercial Union Ins. Co. v. United States, 999 F.2d 581, 587 (D.C. Cir. 1993) (statutes should be construed so that no provision becomes meaningless or useless). This universal principle of statutory construction, furthermore, has been recognized by another court in this very context. See Gilbert Equip. Co., Inc. v. Higgins, 709 F. Supp. 1071, 1089 n.25 (S.D. Ala. 1989) (“If ATF was not allowed to make distinctions between firearms and exclude those that are more clearly military than sporting, that agency would be reduced to a nonentity so far as importation under Section 925(d)(3) is concerned.”), aff’d mem., 894 F.2d 412 (11th Cir. 1990). If rifles capable of accepting magazines that enable the firing of many rounds in rapid succession (which magazines, as noted above, are themselves banned) are “generally recognized as particularly suitable for or readily adaptable to sporting purposes” (18 U.S.C. § 925(d)(3)) simply because they allow the

---

<sup>15</sup> The district court, quoting from the 1998 Treasury Study, defined practical shooting as “ ‘an organized competitive activity in which participants are involved in ‘moving, identifying, and engaging multiple targets and delivering a number of shots rapidly.’ ” 116 F. Supp. 2d at 90 n.7. Plinking, though undefined in the district court opinion, is “shoot[ing] . . . in a random, casual manner.” Webster’s II New College Dictionary (1995).

user to “mov[e], identify[], and engag[e] multiple targets and deliver[] a number of shots rapidly” (116 F. Supp. 2d at 90 n.7), what could possibly remain of the sporting purposes test? Clearly, it was incumbent on the Secretary to adopt a more practical, limiting construction, and the construction that “sporting purposes” means “more traditional types of sports, such as hunting and organized competitive target shooting,” 1998 Treasury Study at 17 (J.A. 113), is consistent with Congress’ intent, the statutory focus on what is “generally recognized” rather than what is on the fringe, and common sense.

**D. An Affirmance Would be Consistent With Prior Case Law in This Area**

The holding that *amici* today urge this Court to adopt is consistent with the holdings of the other courts that have considered similar issues. See Gun South, Inc. v. Brady, 877 F.2d 858, 865-66 (11th Cir. 1989) (holding that the Secretary did not act arbitrarily and capriciously by imposing temporary suspension on importation of firearms while reconsidering aspects of the sporting purposes test); Gilbert Equip. Co., 709 F. Supp. at 1088-89 (upholding the Secretary’s determination that the USAS-12 handgun could not be imported under the sporting purposes exception), aff’d mem., 894 F.2d 412 (11th Cir. 1990). Springfield has not cited, and *amici* are not aware of, any case that has adopted Springfield’s strained construction of § 925(d)(3).

**V. THE AGENCY WAS ENTITLED TO MODIFY ITS POLICY ON LCMM-COMPATIBLE FIREARMS IN ACCORDANCE WITH CHANGING FINDINGS AND CIRCUMSTANCES**

---

Springfield’s complaint that the Secretary’s position on the application of the sporting purposes test to LCMM-compatible firearms is unfair because it represents a change from the prior administrative practice rings hollow and was properly rejected by the district court. See 116 F. Supp. 2d at 91. While Springfield has not undertaken to argue estoppel head-on, it is

worth noting that estoppel generally does not run against the government. See, e.g., Heckler v. Community Health Servs. of Crawford County, Inc., 467 U.S. 51, 60 (1984). Nor does any rigid principle of *stare decisis* constrain an agency tasked with enforcing a statute and determining whether to grant exceptions under a statutory standard. Rather, the agency can — and should — continually evaluate its interpretations to ensure that they are consistent with the factual and legal environment. See American Trucking Ass’ns v. Atchison, Topeka & Santa Fe R.R. Co., 387 U.S. 397, 416 (1967) (“flexibility and adaptability to changing needs . . . is an essential part of the office of a regulatory agency”).

Here, the revision followed on the heels of the 1994 statute that reflected diminished congressional tolerance for firearms capable of discharging large quantities of ammunition quickly,<sup>16</sup> and the 1998 Treasury Study indicating that increasing numbers of LCMM-compatible rifles — particularly imported ones — were being used for violent crimes. See 1998 Treasury Study at 30-35 (J.A. 126-31). The revision was also necessitated by gun manufacturers’ design changes that tended to make some of the previous military configuration features less relevant. 1998 Treasury Study at 25 (J.A. 121). As this Court has stated, “[a]n agency’s view of what is in the public interest may change, either with or without a change in circumstances,” as long as the agency “suppl[ies] a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.” Greater Boston Television Corp. v. FCC, 444 F.2d

---

<sup>16</sup> In its recent Brown & Williamson opinion, the Supreme Court noted that “the meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand.” 529 U.S. at 133. Further, “the ‘classic judicial task of reconciling many laws enacted over time, and getting them to “make sense” in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute.’ ” Id. at 143 (quoting United States v. Fausto, 484 U.S. 439, 453 (1988)). In light of its outright domestic ban on large capacity ammunition feeding devices, Congress’s perspective on these issues could not be more transparent.

841, 852 (D.C. Cir. 1970) (footnotes omitted). Indeed, this principle has been acknowledged in the very context of the statute now under consideration. See Gun South, 877 F.2d at 866 (“The term ‘generally recognized’ in section 925(d)(3) suggests a community standard which may change over time even though the firearm remains the same.”). The careful analysis made by the Secretary before changing the 1989 interpretation, and the coherent justifications advanced for that change, amply support his decision to refuse to permit the importation of these weapons of destruction.

## VI. CONCLUSION

For the foregoing reasons as well as those contained in the briefs of Defendant-Appellee, *amici* respectfully request that this Court affirm the judgment below.

Of Counsel:

Dennis A. Henigan  
Brian J. Siebel  
Leslie Rubin Klein  
BRADY CENTER TO PREVENT GUN  
VIOLENCE  
1250 Eye Street, N.W., Suite 802  
Washington, D.C. 20005  
(202) 289-7319

---

Stuart J. Land  
Robert S. Litt  
Robert J. Katerberg  
ARNOLD & PORTER  
555 Twelfth Street, N.W.  
Washington, D.C. 20004-1206  
(202) 942-5000

*Counsel for the Brady Center to  
Prevent Gun Violence*

Dated: September 19, 2001

**CERTIFICATE PURSUANT TO FED. R. APP. P. 32(A)(7)(C)**

Pursuant to Fed. R. App. P. 32(a)(7)(C), undersigned counsel for the Brady Center to Prevent Gun Violence hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), in that, based on the word count function of the word processing system used to prepare this brief, it contains 6,254 words.

---

Robert J. Katerberg

**CERTIFICATE OF SERVICE**

I certify that on this \_\_\_\_ day of September, 2001, true and correct copies of the foregoing Brief of *Amicus Curiae* the Brady Center to Prevent Gun Violence et al. were served by United States mail, first class postage prepaid, upon:

Stephen R. Halbrook, Esq.  
Richard E. Gardiner, Esq.  
Suite 404  
10560 Main Street  
Fairfax, VA 22030  
(703) 352-7276

*Counsel for Plaintiff-Appellant*

Michael S. Raab, Esq.  
Mark B. Stern, Esq.  
U.S. Department of Justice  
Civil Division  
P.O. Box 883  
Washington, D.C. 20044  
(202) 616-0680

*Counsel for Defendant-Appellee*

---

Robert J. Katerberg

*Counsel for the Brady Center  
to Prevent Gun Violence*