

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota by its Attorney General,
Keith Ellison,Court File No.: 27-CV-24-18827
Case Type: Other Civil

Plaintiff,

v.

**DEFENDANTS' BRIEF IN RESPONSE
TO THE COURT'S JUNE 6, 2025
ORDER**

Glock, Inc. and Glock Ges.m.b.H.,

Defendants.

In response to this Court's June 6, 2025 Order, Defendants Glock, Inc. and Glock Ges.m.b.H. (collectively referred to as "Glock") respectfully submit this brief regarding the implications of the U.S. Supreme Court's decision in the case of *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. ___, No. 23-1141, 2025 WL 1583281 (June 5, 2025) ("S&W"), to their pending motion to dismiss. In *S&W*, the Supreme Court unanimously held that the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-03 ("PLCAA"), is an immunity statute that Congress enacted for the "core purpose" of:

halt[ing] a flurry of lawsuits attempting to make gun manufacturers pay for the downstream harms resulting from misuse of their products. In a "findings" and "purposes" section, Congress explained that PLCAA was meant to stop those suits—to prevent manufacturers (and sellers) from being held "liable for the harm caused by those who criminally or unlawfully misuse firearm[s]."

Id. at *9 (internal citation omitted). The Court determined that because Mexico's claims at the pleading stage did not satisfy the predicate exception, the "defendant manufacturers retain their PLCAA-granted immunity." *Id.* See also *id.* at *10 (describing the PLCAA as providing a "general grant of immunity") (Jackson, J., concurring).

In the *S&W* case, Mexico sued several firearms manufacturers, including Glock, claiming that they “aided and abetted unlawful sales routing guns to Mexican drug cartels.” 2025 WL 1583281, at *4. The types of allegations that Mexico asserted are essentially identical to the claims that the State makes against Glock in its Complaint in this case. The facts are significant because the “Supreme Court has the final word on the meaning of federal law” and “the degree of similarity between the facts of [a] Supreme Court case and the facts of the case before [this Court]” must be considered. *State v. Brist*, 812 N.W.2d 51, 54-55 (Minn. 2012) (citing *Glover v. Minneapolis Bldg. Trades Council*, 10 N.W.2d 481, 482 (Minn. 1943) (reasoning that a Supreme Court decision was “binding and conclusive” on the Minnesota Supreme Court because it involved materially identical facts)).¹ Here, the State’s Complaint against Glock alleges:

- Machine guns have been outlawed in Minnesota for nearly a century. But Glock has returned machine guns to Minnesota by making and selling semi-automatic handguns that are easily converted into illegal fully automatic weapons with “Glock switches”—small devices that allow Glock handguns to fire continuously with a single trigger pull.
- Glock, Inc. and Glock Ges.m.b.H. encourage this conversion by promoting the “fun” of Glock 18 fully automatic machine guns, which are illegal for civilians to purchase.
- Glock knows that its semi-automatic handguns are being converted into illegal machine guns with Glock switches. Switches are illegal, and Glock does not make them
- Glock could fix this problem by changing its handgun design to prevent the easy conversion of legal handguns into illegal machine guns. But Glock has chosen not to do so.
- Given Glock’s refusal to make design changes to deter conversion of its handguns, Glock handguns equipped with switches are killing and injuring Minnesotans like only machine guns can.
- Glock’s design, manufacture, and sale of semi-automatic handguns that are easily

¹ See also *Brist*, 812 N.W.2d at 55 (“[T]he Supreme Court is also the ‘final arbiter’ on the *application* of federal law.”) (citation omitted) (emphasis added).

converted into illegal machine guns, coupled with Glock's refusal to fix this known hazard, violates Minnesota law and must be stopped.

- Glock . . . is estimated to have a 65% market share of handgun sales in the United States.
- Even though the Glock 18 is generally illegal to sell and purchase, Glock promotes fully automatic handguns to the public as exciting and "fun."

Compl. ¶¶ 1-5, 12, 27, 106.

The Supreme Court's decision in *S&W* recounted Mexico's specific allegations of crimes committed with firearms, and why Mexico contended the firearm manufacturers were legally responsible for those crimes based on their own alleged misconduct, as follows:

- Mexico has a severe gun violence problem, which its government views as coming from north of the border.
 - [G]un traffickers can purchase firearms in the United States—often in illegal transactions—and deliver them to drug cartels in Mexico.
 - Those groups, predictably enough, use the imported firearms to commit serious crimes—drug dealing, kidnapping, murder, and others.
- Mexico's primary line of argument is that the manufacturers supply firearms to retail dealers whom they know illegally sell to Mexican gun traffickers.
 - A small minority of the dealers are responsible for most of the sales to Mexican traffickers; and those sales often violate federal gun laws—by, for example, involving straw purchasers or proceeding without background checks.
 - The manufacturers know who those bad apple dealers are. **** Yet the manufacturers continue to supply those dealers, as they do legitimate ones, in order to boost their own profits.
- Mexico claims that the manufacturers have failed to impose the kind of controls on their distribution networks that would prevent illegal sales to traffickers.
 - [T]hey could prohibit dealers from making bulk sales to individual customers, because guns sold in that way (Mexico says) are likely to be diverted to the illegal market.

