

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

REMINGTON ARMS CO., LLC, ET AL.,
Petitioners

v.

DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, ET AL.,

***APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF CONNECTICUT***

To the Honorable Ruth Bader Ginsburg, Associate Justice of the United States and Circuit Justice for the Second Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of this Court, Remington Arms Company, LLC and Remington Outdoor Company, Inc.,¹ respectfully request a 45-day extension of the time in which to file a petition for a writ of certiorari in this Court, to and including Thursday, August 1, 2019. The Supreme Court of Connecticut entered judgment on March 19, 2019 in *Soto v. Bushmaster Firearms International, LLC*, Nos. SC 19832, SC 19833. A copy of the Supreme Court of Connecticut's opinion is attached as Exhibit 1. See 202 A.3d 262 (Conn. 2019). A copy of the Supreme Court of Connecticut's rescript is attached as

¹ In accordance with this Court's Rule 29.6, applicants' corporate disclosures are appended to the end of this application.

Exhibit 2. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1257(a). Applicants’ time to file a petition for a writ of certiorari in this Court will currently expire on June 17, 2019. This application is being filed more than 10 days before that date, and no prior application has been made in this case.

This case presents a nationally important question on which courts are divided regarding the scope of the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901 *et seq.* (“PLCAA”). Enacted in 2005, “[t]he PLCAA generally preempts claims against manufacturers and sellers of firearms and ammunition resulting from the criminal use of those products.” *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1131 (9th Cir. 2009); see 15 U.S.C. §§ 7902, 7903(4)-(5). This case concerns the scope of an exception to PLCAA immunity for “action[s] in which a manufacturer or seller of a [firearm or ammunition] knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought.” 15 U.S.C. § 7903(5)(A)(iii). “This exception has come to be known as the ‘predicate exception,’ because a plaintiff must present “a knowing violation of a ‘predicate statute.’” *Ileto*, 565 F.3d at 1132.

In particular, this case arises out of a lawsuit filed by administrators of the estates of victims killed in the 2012 shooting at Sandy Hook Elementary School in Newtown, Connecticut. The plaintiffs brought suit against the manufacturer of the rifle used in the shooting (Remington), as well as the rifle’s wholesale distributor and its retail seller. As relevant, the plaintiffs alleged that Remington “knowingly marketed, advertised, and promoted” the rifle “for civilians to use to carry out

offensive, military style combat missions against their perceived enemies.” Op. 65-66 (Ex. 1). The plaintiffs alleged that Remington’s marketing violated the Connecticut Unfair Trade Practices Act (“CUTPA”), a general unfair trade practices law that forbids “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Conn. Gen. Stat. § 42-110b(a). Remington argued that CUTPA was not a “statute applicable to the sale or marketing of [firearms]” within the meaning of the PLCAA’s predicate exception.

In a sharply divided 4-3 decision, a bare majority of the Connecticut Supreme Court interpreted the predicate exception broadly, held that CUTPA qualified as a predicate statute, and allowed the case to proceed. Although the majority purported to find support in the Second Circuit’s decision in *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008), it acknowledged that “federal courts” have faced “difficulties * * * in attempting to distill a clear rule or guiding principle from the predicate exception,” Op. 156-157 (Ex. 1), noting that in *Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009), “the Ninth Circuit construed the predicate exception more narrowly” than the Second Circuit, Op. 125 n.47 (Ex. 1). And while the majority ultimately agreed with the plaintiffs, it acknowledged that Remington’s interpretation of the PLCAA’s text was “not implausible.” *Id.* at 118. Justices Robinson, Vertefeuille, and Elgo dissented, “conclud[ing] that the predicate exception encompasses only those statutes that govern the sale and marketing of firearms and ammunition specifically, as opposed to generalized unfair trade practices statutes” like CUTPA. *Id.* at 162.

This Court's review is urgently warranted. As noted, courts are already divided on the predicate exception's scope. The decision below adds to the confusion by holding that the predicate exception encompasses broad, general unfair trade practices laws. That decision is irreconcilable with the Ninth Circuit's analysis in *Ileto*, adopted a much broader reading of the predicate exception than even the Second Circuit did in *City of New York*, and threatens to unleash a flood of lawsuits nationwide challenging firearm companies' lawful business practices under state unfair trade practices statutes—lawsuits Congress plainly intended to prohibit.

Undersigned counsel are working diligently, but respectfully submit that the additional time is necessary to complete preparation of a petition for a writ of certiorari. Undersigned counsel were engaged for the first time at the certiorari stage, and substantial work remains to master the full record of the case, to complete research on the authorities supporting this Court's review, and to prepare the petition and appendix for filing. This case involves a statute this Court has not yet addressed, and requires (among other things) careful review of a large body of cases, legislative history, and secondary literature on the PLCAA's text and purposes.

Undersigned counsel also face numerous overlapping deadlines in other matters. Mr. Elwood is currently preparing a petition for rehearing en banc in the D.C. Circuit due May 27, 2019, and must prepare a motion for stay of the mandate that he anticipates filing if rehearing is not granted. Mr. Elwood also is helping to prepare filings in state and federal regulatory proceedings respecting a pipeline that will be occurring throughout the May-July period, together with a related state-court

appeal. In addition, Messrs. Elwood and Etchemendy are preparing a reply brief in support of certiorari in another case, which must be filed by May 28. Mr. Etchemendy is also preparing a certiorari-stage amicus brief due May 31, and has filings due on June 6 and 10 in the D.C. Circuit for a complex tax appeal and a major administrative case challenging the Federal Energy Regulatory Commission's approval of an interstate pipeline project. In addition, Mr. Elwood has family travel commitments during June 19-26 and July 12-15 that predate his involvement in this case.

Finally, the requested extension would not prejudice any party because, regardless whether the extension is granted, the petition would not be scheduled for Conference before October 1, 2019.

Wherefore applicants respectfully request that an order be entered extending their time to file a petition for a writ of certiorari to and including Thursday, August 1, 2019.

Respectfully submitted,

John P. Elwood /mxe

JOHN P. ELWOOD

Counsel of Record

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May 16, 2019

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, applicants provide the following disclosures:

1. There is no publicly held company that owns 10% or more of the stock of Remington Arms Company, LLC. Remington Arms Company, LLC is a Delaware limited liability company. Remington Arms Company, LLC's sole member is FGI Operating Company, LLC ("FGI Operating"), a Delaware limited liability company. FGI Operating's sole member is FGI Holding Company, LLC ("FGI Holding"), a Delaware limited liability company. FGI Holding's sole member is Remington Outdoor Company, Inc., a Delaware corporation.

2. Remington Outdoor Company, Inc. is a Delaware corporation. It has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Dated: May 16, 2019

Respectfully submitted,

John P. Elwood /mxe

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