

No. _____

**In The
Supreme Court of the United States**

—◆—
KYUNG CHANG INDUSTRY USA, INC.
d/b/a KCI USA, a Nevada Corporation,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT
FOR THE STATE OF NEVADA, IN AND
FOR THE COUNTY OF CLARK, AND THE
HONORABLE DAVID M. JONES, DISTRICT JUDGE, et al.,

Respondents.

—◆—
**On Petition For A Writ Of Certiorari
To The Eighth Judicial District Court,
Clark County, Nevada**

—◆—
PETITION FOR A WRIT OF CERTIORARI

—◆—
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QUESTION PRESENTED

Whether a magazine is a “component part of a firearm” under the Protection of Lawful Commerce in Arms Act.

PARTIES TO THE PROCEEDINGS

Petitioner is KYUNG CHANG INDUSTRY USA, INC. d/b/a/ KCI USA, a Nevada Corporation.

Respondents are: THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE DAVID M. JONES, DISTRICT JUDGE, as well as the following REAL PARTIES IN INTEREST: DION GREEN, as Personal Representative of the ESTATE OF DERRICK FUDGE, deceased; DION GREEN, individually, and as surviving child of DERRICK FUDGE, deceased; LASANDRA JAMES, as Guardian of HANNAH OGLESBY, surviving minor child of LOIS OGLESBY, deceased; LASANDRA JAMES, as Guardian of REIGN LEE, surviving minor child of LOIS OGLESBY, deceased; DANITA TURNER, as Personal Representative of the ESTATE OF LOGAN M. TURNER, deceased; DANITA TURNER, as surviving parent of LOGAN TURNER, deceased; MICHAEL TURNER, as surviving parent of LOGAN TURNER, deceased; NADINE WARREN, as Personal Representative of the ESTATE OF BEATRICE NICOLE WARREN-CURTIS, deceased; and NADINE WARREN, as surviving parent of BEATRICE NICOLE WARREN-CURTIS, deceased.

CORPORATE DISCLOSURE STATEMENT

Petitioner KYUNG CHANG INDUSTRY USA, INC. d/b/a KCI USA, a Nevada Corporation, has no corporate parent, and is a wholly privately-held corporation.

STATEMENT OF RELATED CASES

Kyung Chang Industry USA, Inc. v. Eighth Judicial District Court in and for County of Clark, No. 84844, Supreme Court of Nevada. Order Denying Petition for Writ of Mandamus Entered Mar. 14, 2023.

Green v. Kyung Chang Industry USA, Inc., No. A-21-838762-C, District Court of Nevada, Clark County. Order Regarding Defendant's Motion to Dismiss Entered Mar. 23, 2022.

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PETITION FOR WRIT OF CERTIORARI

Petitioner KYUNG CHANG INDUSTRY USA, INC. d/b/a KCI USA, a Nevada Corporation, respectfully petitions this Court for a writ of certiorari to the Eighth Judicial District Court, Clark County, Nevada in this case.



OPINIONS BELOW

The decision of the Eighth Judicial District Court, Clark County, Nevada is reproduced in the appendix to the petition (“App.”) (App. 1-6). It is not published, but is available at 2022 WL 987555. The decision of the Supreme Court of Nevada declining to exercise review is also reproduced in the appendix (App. 7-10). It is not published either, but is available at 2023 WL 2524332.



JURISDICTION

The Supreme Court of Nevada denied petitioner’s request for a writ of mandamus on March 14, 2023. This Court has jurisdiction to review this case under 28 U.S.C. § 1257(a), as well as pursuant to the collateral order doctrine (given petitioner seeks to avail itself of complete immunity from suit stemming from a federal statute).



STATUTORY PROVISIONS INVOLVED

15 U.S.C. §§ 7901-7903 (Protection of Lawful Commerce in Arms Act) (*see* App. 11-20)



INTRODUCTION

This case presents the question of whether a magazine used to store and load ammunition into a firearm is a “component part of a firearm” under the Protection of Lawful Commerce Arms Act (“PLCAA”). The PLCAA is a federal statute that bars any “qualified civil liability action” from being brought in state or federal court. The PLCAA, with few exceptions, offers complete and total immunity from suit for a “qualified civil liability action” involving a “qualified product.” The PLCAA explicitly defines a “qualified product” to not only include a firearm or ammunition, but also any ***component part*** of a firearm or ammunition.

