A Shot in the Dark: How the Sandy Hook Plaintiffs Established Legal Standing Against the Gun Industry

By: Zachary Posess

I. INTRODUCTION

Here's a consumer product being marketed to men, of all ages, and the imagery being used in the advertising is all militaristic, from the choice of the typeface down to the images... Now, if you’re a disaffected young man... who sees violence as an answer to his problems, I don’t think it’s too much of a stretch to see how that might appeal to a person like that.1

On December 14, 2012, a twenty-year-old man with a history of mental illness entered Sandy Hook Elementary School armed with a cache of weapons designed for military combat.2 He clutched an AR-15 semiautomatic rifle in his hands, with two semiautomatic pistols and hundreds of rounds of ammunition clinging to his body.3 The guns and bullets he carried were all legally purchased.4 Within four and a half minutes, the shooter hunted down and murdered twenty first-graders and six staff members in a building dedicated to public education.5 Law enforcement discovered eighty shell casings littered on the floor of a

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1. J.D. Candidate at Seton Hall University Law School.
5. Larry Buchanan et al., How They Got Their Guns, N.Y. TIMES (Feb. 16, 2018), https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html. The weapons and ammunition were purchased by the shooter's mother. Id.

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single classroom,\footnote{Can Gun Makers Be Held Accountable for Mass Shootings?, supra note 1.} reflecting both the shooter’s mania and the lethality of the weapons he carried.\footnote{Id.} Investigations later revealed that the shooter had intentionally chosen high-capacity magazines, leaving less dangerous weapons at home.\footnote{Clark & O’Donnell, supra note 5.} Overall, he fired at least 154 rounds of high-capacity ammunition.\footnote{Clark & O’Donnell, supra note 5.}

Gun violence has remained a persistent public health crisis in the United States, with eighty-five gun-related deaths occurring each day.\footnote{See generally James M. Schulz et al. The Sandy Hook Elementary School Shooting as Tipping Point: “This Time Is Different”, 1 DISASTER HEALTH 65–73 (2013) (evaluating the congruence of several factors that made the shooting at Sandy Hook). Notably, mass shootings only comprise a small portion of overall gun-related deaths. In 2017, six-in-ten gun-related deaths were the result of suicides. See John Gramlich, What the Data Says about Gun Deaths in the U.S., PEW RESEARCH CTR. (Aug. 16, 2019), https://www.pewresearch.org/fact-tank/2019/08/16/what-the-data-says-about-gun-deaths-in-the-u-s.} The problem has only grown more imminent in the last ten years; between 2014 and 2017, the number of gun-related deaths increased by thirty-two percent.\footnote{Id.} By contrast, the rest of the developed world has largely avoided the scourge of gun violence.\footnote{See Schulz et al., supra note 10.} In the wake of the massacre at Sandy Hook Elementary, the nation collectively mourned the senseless murder of innocent children. The heinous events captured the attention of the media and public to an unprecedented degree and, to many, felt like a tipping point in the national discourse surrounding gun control.\footnote{Soto v. Bushmaster Firearms Int’l, LLC, 202 A.3d 262, 325 (Conn. 2019).}

Nevertheless, in the eight years since Sandy Hook, the U.S. Congress has failed to pass any laws limiting access to high-capacity assault rifles. Faced with legislative inaction, the families of the Sandy Hook victims have sought relief through the American judicial system, filing suit in Connecticut state court against the manufacturer and seller of the guns used in the shooting. In March of 2019, the Connecticut Supreme Court struck a major blow against the gun industry by denying the defendants’ motion to dismiss a claim filed under the state’s unfair trade practices law.\footnote{Soto v. Bushmaster Firearms Int’l, LLC, 202 A.3d 262, 325 (Conn. 2019).}

