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No. 23-852

IN THE

Supreme Court of the United States

MERRICK B. GARLAND, ATTORNEY GENERAL, *et al.*,
Petitioners,
v.

JENNIFER VANDERSTOK, *et al.*,
Respondents.

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

BRIEF FOR PROFESSORS AND SCHOLARS OF LINGUISTICS AND LAW AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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<i>Pulsifer v. United States</i> , 144 S. Ct. 718 (2024)	12
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<i>United States v. Johns</i> , 2022 WL 1062998 (E.D.N.Y. Apr. 8, 2022)	10, 18
<i>United States v. Ryles</i> , 988 F.2d 13 (5th Cir. 1993)	6, 18

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87 Fed. Reg. 24,652 (Apr. 26, 2022) (codified at 27 C.F.R. §§ 478.11-478.12)	5, 10

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OTHER AUTHORITIES*	
<i>16"</i> AR-15 Rifle Kit with 15" Slim Keymod with 80% Lower Receiver - Burnt Bronze, Daytona Tactical, https://daytonatactical.com/products/burnt-bronze-16-ar15-kit-with-15-slim-keymod-with-lower/	23
<i>16"</i> AR-15 Rifle Kit with 15" Slim Keymod with 80% Lower Receiver - Titanium Blue, Daytona Tactical, https://daytonatactical.com/products/titanium-blue-16-ar15-kit-with-15-slim-keymod-with-lower/	23, 26
<i>16"</i> Blue Titanium Rifle Kit 5.56 with 12" House M-lok, Daytona Tactical, https://daytonatactical.com/products/16-blue-titanium-rifle-kit-5-56-with-12-house-m-lok/	15
<i>16"</i> Burnt Bronze Rifle Kit 5.56 with 12" House Keymod, Daytona Tactical, https://daytonatactical.com/products/16-burnt-bronze-rifle-kit-5-56-with-12-house-keymod/	14
<i>16"</i> Flat Dark Earth Rifle Kit 5.56 with 12" Keymod with Lower, Daytona Tactical, https://daytonatactical.com/products/flat-dark-earth-fde-rifle-kit-magpul-lower-furniture-upper-assembled-with-fde-80-lower/	15
80 Percent Arms, https://www.80percentarms.com/	24

* All websites visited on July 2, 2024.

TABLE OF AUTHORITIES—Continued

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<i>80% Lower Milling Service</i> , Reddit, https://www.reddit.com/r/ar15/comments/grxejl/80_lower_milling_service/	24
<i>AR-15 5.56/.223 16" M4 TACTICAL RIFLE KIT / 15" MLOK / LE STOCK</i> , https://moriartiarments.com/ar-15-6.5-grendel/5.56-nato-.223-rem/ar-15-5.56.223-16-m4-tactical-rifle-kit-with-15-mlok-super-slim-handguard-rk15-fk15-nl?sort=rating&order=DESC	16
<i>AR-15 Rifle Kit 15" M-Lok Barreled Upper with NIB BCG</i> , https://daytonatactical.com/products/ar-15-rifle-kit-15-m-lok-barreled-upper-with-nib-bcg/	16
<i>AR-40 4.5" Billet MOD1 Upper Receiver Pistol Build Kit</i> , A1Armory, https://a1armory.com/ar-40-4-5-billet-mod1-upper-receiver-pistol-build-kit/	13
Barrett, Amy Coney, <i>Congressional Insiders and Outsiders</i> , 84 U. Chi. L. Rev. 2193 (2017)	9, 17
Doerfler, Ryan D., <i>Late-Stage Textualism</i> , 2021 Sup. Ct. Rev. 267 (2022)	27
Huang, Yan, <i>Anaphora: A Cross-Linguistic Study</i> (2000)	25
Huddleston, Rodney D. & Geoffrey K. Pullum, <i>The Cambridge Grammar of the English Language</i> (2022)	14

TABLE OF AUTHORITIES—Continued

	Page
Hung, Eric, <i>80% Arms Easy Jig Gen 3 Review: Never Easier</i> , Pew Pew Tactical (Feb. 17, 2023), https://www.pewpewtactical.com/80-percent-arms-easy-jig-review/	24
Magnum Rubber Band Guns, https://www.rubberbandguns.com/rifles/rifles-military	26
Manning, John F., <i>What Divides Textualists from Purposivists</i> , 106 Colum. L. Rev. 70 (2006)	9
MOC 14022 Military Thompson Sub Machine Gun Bricks Toys, USABlocks, https://www.usablocks.com/products/moc-14022-military-thompson-sub-machine-gun-bricks-toys-usablocks	26
<i>Pike Arms® Elite22™ 80% Receiver With Extended Picatinny Rail, Matte Black</i> , Tactical Innovations Inc., https://www.tacticalinc.com/catalog/product/id-8186	23
<i>PSA AR-15 Rifle Kit 5.56" Nitride 1:7 Mid-Length 13.5" LTWT M-Lok Moe w/MBUS Sights</i> , Palmetto State Armory, https://palmettostatearmory.com/psa-16-5-56-nato-1-7-mid-length-nitride-13-5-lightweight-m-lok-moe-ept-rifle-kit-516446780.html	15, 16
Pustejovsky, James, <i>The Generative Lexicon</i> (1995)	1, 7
Pustejovsky, James, <i>The Generative Lexicon</i> , 17 Computational Linguistics 409 (1991)	1, 7

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Rosch, Eleanor, et al., <i>Basic Objects in Natural Categories</i> , 8 Cognitive Psych. 382 (1976)	20
Scalia, Antonin & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012)	27, 28
<i>Tiger Rock AR-15 Burnt Bronze 5" Complete Pistol Kit</i> , A1Armory, https://a1armory.com/tiger-rock-ar-15-burnt-bronze-5-complete-pistol-kit/	14
<i>Tiger Rock AR-15 Flat Dark Earth Enhanced Rifle Kit w 10" Handguard</i> , A1Armory, https://a1armory.com/tiger-rock-ar-15-flat-dark-earth-enhanced-rifle-kit-w-10-handguard/	14
<i>Tiger Rock AR-15 Robins Egg Blue 7" Pistol Build Kit</i> , A1Armory, https://a1armory.com/tiger-rock-ar-15-robins-egg-blue-7-pistol-build-kit/	14
Tversky, Barbara & Kathleen Hemenway, <i>Objects, Parts, and Categories</i> , 113 J. Experimental Psych.: Gen. 169 (1984)	20
<i>Unfinished Lowers: Where Can I Send Them to Be Finished?</i> , The Highroad, https://www.thehighroad.org/index.php?threads/unfinished-lowers-where-can-i-send-them-to-be-finished.745023/	24
Waldon, Brandon, et al., <i>On the Context Dependence of Artifact Noun Interpretation</i> , 27 Proc. Sinn und Bedeutung 674 (2023)	2

