NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* THOMPSON/CENTER ARMS CO.

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

No. 91–164. Argued January 13, 1992—Decided June 8, 1992

Respondent manufactures the ``Contender'' pistol and, for a short time, also manufactured a kit that could be used to convert the Contender into a rifle with either a 21-inch or a 10-inch barrel. The Bureau of Alcohol, Tobacco and Firearms advised respondent that when the kit was possessed or distributed with the Contender, the unit constituted a ``firearm'' under the National Firearms Act (NFA or Act), 26 U.S.C. §5845(a)(3), which defines that term to include a rifle with a barrel less than 16 inches long, known as a short-barreled rifle, but not a pistol or a rifle having a barrel 16 inches or more in length. Respondent paid the $200 tax levied by §5821 upon anyone ``making'' a ``firearm'' and filed a claim for a refund. When its refund claim proved fruitless, respondent brought this suit under the Tucker Act. The Claims Court entered summary judgment for the Government, but the Court of Appeals reversed, holding that a short-barreled rifle ``actually must be assembled'' in ordered to be ``made'' within the NFA's meaning.

Held: The judgment is affirmed.

924 F.2d 1041, affirmed.

JUSTICE SOUTER, joined by THE CHIEF JUSTICE and JUSTICE O'CONNOR, concluded that the Contender and conversion kit when packaged together have not been ``made'' into a short-barreled rifle for NFA purposes. Pp.3–13.

(a)The language of §5845(i)—which provides that ``[t]he term `make', and [its] various derivatives . . . , shall include manufacturing . . . , putting together . . . , or otherwise producing a firearm''—clearly demonstrates that the aggregation of separate parts that can be assembled only into a firearm, and the aggregation of a gun other than a firearm and parts that would have no use in association with the gun

except to convert it into a firearm, constitute the ``making'' of a firearm. If, as the Court of Appeals held, a firearm were only made at the time of final assembly (the moment the firearm was ``put together''), the statutory ``manufacturing . . . or otherwise producing'' language would be redundant. Thus, Congress must have understood ``making'' to cover more than final assembly, and some disassembled aggregation of parts must be included. Pp.4–7.

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(b)However, application of the ordinary rules of statutory construction shows that the Act is ambiguous as to whether, given the fact that the Contender can be converted into either an NFA-regulated firearm or an unregulated rifle, the mere possibility of its use with the kit to assemble the former renders their combined packaging ``making.'' Pp.7–12.

(c)The statutory ambiguity is properly resolved by applying the rule of lenity in respondent's favor. See, *e. g., Crandon* v. *United States,* 474 U.S. 152, 168. Although it is a tax statute that is here construed in a civil setting, the NFA has criminal applications that carry no additional requirement of willfulness. Making a firearm without approval may be subject to criminal sanction, as is possession of, or failure to pay the tax on, an unregistered firearm. P.12.

JUSTICE SCALIA, joined by JUSTICE THOMAS, agreed that the rule of lenity prevents respondent's pistol and conversion kit from being covered by the NFA, but on the basis of different ambiguities: whether a firearm includes unassembled parts, and whether the requisite ``inten[t] to be fired from the shoulder'' existed as to the short barrel component. Pp.1–5.

SOUTER, J., announced the judgment of the Court and delivered an opinion in which REHNQUIST, C. J., and O'CONNOR, J., joined. SCALIA, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined. WHITE, J., filed a dissenting opinion, in which BLACKMUN, STEVENS, and KENNEDY, JJ., joined. STEVENS, J., filed a dissenting opinion.