This Comment considers the implications of the Connecticut Supreme Court’s recent decision in \textit{Soto v. Bushmaster Firearms Int’l, LLC}, where the Sandy Hook plaintiffs stunned the legal world and successfully circumvented a federal statute that precludes nearly all
civil claims against the gun industry. Specifically, this Comment will explore the majority’s reasoning in Soto and whether it can serve as a guide for future tort claims against gun sellers and manufacturers. Part II of this Comment provides historical context for the decision in Soto, discussing the statutory landscape for gun-related litigation and prior civil suits against gun manufacturers. Next, Part III analyzes the majority’s decision in Soto, emphasizing those areas in which the Connecticut Supreme Court disagreed with the lower courts. Finally, Part IV argues that the use of certain images and themes in gun advertising may provide a cognizable cause of action in other states with robust unfair trade practice laws. This Comment concludes with recommendations for the future of litigation against the gun industry in a post-Soto world.

II. Litigation Against the Gun Industry Prior to Soto

This Part will begin by providing a broad overview of the gun violence epidemic currently plaguing the nation, followed by a discussion of litigation against the gun industry before and after the enactment of a federal immunity law.

A. Gun Violence in the United States

It is often said that gun violence is a uniquely American problem. Statistics prove that such sentiments are alarmingly true. The United States boasts the highest rate of gun-related homicides in the developed world, with roughly four times more deaths per capita than the second-ranking country, Switzerland. Between 1965 and 2004, aside from motor vehicle accidents, firearms were the most common cause of injury-related death nationally, killing 1,250,803 people. Mass shootings, defined by the Congressional Research Service as events in which an individual shoots four or more victims that were selected

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15 Id.


17 Lopez, supra note 16.

somewhat indiscriminately, have rapidly increased in the past decade. As of April 28, 2020, 2,437 mass shootings have occurred in the United States since the killings at Sandy Hook Elementary. News reports of mass shootings have become chillingly commonplace; since 2012, there has only been one full calendar week that a mass shooting did not occur.

Social scientists and political commentators have put forth various theories to explain the epidemic of gun violence in the United States: untreated mental health disorders, poverty and inequality, and America’s “frontier” culture. The most logical explanation, however, is the most obvious one: American consumers enjoy relatively unregulated access to guns and ammunition. A 2017 survey revealed that roughly thirty percent of Americans admit to owning a gun, and another eleven percent say they have access to a gun in their

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21 Id. While this statistic remained true up until March of 2020, it remains unclear whether the COVID-19 pandemic and subsequent shutdowns lead to an increase or decrease in mass shootings. Some news sources have reported a decline in mass shootings as a result of statewide shutdowns, while others have reported the opposite. Compare Chris Dolmetsh, One Good Thing From the Pandemic: Mass Shootings in U.S. Plunge, BLOOMBERG (May 9, 2020), https://www.bloomberg.com/news/articles/2020-05-09/one-good-thing-from-the-pandemic-mass-shootings-in-u-s-plunge, with Heidi Przybyla, Gun Violence Grows During Coronavirus Pandemic Group’s Data Shows, NBC NEWS: MEET THE PRESS BLOG (last updated Sept. 22, 2020, 6:48 PM). Although the data regarding mass shootings remains in dispute, the pandemic has led to increase overall gun-related deaths. Gun Violence and COVID-19: Colliding Public Health Crises, EVERYTOWN RESEARCH & POLICY (June 16, 2020), https://everytownresearch.org/report/gun-violence-and-covid-19-colliding-public-health-crises.


23 See Bruce P. Kennedy et al., Social Capital, Income Inequality, and Firearm Violent Crime, 47 SOCIAL SCIENCE & MEDICINE 7, 7 (1998) (positing that increasing poverty and income inequality has led to higher rates of gun violence).

