

No. 23-1141

IN THE
Supreme Court of the United States

SMITH & WESSON BRANDS, INC., ET AL.,

Petitioners,

v.

ESTADOS UNIDOS MEXICANOS,

Respondent.

**On Writ of Certiorari
to the United States Court of Appeals
for the First Circuit**

**BRIEF FOR U.S. SENATOR RICHARD
BLUMENTHAL, U.S. REPRESENTATIVES
MADELEINE DEAN AND JAMIE RASKIN, AND
40 OTHER CURRENT AND FORMER MEMBERS
OF CONGRESS AS *AMICI CURIAE* IN SUPPORT
OF RESPONDENT**

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INTEREST OF *AMICI CURIAE*¹

Amici believe that the threat of civil liability against those who knowingly aid and abet illegal sales of firearms is a vital part of our nation's defense against gun crime.

As current and former elected representatives of citizens affected by gun violence, *amici* are keenly aware of the dangers to public safety and national security posed

¹ Pursuant to this Court's Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief, and that no person other than *amici* and their counsel made such a monetary contribution.

by illegal sales of firearms. *Amici* thus have a particular interest in ensuring that the Protection of Lawful Commerce in Arms Act is applied in a manner that, consistent with its text and legislative history, holds firearms manufacturers accountable when they engage in unlawful conduct.

The names of additional individual *amici* are listed in the Appendix.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Protection of Lawful Commerce in Arms Act (PLCAA), 15 U.S.C. § 7901 *et seq.*, was meant to do just what its name suggests—protect *lawful* commerce in arms. The Act does not, and was never intended to, immunize gun-industry defendants like Petitioners, sued for harms resulting from their own *unlawful* conduct.

The PLCAA’s text and history reflect a carefully calibrated legislative compromise. On one hand, the Act shields law-abiding industry participants from liability for harm “solely” caused by others. 15 U.S.C. § 7901(a)(6). On the other, the Act’s enumerated exceptions ensure that industry participants remain accountable for the consequences of their own misconduct.

This case involves the PLCAA’s so-called “predicate” exception. The predicate exception withdraws from the Act’s coverage any action brought to redress harms proximately caused by a gun manufacturer’s or seller’s own knowing violation of a state or federal statute.

Invoking common-law principles, Petitioners urge that proximate cause cannot be shown—and thus the predicate exception does not apply—where, as here, a plaintiff alleges criminal activity further down the causal chain. But the PLCAA applies *only* to suits alleging harm “resulting from” another’s “criminal or unlawful misuse” of firearms. 15 U.S.C. § 7903(5)(A). Under Petitioners’

reading, the rule would swallow the exception. It cannot be that Congress meant to draft the statute so that a fact necessary to *trigger* immunity would simultaneously foreclose a carefully crafted exception to that immunity.

Petitioners’ proposal would also have devastating policy consequences. It would allow the gun industry to evade civil liability for the worst violations of federal and state law—those that facilitate violent crime. And it would bar virtually all suits by victims of gun violence, denying them compensation and depriving the public of the important deterrent effect such suits have.

Whatever the Court’s view of the claims asserted in this case, Petitioners’ interpretation of the predicate exception’s proximate-cause requirement cannot stand. The Court should apply the Act consistent with its text and purpose, and reject a reading that would leave victims of gun violence without a remedy for the worst kinds of industry misconduct.

ARGUMENT

I. THE PLCAA DOES NOT IMMUNIZE GUN-INDUSTRY PARTICIPANTS FOR THE CONSEQUENCES OF THEIR OWN MISCONDUCT

The PLCAA protects gun-industry participants from liability for harm “*solely*” caused by others’ unlawful conduct. 15 U.S.C. § 7901(b)(1) (emphasis added). It does not foreclose actions like this one, in which a manufacturer’s *own* allegedly unlawful conduct “was a proximate cause of the harm for which relief is sought.” *Id.* § 7903(5)(A)(iii).

A. The Act Protects Only *Lawful* Commerce in Arms

The PLCAA generally bars state- or federal-court actions against firearms manufacturers, sellers, or trade associations, for harm “resulting from the criminal or

unlawful misuse” of firearms. 15 U.S.C. § 7903(5)(A); see *id.* § 7902(a). That protection, however, is not absolute. Consistent with the Act’s focus on protecting only “lawful commerce in arms,” the definition of a “qualified civil liability action” subject to immunity expressly excludes five discrete types of proceedings, including products liability suits against manufacturers and suits against gun sellers who knowingly supply guns to someone likely to misuse them. See, *e.g.*, *id.* § 7903(5)(A)(ii), (v).

The Act also exempts “action[s] in which a manufacturer or seller of a qualified product 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, known as the “predicate exception,” flows directly from the statute’s stated purpose of protecting manufacturers from liability for “harm *solely* caused by the criminal or unlawful misuse” of guns or ammunition “by *others*.” *Id.* at § 7901(b)(1) (emphasis added). A gun-industry defendant is not being held liable for “harm solely caused by” someone else if the defendant’s *own* knowing violation of state or federal law is “a proximate cause” of that harm.