- [T]hey could bar dealers from selling their firearms at gun shows or out of their homes, because those sales (Mexico again says) often ignore regulatory requirements like background checks.
- [M]anufacturers could implement processes for monitoring or supervising their dealers' sales practices, so as to minimize illegal sales to traffickers.
- Mexico alleges that the manufacturers make design and marketing decisions intended to stimulate cartel members' demand for their products.
 - [M]anufacturers have increased production of military-style assault weapons, with an eye toward cultivating the criminal market.
 - [M]anufacturers make guns whose serial numbers can be obliterated or defaced, thus hindering police tracing efforts.
 - [M]anufacturers produce firearms whose names or aesthetic features appeal to cartel members.

S&W, 2025 WL 1583281, at **4-5 (cleaned up).

The Supreme Court summarized Mexico's claims as asserting a:

variety of tort claims against the defendants, mostly sounding in negligence. The basic theory is that the defendants failed to exercise "reasonable care" to prevent trafficking of their guns into Mexico, and so are responsible for the harms arising there from the weapons' misuse.

Id. And the Court summarily concluded "[t]hat theory, as all agree, runs straight into PLCAA's general prohibition" and, therefore, "Mexico's action, that is, seeks to hold firearms manufacturers liable for 'the criminal or unlawful misuse' of guns by third parties—and so, according to PLCAA, 'may not be brought.'" *Id.* (citing 15 U.S.C. §§ 7902(a), 7903(5)(A)). The State's Complaint against Glock asserts a resoundingly similar "theory" that, like Mexico's claims in *S&W*, "may not be brought."

Furthermore, Mexico's complaint had raised additional marketing-related allegations,

including a claim against one defendant, Smith & Wesson,² for violation of the Massachusetts Consumer Protection Act. *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 633 F. Supp. 3d 425, 435-37 (D. Mass. 2022). Those claims alleged that the “defendants ‘routinely’ market their guns with military and law-enforcement images and language” and “that the use of explicit military and law enforcement references, as well as references to a weapon’s ability to function in ‘combat-like scenarios,’ attracts dangerous users or criminals.” *Id.* at 435-36 (internal citations omitted).³ The complaint further alleged that the “defendants utilize these marketing tactics while knowing that they are ‘disproportionately’ attractive to criminal organizations.” *Id.* at 436. Based on those allegations, Mexico claimed that defendants were liable because the manner in which they marketed and advertised their firearms contributed to their use by third-party criminals. *Id.* at 435-37.

The district court dismissed such claims, as this Court should here, noting that the advertising and marketing of which Mexico complained was “perhaps distasteful, but it is not false, misleading, or deceptive” as required to impose liability under statutes like the state consumer protection statutes. *Estados Unidos*, 633 F. Supp. 3d at 452-54 (noting that nothing about the advertisement is unlawful or immoral, unethical, oppressive or unscrupulous) (citation and quotation marks omitted). Recognizing that its attempt to impose liability for the marketing and advertising of firearms predicated on alleged violations of a state consumer protection statute had

² Smith & Wesson was the only defendant in that case that conducted its business in Massachusetts and, unlike the State in this case, Mexico did not attempt to argue that such statutes apply to other defendants, like Glock, that conduct their business in other states.

³ Mexico further alleged, among other things, that one defendant “highlights their gun’s ability to ‘eat more ammo,’” which allegedly “indicates the gun’s capacity for rapid-pace, high-output shooting that, allegedly, would be neither necessary nor desired for the average civilian buyer,” and “Glock uses military uniforms, associates with police, and discusses “tactical” uses to advertise its guns.” *Id.* at 436, n.4.

no basis in law, Mexico did not even appeal the dismissal of those claims. *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc.*, 91 F.4th 511, 518 n.3 (1st Cir. 2024). Had it done so, the Supreme Court would have undoubtedly dismissed them for the same reasons it dismissed all of Mexico's other claims.