TABLE OF AUTHORITIES—Continued

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Waldon, Brandon, et al., <i>Reading Law with Linguistics: How Linguistic Theory and Data Inform Statutory Interpretation of Artifact Nouns</i> , https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4881277 (2024)	2, 9, 13
<i>What is an 80% Lower?</i> , 80 Percent Arms, https://www.80percentarms.com/blog/what-is-an-80-lower/	24
Woodland Scenics, Basic Pine Derby Car Kit, Amazon Customer Reviews, https://www.amazon.com/Woodland-Scenics-Pine-Derby-Basic/product-reviews/B000BR4VBG/ref=cm_cr_arp_d_viewopt_kywd	16

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IN SUPPORT OF PETITIONERS**

INTEREST OF AMICI CURIAE

Amici are professors and scholars of law and linguistics with expertise in linguistic theory and empirical linguistics.¹ The analysis in this amicus brief is grounded in decades of research in linguistics, including by amicus James Pustejovsky in monographs and articles including *The Generative Lexicon* (1991) and *The Generative Lexicon* (1995). Amici Brandon Waldon and Cleo

¹ No counsel for a party authored this brief in whole or in part, and no person or entity other than amici and their counsel made a monetary contribution to fund the preparation or submission of this brief.

Condoravdi have also published scholarly research on artifact noun interpretation. See, e.g., Waldon et al., *On the Context Dependence of Artifact Noun Interpretation*, 27 Proc. Sinn und Bedeutung 674 (2023). This brief also draws extensively on a recent theoretical and empirical study about the language at issue in this case. See Waldon et al., *Reading Law with Linguistics: How Linguistic Theory and Data Inform Statutory Interpretation of Artifact Nouns*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4881277 (“Waldon et al. 2024”).

Amici submit this brief in their individual capacities and include their affiliations for identification purposes only:

- Professor Kevin Tobia, JD, PhD, Georgetown University
- Professor Nathan Schneider, PhD, Georgetown University
- Brandon Waldon, PhD, Georgetown University
- Professor James Pustejovsky, PhD, Brandeis University
- Professor Cleo Condoravdi, PhD, Stanford University

SUMMARY OF ARGUMENT

The Gun Control Act of 1968 (the Act) provides for governmental regulation of firearms, defined to include “any weapon ... which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.” 18 U.S.C. § 921(a)(3)(A). The Court will consider whether this definition includes a weapon parts kit that is designed to or may readily be converted to expel a projectile by the action of an explosive.

As a matter of linguistics, the answer is yes. Artifact nouns such as *weapon*, *firearm*, *table*, and *bicycle* have context-sensitive ordinary meanings, which are heavily influenced by an object's design and potential function. In many contexts, an incomplete firearm that is designed to be, or is readily convertible to be, an operable firearm simply is a firearm. Thus, in a survey of hundreds of Americans, a clear majority (65%) described unassembled and uncompleted firearm parts kits as *firearms*—even in the absence of further definitional context (such as the Act's specification that “firearm” includes weapons that may readily be converted to expel a projectile by an explosive). Online customer reviews confirm this ordinary understanding of a parts kit. People regularly refer to such a product as a *firearm*, *weapon*, *gun*, *rifle* and/or *AR*.

The Act's text clearly and specifically employs these ordinary meanings. Section 921(a)(3)(A) refers to design (“designed to”) and potential function (“may readily be converted to”) as key facets of meaning: A firearm is “any weapon ... which will *or* is designed to *or* may readily be converted to expel a projectile by the action of an explosive.” 18 U.S.C. § 921(a)(3)(A) (emphases added). This accords with linguistic theory, which emphasizes the significance of design and potential function to artifact nouns' meanings. Indeed, presenting survey participants with this additional statutory language (“designed to *or* may readily be converted to”) increased to 73% the proportion of Americans who agreed that unassembled and unfinished parts kits are firearms. In sum, the Fifth Circuit's view that the ordinary meanings of *firearm* and *weapon* are restricted to firearms that are presently operable or extremely close to operability (*i.e.*, made operable in a matter of seconds) is refuted by

linguistic theory, survey data, and robust patterns of natural language use.

The Act also defines “firearm” to include “the frame or receiver of any such weapon” (“such weapon” as defined in Section 921(a)(3)(A)). The Court will consider whether this definition includes frame or receiver parts kits that are designed to or may readily be converted to function as a frame or receiver. Here, too, linguistic theory and data provide a clear answer: As artifact nouns, *frame* and *receiver* have ordinary meanings that are not limited to perfectly completed or presently operable objects. This reading is again confirmed by natural language practice.

The ordinary meanings are again reinforced by the context provided by Section 921(a)(3)(B), which explicitly defines the terms’ scope as extending to frames and receivers of “any such weapon,” as defined in Section 921(a)(3)(A). Linguists call this textual connection between the two sections “anaphora.” Here, anaphora’s contribution clarifies the relevant class of frames and receivers: ones for the weapons that Section 921(a)(3)(A) defines. Anaphora also provides the linguistic explanation for intuitive conclusions about Section 921(a)(3)(B). As a simple example, read literally, or through an abstract dictionary definition, “receiver” in Section 921(a)(3)(B) might include a toy receiver for a toy gun. But read in context, Section 921(a)(3)(B) clarifies that the only kinds of “receiver[s]” applicable here are ones of “any such weapon” as contemplated in Section 921(a)(3)(A), which involves an explosive. The context emphasizes a receiver’s contribution within a weapon, defined by that weapon’s ability, design, or functional potential to expel a projectile by means of an explosive. Linguistic theory, empirical data, and statutory context accordingly support the government’s reading of the

statute, not the Fifth Circuit's. The judgment should therefore be reversed.

ARGUMENT

I. THE ORDINARY MEANINGS OF FIREARM AND WEAPON SUPPORT THE GOVERNMENT'S INTERPRETATION

Congress granted the Attorney General authority to administer the Act. 18 U.S.C. § 926(a). The Attorney General, in turn, delegated authority to administer federal firearms laws, including the Act, to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). 28 C.F.R. § 0.130.

The Act defines a “firearm” as follows:

- (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- (B) the frame or receiver of any such weapon;
- (C) any firearm muffler or firearm silencer; or
- (D) any destructive device.

18 U.S.C. § 921(a)(3). ATF promulgated a Final Rule defining “firearm” to “include a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted, to expel a projectile by the action of an explosive.” Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24,652, 24,735 (Apr. 26, 2022) (codified at 27 C.F.R. §§ 478.11-478.12).

