SUPREME COURT OF THE UNITED STATES

No. 91–164

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

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

[June 8, 1992]

JUSTICE WHITE, joined by JUSTICE BLACKMUN, JUSTICE STEVENS, and JUSTICE KENNEDY, dissenting.

The Court of Appeals for the Federal Circuit concluded that, to meet the definition of "firearm" under the National Firearms Act (NFA), 26 U. S. C. §5845(a)(3), "a short-barreled rifle actually must be assembled." 924 F. 2d 1041, 1043 (1991) (footnote omitted). I agree with the majority that this pinched interpretation of the statute would fail to accord the term "make" its full meaning as that term is defined, §5845(i), and used in the definition of the term "rifle," §5845(c). Because one "makes" a firearm not only in the actual "putting together" of the parts, but also by "manufacturing . . . or otherwise producing a firearm," Congress clearly intended that the "making" include a "disassembled aggregation of parts," *ante*, at 5, where the assemblage of such parts results in a firearm. In short, when the components necessary to assemble a rifle are produced and held in conjunction with one another, a "rifle" is, not surprisingly, the result.

This was the difficult issue presented by this case, and its resolution, for me, is dispositive, as respondent Thompson/Center concedes that it manufactures and distributes together a collection of parts that may be readily assembled into a short-barreled rifle. Indeed, Thompson/Center's argument concerning statutory construction, as well as its

appeal to the rule of lenity, does not suggest, nor does any case brought to our attention, that one may escape the tax and registration requirements the NFA imposes on those who "make" regulated rifles simply by distributing as part of the package other interchangeable pieces of sufficient design to avoid the regulated definition. The majority nevertheless draws an artificial line between, on the one hand, those parts that "can serve no useful purpose except the assembly of a firearm" or that have "no ostensible utility except to convert a gun into such a weapon," and, on the other hand, those parts that have "an obvious utility for those who want both a pistol and a regular rifle." *Ante*, at 7.

I cannot agree. Certainly the statute makes no distinction based on the "utility" of the extra parts. While the majority prefers to view this silence as creating ambiguity, I find it only to signal that such distinctions are irrelevant. To conclude otherwise is to resort to "`ingenuity to create ambiguity'" that simply does not exist in this statute. *United States* v. *James*, 478 U. S. 597, 604 (1986), quoting *Rothschild* v. *United States*, 179 U. S. 463, 465 (1900). As noted by the Government, when a weapon comes within the scope of the "firearm" definition, the fact that it may also have a nonregulated form provides no basis for failing to comply with the requirements of the NFA. Brief for United States 13–14.

The Court today thus closes one loophole—one cannot circumvent the NFA simply by offering an unassembled collection of parts—only to open another of equal dimension—one can circumvent the NFA by offering a collection of parts that can be made either into a "firearm" or an unregulated rifle. I respectfully dissent.