B. The Act’s History Confirms Congress’ Intent To Preserve Liability for *Unlawful* Commerce

The PLCAA’s legislative history confirms its narrow focus on protecting only lawful commerce in arms. The Act’s sponsor, Senator Larry Craig, explained that the statute would apply to just “one extremely narrow category of lawsuits”—those seeking to hold law-abiding gun-industry defendants liable for injuries resulting from others’ misconduct. 151 Cong Rec. 18084 (2005). “As we have stressed repeatedly,” Senator Craig assured his colleagues, “this legislation will not bar the courthouse

doors to victims who have been harmed by the negligence or misdeeds of anyone in the gun industry.” *Id.* at 18096.

The PLCAA’s co-sponsors in Congress echoed Senator Craig’s assurances. “If a manufacturer or seller does not operate entirely within Federal and State law,” Senator Orrin Hatch declared, “it is not entitled to the protection of this legislation.” 151 Cong. Rec. at 18073. Senator Jeff Sessions sounded a similar note. Where members of the gun industry “don’t make [purchasers] comply with the waiting requirement” or “don’t get the proper identification from the person who is actually buying the gun,” Senator Sessions argued, “then they have aided and abetted in getting the gun to someone illegally. That is something for which they can be * * * sued under this legislation.” *Id.* at 18091.

Senator George Allen insisted that the PLCAA “carefully preserve[s] the right of individuals to have their day in court with civil liability actions for injury or danger caused by negligence on the firearms dealer or manufacturer.” 151 Cong. Rec. at 19130.² Supporters gave concrete examples of the types of lawsuits not foreclosed by the legislation, including claims like the ones here, alleging that “the manufacturer or seller aided, abetted or conspired with any other person to sell firearms or ammunition if they knew or had reasonable cause to believe that the purchaser intended to use those products for the furtherance of a crime,” and claims involving “straw” purchasing. 151 Cong. Rec. at 18085, 18091

² See also 151 Cong. Rec. at 18084 (statement of Sen. Craig) (The PLCAA “does not protect members of the gun industry from every lawsuit or legal action that could be filed against them. It does not prevent them from being sued for their own misconduct.”); *id.* at 18103 (statement of Sen. Baucus) (“This bill * * * will not shield the industry from its own wrongdoing or from its negligence.”).

(statements of Sen. Craig, Sen. Sessions). The enacted statute reiterated those assurances, explaining that Congress' purpose was to protect gun manufacturers and sellers from liability for "harm solely caused by the criminal or unlawful misuse" of guns or ammunition "by others." 15 U.S.C. § 7901(b)(1).

II. PETITIONERS' READING CONTRAVENES THE TEXT AND THREATENS FAR-REACHING CONSEQUENCES

Petitioners urge that common-law principles preclude a showing of proximate cause when a causal chain relies on "an independent criminal act." Pet. Br. 24. Reading such a rule into the PLCAA would upend the carefully calibrated compromise at the heart of the statutory scheme. It would effectively strike the predicate exception from the statute, immunizing the very *worst* kinds of industry misconduct—misconduct, like the illegal gun sales alleged here, that facilitates criminal activity.

A. Under Petitioners' Reading, the Rule Would Swallow the Exception

Petitioners would bar virtually any suit against gun-industry participants involving independent criminal conduct. But the PLCAA's predicate exception is meant to *preserve* liability for just such cases. It leaves open the courthouse doors for actions that seek relief for criminal or unlawful acts proximately caused by industry misconduct.

The PLCAA bars "qualified civil liability action[s]." 15 U.S.C. § 7902(a). The Act defines qualified civil liability actions as suits against gun-industry participants seeking relief for harms "resulting from" another's "criminal or unlawful misuse" of firearms. *Id.* § 7903(5)(A). But not every suit alleging harms resulting from another person's

criminal or unlawful use of firearms is barred.

Congress provided that the definition of qualified civil liability actions “shall not include,” among other things, suits where such harms are proximately caused by the defendant’s own misconduct. 15 U.S.C. §7903(5)(A); see *id.* §7903(5)(A)(iii). The predicate exception thus ensures that gun-industry participants *remain* liable when their misconduct is “a proximate cause” of harms “resulting from” another’s “criminal or unlawful misuse” of firearms. *Id.* §7903(5)(A), (A)(iii).

Petitioners would short-circuit the statutory scheme. They would read the predicate exception’s proximate-cause requirement to bar suits whenever an intervening criminal act contributes to the alleged harm—exactly the kind of suit the predicate exception was meant to *preserve*. That defies the cardinal principle that courts must give effect to every provision of a statute—a rule that “applies with special force” where, as here, a proposed statutory construction “render[s] an entire subparagraph meaningless.” *Pulsifer v. United States*, 601 U.S. 124, 143 (2024) (alteration in original). Whatever proximate cause might mean in other contexts, it cannot mean that the PLCAA’s predicate exception is self-defeating.³

B. Petitioners’ Reading Would Insulate the Very Worst Gun-Industry Misconduct

Reading the PLCAA as Petitioners urge would shield gun-industry defendants from liability for misconduct that facilitates criminal activity by third parties. That would remove an important deterrent and deprive victims of gun

³ As other *amici* explain, Petitioners misread common-law principles, too. See Brief of Professors of Tort Law, Statutory Interpretation, and Firearms Regulation as *Amici Curiae* Supporting Neither Party 12-19 (collecting authorities).

violence and their families of what is often the only practical recourse they have.