The Fifth Circuit held, and Respondents contend, that the only “actual” firearms are completed ones or ones extremely close to operability, and that the statute only covers such firearms: “It covers only an *actual*

firearm and its *actual* frame or receiver; it does not cover mere parts or kits of parts that might be manufactured into one.” Defense Distributed Opp. 10; *see also* Pet. App. 26a (“[W]eapon parts kits are not ‘readily converted to an operable firearm,’ and thus they do not constitute ‘firearms’ under the [Act].”).

But the category of “actual” firearms is not limited to entities that are perfectly completed, presently operable, or even extremely close to operability. The Fifth Circuit recognized that a disassembled weapon whose barrel is removed from the stock is a “firearm.” Pet. App. 110a (citing *United States v. Ryles*, 988 F.2d 13, 16 (5th Cir. 1993)). Likewise, VanDerStok (Opp. 16) concedes that a “firearm” includes “malfunctioning or intentionally disabled firearms and those that are temporarily disassembled.” Having acknowledged that the Act covers incomplete firearms, the Fifth Circuit and VanDerStok draw the Act’s outer boundary in the wrong place. The linguistic principles underlying the interpretation of artifact nouns such as “firearm” explain why.

A. Artifact Nouns’ Ordinary Dimensions Of Meaning Include Design And Potential

Linguistics scholars have for decades studied *artifact* nouns—words like “firearm,” “weapon,” “table,” and “bicycle”—which denote things that have been created intentionally by humans, often with a specific purpose or functionality in mind. Artifact nouns differ from *natural kind* nouns like “egg,” “dog,” and “water,” which denote things that may be employed for various human purposes but that are not human-*designed* to function in a particular way.

All physical objects, whether natural kinds or artifacts, can be described in relation to certain properties, such as their physical form (*e.g.*, shape, size) and

constituent parts (*e.g.*, dogs and tables both have legs). But when considering the meaning of artifact nouns, it is important to recognize additional facets of meaning that are both salient and modulated by context. Amicus Professor James Pustejovsky, one of the foremost authorities on artifact nouns within linguistics, has identified these facets of meaning taken together as the noun's *qualia structure*. Pustejovsky, *The Generative Lexicon*, 17 Computational Linguistics, 409, 426-427 (1991) ("Pustejovsky 1991"); see also Pustejovsky, *The Generative Lexicon* (1995) ("Pustejovsky 1995"). Facets that distinguish artifact nouns from natural kind nouns include:

1. The potential of an object to fulfill some function or purpose (*function-potential* facet).
2. Factors involved in the origin or bringing about of an object (*manner-of-creation* facet).

For simplicity, we refer to the first facet as "**Potential**" and the second as "**Design**." For example, with respect to a gun, the Potential facet includes the potential to fire bullets (the main thing guns do or help people to do). The Design facet includes the steps of manufacture and assembly.

In different contexts, the applicability of an artifact noun's facets of meaning can vary. For example, consider the artifact noun "novel" in this sentence:

Noel began a novel.

In this sentence, "novel" is underspecified as to the precise action that Noel undertakes. On one interpretation, the sentence implies that Noel initiated the process of *reading* a novel; on another interpretation, the sentence implies that Noel initiated the process of *writing* a novel.

Linguistic theory illuminates the source of this indeterminacy. On the “began-to-read” interpretation, the relevant facet of the noun *novel* is its Potential: on this reading, the object realizes its potential to fulfill its intended function (*i.e.*, to be read). On the “began-to-write” interpretation, the relevant facet is the Design, *i.e.*, the property of being brought into existence through writing.²

Importantly, it would be misleading to say that there are two *senses* of “novel” that produce the indeterminacy in the above sentence. “Novel” is not “ambiguous” in the sense that there are two competing senses of “novel,” in contrast to, say, “meeting at the bank,” which could refer to both a financial institution and a river’s edge. Rather, there is a single concept of “novel” shared by *both* possible interpretations—and, indeed, the very same novel could be at issue in both readings. The difference is whether the contextually relevant facet of meaning is taken to be the artifact noun’s Design or Potential—whether the novel is being written or being read.

These two facets of meaning help explain why the Fifth Circuit’s reading of *firearm*, as restricted to entities that are perfectly completed or extremely close to operability, is inapposite as a theory of the term’s ordinary meaning. In many contexts, an artifact noun’s Design and Potential are more relevant than whether the entity to which the noun refers contains every part stereotypically associated with a completed entity. Often, an “incomplete novel,” missing one page, is nonetheless a novel; an “unassembled table” purchased from IKEA

² There is, of course, a distinct sense of “novel”—the adjective meaning “new”—but that is not the sense at issue in the above sentence, where “novel” is clearly a noun.

is a table; and various “incomplete” or “unassembled” firearms that were designed to expel projectiles, or which could readily be converted to expel projectiles, are nonetheless firearms.

B. In A Survey Of Americans, A Majority Described Incomplete And Unassembled Weapon Parts Kits As Firearms

Survey data are a useful complement to other sources of linguistic evidence such as dictionaries, especially insofar as the Court seeks to understand how “the ordinary English speaker ... would understand the words of the statute,” Barrett, *Congressional Insiders and Outsiders*, 84 U. Chi. L. Rev. 2193, 2194 (2017), or how the “reasonable person” uses words. See Manning, *What Divides Textualists from Purposivists*, 106 Colum. L. Rev. 70, 70 (2006). Here, empirical results reinforce the theoretical conclusion that unassembled and/or unfinished collections of parts fall within the ordinary meaning of certain artifact nouns.

In a survey that amici conducted, over 1,200 Americans (50% men / 50% women and 50% Republican / 50% Democrat) were invited to evaluate hypothetical scenarios. Three-hundred and twenty-six were randomly assigned to read about firearm parts kits that were described as being (1) unassembled and (2) uncompleted, in that they required additional labor and tools to complete.³

³ The kits were described as “packages of firearm parts that a person can order online. To create a functional firearm, the buyer must combine the elements of the parts kit. Most people could combine the parts in one or two hours with the right tools.” Waldon et al. 2024.

As the examples in Part I.C of this brief illustrate, the survey’s description applies to the firearm parts kits at issue in this case. Customers can buy complete upper and lower kits with 80% receivers,⁴ and customers report being able to finish an 80% receiver in an hour. The survey’s description of a firearm parts kit requiring specialized tools and at least an hour of work to assemble is *more* laborious than many currently available weapon parts kits, some of which contain all the parts and tools necessary for assembly, *see* 87 Fed. Reg. at 24,661-24,662, and some of which can be completed in fewer than 30 minutes, *see id.* at 24,686 n.106; *see also United States v. John*, 2022 WL 1062998, at *4 (E.D.N.Y. Apr. 8, 2022) (holding defendant’s starter gun was a “firearm” under the Act where an ATF agent was able to convert the gun to fire live ammunition in “twenty to thirty minutes”).