Kyung Chang Industry USA, Inc. (“KCI”) manufacturers, imports and distributes magazines to wholesalers for semiautomatic firearms. One of KCI’s magazines was used in furtherance of a shooting that occurred on August 4, 2019. The Real Parties in Interest filed suit against KCI based upon its allegedly negligent manufacture of this magazine. KCI subsequently moved to dismiss the suit on the basis that its magazine was a component part of a firearm, and thus entitled to complete immunity under the PLCAA. The Eighth Judicial District Court, Clark County, Nevada held that KCI’s magazine was not a “component part”

eligible for immunity under the PLCAA. The Nevada Supreme Court subsequently denied KCI's request for a petition for a writ of mandamus.

There is no dispute that the question raised here is of paramount importance. In enacting the PLCAA, the United States Congress determined that firearm manufacturers should not be held liable for the criminal misuse of their products. Both state and federal courts have concluded that a magazine is a "component" part of a firearm. The Supreme Court of Nevada's decision to decline to review the substantive merits of the lower court decision is also notable for several reasons, and worthy of review. First, it allows basic canons of statutory construction to be turned upside down, undermining federally-prescribed immunity and preemption in the process. Additionally, the Supreme Court of Nevada's invitation to KCI to first flesh out supposed factual issues regarding the PLCAA fails to appreciate that an immunity determination under the PLCAA is a threshold question of law, and worthy of appellate review despite its interlocutory nature. As the collateral order doctrine clearly applies in this case, this Court should grant the instant petition.

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STATEMENT OF THE CASE

A. Petitioner

KCI is a federally-licensed manufacturer, holding a Manufacturer Federal Firearm License. As a licensed

manufacturer of firearm products, one of its products is a large capacity magazine. This particular magazine, just like any other magazine, has no other practical purpose besides being inserted into a firearm for storing and feeding ammunition. It remains undisputed that the manufacture, sale and ownership of one of these large capacity magazines is not in and of itself illegal.

On August 4, 2019, an individual criminally misused one of KCI's magazines to perpetuate an unlawful shooting. The individual had obtained the magazine via a second individual, who had purchased the magazine from a federally licensed retailer (not KCI). This second individual who gave the magazine to the shooter has himself been criminally convicted of possession of a firearm by an unlawful user and making a false statement regarding firearms. The Real Parties in Interest are the representatives of the estates and family members of victims from the shooting.

B. The PLCAA

The Protection of Lawful Commerce in Arms Act is a federal immunity and preemption statute that, under specified circumstances, provides complete and total immunity against both state and federal suits to manufacturers and sellers of firearms and ammunition products. In enacting the PLCAA, Congress made the following finding:

Businesses in the United States that are engaged in interstate and foreign commerce

through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition productions that function as designed and intended. App. 12.

Congress identified various constitutional issues with allowing liability for the sale/manufacture of firearms products that are otherwise entirely legal. These concerns about runaway liability and legislating via lawsuit are codified in the PLCAA, and include the following:

- (1) “. . . an unreasonable burden on interstate and foreign commerce of the United States.” App. 12.
- (2) “. . . a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.” App. 13.
- (3) “. . . threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.” *Id.*

Under the PLCAA, “[a] qualified civil liability action may not be brought in any Federal or State court.”

App. 15. The PLCAA expressly exempts certain actions from receiving federal immunity, including:

- (1) “an action brought against a transferor convicted under section 924(h) of title 18, United States Code . . .” App. 16.
- (2) “an action brought against a seller for negligent entrustment or negligence per se . . .” *Id.*
- (3) “an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute . . .” App. 17.
- (4) “an action for breach of contract or warranty . . .” App. 18.
- (5) “an action for death, physical injuries or property damages resulting directly from a defect . . .” *Id.*
- (6) “an action or proceeding commenced by the Attorney General . . .” *Id.*

Otherwise, assuming it does not fall within one of the above exceptions, a “qualified civil liability action” includes any action “brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. . . .” App. 16.