For instance, in New York, a shooting victim and his father sued a gun manufacturer, distributor, and dealer after defendants sold 87 guns to a convicted felon via blatant straw purchases, in violation of federal, state, and local laws. *Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 147-151 (N.Y. App. Div. 2012), *amended by* 103 A.D.3d 1191 (N.Y. App. Div. 2013).

The State of Minnesota sued a gun dealer that violated federal and state firearms laws by selling guns to straw purchasers, after the illegally sold guns were used in crimes including a shootout. *Minnesota v. Fleet Farm LLC*, 679 F. Supp. 3d 825, 831, 835 (D. Minn. 2023), *motion to certify appeal denied*, No. 22-cv-2694, 2024 WL 22102 (D. Minn. Jan. 2, 2024).

In Maryland, a widow sued Wal-Mart for selling her husband a shotgun he used to kill himself. *Brady v. Walmart Inc.*, No. 8:21-cv-1412-AAQ, 2022 WL 2987078 (D. Md. July 28, 2022). Although its employees were on notice that the man was suicidal, Wal-Mart argued that the PLCAA barred the plaintiff's suit because he committed a crime by shooting himself in a private parking lot. *Id.* at *1-3.

Others, including victims of mass shootings, have also sought relief under the PLCAA's predicate exception. See *Prescott v. Slide Fire Sols., LP*, 410 F. Supp. 3d 1123, 1137-40 (D. Nev. 2019) (victims of Las Vegas mass shooting alleging illegal trade practices).

Petitioners' reading could force dismissal of those suits, even if the plaintiffs proved that the defendants' own wrongdoing helped cause the harm they suffered. That would have consequences far beyond the individuals and

families immediately affected by gun violence. It would also harm the public at large. In addition to offering some measure of redress to victims of industry misconduct, the predicate exception serves an important deterrent function. When gun manufacturers or sellers knowingly break laws intended to keep Americans safe, they put everyone at risk. The threat of civil liability from the victims of those violations complements government enforcement efforts and helps make our communities safer.

CONCLUSION

Adopting Petitioners' interpretation of the predicate exception's proximate-cause requirement would defy the PLCAA's text, upend the balance Congress struck, foreclose relief for victims of gun violence, and undermine the exception's important deterrent effect. The Court should reject Petitioners' effort to rewrite the statute and ensure the Act does not become a screen for the gun industry's worst offenders.

The court of appeals' judgment should be affirmed.

Respectfully submitted.

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JANUARY 2025

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APPENDIX
LIST OF *AMICI CURIAE*

The following current and former members of the United States Senate and House of Representatives join in this brief:

U.S. Senate

Senator Richard Blumenthal (Connecticut)
Senator Cory Booker (New Jersey)
Senator Mazie Hirono (Hawaii)
Senator Tim Kaine (Virginia)
Senator Chris Murphy (Connecticut)
Senator Jack Reed (Rhode Island)
Senator Adam B. Schiff (California)
Senator Chris Van Hollen (Maryland)
Senator Sheldon Whitehouse (Rhode Island)
Senator Ron Wyden (Oregon)

Former Senator Russell D. Feingold (Wisconsin)

U.S. House of Representatives

Representative Gabe Amo (RI-01)
Representative Becca Balint (VT-AL)
Representative Julia Brownley (CA-26)
Representative André Carson (IN-07)
Representative Sean Casten (IL-06)
Representative Jasmine Crockett (TX-30)
Representative Danny K. Davis (IL-07)
Representative Madeleine Dean (PA-04)
Representative Rosa L. DeLauro (CT-03)
Representative Bill Foster (IL-11)
Representative Valerie P. Foushee (NC-04)

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Representative Dan Goldman (NY-10)
Representative Glenn Ivey (MD-04)
Representative Henry C. "Hank" Johnson, Jr. (GA-04)
Representative Ted Lieu (CA-36)
Representative Seth Magaziner (RI-02)
Representative Betty McCollum (MN-04)
Representative James P. McGovern (MA-02)
Representative Seth Moulton (MA-06)
Representative Eleanor Holmes Norton (DC-AL)
Representative Ilhan Omar (MN-05)
Representative Mark Pocan (WI-02)
Representative Mike Quigley (IL-05)
Representative Delia C. Ramirez (IL-03)
Representative Jamie Raskin (MD-08)
Representative Mary Gay Scanlon (PA-05)
Representative Jan Schakowsky (IL-09)
Representative Mike Thompson (CA-04)
Representative Rashida Tlaib (MI-12)
Representative Jill Tokuda (HI-02)
Representative Paul D. Tonko (NY-20)
Representative Maxine Waters (CA-43)