In one version of the study, participants read a simple definition of the term “firearm” that did not address either a firearm’s design or potential. “Firearm” was defined simply as “any weapon which will expel a projectile by the action of an explosive.” Participants were asked whether an incomplete and unassembled firearm parts kit is a “firearm,” according to that definition.

⁴ “80% receiver” is a marketing term for a partially machined receiver that requires additional fabrication before it can be integrated into an operable firearm. ATF has noted that the term “is neither found in Federal law nor accepted by ATF,” 87 Fed. Reg. 24,652, 24,663 n.47 (Apr. 26, 2022), and amici likewise use the term solely for convenience.

Firearm condition (legal disagreement)	
Prompt	<p>Imagine that a U.S. court is deciding a dispute between two parties about the meaning of the term “firearm” in a law.</p> <p>The law includes a definitions section, which states: “The term ‘firearm’ means:</p> <ul style="list-style-type: none"> • “Any weapon which will expel a projectile by the action of an explosive.” [Limited context] • “Any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.” [Full context] <p>The disagreement concerns whether firearm parts kits are included in the law. These parts kits are packages of firearm parts that a person can order online. To create a functional firearm, the buyer must combine the elements of the parts kit. Most people could combine the parts in one or two hours with the right tools.</p>
Question	In your view, does the law’s definition of “firearm” include firearm parts kits?
Results	<p>Limited context: 65% (113/173) said “yes.”</p> <p>Full context: 73% (111/153) said “yes.”</p>

Overall, a majority of Americans in amici's study (65%, 113/173) described these parts kits as members of the category "firearm" even *without* the added context provided by Section 921(a)(3)(A). See Waldon et al. 2024. In a different arm of the same study, participants were shown a definition of "firearm" with an express reference to design or potential function, tracking the language of Section 921(a)(3)(A) ("designed to" and "may readily be converted to"). When such contextual language was added, an even greater proportion described firearm parts kits as firearms—fully 73% (111/153). See *infra* Part II.

These empirical results reinforce the conclusion that the ordinary meaning of *firearm* (and other artifact nouns such as *table*) in many contexts encompasses an object's design and potential function without requiring either the presence or assembly of all of an object's constituent parts. Moreover, the ordinary meaning of "firearm" is not limited to entities that are perfectly complete, presently operable, or extremely close to operability; the ordinary meaning extends to firearm parts kits that are made operable only through upwards of an hour of further assembly and that are sold without the tools needed to complete the conversion.

C. Americans Regularly Refer To Firearm Parts Kits As Firearms And Weapons

In assessing whether firearm parts kits fall within the ordinary meaning of *firearm* and *weapon*, actual linguistic usage is also instructive. The Court regularly considers hypothetical linguistic examples to assess the ordinary meaning of statutes, particularly in criminal contexts. See, e.g., *Pulsifer v. United States*, 144 S. Ct. 718, 729-731 (2024); *Lockhart v. United States*, 577 U.S. 347, 357 (2016). Members of the Court have also

recommended considering patterns of actual language use through corpus linguistics. *See, e.g., Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1174-1175 (2021) (Alito, J., concurring).

Ordinary usage shows that firearm parts kits fall within the ordinary meaning of both *firearm* and *weapon* in many contexts—especially contexts similar to Section 921. Amici present several clear examples below, with the relevant term bolded for emphasis.⁵

First, grammatical evidence links the label “firearm” to a parts kit:

- “Introducing the AR-40 4.5" MOD1 Billet Upper Receiver Pistol Build Kit, a powerful and compact **firearm** designed to deliver outstanding performance in the dynamic world of pistol builds.”⁶
- “Tiger Rock AR-15 Enhanced Flat Dark Earth Rifle Kit with a 10" Handguard, a precision-engineered **firearm** designed for optimal performance and durability.”⁷

⁵ Amici’s article, Waldon et al. 2024, presents additional examples of uses of *firearm*, *weapon*, *rifle*, *AR*, and *gun* to refer to firearm parts kits.

⁶ <https://alarmory.com/ar-40-4-5-billet-mod1-upper-receiver-pistol-build-kit/>.

⁷ <https://alarmory.com/tiger-rock-ar-15-flat-dark-earth-enhanced-rifle-kit-w-10-handguard/>.

- “Tiger Rock AR-15 Enhanced Robins Egg Blue Pistol Kit - a compact and powerful **firearm** designed for performance and style.”⁸
- “Discover the iconic 16" Burnt Bronze Rifle Kit 5.56 from House Keymod, a stylish and versatile **firearm** made in the USA.”⁹
- “Invest in excellence with the Tiger Rock AR-15 Burnt Bronze 5" Complete Pistol Kit – a versatile, reliable, and aesthetically pleasing **fire-arm** that stands out in both performance and style.”¹⁰

The construction used here (“the ... Kit, a powerful and compact **firearm**”), with a comma or hyphen separating the full product name from a descriptive phrase, conveys that the speaker believes that the kit *is* a firearm.¹¹

Second, many advertisements name the kit and then immediately refer to a “weapon” or “rifle.” For example:

- “Looking for a little more firepower in your life? Say hello to the 16" Flat Dark Earth Rifle Kit 5.56 with 12" Keymod. This powerful **rifle** comes

⁸ <https://alarmory.com/tiger-rock-ar-15-robins-egg-blue-7-pistol-build-kit/>.

⁹ <https://daytonatactical.com/products/16-burnt-bronze-rifle-kit-5-56-with-12-house-keymod/>.

¹⁰ <https://alarmory.com/tiger-rock-ar-15-burnt-bronze-5-complete-pistol-kit/>.

¹¹ Specifically, this is an illustration of an “ascriptive [noun phrase] supplement.” See Huddleston & Pullum, *The Cambridge Grammar of the English Language* 1357 (2022) (the first part of example [19ib], “Kim Jones, a quite outstanding student, won a scholarship to MIT,” is equivalent in meaning to [19ib], “Kim Jones was a quite outstanding student.”).

equipped with an M4 Feed Ramp, a 1×7 barrel twist, and a $1/2 \times 28$ thread, making it perfect for taking down even the most tough targets.”¹²

Others refer to parts kits themselves as weapons:

- “When you need the best AR-15 rifle available, look no further than this Blue Titanium 16" Rifle Kit 5.56 12" House M-LOK. Designed and manufactured with an obsessive attention to detail, this rugged and dependable **weapon** is perfect for the professional gun owner or enthusiast.”¹³
- “Outstanding! A great value and a great **weapon**! Assembles pretty easy, I would recommend it for anyone who is interested in making their first build.”¹⁴

Customer reviews also tightly tether references to the unassembled firearm parts kits and a “rifle”¹⁵:

¹² <https://daytonatactical.com/products/flat-dark-earth-fde-rifle-kit-magpul-lower-furniture-upper-assembled-with-fde-80-lower/>.

