Cargill v. Garland: How Ambiguous Is It?

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In 2017, the horrific mass-shooting in Las Vegas, Nevada, raised the profile of a previously obscure weapon modification known as a "bump stock." Following a presidential directive, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reinterpreted the definition of "machinegun" under the Firearms Control Act to include semi-automatic guns modified with bump stocks, reversing a position it had held since at least 2008. This made possession of bump stocks illegal, and the ATF confiscated two such devices from Michael Cargill, who sued.

The government won in district court under Chevron deference, and the judgment was upheld by a Fifth Circuit panel. However, in the case at bar, a 13-3 decision of an en banc Court reversed the panel and created a circuit split by holding the statute was unambiguously contrary to the ATF position; but, even if it was ambiguous, the rule of lenity foreclosed the ATF position.

Chevron does not apply to criminal statutes; the rule of lenity resolves ambiguity against criminality.

I. INTRODUCTION

The scene for this case was set by the devastating mass shooting in 2017 in Las Vegas, Nevada, which killed 58 people and wounded over 800 others.[1] The event left law enforcement agencies scrambling to take action to prevent a repeat occurrence. One such agency was the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), which drafted a regulation on "bump stocks" at the behest of President Trump.[2]

This Comment lays out the factual issues and legal background before examining the decision of the en banc Fifth Circuit Court of Appeals.[3] The analysis will focus on the application of the rule of lenity and the contested nature of *Chevron* deference in criminal statutes, and

1. *See Gunman Opens Fire on Las Vegas Concert Crowd, Wounding Hundreds and Killing 58*, HIST. (Oct. 1, 2018), https://www.history.com/this-day-in-history/2017-las-vegas-shooting.

2. Press Release, Dep't of Just., Department of Justice Announces Bump-Stock-Type Devices Final Rule (Dec. 18, 2018), https://www.justice.gov/opa/pr/department-justice-announces-bump-stock-type-devices-final-rule ("We are faithfully following President Trump's leadership by making clear that bump stocks, which turn semiautomatics into machine guns, are illegal.").

3. *See Cargill v. Garland*, 57 F.4th 447 (5th Cir. 2023) (en banc) [hereinafter *Cargill* III].

how these rules interact with one another. The analysis also points out a trend in jurisprudence away from agency deference and towards a more robust statutory interpretation that finds less room for ambiguity.

II. BACKGROUND

This section examines the history of the three primary statutes upon which the ATF relies for its rulemaking authority and briefly recaps the ATF regulatory history on this point. It then dives into the facts and procedural history of the case at bar.

A. Legal Background

This section briefly summarizes the primary statutes involved in the case, the ATF regulations at issue, and the role of *Chevron* deference and the rule of lenity in criminal statutory interpretation. This case occurs at the nexus of these topics.

Congress passed the National Firearms Act ("NFA") in 1934, which defined "machine gun."[4] In 1968, Congress passed the Gun Control Act ("GCA"), which redefined "machinegun" in the NFA to exclude semiautomatic rifles but include "parts designed and intended for use in converting a weapon into a machinegun."[5] Finally, in 1986, Congress passed the Firearm Owners Protection Act ("FOPA").[6] FOPA made transfer or possession of a machinegun unlawful in most situations, imposing the criminal penalty at issue in this case.[7]

On March 29, 2018 the ATF proposed a new rule interpreting the definition of "machinegun" in the NFA to include bump stocks.[8] Although since 2006 the ATF had consistently classified *mechanical* bump stocks (that used a spring or internal mechanism to reset the gun's position) as machineguns under the Act, it had classified non-mechanical bump stocks to be a firearm part, not a machinegun.[9] No notice-and-comment rulemaking had been issued on either type.[10] Only non-mechanical bump stocks were at issue in the case.[11]

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4. National Firearms Act, ch. 757, 48 Stat. 1236 (1934) (codified at 26 U.S.C. §§ 5801–5872).

5. Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (1968) (codified at 18 U.S.C. §§ 921–928).