24 See Robert Weisberg, Values, Violence, and the Second Amendment: American Character, Constitutionalism, and Crime, 39 Hous. L. REV. 1, 21–22 (2002) (describing the American “frontier experience” as “a selectively identified immigrant population taking over vast territory and reflecting an adventurous, individualist spirit, which is supposed to have something to do with aggressive, lawless violence.”).
household. The rate of civilian gun ownership in the United States is 120.5 guns per 100 citizens, making Americans by far the most-armed civilian population in the world. The second most-armed civilian population is in Yemen (52.8 guns per 100 citizens), a nation currently embroiled in a bitter civil war. Overall, Americans comprise four and a half percent of the global population but own roughly forty-five percent of private firearms. Consequently, the United States is the only country in the world where guns outnumber citizens.

Typically, a public health crisis like gun violence would yield a legislative response. Safety concerns surrounding consumer goods such as automobiles, lead paint, and unpasteurized milk have led to complex regulatory systems to minimize the risk of illness or death. And yet, despite the murder of dozens of schoolchildren, the gun industry has managed to evade serious regulation. This has not been for lack of trying. The public outcry regarding gun violence has been deafening, as activists led by the parents and students victimized by school shootings have fought tirelessly for legislative reform. Although advocacy groups have found success in lobbying at the state level, Congress has been entirely flat-footed on the issue. In light of this federal inertia, many gun control advocates have moved the battle into the courtroom, using tort litigation as a way to regulate the gun industry’s most troublesome practices.


27 Lopez, supra note 16.

28 Karp, supra note 26.

29 Lopez, supra note 16.


B. Litigation as a Regulatory Tool against the Gun Industry

The concept of "regulation-through-litigation" has been vigorously debated among legal scholars. The fundamental arguments against the practice of regulation-through-litigation are that such efforts are inefficient in enacting change and subvert the American democratic process. By contrast, those in favor of litigation as a regulatory tool contend that civil judgments can help disincentivize unscrupulous business practices and regulate dangerous markets that legislatures are otherwise unwilling to check. For example, in the past, mass tort litigation has been used to combat the epidemic of cigarette-related deaths in the United States. As a result of a series of class action lawsuits, tobacco companies were ordered to provide internal documents that revealed executives had long understood the health risks associated with smoking. Ultimately, several tobacco companies agreed to a $200 billion Master Settlement Agreement, to be allocated to the victims of tobacco-related diseases over twenty-five years. Even today, opioid manufacturers and distributors are being held accountable for the public health crisis caused by their products under public nuisance liability.

For many years, the gun industry faced similar legal challenges. Beginning in the 1980s, an increasing number of private citizens filed civil claims against gun manufacturers, distributors, and sellers under...
various theories of liability.\textsuperscript{38} States and municipalities also brought separate actions against the gun industry during this time seeking injunctions and damages for financial losses associated with gun violence, including police and emergency services and loss of future investment.\textsuperscript{39} The influx of litigation during this period caused gun-rights advocates to grow increasingly concerned about future legal exposure.\textsuperscript{40} Thus, for the next several decades, the top legislative priority of the National Rifle Association ("NRA") and other gun advocacy groups became the passage of federal legislation to insulate the gun industry against civil liability.

Litigation against the gun industry proved effective in some regards. Of course, monetary settlements and judgments provided victims and their families an opportunity to be rightfully compensated for medical expenses, pain and suffering, and loss of income. In addition, the financial risk and negative publicity associated with a drawn-out trial put pressure on gun manufacturers and sellers to self-regulate. In 2000, Smith & Wesson, the nation’s oldest gun manufacturer, agreed to implement a wide array of substantive safety measures as part of a settlement agreement entered with three cities.\textsuperscript{41} The settlement agreement included the production of “smart guns” (i.e., weapons that can only be fired by an authorized user) and required the manufacturer to place a second serial number on each gun to prevent criminals from anonymizing the weapon.\textsuperscript{42} The impact of these lawsuits on defending gun companies was undeniable. Smith & Wesson barely avoided declaring bankruptcy following the 2000 settlement.\textsuperscript{43} Shortly


\textsuperscript{40} See Eric Gorovitz et al., \textit{Preemption or Prevention? Lessons from Efforts to Control Firearms, Alcohol, and Tobacco}, 19 J. OF PUB. HEALTH. POL’Y (Mar. 1998). In this 1998 article, the authors warned that several industries, including the gun industry, were actively lobbying Congress to pass legislation preempting state and local governments from passing regulation to address public health risks. \textit{Id}.