The PLCAA defines a “qualified product” as “a firearm (as defined in subparagraph (A) or (B) of section

921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.” *Id.*

C. Procedural History

The Real Parties in Interest brought suit against KCI, alleging a variety of causes of action related to its manufacture, sale and distribution of the magazine used in furtherance of the August 4, 2019 shooting. Given that the lawsuit clearly arose from the criminal misuse of the magazine, and the suit did not validly qualify for any of the PLCAA’s six enumerated exceptions for what constitutes a “qualified civil liability action,” KCI filed a motion to dismiss all claims.

The district court denied KCI’s request to dismiss the entirety of the Real Parties in Interest’s claims, holding that the PLCAA was not applicable. The district court reasoned that the magazine was not a “component part” (and thus not eligible for immunity under the PLCAA) because the magazine “is not required for the subject gun to operate and fire projectiles, the subject firearm is capable of firing without any magazine inserted, and the 100-round magazine was not included with the firearm by the manufacturer.” App. 5-6. In articulating these two bases for finding the magazine was not a “component part” of a semiautomatic firearm or ammunition under the PLCAA, the district court determined that the case was distinguishable

from other relevant case law such as *Prescott v. Slide Fire Solutions, LP*, 341 F.Supp.3d 1175 (D. Nev. 2018). *Id.*

KCI subsequently appealed to the Supreme Court of Nevada, petitioning for a writ of mandamus. The Supreme Court of Nevada denied KCI's requested writ petition, determining that writ petitions were subject to discretionary review and usually granted only in extraordinary circumstances. App. 8-9. And in light of this discretionary review, "[w]hen disputed issues of fact are critical in demonstrating the propriety of extraordinary relief, those factual issues should be resolved in the first instance in the district court." App. 9.

While the Supreme Court of Nevada declined to review the underlying, substantive merits of the writ petition, it also refrained from articulating exactly how the "factual issues" would or even could be fleshed out in the district court. Indeed, the district court made a final, dispositive ruling on whether or not the magazine was a "component part" under the PLCAA, a ruling that will obviously remain undisturbed following additional discovery (discovery which will not, nor cannot, focus on the PLCAA issue given it is an issue of law and not an issue of fact).



REASONS FOR GRANTING THE PETITION

I. THE DISTRICT COURT’S RULING ON THE MEANING OF A “COMPONENT PART” OF A FIREARM UNDER THE PLCAA MERITS THIS COURT’S REVIEW

A. The Opinion Below Conflicts With Decisions From Both State and Federal Courts

The issue of whether a magazine is a “component part” of a firearm (under the PLCAA or otherwise) has not been directly addressed by this Court. Nonetheless, various lower federal and state courts have opined on the issue, and consistently held what any reasonable method of statutory interpretation would, that is, a magazine is clearly a “component part” of a firearm.

The United States Court of Appeals for the Fifth Circuit has previously considered what constituted a “component” part of a firearm in the context of the Arms Control Export Act. *United States v. Gonzalez*, 792 F.3d 534, 537 (5th Cir. 2015). In that case, the statutory scheme at issue did not explicitly specify “magazines” among the categories of regulated products. *Id.* Yet, the statutory scheme did apply to “components” of firearms, and the relevant State Department definition of “component” included any “item that is useful only when used in conjunction with an *end-item*.” *Id.* The Fifth Circuit ultimately held that a magazine was only useful when used in conjunction with a rifle, and as such, was a “component” part subject to regulation under the Arms Control Export Act. *See id.*

The Supreme Court of Texas has specifically noted that a magazine is a qualified product under the PLCAA. *In re Acad., Ltd.*, 625 S.W.3d 19, 29 (Tex. 2021) (“As explained, both firearms and magazines (along with other component parts) are “qualified products” subject to the PLCAA’s general prohibition against qualified civil liability actions . . . ”). The Missouri Court of Appeals has likewise accepted that “magazines and/or ammunition were ‘qualified products’” under the PLCAA. *Noble v. Shawnee Gun Shop, Inc.*, 409 S.W.3d 476, 479 (Mo. Ct. App. 2013), *abrogated by Delana v. CED Sales, Inc.*, 486 S.W.3d 316 (Mo. 2016) (abrogating on the basis of the negligent entrustment issue, not whether or not a magazine was a “qualified product”). Finally, at least one federal district court has opined that “magazines” are “integral components to vast categories of guns.” *Fyock v. City of Sunnyvale*, 25 F.Supp.3d 1267, 1276 (N.D. Cal. 2014), *aff’d sub nom. Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015).