6. Firearm Owner's Protection Act, Pub. L. No. 99-308, 100 Stat. 449 (1986).

7. *Id.* at § 201; *see also* 18 U.S.C. § 922(o)(1).

8. Bump-Stock-Type Devices, 83 Fed. Reg. 13442, 13447 (Mar. 29, 2018) (codified at 27 C.F.R. pts. 447, 478, 479) (bump-stock proposed rule).

9. Bump-Stock-Type Devices, 83 Fed. Reg. 66514, 66514 (Dec. 26, 2018) (codified at 27 C.F.R. pts. 447, 478, 479) ("Between 2008 and 2017, however, ATF also issued classification decisions concluding that other bump-stock-type devices were not machineguns, primarily because the devices did not rely on internal springs or similar mechanical parts to channel recoil energy.").

10. *Id.*; *see also Cargill* III, 57 F.4th 447, 455 (5th Cir. 2023) (Judge Elrod quotes a typical classification letter from the ATF: "Dear [Applicant], This is in reference to your

B. Case Description

The ATF issued its Final Rule on December 26, 2018, classifying all bump stocks as machineguns.[12] Plaintiff Michael Cargill surrendered two non-mechanical bump stocks to the ATF when the bump stock rule became final.[13] He then sued the ATF, claiming, inter alia, the rule is contrary to the unambiguous NFA statutory text and even if the statute is ambiguous, the rule of lenity applies.[14]

The court held a bench trial with the District Court rejecting Cargill's arguments.[15] The court ruled the ATF correctly designated bump stocks as machineguns.[16] It refused to apply *Chevron* deference, declaring matter-of-factly that *Chevron* has no place in the criminal context.[17]

A three-judge Fifth Circuit panel affirmed, with no dissent.[18] Writing for the panel, Judge Higginson echoed the trial judge's reasoning.[19] Notably, Judge Higginson did not reach a holding on *Chevron* deference.[20] The Fifth Circuit granted a rehearing en banc.[21]

III. COURT'S DECISION

While the court engages in a robust and exhaustive analysis of the statutory text and how that text applies to semiautomatic weapons with

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submission . . . asking for an evaluation of a replacement shoulder stock for an AR-15 type rifle. Your letter advises that the stock (referenced in this reply as a "bump stock") is intended to assist persons whose hands have limited mobility to "bump-fire" an AR-15 type rifle. . . . The stock has no automatically functioning mechanical parts or springs and performs no automatic mechanical function when installed. In order to use the installed device, the shooter must apply constant forward pressure with the non-shooting hand and constant rearward pressure with the shooting hand. Accordingly, we find that the "bump stock" is a firearm part and is not regulated as a firearm under the Gun Control Act or the National Firearms Act.").

11. *Cargill* III, 57 F.4th at 454.

12. Bump-Stock-Type Devices, 83 Fed. Reg. at 66514.

13. *Cargill* III, 57 F.4th at 456.

14. *Id.*

15. *Cargill v. Barr*, 502 F.Supp.3d 1163, 1198 (W.D. Tex. 2020) [hereinafter *Cargill* I] (holding that "Plaintiff is not entitled to the relief requested on any of the stated counts.").

16. *Id.* at 1198–99 ("[T]he Court finds Defendants' interpretations of the terms 'single function of the trigger' and 'automatically' in the statutory definition of 'machinegun' properly include bump stocks within that definition.").

17. *Id.* at 1190 ("*Chevron* does not apply to criminal statutes" (citing *United States v. Apel*, 571 U.S. 359, 369 (2014) ("Either way, we have never held that the Government's reading of a criminal statute is entitled to any deference."))). The district judge is probably overreading the precedent here. *Not* holding the government's reading is entitled to deference is not the same thing as holding that the government's interpretation is *not* entitled to deference.

18. *See Cargill* III, 57 F.4th at 455.