\textsuperscript{42} \textit{Id}. Smith & Wesson faced strong criticism from the rest of the gun industry for agreeing to the settlement. \textit{Id}.

\textsuperscript{43} Dao, \textit{supra} note 41.
thereafter, eight victims of a mass shooter known as “the D.C. sniper” received a $2.55 million legal settlement from the gun dealer and manufacturer, Bushmaster Firearms. In 2003, a California gun maker was forced to shutter its doors when a jury awarded a $24 million verdict to the seven-year-old victim of a defective handgun.

During this time, gun advocates were acutely aware of the spread of litigation throughout the nation. In particular, media coverage of the D.C. sniper settlement made national headlines in 2004, thereby affirming the NRA’s warnings of an existential threat to the gun industry. After years of intense lobbying, the gun industry received an unprecedented gift from the United States Congress.

C. The Passage of PLCAA

In October of 2005, a Republican-controlled Congress passed the Protection of Lawful Commerce in Arms Act (PLCAA). PLCAA provides blanket civil immunity to the gun industry, insulating manufacturers, distributors, and sellers from lawsuits filed by gun violence victims. The stated purpose of PLCAA is to ensure that the gun industry cannot be held liable “for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.” More specifically, PLCAA preempts qualified civil liability actions against the gun industry in any state or federal court unless the plaintiff's claim falls within one of PLCAA’s six narrow exceptions. The two statutory exceptions that have been invoked most frequently are (1) the “negligent entrustment exception,” which permits a cause of action “brought against a [firearm

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47 Associated Press, supra note 45.
49 Id.
50 § 7901(5).
51 § 7903(5)(A)(i-vi).
or ammunition] seller for negligent entrustment or negligence per se;” 52 and (2) the “predicate exception,” which permits a cause of action when “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.” 53

During congressional debates in the House and Senate, PLCAA’s advocates argued that the nation desperately needed tort reform to prevent citizens, municipalities, and states from filing bad-faith lawsuits to financially cripple the gun industry as a proxy for repealing the Second Amendment. 54 President George W. Bush also spoke glowingly of PLCAA, stating that he looked forward to signing the bill into law because he believed it would “further our [country’s] efforts to stem frivolous lawsuits, which cause a logjam in America’s courts, harm America’s small businesses, and benefit a handful of lawyers at the expense of victims and consumers.” 55 In hindsight, some have criticized Congress’ concerns over tort reform as a veiled effort to satisfy the political whims of gun lobbyists and the financial interests of the gun industry. The most direct mouthpiece of the NRA in Congress was Senator Larry Craig of Idaho, who was both the author and chief sponsor of PLCAA. Senator Craig also served as a board member for the NRA during his time in Congress, a role that undoubtedly colored his advocacy for PLCAA. 56

In practice, PLCAA is largely ineffective as a piece of tort reform because well-established rules of civil procedure already prohibit a plaintiff from filing a frivolous claim. 57 Further, the uniqueness of

57 See Alden Crow, Shooting Blanks: The Ineffectiveness of the Protection Against Commerce in Arms Act, 59 S.M.U. L. REV. 1813, 1822 (citing Fed. R. Civ. P. 12(b)(6), which permits a motion to dismiss and impose sanctions for a claim filed for “any improper
PLCAA strikes many as unfair favoritism for a certain industry. In passing the law, the federal government has given the manufacturers, distributors, and sellers of firearms invaluable legal protection that no other individuals or companies enjoy.\textsuperscript{58} In effect, PLCAA “took away the possibility of compensation under state law, and replaced it with […] nothing.”\textsuperscript{59}