¹³ <https://daytonatactical.com/products/16-blue-titanium-rifle-kit-5-56-with-12-house-m-lok/>.

¹⁴ <https://palmettostatearmory.com/psa-16-5-56-nato-1-7-mid-length-nitride-13-5-lightweight-m-lok-moe-ept-rifle-kit-516446780.html>.

¹⁵ If speakers made a sharp categorization distinction between kits and assembled firearms, they might be expected to signal the difference more explicitly: instead of “Great inexpensive rifle,” perhaps, “This inexpensive kit builds a great rifle”—but of course, this sounds unnecessarily explicit when one understands what the kit is.

- “Since I bought this kit I have bought several more AR’s. This one by far is still my go to range **rifle** as it is nails at 200 yards.”¹⁶
- “The kit came in as advertised. Great inexpensive **rifle**.”¹⁷
- “Purchased this **rifle**. The assembly was a learning experience since this was my first build[.]”¹⁸

What is purchased is an uncompleted firearm kit, not a completed firearm—so it is unlikely that “rifle” in these sentences refers *only* to completed firearms. Rather, the writers’ use of the demonstrative adjective “this” to modify “rifle,” near references to the kit, suggests that the customers refer to both the kit and the firearm assembled from the kit as one holistic product.¹⁹

¹⁶ <https://palmettostatearmory.com/psa-16-5-56-nato-1-7-mid-length-nitride-13-5-lightweight-m-lok-moe-ept-rifle-kit-516446780.html>.

¹⁷ <https://daytonatactical.com/products/ar-15-rifle-kit-15-m-lok-barreled-upper-with-nib-bcg/>.

¹⁸ <https://moriartiarments.com/ar-15-6.5-grendel/5.56-nato-223-rem/ar-15-5.56.223-16-m4-tactical-rifle-kit-with-15-mlok-super-slim-handguard-rk15-fk15-nl?sort=rating&order=DESC>.

¹⁹ Respondent VanDerStok (Opp. 24) attempts to analogize a weapon parts kit to a “pinewood derby car kit that comes with wheels, nails to affix them, and a block of wood that must be carved and sanded before it becomes a car.” VanDerStok notes, “No one would call such a kit a car.” *Id.* Yet some do. *See, e.g.*, https://www.amazon.com/Woodland-Scenics-Pine-Derby-Basic/product-reviews/B000BR4VBG/ref=cm_cr_arp_d_viewopt_kywd (“This car is easy to work with and great for Scouts. The kids can help when putting the car together.”). This usage is not surprising, as these pinewood derby kits are designed to be complete cars. If the block of wood were sold separately (not as part of a kit designed to become a car),

The preceding examples offer ample evidence that sellers and consumers readily deploy “firearm” and similar nouns to refer to a product over its lifespan, or to the product that is purchased (as a kit). These examples demonstrate that ordinary speakers do not confine *firearm* to just completed weapons or those extremely close to operability as a matter of ordinary meaning.

II. SECTION 921(a)(3)(A)’S TEXT AND CONTEXT REINFORCE THE BROAD ORDINARY MEANING OF FIREARM

It is of course true that an explicit statutory definition can sometimes justify deviating from a word’s ordinary meaning. *See, e.g.*, Pet. App. 98a (quoting *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018)). Here, however, there is no conflict between the ordinary meaning and statutory definition. The definition embodies ordinary meaning with its clear and specific focus on a firearm’s *design* (“designed to”) and *potential* (“may readily be converted to”).

A. The Act’s Definition Does Not Limit *Firearm* To Completed Weapons And Identifies Design And Potential As Facets Of Its Meaning

Under the Act, “firearm” is defined disjunctively to include any weapon that:

1. will; or

one would not expect customers to describe that wood block as a car. But the Court does not need to decide the status of pinewood derby cars. With respect to weapon parts kits, the linguistic usage data is clear: Americans regularly treat the weapon parts kit and the completed firearm as the same thing, and the Court should assume Congress did, as well. *See Barrett*, 84 U. Chi. L. Rev. at 2209 (“If, moreover, a legislative command is directed to the citizenry, it is both sensible and fair for the courts to interpret the command as its recipients would.”).

2. is designed to; or
3. may readily be converted to expel a projectile by the action of an explosive.

18 U.S.C. § 921(a)(3)(A). To construe the three-part definition of “firearm” as limited to only “complete” or “operable” firearms, or firearms that are extremely close to operability, fails to account for the ordinary meaning of “firearm,” as discussed in Part I. Such artificial cabining is also inconsistent with the statute’s context. “To strip a word from its context is to strip that word of its meaning.” *Biden v. Nebraska*, 143 S. Ct. 2355, 2378 (2023) (Barrett, J., concurring).²⁰

²⁰ The Fifth Circuit agreed that a “firearm” includes items that could become operable firearms in thirty seconds. Pet. App. 25a-26a (discussing *Ryles*, 988 F.2d at 16, which concerned a disassembled firearm that could have been assembled in thirty seconds or less). The Fifth Circuit concluded that, “[u]nlike the firearm in *Ryles*, weapon parts kits are far from being ‘operable.’ Assembling a weapon parts kit takes much longer than thirty seconds, and the process involves many additional steps,” and so a weapon parts kit was not capable of being “readily converted” to an operable firearm, and therefore not a “firearm” under the Act. Pet. App. 26a. But the Fifth Circuit and the concurrence both conceded that the Act’s “may readily be converted” language could cover a process taking upwards of 12 minutes and requiring the use of tools such as a drill. See Pet. App. 24a n.18, 48a (citing *United States v. 16,179 Molso Italian .22 Caliber WinLee Derringer Convertible Starter Guns*, 443 F.2d 463, 465 (2d Cir. 1971) (holding starter pistols were “firearms” under the Act where ATF agents testified they could convert the pistols to fire live ammunition in three to 12 minutes using a drill)). Another court recently held that a 30-minute conversion time for a starter gun constitutes a “readily convertible” weapon under the Act. See *United States v. Johns*, 2022 WL 1062998, at *4 (E.D.N.Y. Apr. 8, 2022). But if 30 seconds and 12 minutes (and, perhaps, 30 minutes) can all suffice under the Fifth Circuit’s reasoning, there is no principled basis for the Fifth Circuit’s temporal cutoff,

A statutory definition that included only the first criterion (“will expel a projectile...”) could arguably be said to restrict the meaning of “firearm” to a narrower set of weapons that are actually fireable. But this interpretation is incompatible with the second and third clauses of Section 921(a)(3)(A).²¹ Respondent VanDerStok (Opp. 16) acknowledges this uncontroversial proposition.²²

As Part I explained, artifact nouns such as “firearm” and “weapon” have facets of ordinary meaning that include their design and potential. *See generally* Pustejovsky 1991; Pustejovsky 1995. Congress’s definition of firearm clearly emphasizes these two dimensions. The definition thus expressly covers weapons that are

particularly in light of empirical findings about ordinary speakers’ understanding that weapons parts kits requiring considerable assembly are nonetheless “firearms.” *See supra* Part I.B.