19. *Cargill v. Garland*, 20 F.4th 1004, 1010 (5th Cir. 2021) [hereinafter *Cargill* II] ("[T]he statute's plain language makes clear the 'function' must be '*of the trigger*.' The statute speaks only to how the trigger acts, making no mention of the shooter." (quoting *Aposhian v. Wilkins*on, 989 F.3d 890, 895 (10th Cir. 2021))).

20. *Id.* at 1009 n.4 ("Because we conclude that bump stocks are 'machinegun[s]' under the best interpretation of the statute, we do not address whether the Rule is entitled to deference.").

21. *Cargill v. Garland*, 37 F.4th 1091 (5th Cir. 2022) (granting rehearing en banc).

and without bump stocks, this Comment will narrowly focus on the interaction between the statutory text and ATF-issued regulations. It then examines how court-created rules regarding ambiguity are applied in the case.

A. Statutory Interpretation

Writing for a 13-judge majority, Judge Jennifer Elrod engaged in a deep and robust statutory interpretation which provides an in-depth explanation of semi-automatic and fully automatic functions, as well as bump stock mechanics, which I will not fully examine here.[22]

The majority explained the NFA defines a "machinegun" as a gun that can fire multiple bullets with a single function of the trigger.[23] Bump stocks function by causing the trigger to function faster than is generally possible without the use of a bump stock.[24] To the majority, this settles the matter.[25] Each function of the trigger fires a single bullet.

The dissent incorporated its opinion from the overruled panel decision,[26] which echoes the ATF's rule that a single *function* of the trigger means a single *pull* of the trigger.[27] This interpretation is based on the shooter's perspective.[28] The shooter's finger rests on a trigger ledge, which causes the trigger to repeatedly impact the shooter's finger, rather than the shooter pulling the trigger for each shot, meaning the shooter does not physically pull on the trigger.[29]

However, the majority points out that two definitions in the NFA which define semiautomatic rifle and shotgun describe a "pull of the trigger."[30] By contrast, the machinegun definition describes a "single

22. *Cargill* III, 57 F.4th at 452–54 (detailing the function of semi-automatic and automatic rifles).

23. *Id.* at 451.

24. *Id.* at 454 ("In summary, a bump stock combines with a semi-automatic weapon to facilitate the repeated function of the trigger. To be sure, it makes the process faster and easier. But the mechanics remain exactly the same: the firing of each and every round requires an intervening function of the trigger.").

25. *See id.* at 459 ("Thus, the relevant question is whether a semi-automatic rifle equipped with a non-mechanical bump stock fires more than one shot each time the trigger 'acts.' It does not.").

26. *Id.* at 479 (Higginson, J., dissenting).

27. *Cargill* II, 20 F.4th 1004, 1009 (5th Cir. 2001) ("[S]ingle function of the trigger' means a single pull of the trigger and analogous motions." (quoting Bump-Stock-Type Devices, 83 Fed. Reg. 66,514, 66,553 (Dec. 26, 2018) (codified at 27 C.F.R. § 447.11))).

28. *Id.* at 1007 ("[W]hen a bump stock is used as intended, the shooter pushes forward to engage the trigger finger with the trigger, which causes a single trigger pull that initiates a firing sequence that continues to fire as long as the shooter continues to push forward." (quoting Bump-Stock-Type Devices, 83 Fed. Reg. at 66516)).

29. Bump-Stock-Type Devices, 83 Fed. Reg. at 66,516 (describing a bump stock function as "typically constant forward pressure with the non-trigger hand on the barrel-shroud or fore-grip of the rifle, and constant rearward pressure on the device's extension ledge with the shooter's trigger finger").