The Supreme Court's Decision in *S&W* Requires the Dismissal of the State's Claims Against Glock in this Case

The State's claims constitute a qualified civil liability action for purposes of the PLCAA, and the State relies on the predicate exception in an attempt to allow it to proceed with the types of claims that the Supreme Court unanimously held that Congress had intended to prohibit. Specifically, the State relies on five statutes: (1) Minn. Stat. § 325D.44, the Deceptive Trade Practices Act; (2) Minn. Stat. 325F.67, the False Statement in Advertisement Statute; (3) Minn. Stat. § 325F.69, the Prevention of Consumer Fraud Act; (4) Minn. Stat. § 609.67 related to machine guns and short-barreled shotguns; and (5) Minn. Stat. § 609.74 related to public nuisance. The State contends that Glock has "aid[ed] and abet[ed] the violation of Minnesota law, including Minnesota Statutes sections 325D.44, 325F.67, 325F.69, and 609.67." Compl. ¶ 221. *See also id.* ¶ 283 (claiming that Glock "aided and abetted the violation of, Minnesota law, including Minnesota Statutes sections 325D.44, 325F.67, 325F.69, 609.67, and 609.74").

The State does not contend that Glock independently violated Section 609.67. Compl. ¶¶ 225-44. Nevertheless, it argues that by "refusing to change the design of Glock handguns despite knowledge that the handguns can easily be converted to illegal machine guns by equipping them with Glock switches," and "promotion of fully automatic Glock handguns, including communicating that they are 'fun' and desirable (e.g., "#GlockPorn"), even though such machine guns are illegal for ordinary consumers to possess," Glock "aided and abetted each and every violation of Minnesota Statutes section 609.67 that occurred when individuals attached Glock

switches to Glock semi-automatic handguns.” *Id.* ¶¶ 238, 240, 242. The claims regarding the manner in which Glock is alleged to have aided and abetted the violation of Sections 325D.44, 325F.67, 325F.69, and 609.74 are based on the same factual allegations. The underlying basis of the State’s arguments is therefore that Glock has aided and abetted unidentified criminals to illegally convert its semi-automatic pistols, which are legal under both federal and Minnesota law, to machineguns by not changing their design to make it more difficult to install an MCD. These types of factual allegations do not remotely support the requirements for aiding and abetting liability.

In *S&W*, the Supreme Court ruled in favor of the same arguments Glock has raised for the dismissal of the aiding and abetting claims in this case, rejecting the very arguments raised by the State in opposition to Glock’s motion to dismiss. 2025 WL 1583281, at **5-6. The Supreme Court explained that:

Federal aiding-and-abetting law reflects a centuries-old view of culpability: that a person may be responsible for a crime he has not personally carried out if he deliberately helps another to complete its commission. To aid and abet a crime, a person must take an affirmative act in furtherance of that offense. And he must intend to facilitate the offense’s commission.” **** An aider and abettor must participate in a crime as in something that he wishes to bring about and seek by his action to make it succeed.

Id. at *5 (cleaned up). The Court further noted three principles related to aiding and abetting liability:

- First, aiding and abetting is most commonly a rule of secondary liability for specific wrongful acts. It is possible for someone to aid and abet a broad category of misconduct, but then his participation must be correspondingly pervasive, systemic, and culpable.
- Second, aiding and abetting usually requires misfeasance rather than nonfeasance. Absent an independent duty to act, a person’s failures, omissions, or inactions—even if in some sense blameworthy—will rarely support aiding-and-abetting liability.

- And third, routine and general activity that happens on occasion to assist in a crime—in essence, incidentally—is unlikely to count as aiding and abetting. So, for example, an ordinary merchant does not become liable for all criminal misuses of his goods, even if he knows that in some fraction of cases misuse will occur. The merchant becomes liable only if, beyond providing the good on the open market, he takes steps to promote the resulting crime and make it his own.

Id. (cleaned up).

The provisions in Minn. Stat. §§ 325D.44, 325F.67, 325F.69, 609.67 and 609.74 on which the State relies, seek to impose liability on Glock based on the same theory that the Supreme Court unanimously rejected. Specifically, “‘passive nonfeasance’—a ‘failure to stop’” criminals from illegally converting Glock pistols to machineguns is insufficient to satisfy the predicate exception to the PLCAA and the “‘failure to improve gun design [by making it more difficult it install an MCD] (which federal [and Minnesota] law do not require) cannot in the end show that [Glock has] joined hand in with lawbreakers in the way needed to aid and abet.” *S&W*, 2025 WL 1583281, at *8.⁴ The Supreme Court concluded that because the firearms at issue there – like Glock pistols here – are “both widely legal and bought by many ordinary consumers,” “manufacturers cannot be charged with assisting in criminal acts just because [third-party criminals] like those guns too.”