²¹ Moreover, for a majority of Americans in amici’s survey, the first criterion alone is sufficient to cover weapon parts kits. *See supra* Part I.B.

²² Respondents acknowledge, as did the Fifth Circuit, that “firearm” must extend beyond firearms that can shoot at the precise moment of sale. Pet. App. 26a; VanDerStok Opp. 16 (“The most natural reading of ‘designed to’ is that it captures nonfunctional *but complete* firearms—firearms that, if they functioned *as designed*, would be capable of expelling a projectile by means of an explosive but which cannot for one reason or another.”). But Respondents do not offer a reasoned basis for reading “designed to” so narrowly—there is no reason to treat a disassembled firearm that is “designed to” expel a projectile, but requires reassembly to do so, any differently from a firearm parts kit that is designed to expel a projectile, and only requires final assembly to do so. And as discussed in Part I, there is no such difference in either linguistic theory or in actual usage.

“designed to” or “may readily be converted to” expel a projectile, as those words’ ordinary meaning conveys.

B. By Referring To “Any Weapon,” The Statutory Text Further Emphasizes The Relevance Of Potential

Section 921(a)(3)(A) covers “any weapon” which exhibits the specified ability, design, or potential characteristics. In linguistics and psychology, *weapon* is considered a superordinate artifact noun, meaning that it groups together categories denoted by basic-level nouns (*e.g.*, *firearm*, *sword*, *spear*). Like basic-level artifact nouns, superordinates tend to identify entities that have common potential-related properties; however, there may be few (if any) common perceptual attributes that characterize a superordinate category. See Tversky & Hemenway, *Objects, Parts, and Categories*, 113 J. Experimental Psych.: Gen. 169, 188-189 (1984); Rosch et al., *Basic Objects in Natural Categories*, 8 Cognitive Psych. 382, 435 (1976). For example, the superordinate noun *vehicle* identifies entities of many shapes, sizes, and descriptions; what makes something a *vehicle* is the potential to transport people or things.

As a matter of ordinary meaning, *weapon* contemplates entities with common functional potential without regard for physical form or constitution. Moreover, like *firearm*, *weapon* may denote entities that are far from operable. Thus, *weapon* harmonizes with the rest of Section 921(a)(3)(A), which explicitly emphasizes the role of potential while downplaying the relevance of physical characteristics.

C. When Presented With The Linguistic Context Of Section 921(a)(3)(A), Nearly Three Quarters Of Survey Participants Called Incomplete And Unassembled Parts Kits “Firearms”

The statutory context further supports the idea that the ordinary meanings of *firearm* and *weapon* include firearm parts kits that are designed to or may readily be converted to expel a projectile by means of an explosive. Congress’s choice of language (“designed to” and “may readily be converted to”) maps onto the two main facets of meaning of artifact nouns like *firearm* studied by linguists and described in Part I—Design and Potential.

This dimension of the statutory context is again reinforced by survey responses. In the survey described in Part I, some participants were presented with a truncated definition of “firearm,” omitting any reference to convertibility or design. As explained in Part I, even here, a clear majority of participants (65%) described parts kits as “firearms.” Other participants were presented with a definition of “firearm” matching the statutory text: “Any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.” Participants presented with this definition, taken from Section 921(a)(3)(A), were even more likely to call a parts kit a “firearm”: Fully 73% described a weapon parts kit as a “firearm” when presented with this context.

Survey participants’ sensitivity to linguistic context was not limited to firearms. Other participants were presented with analogous scenarios about kits containing table and bicycle parts. When provided with definitional context tracking the “designed to” or “may readily be converted to” language of Section 921(a)(3)(A), survey participants were again likelier to agree that

disassembled tables, disassembled bicycles, and similar amalgamations of parts were “tables” and “bicycles.” For example, participants were more likely to call an IKEA-style table parts kit a table when “table” was defined with context matching Section 921(a)(3)(A)’s: “any piece of furniture which will or is designed to or may readily be converted to provide a level surface on which objects may be placed.” With this context, 74% (112/151) agreed that the table parts kit is a “table.” Even absent this context, a majority (57%, 104/181) *still* opted for the same description. The results were similar for bicycle parts kits. With this context, 58% (77/133) agreed that a bicycle parts kit is a “bicycle,” and without this context, 47% (92/195) chose that description.

These survey results demonstrate that the statutory context drafted by Congress produced an even greater consensus about the meaning of “firearm.” A supermajority of survey participants believed that a definition with a reference to weapons “designed to” or that “may readily be converted to” function as a firearm extends to parts kits—even when finishing those kits requires over an hour of labor with additional tools.

III. THE ORDINARY MEANINGS OF *RECEIVER* AND *FRAME* SUPPORT THE GOVERNMENT’S INTERPRETATION

The Act’s definition of “firearm” also includes “the frame or receiver of any such weapon,” 18 U.S.C. § 921(a)(3)(B), and the Court will consider whether this definition includes frame or receiver parts kits that are designed to or may readily be converted to function as a frame or receiver.

The linguistic theory explained in Parts I and II is instructive here as well. Like *firearm* and *table*, *frame* and *receiver* are also artifact nouns, with important facets of meaning that include Design and Potential. The

applicability of the linguistic theory about artifact nouns to “frames” and “receivers” is again confirmed by ordinary usage, which refers to an incomplete receiver as a *receiver*:

- “What additional parts do I need to assemble a complete rifle or pistol using **this receiver**?²³

Ordinary English speakers also regularly refer to unassembled packages that include an “incomplete” 80% receiver as a *firearm* or *rifle*:

- “Get ready to rock and roll with the brand new 16" AR-15 Rifle Kit with 15" Slim Keymod and 80% Lower Receiver – Burnt Bronze! Not only does it look great, thanks to its stylish burnt bronze color, but it’s also the perfect **firearm** for any shooter.”²⁴
- “Introducing the 16" AR-15 Rifle Kit with 15" Slim Keymod with 80% Lower Receiver – Titanium Blue; the perfect addition to your collection! This **rifle** has many of the features you’d expect from a higher-end model, like a .223/5.56 M4 Feed Ramp and 1:7-barrel twist.”²⁵

More broadly, ordinary usage illustrates that the design and potential of incomplete receivers are often highly contextually relevant. Many tutorials and guides illustrate how to convert an 80% receiver into a

²³ <https://www.tacticalinc.com/catalog/product/id-8186>.