30. *Cargill* III, 57 F.4th at 461; 26 U.S.C. § 5845(c) ("The term 'rifle' means a weapon designed . . . to fire only a single projectile through a rifled bore for each single pull of the trigger.");

function of the trigger" not a single *pull of the trigger*.[31] As the majority noted, this decision created a circuit split, with three other circuits upholding the rule.[32]

B. The Rule of Lenity

After interpreting the text of the statute, the majority turns to rules surrounding statutory ambiguity: *Chevron* deference and the rule of lenity.[33] The majority states that even if the statute is ambiguous, *Chevron* deference should not be applied because, inter alia, this is a statute carrying criminal penalties.[34] Instead, the rule of lenity should apply, because ambiguous criminal statutes must be interpreted in favor of the citizen.[35]

The dissent rebuked the majority's contention that lenity would be invoked if the statute were ambiguous, stating "the majority opinion and the lead concurrence apply the rule of lenity to garden-variety ambiguity."[36] The dissent worries that "the majority rests on an unstated and unsupported leap: ambiguous statutes are always grievously ambiguous."[37] This argument over lenity is expounded in the next section.

IV. COMMENTARY

As usual, everyone on the court is accusing each other of rewriting statutes. This commentary seeks to distill the issue of ambiguity in statutory text to its core by examining how the interplay between *Chevron* deference and the rule of lenity make their joint application impossible. It demonstrates that the majority has the only logically consistent application of the rule of lenity, and that the dissent's concept of lenity does not work in practice.

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§ 5845(d) ("The term 'shotgun' means a weapon designed . . . to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.").

31. 26 U.S.C. § 5845(b) ("The term 'machinegun' means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.").

32. *Cargill* III, 57 F.4th at 457 ("Three of our sister circuits have reviewed preliminary-injunction motions relating to the Final Rule."). All the circuits were divided on the issue. *See* Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 920 F.3d 1 (D.C. Cir 2019); Aposhian v. Barr, 958 F.3d 969 (10th Cir. 2020) (a 6-5 decision with three dissents); Gun Owners of Am., Inc. v. Garland, 19 F.4th 890 (6th Cir. 2021) (an evenly split Court resulted in the District Court being affirmed by rule).

33. *Cargill* III, 57 F.4th at 464–65, 469.

34. *Id.* at 466 ("The *Chevron* framework does not apply for a second, independent reason: the statute which the Final Rule interprets imposes criminal penalties.").

35. *Id.* at 471 ("Therefore, assuming *arguendo* that the statute is ambiguous, we conclude that the rule of lenity demands that we resolve that ambiguity in favor of Cargill").

36. *Id.* at 480 (Higginson, J., dissenting).

37. *Id.* at 481.

Courts have wrestled with ambiguity for decades,[38] and different courts define ambiguity differently. This Comment adopts the court's terminology from its decision as much as possible. "Garden-variety ambiguity" is ambiguity from a plain reading of the statute, that may be resolved with traditional tools of statutory interpretation.[39] "Reasonable-doubt ambiguity" is ambiguity that still remains after applying the traditional tools of statutory interpretation, but which favors one side or the other in the litigation.[40] "Grievous ambiguity" is a *final* state of ambiguity where there is an exact tie and neither party's argument is stronger than the other.[41]

A. How Ambiguous is it?

If we envision statutory interpretation as an American football field, each end zone would represent unambiguous statutory language. The court starts from the 50-yard-line and applies arguments from each side to see how far each party is able to move the ball. If one side prevails and moves the ball all the way to the opposing end zone, they score a touchdown and their position is unambiguously correct.

What happens when one party has stronger arguments, but these arguments are not strong enough to move the ball all the way to the end zone? If there were no rules for resolving ambiguity, courts would be forced to make detailed, fact-intensive inquiries in each case, and disputing parties would not be able to predict their case's outcome.[42] This is a major reason the Supreme Court creates rules that courts and litigants can rely on.[43]

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38. Then-Judge Antonin Scalia famously quipped, "the crucial question—almost invariably present—[is] how much ambiguousness constitutes an ambiguity." United States v. Hansen, 772 F.2d 940, 948 (D.C. Cir. 1985).

39. *See Cargill* III, 57 F.4th at 480 n.2 (Higginson, J., dissenting) ("[T]he recent trend in our circuit, culminating here, has been to lower the bar for lenity beneath the floor presently set by the Supreme Court.").