The gun industry quickly recognized that PLCAA represented an unprecedented victory. The NRA released a statement proclaiming it as “the most significant piece of pro-gun legislation in twenty years.”\textsuperscript{60} NRA Chief Executive Wayne LaPierre described it at the time as a “historic piece of legislation,” concluding that “[a]s of Oct. 20, [2005], the Second Amendment is probably in the best shape in this country that it’s been in decades.”\textsuperscript{61} Conversely, activists, legal scholars, and many Democratic politicians expressed outrage at the overwhelming influence that lobbyists played in drafting and enacting PLCAA.\textsuperscript{62} Over the next decade, PLCAA would prove to be a nearly insurmountable obstacle for gun violence victims seeking judicial relief.

D. The Impact of PLCAA

In the fourteen years between PLCAA’s passage and the Connecticut Supreme Court’s decision in \textit{Soto}, plaintiffs suing the gun industry were effectively barred from moving beyond the initial pleading phase of litigation.\textsuperscript{63} The statute required judges throughout


\textsuperscript{59} Id.


\textsuperscript{61} Stolberg, supra note 55.

\textsuperscript{62} See Stolberg, supra note 55. Dennis Henigan of the Brady Center to Prevent Gun Violence noted that PLCAA “is literally unprecedented in American history because it is the first time that the federal government will be stepping in and retroactively depriving injured people of their vested legal rights under state law, without providing them any alternative.” Senator Edward M. Kennedy (D-Mass.) contended that PLCAA was “bought and paid for by the N.R.A.[.]” Rep. Chris Van Hollen (D-Md.) called the bill “a cruel hoax” on the victims of gun violence.

the nation to dismiss negligence, negligent entrustment, and public nuisance claims filed by individuals and public entities as a matter of law.\textsuperscript{64} The court’s unexpected ruling in \textit{Soto}, however, has reignited the debate over whether PLCAA is truly impenetrable.

\textbf{III. \textit{ANALYSIS OF THE CONNECTICUT SUPREME COURT’S DECISION IN SOTO}}

Following the tragedy at Sandy Hook Elementary School, families representing nine of the deceased victims (“the Plaintiffs”) filed a wrongful death action against the manufacturer, distributor, and retailer (collectively, “the Defendants”) of the semiautomatic rifle that the shooter had used—a Bushmaster XM15-E2S.\textsuperscript{65} As anticipated, the Defendants quickly moved to dismiss the suit in its entirety, arguing it was barred under PLCAA.\textsuperscript{66} The Plaintiffs responded that their claims were permitted under two of PLCAA’s enumerated exceptions.\textsuperscript{67} First, the Plaintiffs contended that the Defendants’ actions triggered the negligent entrustment exception because they provided civilian consumers with access to “an AR-15 style assault rifle that is suitable for use only by military and law enforcement personnel.”\textsuperscript{68} More specifically, the complaint alleged that (1) the AR-15 is “grossly ill-suited” for any legitimate civilian uses, such as recreation or self-defense; (2) the harms associated with mass shootings outweigh any