²⁴ <https://daytonatactical.com/products/burnt-bronze-16-ar15-kit-with-15-slim-keymod-with-lower/>.

²⁵ *16" AR-15 Rifle Kit with 15" Slim Keymod with 80% Lower Receiver – Titanium Blue*, Daytona Tactical, <https://daytonatactical.com/products/titanium-blue-16-ar15-kit-with-15-slim-keymod-with-lower/>.

functional receiver. Many of them emphasize that this is an “easy” process²⁶ and “[y]ou can now finish an 80 lower [a type of 80% receiver] in about the time it takes to watch the average movie.”²⁷ Supplementary products promise to make it “ridiculously easy for a non-machinist to finish their 80% lower in under 1 hour with no drill press.”²⁸ Online forums offer advice to those seeking a service to complete their “80% lower.”²⁹

These examples of ordinary usage highlight that the relevant design and potential function of 80% receivers is to provide a receiver that can slot quickly and easily into a weapon. Accordingly, the ordinary language discussion of incomplete receivers (or “80% receivers”) conveys what they in fact are: “receivers.”³⁰

²⁶ Hung, *80% Arms Easy Jig Gen 3 Review: Never Easier*, Pew Pew Tactical (Feb. 17, 2023), <https://www.pewpewtactical.com/80-percent-arms-easy-jig-review/> (“Want the easiest way to complete an AR 80% receiver? We hands-on review the 80% Arms Easy Jig Gen 3 with a full video and tons of pictures. It’s worth it!”).

²⁷ <https://www.80percentarms.com/blog/what-is-an-80-lower/>.

²⁸ 80 Percent Arms, <https://www.80percentarms.com/> (Hover over “Ridiculously Easy” to see text).

²⁹ E.g., https://www.reddit.com/r/ar15/comments/grxejl/80_lower_milling_service/; <https://www.thehighroad.org/index.php?threads/unfinished-lowers-where-can-i-send-them-to-be-finished.745023/>.

³⁰ While amici did not conduct a survey regarding the words “frame” or “receiver,” the same principles of linguistic theory apply to those words as to “firearm.”

IV. SECTION 921(a)(3)'S TEXT AND CONTEXT EMPLOY THE ORDINARY MEANINGS OF *RECEIVER* AND *FRAME***A. Section 921(a)(3)(B)'s Text Indicates That *Receiver* And *Frame* Include Unfinished Entities Through Reference To “Of Any Such Weapon”**

Section 921 defines *firearm* to include:

- (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- (B) the frame or receiver of any such weapon[.]

18 U.S.C. § 921(a)(3). The phrase “any such weapon” in subparagraph (B) refers back to “weapon” as defined in subparagraph (A). Linguists call this relationship “anaphora”: “a relation between two linguistic elements, wherein the interpretation of one (called an anaphor) is in some way determined by the interpretation of the other (called an antecedent).” Huang, *Anaphora: A Cross-Linguistic Study* 1 (2000).

This clear reference from Congress, using “any such weapon” in subparagraph (B) to refer back to “weapon” in subparagraph (A), is essential to understanding the contextual meaning of “frame” and “receiver.” Subparagraph (B) refers to frames and receivers of “such weapon[s],” *i.e.*, weapons that will, or are designed to, or may readily be converted to expel a projectile by means of an explosive.

Anaphora’s contribution to this contextual meaning is the linguistic explanation for intuitive conclusions about subparagraph (B)’s meaning. Consider, for example, that “receiver” in subparagraph (B) would not

include the completed metal receiver of a toy gun.³¹ Reading “receiver” through a decontextualized dictionary definition might suggest that such a toy receiver is a receiver, but the statutory context indicates why this is not a “receiver” under Section 921(a)(3)(B): The receiver of a toy gun is not part of “any such weapon” described in Section 921(a)(3)(A). A toy receiver cannot contribute to a “weapon,” in the sense of a firearm that will, is designed to, or may readily be converted to expel a projectile by means of an explosive.

Recognizing anaphora’s contribution to this contextual meaning of “frame” and “receiver” underscores that Section 921(a)(3)(B) encompasses an “incomplete” 80% receiver that is designed to or could be easily converted into the essential firing mechanism of an AR-15, or a weapon parts kit falling under Section 921(a)(3)(A). Such 80% receivers are frequently sold as components of weapon parts kits that qualify as “firearms” under subparagraph (A).³² The same or similar (unfinished) receivers are thus clearly receivers of “any such weapon” as defined in Section 921(a)(3)(A).

Respondents, as well as the Fifth Circuit, take the omission of “designed to or may readily be converted to” from subparagraph (B) to be a meaningful exclusion. Pet. App. 17a; VanDerStok Opp. 12-13; Defense Distributed Opp. 14. They conclude on that basis that “frame or receiver” extends only to operable frames and receivers. That is, they invoke the “meaningful variation”

³¹ See, e.g., <https://www.rubberbandguns.com/rifles/rifiles-military>; <https://www.usablocks.com/products/moc-14022-military-thompson-sub-machine-gun-bricks-toys-usablocks>.

³² See, e.g., <https://daytonatactical.com/products/titanium-blue-16-ar15-kit-with-15-slim-keymod-with-lower/>; *supra* notes 24-25.

canon of statutory interpretation, which is a version of the Consistent Usage canon. See Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012). The meaningful variation canon states that, “where the document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea.” *Id.*

But as Scalia and Garner explain, “[n]o canon of interpretation is absolute.... It is a rare case in which each side does *not* appeal to a different canon to suggest its desired outcome.” Scalia & Garner, *supra*, at 59. The frequent availability of conflicting linguistic canons calls their use into question and has even led some commentators to describe their use as “embarrassing.” See Doerfler, *Late-Stage Textualism*, 2021 Sup. Ct. Rev. 267, 267 (2022); see also *Facebook*, 141 S. Ct. at 1174-1175 (Alito, J. concurring) (“[T]he Scalia-Garner treatise makes it clear that interpretative canons are not rules of interpretation in any strict sense.” (quotation marks omitted)). Indeed, when conflicting canons are at issue, the Court is careful to explain why the statutory context clearly favors one over the other. See, e.g., *Lockhart*, 577 U.S. at 357.