40. *See id*. at 478 n.3 (Ho, J., concurring) ("Moreover, the Supreme Court has long held that lenity requires us to 'resolve [] ambiguity' and construe 'reasonable doubt' in favor of the accused." (first quoting *United States v. Granderson*, 511 U.S. 39, 54 (1994); then citing *Moskal v. United States*, 498 U.S. 103, 108 (1990))).

41. *See id*. at 480 (Higginson, J., dissenting) (Grievous ambiguity occurs when "having tried to make sense of a statute using every other tool, we face an unbreakable tie between different interpretations").

42. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2237 (2022) ("*Stare decisis* plays an important role and protects the interests of those who have taken action in reliance on a past decision. It 'reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.'" (quoting *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015))).

43. *See Kennedy v. Bremerton Sch. Dist.*, 142 S.Ct. 2407, 2424 (2022) ("Our cases offer some helpful guidance for resolving this question."). Justice Gorsuch continued his criticism, holding that "The District and the Ninth Circuit erred by failing to heed this guidance." *Id.* at 2428. Mitchell N. Berman describes this well, stating: "Much of existing constitutional doctrine is better understood not as judicial statements of constitutional meaning (i.e., as constitutional operative propositions) but rather as judicial directions regarding how courts should decide whether such operative propositions

The courts hearing this case considered two methods of resolving ambiguity: *Chevron* deference and the rule of lenity.[44] These rules are irreconcilable because they are opposing. In cases of ambiguity, lenity favors defendants, while *Chevron* favors government.[45]

Chevron deference does not depend on *how* ambiguous the statute is.[46] If a provision is *at all* ambiguous, the agency interpretation is entitled to deference.[47] Back to the football analogy, if a challenger to an agency interpretation cannot score a touchdown by proving the statute unambiguously supports its position, then the government wins. It does not matter how far they moved the ball.

In criminal cases, the rule of lenity applies when there is grievous ambiguity.[48] Grievous ambiguity is "such that the Court must simply guess as to what Congress intended."[49] On our football field, we might mark an area within one yard of midfield as the zone of grievous ambiguity. The remaining 49 yards on either side of midfield are ambiguous, but not controlled by lenity.

If a court were to attempt to apply *Chevron* deference and lenity to an ambiguous criminal statute, the game breaks. This case demonstrates that the mere existence of the rule of lenity defeats *any* application of *Chevron* that would affect the outcome of a case.

In the case of garden-variety ambiguity, where the best interpretation favors the government, then *Chevron* deference would apply but not the rule of lenity, compelling a result in favor of government.[50] But this is the same outcome that would be produced without applying *Chevron*.

If the Court finds a statute grievously ambiguous, then the rule of lenity and *Chevron* deference would both apply *and compel opposite results*.[51] *Chevron* favors the government interpretation, while lenity

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have been satisfied (i.e., as constitutional decision rules)." Mitchell N. Berman, *Constitutional Decision Rules*, 90 VA. L. REV. 1, 12 (2004).

44. *Cargill* III, 57 F.4th at 456 ("And even if the statute is ambiguous, *Cargill* says, it should be construed in his favor because of the rule of lenity. And because the statute concerns criminal penalties, the Government's interpretation is not entitled to [*Chevron* deference].").

45. *See id.* at 467 ("We must not apply *Chevron* where, as here, the Government seeks to define the scope of activities that subject the public to criminal penalties.").

46. *See, e.g.*, *id.* at 457 ("[T]he Final Rule was ambiguous and entitled to *Chevron* deference." (citing *Aposhian v. Barr*, 958 F.3d 969 (10th Cir. 2020)).

47. *Id.*

48. *Maracich v. Spears*, 570 U.S. 48, 76 (2013) (quoting *Barber v. Thomas*, 560 U.S. 474, 488 (2010)).

49. *Id.*

50. See *Cargill* III, 57 F.4th at 480 (Higginson, J., dissenting) (reasoning that lenity does not apply in "garden-variety" ambiguity).