B. This Case Presents Critical Issues of Statutory Construction

The lower court’s two proffered bases for finding that KCI’s magazine is not a component part under the PLCAA (because the specific firearm at issue can technically operate without said magazine, and secondarily, the magazine was not included in the packaging by the firearm’s manufacturer) violates this Court’s most basic tenets of statutory construction. Indeed, with respect to determining whether a “magazine” is a “component part” of a firearm, it should be noted that the

“[i]nterpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authority that inform the analysis.” *Dolan v. Postal Serv.*, 546 U.S. 481, 486 (2006). Additionally, in the absence of a statutory definition (as in the instant case), terms must be given their ordinary meaning. *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995).

In this particular case, the lower court correctly cited to a prior District of Nevada opinion holding that a bump stock was a “component part” of a firearm under the PLCAA. See App. 5 (citing *Prescott v. Slide Fire Sols., LP*, 341 F.Supp.3d 1175, 1188-89 (D. Nev. 2018)). In *Prescott*, the court defined “component” as meaning an “essential” constituent part, and as such, a bump stock was a “component” part of a firearm since rifle stocks (which include bump stocks) are necessary for a rifle to fire. *Id.* Relying on *Prescott*, the lower court held in this case that since the rifle at issue can technically fire a single round without any magazine inserted, a magazine must not be “essential” to the rifle’s use, and thus not a “component part” under the PLCAA. App. 5.

Had the lower court relied upon the entirety of the applicable statutory scheme as it was required to do under *Dolan*, rather than a narrow, technical analogy to the *Prescott* case, it would have necessarily come to the opposite conclusion. Indeed, in determining what constitutes a “component part of a firearm” under the PLCAA, a threshold issue is to determine how the PLCAA defines a “firearm.” The PLCAA uses the

definition of a firearm as found in section 921(a)(3) of title 18, United States Code. App. 16. When one looks at the broader statutory scheme set forth in 18 U.S.C. § 921, one sees that a “semiautomatic rifle” is defined as “any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round . . .” 18 U.S.C. § 921(a)(29).

In this particular case, it remains undisputed that the firearm at issue would fall within the definition of a “semiautomatic rifle” as set forth in 18 U.S.C. § 921(a)(29). Keeping this definition in mind, it becomes apparent that a magazine is the only possible way that a semiautomatic rifle can achieve its essential function of using the energy “of a firing cartridge to extract the fired cartridge case and chamber the next round.” Conversely, a semiautomatic rifle that fires just one round without any magazine inserted inherently cannot achieve its essential function of chambering the next round (since there is no additional round to be fed into the rifle, something only a magazine could provide). Thus, while the lower court was right to look to *Prescott* for guidance, it should have done so while also considering the applicable statutory scheme contemplated by the PLCAA.

Additionally, the lower court, by using the fact that “the subject 100 round magazine was not included with the firearm by the manufacturer” as a secondary basis for the magazine not being a “component part” under the PLCAA, further violated basic principles of statutory construction. For one, the PLCAA itself notes that

a firearm's ammunition constitutes a "qualified product." App. 16. Ammunition normally and almost always is not included by the firearm manufacturer/seller in the firearm's packaging, yet it is nonetheless protected under the PLCAA. As such, the PLCAA's own text suggests that whether or not a magazine is the particular magazine included in the firearm's packaging is not necessarily dispositive. Indeed, nowhere in the PLCAA nor the related statutory scheme set forth in 18 U.S.C. § 921 is there any suggestion that this is a relevant consideration. If anything, the lower court's own reliance on *Prescott* should deem this consideration a moot point. In *Prescott*, the court found that a bump stock was still a "component part" under the PLCAA notwithstanding the fact "bump stocks are not included at the time of sale and require a conversion kit for installation." 341 F.Supp. at 1190.