In the context of Section 921(a)(3), two different canons support divergent readings. First is the Consistent Usage canon: Congress used explicit language about incomplete weapons in subparagraph (A) (“designed to” and “may readily be converted to”) but omitted it from subparagraph (B). A second applicable canon is the Associated Words canon. This canon implies that “frame” and “receiver” should be interpreted similarly to other terms in the statute such as “weapon,” “muffler,” “silencer,” and “destructive device”—all of which are defined to include uncompleted entities. See 18 U.S.C. § 921(a)(4) (defining “destructive device”); *id.*

§ 921(a)(25) (defining “firearm silencer” and “firearm muffler”). This canon leads to the opposite conclusion from the Fifth Circuit’s: Read in context, the statute conceptualizes the artifact nouns by reference to their design and/or potential; and “frame” and “receiver” should be construed similarly to include incomplete entities that are designed to or can readily be converted to function as frames and receivers.

How should the Court resolve the conflict between these two linguistic canons? According to Scalia and Garner, “[b]ecause it is so often disregarded, [the Consistent Usage] canon is particularly defeasible by context... [it] can hardly be said to apply across the whole *corpus juris*.” Scalia & Garner, *supra*, at 171-172. The Consistent Usage canon “more than most other canons... is not often achieved.” *Id.* at 170. In contrast, “[t]he associated-words canon has tremendous value in a broad array of cases.” *Id.* at 196. Thus, according to Scalia and Garner, as a general matter the Associated Words canon is more broadly applicable than Consistent Usage reasoning.

The language and context of Section 921 further confirm that the Associated Words canon is more apt. Clear linguistic indications count against inferring any “meaningful” variation between subparagraphs (A) and (B). The presence of an anaphoric construction in subparagraph (B) (“any such weapon”)—coupled with the linguistic context of subparagraph (A) (elaborating firearm as “any weapon” that is “designed to or may readily be converted to expel a projectile”), which contains the antecedent of “any such weapon”—clarifies why the absence of similar language in subparagraph (B) does not support a restrictive construction of “frame or receiver.” These two linguistic features are sufficient to determine the interpretation of “frame or receiver” in context. For

this reason, it would have been superfluous for Congress to add overt “designed to or may readily be converted to” language in subparagraph (B). In fact, the absence of such language from subparagraph (B) is consistent with the interpretation of “frame or receiver” arrived at based on the context of subparagraph (A), which in turn suggests that “frame or receiver” extends, in context, beyond perfectly complete or presently operable frames and receivers. In sum, the textual indications from Section 921 strongly support applying the Associated Words canon.

Moreover, none of the indications one would ordinarily look for to support the Consistent Usage canon is present here. That canon carries the most weight when there is clear linguistic evidence that text was included in one place and omitted from another place in order to draw a contrast. That is not the case here.

Consider a hypothetical alternative where, instead of subparagraph (B), there was a subparagraph (B'), coupled with subparagraph (A) as follows:

(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;

(B') any frame or receiver of a weapon which will expel a projectile by the action of an explosive.

In this hypothetical, the parallel language (“which will expel”) and absence of any connection between the two clauses (*i.e.*, no anaphoric “such”) provide a stronger basis for reading the absence of the phrase “is designed to or may readily be converted to” from subparagraph (B') as deliberate and meaningful. An even stronger

candidate for meaningful variation would cite the same terms in both subparagraphs, such as:

- (A') any weapon (including a starter gun), including those with unfinished frames or receivers, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- (B') any frame or receiver of a weapon which will expel a projectile by the action of an explosive.

The actual statutory text, however, is not a good candidate for such an inference. It does not use two different terms (*e.g.*, land vs. real estate, unfinished frame vs. frame), nor does it include any language that indicates a contrast between subparagraphs (A) and (B). In fact, it expressly links the clauses together with the phrase “any such weapon,” so that they are best read as sharing a single context in which both the Design and Potential facets of meaning are salient.

B. Contextual Resolution Of Section 921(a)(3)'s Indeterminacy Supports The Government's Interpretation Of Receiver And Frame

Ordinary meaning and additional statutory text (the “any such weapon” anaphora) support reading *frame* and *receiver* as inclusive of kits that are designed to or may readily be converted to function as the frame and receiver of a “weapon” in the sense specified in Section 921(a)(3)(A). This conclusion is bolstered by considerations of context and consistency.

One such contextual principle is that we expect context to clarify language in a consistent manner. Consider for example the following sentence:

On Sunday morning, he met Susan for coffee, he mowed the lawn, and he browsed the news.

Most speakers of English would expect each occurrence of “he” to refer to the same person. Of course, this can be rebutted with additional context.³³ But there is a default presumption of consistency. Consider next an example with artifact nouns:

Last week, Noel started a novel, and Liz finished a nonfiction book.

Here, “novel” and “nonfiction book” can have a “potential” function interpretation: Noel and Liz were reading books. But these terms can also have a “design” interpretation: Noel and Liz were writing books. By itself, this sentence does not supply enough context to adjudicate between these two interpretations.

Without added context, a natural preference for consistency makes either of the following two interpretations more probable:

- A. Noel started [reading] a novel, and Liz finished [reading] a nonfiction book.
- B. Noel started [writing] a novel, and Liz finished [writing] a nonfiction book.

and the following two interpretations far less probable:

- C. Noel started [writing] a novel, and Liz finished [reading] a nonfiction book.
- D. Noel started [reading] a novel, and Liz finished [writing] a nonfiction book.

³³ For example:

Asked to tell family members what each of her three older cousins did Sunday morning, seven-year-old Priya said, pointing to each cousin in turn: “On Sunday morning, he met Susan for coffee, he mowed the lawn, and he browsed the news.”

Turning to Section 921(a)(3), the natural preference for linguistic consistency demonstrated above strongly supports the government's reading. A "firearm" is:

- (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- (B) the frame or receiver of any such weapon;
- (C) any firearm muffler or firearm silencer; or
- (D) any destructive device.

As Parts I and II have explained, Section 921(a)(3)(A) emphasizes design and potential function. Section 921(a)(3)(C) (concerning "any firearm muffler or firearm silencer") and Section 921(a)(3)(D) (concerning "any destructive device") both invoke statutory definitions which, like Section 921(a)(3)(A), foreground the Potential and Design facets of meaning ahead of considerations of physical shape or constitution. *See supra* pp. 27-28. Together, subparagraphs (A), (C), and (D) provide contextual support for reading "frame" and "receiver" in subparagraph (B) in a way that likewise encompasses design and potential use.

In sum, the Fifth Circuit's position that the ordinary meanings of *frame* and *receiver* are restricted only to perfectly completed members conflicts with linguistic theory, ordinary meaning, robust patterns of natural language use, and context-sensitive interpretation.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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