51. It is unclear whether the rule of lenity would also apply in cases of reasonable-doubt ambiguity where the best interpretation favors government. *See id.* at 469 ("The Supreme Court does not appear to have decided which of these standards governs the rule of lenity."). Either way, answering this question is not necessary to the majority's holding that the defendant has the best interpretation or alternatively that the result is an exact tie, invoking the rule of lenity. *Id.* ("But it

vindicates the criminal defendant. The Supreme Court could craft a rule whereby lenity prevails but has not done so.[52]

Even more problematic: in the case of garden-variety ambiguity, if the court finds the best interpretation favors a criminal defendant, then the rule of lenity does not apply.[53] But *Chevron* deference covers the entire field.[54] This means that *Chevron* would effectively reach *past* the area of grievous ambiguity protected by lenity and make a defendant's conduct criminal *when the defendant has the superior interpretation*.

It would be an absurd result for courts to decide in favor of defendants when there is a tie but in favor of government when a defendant has the better interpretation. This explains why the Supreme Court has "never held that the Government's reading of a criminal statute is entitled to any deference."[55] This may also be why the ATF waived *Chevron* deference.[56] If the rule of lenity vindicates the defendant in cases of grievous ambiguity, the defendant must also prevail when he has the best interpretation.

The conclusion therefore dramatically narrows the field of ambiguity for statutes carrying criminal penalties. *Chevron* deference is impossible. The Court should resolve any ambiguity based on the best statutory interpretation, regardless of which party advances it. Only in an exact tie can grievous ambiguity be resolved by rule. It logically follows that grievous ambiguity is the only *final* ambiguity a criminal statute may have after a Court has finished its work of interpretation.[57] There is no way to apply *Chevron* deference in the criminal context without creating a conflict with the rule of lenity, and no alternative method of resolving ambiguity by rule.

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does not matter which standard applies because the rule of lenity applies even under the more stringent 'grievously ambiguous' condition.").

52. The Supreme Court has applied lenity and ignored *Chevron* in statutes with civil and criminal implications without crafting a rule. *See United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 518 (1992) ("Making a firearm without approval may be subject to criminal sanction, as is possession of an unregistered firearm and failure to pay the tax on one[.] It is proper, therefore, to apply the rule of lenity and resolve the ambiguity in Thompson/Center's favor." (internal citations omitted)); *see also Guedes v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 140 S. Ct. 789, 790 (2020) ("[W]hatever else one thinks about *Chevron*, it has no role to play when liberty is at stake.").

53. *See Cargill* III, 57 F.4th at 480 (Higginson, J., dissenting).

54. *See id.* at 457 (majority opinion) (citing *Aposhian v. Barr*, 958 F.3d 969 (10th Cir. 2020)).

55. *United States v. Apel*, 571 U.S. 359, 369 (2014).

56. There is disagreement about whether *Chevron* waiver is possible, which this Comment does not examine because the majority did not make waiver part of its holding. *Cargill* III, 57 F.4th at 464 ("Because we hold that the statute is unambiguous, *Chevron* deference does not apply."). In a parallel case challenging the same regulation, the United States Court of Appeals for the District of Columbia noted that the government remarkably stated in oral argument that "if the Rule's validity turns on the applicability of *Chevron*, it would prefer that the Rule be set aside rather than upheld under *Chevron*." *Guedes v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 920 F.3d 1, 21 (D.C. Cir. 2019).

57. *Guedes v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 140 S. Ct. 789, 790 (2020) (Gorsuch, J., concurring in denial of certiorari) ("Before courts may send people to prison, we owe them an independent determination that the law actually forbids their conduct.").

B. The Dissent's Concept of Lenity is Impractical

In his *Cargill III* dissent, Judge Higginson spends the bulk of his argument attacking the application of the rule of lenity.[58] Critically, the dissent reasons the case before the court is mere "garden-variety ambiguity," not rising to the level of grievous ambiguity required to invoke lenity.[59]

The dissent criticizes the majority's reasoning by stating that traditional tools of statutory interpretation would still be useful to interpret an ambiguous statute.[60] This argument is logically problematic for two reasons.

