

Ghost Guns and the Bankruptcy Code: Neither Provides Ammunition for Dismissing Actions - SCOTUS Today

Article By:

Stuart M. Gerson

The Supreme Court decided two cases today, continuing the release of opinions on which the Court is not deeply divided. The tougher ones are yet to come.

Despite the fact that today's cases come from highly specialized areas of practice—firearms control and bankruptcy—both are interesting because they involve the interpretation of text, as Justices of all stripes continue to apply textual, literalist principles of interpretation rather than couching their views in a broader, arguably political, analysis of implied congressional intent.

The more closely watched of today's two cases is *Bondi v. Vanderstok*, in which an interesting array of Justices—Justice Gorsuch wrote for himself and six other members of the Court (with Justices Thomas and Alito dissenting)—upheld a 2022 regulation of the Biden administration governing the sale and possession of so-called “ghost guns,” *i.e.*, firearms made from kits constructed from untraceable parts. The regulation in question subjects the do-it-yourself “ghost gun” kits to the same requirements as fully assembled firearms, requiring serial numbers, background checks, and records of sales or transfers to private buyers. The Gorsuch opinion endorsed the position that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) had the authority to issue the rule under the Gun Control Act of 1968 (GCA). The law “embraces, and thus permits ATF to regulate, some weapon parts kits and unfinished frames or receivers,” Gorsuch wrote. One notes that the Trump administration took no position in the case. The 7-2 decision keeps in force the 2022 regulation. Justice Gorsuch's leadership as to the decision—a rare reversal of the U.S. Court of Appeals for the Fifth Circuit—is particularly interesting because of his alignment with three conservatives (Chief Justice Roberts, the increasingly independent Justice Barrett, and Justice Kavanaugh) and the Court's three liberals.

Turning to the stated language of the GCA, Justice Gorsuch writes that the GCA authorizes ATF to regulate “any weapon . . . which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.” This language creates two requirements. First, there must be a “weapon.” Second, the weapon “must be able to expel a projectile by the action of an explosive, designed to do so, or susceptible of ready conversion to operate that way.” According to the Court, “[A]t least some kits will satisfy both.” Rejecting the application of the rule of lenity and the rule of constitutional avoidance, Justice Gorsuch held that neither of those rules “has any role to play where ‘text, context, and structure’ decide the case. . . . The GCA embraces, and thus permits ATF to

regulate, some weapons parts kits and unfinished frames or receivers, including those we have discussed. Because the court of appeals held otherwise, its judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.”

Justice Thomas dissented, arguing that the statutory terms did not cover the unfinished frames in the parts kits and that those kits, by themselves, did not fit the definition of a “firearm.” Justice Alito argued that the majority decided the case on grounds that were not raised or decided in the courts below. Both dissents are swamped by the strong bipartisan majority that, as Justice Gorsuch made clear, was conscious of the regulation’s origin in the wake of the assassination of Dr. Martin Luther King, Jr.

From a Court “politics” standpoint, the other case decided today, *United States v. Miller*, is just as interesting. In this case, Justice Jackson’s majority opinion was joined by all of the other Justices, save for Justice Gorsuch, who dissented. The case involved the power of a bankruptcy trustee under the Bankruptcy Code, 11 U.S.C. §544(b)(1), to set aside, or “avoid,” certain fraudulent transfers of a debtor’s assets. The Court held that the Bankruptcy Code’s waiver of sovereign immunity only waives sovereign immunity with respect to the federal cause of action created by Section 544(b), which gives the trustee the power to avoid certain transfers that would be “voidable under applicable law”—that is, voidable outside of bankruptcy proceedings. However, it doesn’t encompass sovereign immunity for state law claims nested within that federal claim. Ultimately, the case is remanded to allow the courts below to consider an argument based on state law that was not briefed or considered by the Supreme Court.

Again, we note that the Court continues to deal with the “easy” stuff. There remain more than a few storm clouds on the horizon. So, keep your rubber boots on and look out for lightning in the days to come.

©2025 Epstein Becker & Green, P.C. All rights reserved.

National Law Review, Volume XV, Number 85

Source URL: <https://natlawreview.com/article/ghost-guns-and-bankruptcy-code-neither-provides-ammunition-dismissing-actions>