Id., at *8.

⁴ Like the State’s claims in this case, all of Mexico’s causes of action were based on state law. *Estados Unidos*, 633 F. Supp. 3d at 431 (“All claims arise under state law, and include, among other things, claims for negligence, public nuisance, defective design, unjust enrichment, and violation of Connecticut and Massachusetts state consumer-protection statutes.”). Mexico did not seek to rely on the federal criminal aiding and abetting statute, 18 U.S.C. § 2(a), and it was not referenced in either the district court’s or the circuit court’s decisions. The Supreme Court applied federal aiding and abetting law because whether there can be aiding and abetting liability for purposes of the predicate exception to the PLCAA is an issue of federal law, even if all of the claims raised by a plaintiff arise under state law. Nevertheless, Minnesota law regarding aiding and abetting liability, whether in the context of a crime or a tort, is in accord with federal aiding and abetting law as interpreted by the Supreme Court in the *S&W* case. See Glock’s Memorandum of Law in Support of Its Motion to Dismiss at 12-14 and Reply Memorandum of Law in in Further Support of Its Motions to Dismiss at 4-6.

The Supreme Court suggested that the predicate exception can only be satisfied by the alleged violation of statutes specifically applicable to the sale or marketing of firearms like the provisions of the Gun Control Act cited as examples in the predicate exception itself. *S&W*, 2025 WL 1583281, at *9. *See also id.* at *3 (“gun-sale violation”); *3 (“federal gun crime”); *4 (sales that “violate federal gun laws”); *7 (“unlawful sales of firearms”); *8 (“firearms violation”). The Court warned that broadly reading the predicate exception to allow other types of claims to survive would “swallow most of the rule,” and that it was doubtful that “Congress intended to draft such a capacious way out of the PLCAA.” *Id.* at 9. For that reason, in a concurring opinion, Justice Thomas cautioned that courts should give “careful consideration” to the predicate exception’s requirement that defendants have actually “violated” a statute applicable to the sale or marketing of firearms. *Id.* at *9 (Thomas, J., concurring). *See also id.* (explaining that it is improper to allow cases to proceed based on “mere allegations of an predicate violation”).

Justice Jackson similarly explained that the PLCAA was enacted in “response to a flood of civil lawsuits that sought to hold the firearms industry responsible for downstream lawbreaking by third parties.” *S&W*, 2025 WL 1583281, at *9 (Jackson, J., concurring). She noted that “[a]ctivists had deployed litigation in an effort to compel firearms manufacturers and associated entities to adopt safety measures and practices that exceeded what state or federal statutes required.” *Id.* As Justice Jackson recognized, the predicate exception to the PLCAA “reflects Congress’s view that the democratic process, not litigation, should set the terms of gun control.” *Id.* at *10. She realized that allowing lawsuits that Congress had intended to prohibit to continue based on the mere presence of conclusory “allegations about particular statutory violations” would “turn the courts into common-law regulators” and violate the “basic design” of the PLCAA to “preserve the primacy of the political branches—both state and federal—in deciding which duties to impose on

the firearms industry.” *Id.*

The manufacture and sale of Glock pistols as currently designed does not violate federal or Minnesota law. The only statute at issue in this case that is specifically applicable to the sale or marketing of firearms and therefore capable of being used to satisfy the predicate exception is Minn. Stat. § 609.67, and the State does not claim that Glock independently violated that statute. In the absence of a statute prohibiting the sale of Glock pistols as currently designed to civilian consumers, the State is attempting to do exactly what the PLCAA prohibits – “use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees.” 15 U.S.C. § 7901(a)(8).

The Supreme Court’s determination of a federal question “is binding upon the state courts, and must be followed, any state law, decision, or rule to the contrary notwithstanding.” *Chesapeake & Ohio Railway Co. v. Martin*, 283 U.S. 209, 220-21 (1931). Consequently, decisions by the U.S. Supreme Court interpreting federal laws such as the PLCAA are binding on Minnesota state courts. *See, e.g., U.S. ex rel. Lawrence v. Woods*, 432 F. 2d 1072, 1075-76 (7th Cir. 1970), *cert. denied*, 402 U.S. 983 (1971) (“The Supreme Court of the United States has appellate jurisdiction over federal questions arising either in state or federal proceedings, and by reason of the supremacy clause the decisions of that court on national law have binding effect on all lower courts whether state or federal.”). Accordingly, pursuant to the binding precedent from the Supreme Court in the *S&W* case, the State’s claims against Glock must be dismissed.

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Respectfully submitted,

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