First, as the dissent noted, the majority utilized the tools of statutory interpretation in holding the statute was not ambiguous.[61] If the statute remained ambiguous after applying the tools of interpretation, then those tools would have proven inadequate.[62]

Second, the dissent does not extend his concept of ambiguity to its logical conclusion. If the rule of lenity does not apply to garden-variety ambiguity or reasonable-doubt ambiguity, then what other possible resolution exists?[63] It is possible that Judge Higginson would favor application of *Chevron* deference to resolve garden-variety and reasonable-doubt ambiguity, but he did not mention *Chevron* in his *Cargill III* dissent and did not perform a *Chevron* analysis in *Cargill II*.[64] Also, as explained above, applying *Chevron* to a criminal statute is impossible because of the conflict with lenity. The only remaining path is that if a criminal statute is not *grievously* ambiguous, then it is *not ambiguous at all*.[65]

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58. *Cargill* III, 57 F.4th at 479 (Higginson, J., dissenting) ("I write further to dissent from our court's use of lenity to rewrite this statute.").

59. *Id.* at 480.

60. *Id.*

61. *Id.* at 481 ("Yet the majority does not explain how the tools upon which it relied to interpret the statute—dictionaries, grammar, and corpus linguistics—would be useless to resolve an interpretive debate if the statute were ambiguous.").

62. *Id.* at 469 (majority opinion) ("We have availed ourselves of all traditional tools of statutory construction, and in this circumstance, they fail to provide meaningful guidance. That is sufficient to require application of the rule of lenity irrespective of whether the reasonable doubt or grievous ambiguity standard applies.").

63. *Compare Maracich v. Spears*, 570 U.S. 48, 76 (2013) ("[T]he rule of lenity only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute such that the Court must simply guess as to what Congress intended." (quoting *Barber v. Thomas*, 560 U. S. 474, 488 (2010))), *with United States v. Apel*, 571 U.S. 359, 360 (2014) ("[T]his Court has never held that the Government's reading of a criminal statute is entitled to any deference."). The Supreme Court has provided no other tools for resolving ambiguity in a criminal case.

64. *See Cargill* II, 20 F.4th 1004, 1009 n.4 (5th Cir. 2021) ("Because we conclude that bump stocks are 'machinegun[s]' under the best interpretation of the statute, we do not address whether the Rule is entitled to deference."); *see also generally Cargill* III, 57 F.4th at 479–83 (Higginson, J., dissenting).

65. *See supra* note 38 and accompanying text.

V. CONCLUSION

As the Supreme Court continues to distance itself from *Chevron* deference,[66] the Fifth Circuit opinion in *Cargill v. Garland* relies on traditional statutory interpretation, and an alternative holding based on a rule of construction older than the Constitution.[67] In light of Justice Gorsuch's comments on a denial of certiorari, such traditional methodology has at least one willing ear on the Supreme Court.[68] This decision may be just the case the Court is waiting for.[69]

66. *See* Nathan Seltzer, *Becerra v. Empire Health Found., 142 S.Ct. 2354 (2022) or: How I Learned to Stop Deferring and Forget Chevron*, 62 WASHBURN L.J. ONLINE 3 (2023).

67. "[T]ho[s]e who are convicted of [s]tealing hor[s]es [s]hould not have the benefit of clergy, the judges conceived that this did not extend to him that [s]hould [s]teal but one hor[s]e." 1 WILLIAM BLACKSTONE, COMMENTARIES *88.

68. *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 140 S. Ct. 789, 790 (2020) ("[Whatever else one thinks about *Chevron*, it has no role to play when liberty is at stake.").

69. *Id.* at 791 ("Further, other courts of appeals are actively considering challenges to the same regulation. Before deciding whether to weigh in, we would benefit from hearing their considered judgments—provided, of course, that they are not afflicted with the same problems.").