C. This Is an Increasingly Important Issue Worthy of the Court's Review

As this Court knows, there have been repeated, longstanding calls for Congress to enact legislative change to address numerous issues related to firearms. However, Congress has largely declined to enact sweeping legislative change with respect to firearms or large-capacity magazines. This lack of action has prompted interested parties to resort to using the judicial branch of government to realize their legislative goals. Nonetheless, allowing this type of litigation to persist violates Congress' intent in enacting the PLCAA. Indeed, Congress explicitly determined that

“imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system.” App. 12. The blanket immunity offered by the PLCAA exists for situations such as the case at bar, in which a “maverick judicial officer . . . would expand civil liability in a manner never contemplated by the framers of the Constitution.” App. 13.

II. THE SUPREME COURT OF NEVADA’S RULING ON THE TIMELINESS OF THE WRIT PETITION MERITS THIS COURT’S REVIEW

A. The Opinion Below Conflicts With Decisions From This Court Granting Interlocutory Review Pursuant to the Collateral Order Doctrine

Apart from the underlying substantive merits related to the interpretation of the PLCAA, this case also presents a rather novel procedural conundrum worthy of this Court’s review. The Supreme Court of Nevada declined to opine or rule on the substantive merits of the underlying PLCAA issue. In declining to do so, the court implied that there were outstanding factual issues that “should be resolved in the first instance in the district court.” App. 9. Yet it remains unclear how the case proceeding with discovery and being adjudicated by the district court will resolve the PLCAA issue or allow KCI to appeal the same at a later, delayed time. The fact is, no discovery will be (nor could be) taken on the issue of whether a magazine is a component part of a firearm under the PLCAA. This is a

question of law (not a question of fact) that the lower court has already determined, and will not be revisiting.

Keeping the foregoing in mind, it becomes apparent KCI should in no way be required to wait for the district court to first resolve outstanding “factual issues.” Immunity from suit exists precisely so that parties do not have to subject themselves to discovery and a lengthy trial. In fact, this Court has singled out immunity from suit, especially immunity that derives from a federal statute, as being important enough to merit interlocutory review pursuant to the collateral order doctrine: “When a policy is embodied in a constitutional or statutory provision entitling a party to immunity from suit (a rare form of protection), there is little room for the judiciary to gainsay its ‘importance.’” *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 879 (1994).

As this Court knows, the collateral order doctrine is available to appellants when (1) the lower court decision has a “final and irreparable effect,” (2) is “too important to be denied review,” and (3) is regarding a collateral issue divorced from the underlying cause(s) of action. *See, e.g., United States v. Cefaratti*, 202 F.2d 13, 16 (D.C. Cir. 1952). And in this case, the collateral order doctrine most definitely applies. Indeed, the lower court’s order (and the Supreme Court of Nevada’s refusal to review the same) (1) constituted a “final” decision on whether a magazine was a “component part,” (2) clearly concerns an important issue since it deals directly with federally-prescribed immunity, and

(3) is collateral to the underlying merits of the case, which concern KCI's allegedly negligent manufacture, sale and distribution of its magazine.

To be sure, the collateral order doctrine has most often been applied by this Court in the context of appeals pursuant to 28 U.S.C. § 1291. *See, e.g., Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546-47 (1949). Yet this Court has also on more limited occasions applied the collateral order doctrine in the context of appeals pursuant to 28 U.S.C. § 1257(a) (which concern appeals of state supreme court decisions). *See, e.g., Loc. No. 438 Const. & Gen. Laborers' Union, AFL-CIO v. Curry*, 371 U.S. 542, 549 (1963). The relative dearth of case law concerning the collateral order doctrine in the context of 28 U.S.C. § 1257(a) as compared to 28 U.S.C. § 1291 merits this Court's review and consideration. And in this particular case, the nature of the Supreme Court of Nevada's decision, which declined to consider the underlying substantive merits even in the slightest, further presents novel legal issues as to whether or not this Court could consider the interlocutory appeal under 28 U.S.C. § 1257(a) (something that KCI would clearly answer in the affirmative for all of the foregoing reasons).



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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