

Supreme Court Allows Case Against AR-15 Manufacturer To Proceed

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Earlier this week, the Supreme Court **declined to take an appeal** brought by gun manufacturer Remington Arms appealing a decision that allowed a civil lawsuit filed by the parents of the victims of the December 2012 Sandy Hook shooting to go forward:

The Supreme Court cleared the way on Tuesday for relatives of Sandy Hook Elementary School shooting victims to sue the Remington Arms Company, the maker of the rifle used in the massacre.

The court said that it would not hear an appeal by Remington of a ruling by Connecticut's Supreme Court that allowed a lawsuit brought by the families of the victims to go forward. The case has been seen as a test of the ability of plaintiffs to pierce the legal immunity of firearm manufacturers in the aftermath of shootings.

The case, **Remington Arms v. Soto**, was an outgrowth of a suit brought in Connecticut by relatives of those killed in the Dec. 14, 2012, **shooting in Newtown, Conn.**, that killed 20 first graders and six educators. The Connecticut case is **Soto v. Bushmaster**.

The Supreme Court's announcement that it would not take up the case effectively confirmed that there is a path to challenging a federal law enacted in 2005 that shields gun makers, dealers and distributors from lawsuits after gun-related crimes.

As is the court's custom, its order denying review gave no reasons.

The Sandy Hook families' suit used one of six narrow exemptions to the 2005 law to argue that Remington violated Connecticut's Unfair Trade Practices Act. The suit said the gun maker recklessly marketed the Bushmaster AR-15-style rifle to disturbed young men like the Sandy Hook gunman through product placement in violent video games and advertising pitches like "consider your man card reissued," and "the opposition will bow down."

The National Shooting Sports Foundation, the firearms industry's trade association, released a statement saying it was "disappointed" in the order.

"We are confident that Remington will prevail at trial," the foundation said, adding that it believed there was no evidence that the gunman or his mother, who bought the weapon, "were influenced in any way by any advertisement."

Remington said in legal filings that the Connecticut lawsuit was "widely recognized as a bellwether for the future of firearms litigation nationwide." After the Connecticut Supreme Court ruled that a critical portion of the lawsuit could proceed, the company appealed to the United States Supreme Court, saying that the families' case, if successful, would "eviscerate" the 2005 federal law.

Cato's Walter Olson **comments:**

Even given strong public emotion about the Newtown massacre, the claims against Remington are likely to fail in the end — assuming the law and the facts matter — since **no evidence has been presented** that any gun ad influenced either the shooter or his mother, who had two years earlier purchased the rifle he used. But many gun control advocates have been open in arguing that whether the suit wins or loses, it could serve as a vehicle for extensive discovery that would both inflict financial harm on defendant Remington and perhaps also unearth documents from which political and legal hay might be made in future controversies

The Federal law in question in this case, the **Protection of Lawful Commerce In Arms Act** was passed in 2005 in the wake of a series of largely unsuccessful lawsuits against gun manufacturers and sellers by crime victims and some large cities which attempted to hold the manufacturers and sellers responsible under traditional tort and products liability law for violence committed by criminals and other gun incidents. Notwithstanding the fact that it was generally winning in court, the gun industry, as well as Second Amendment groups, began to push for a Federal law that would bar most lawsuits against manufacturers and sellers in Federal or State court. The result was the PLCAA, which **passed the House of Representatives by a vote of 283-144** and **the Senate by a vote of 65-31**, this included the votes of 59 Democrats (including Independent Bernie Sanders) in the House and 14 Democrats in the Senate. The law itself is set forth at **15 U.S.C. §§ 7901-7903**.

The PLCAA provides, in **Sec 7902**, that “a qualified civil liability action may not be brought in any Federal or State court.” **Sec. 7903(5)(A)** defines a ‘qualified civil liability action’ as “a civil action or proceeding or an administrative proceeding 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” related to the criminal or other misuse of a weapon. The lawsuit filed by the victims and survivors of the Sandy Hook shootings clearly falls within this definition so, unless some exception applies, it would appear that their lawsuit is clearly barred by the PLCAA and that its only a matter of time before it is dismissed. The exceptions to the bar on lawsuits are covered in 7903(5)(A)(i-vii), but the attorneys for the Plaintiffs appear to be relying solely on the exception set forth in 5(A)(iii) which provides that a case against a gun manufacturer or supplier can go forward “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.” In denying the motion to dismiss, the trial judge and the State Supreme Court relied upon the Plaintiff’s claims under Connecticut’s **Unfair Trade Practices Act** Specifically in connection with this claim, the lawsuit alleges that Remington recklessly marketed the Bushmaster AR-15-style rifle to disturbed young men like the Sandy Hook gunman through product placement in video games and other forms of advertising.

Since these rulings from the trial court judge and the Connecticut Supreme Court came in response to a Motion to Dismiss, the rules of court generally require the court to take the allegations in the Complaint as true and then rule if the case can go forward. Based on this, both courts found that the allegations of a violation of the Connecticut law were sufficient and that the case could go forward. This means that the case will proceed back to the trial court, where the Plaintiffs will be able to conduct discovery against Remington and any other Defendants in the

case. Ultimately, of course, the Plaintiffs will be required to prove their case, including the elements of the relevant state law. It's possible that at that point the case could still be dismissed under the PLCAA if the Plaintiffs are unable to make out a case that the state law was violated. Clearly, though Remington would have preferred to see the case dismissed early both because of the bad publicity involved and because discovery could end up making public things they would rather remain private.

Whatever the outcome, this case will be interesting to keep an eye on given the implications it could have for the gun control debate.