\textsuperscript{64} \textit{See}, \textit{e.g.}, \textit{Ileto v. Glock, Inc.}, 565 F.3d 1126 (9th Cir. 2009) (dismissing claims of tort negligence and public nuisance against a gun manufacturer because such claims were not applicable to the gun industry under PLCAA’s predicate exception); \textit{City of New York v. Beretta U.S.A. Corp.}, 524 F.3d 384 (2d Cir. 2008) (same); \textit{Noble v. Shawnee Gun Shop, Inc.}, 409 S.W.3d 476 (Mo. Ct. App. 2013) (dismissing a negligent entrustment claim against a gun shop); \textit{Estate of Kim v. Coxe}, 295 P.3d 380 (Alaska 2013) (finding that a firearm dealer cannot be liable for negligence per se or knowingly violating an existing statute when the firearm is stolen); \textit{Phillips v. Lucky Gunner, LLC}, 2015 US Dist. LEXIS 39284 (D. Colo. Mar. 27, 2015) (dismissing claims filed by the parents of a victim of the Aurora, Colorado movie theater against various online firearm retailers for negligence, negligent entrustment, and creating a public nuisance). The few cases where courts have permitted claims to proceed beyond a motion to dismiss involve straw purchases, where guns are sold to an intermediary buyer. \textit{See}, \textit{e.g.}, \textit{Williams v. Beemiller, Inc.}, 952 N.Y.S.2d 333 (App. Div. 2012), amended by 962 N.Y.S.2d 834 (App. Div. 2013) (finding sufficient facts to support a claim that a gun seller knowingly violated the Gun Control Act of 1968, 18 U.S.C. § 921 et seq.); \textit{City of New York v. Bob Moates’ Sport Shop, Inc.}, 253 F.R.D. 237 (E.D.N.Y. 2008) (concluding that a defendants’ participation in straw purchases triggers PLCAA’s predicate exception because it violates federal laws relating to the sale and marketing of firearms).


\textsuperscript{66} \textit{Id} at 274.

\textsuperscript{67} \textit{Id}.

\textsuperscript{68} \textit{Id} at 273–74.
potential benefits of selling the AR-15 to civilians; and (3) the Defendants had knowledge of (1) and (2) but continued to sell the AR-15 nonetheless.\textsuperscript{69} Following the holdings of several other state courts, the majority in \textit{Soto} dismissed the Plaintiffs’ negligent entrustment claim.\textsuperscript{70} The Plaintiffs could not prevail on a negligent entrustment claim, the court concluded, because there was no showing that the shooter’s mother, who had legally purchased the rifle used in the shooting, was “incompetent” or “had a propensity to use the weapon in an unsafe manner[].”\textsuperscript{71} The court also rejected the assertion that \textit{any} sale of an assault rifle to a civilian is unreasonable and, therefore, constitutes negligent entrustment.\textsuperscript{72}

The Plaintiffs, however, proffered a second argument that presented Connecticut’s Supreme Court with a novel legal theory—that the Defendants’ marketing practices had violated the Connecticut Unfair Trade Practices Act (CUTPA) and thereby triggered PLCAA’s predicate exception.\textsuperscript{73} The argument was twofold. First, they argued that the sale of the XM15-E2S rifle to \textit{any} civilian constitutes an unfair trade practice.\textsuperscript{74} The majority ultimately agreed with the trial court that this claim was time-barred, but stated in a footnote that “we believe that that theory, if timely presented, would also be barred by PLCAA immunity and/or [Connecticut’s Products Liability Act].”\textsuperscript{75} Second, the Plaintiffs contended that “the defendants violated CUTPA by advertising and marketing the XM15-E2S in an unethical, oppressive, immoral, and unscrupulous manner that promoted illegal offensive use of the rifle.”\textsuperscript{76}

The majority opinion in \textit{Soto} describes the sheer power of semiautomatic assault rifles in graphic detail.\textsuperscript{77} Connecticut law requires that an appellate court accept the facts alleged in the complaint as true when reviewing a trial court’s grant of a motion to strike.\textsuperscript{78} The majority in \textit{Soto} made a point, however, to recount the most disturbing features of the AR-15 assault rifle used at the Sandy Hook, drawing comparisons to the M16, a similar rifle used by the U.S. Army:

\begin{footnotes}
\item[69] Id. at 277.
\item[70] Id. at 278–79.
\item[71] \textit{Soto}, 202 A.3d at 276, 278–79.
\item[72] Id. at 283.
\item[73] Id. at 273–74.
\item[74] Id. at 274–75.
\item[75] Id. at 275 n.14.
\item[76] Id. at 284.
\item[77] \textit{Soto}, 202 A.3d at 275–76.
\item[78] Id. at 275 n.15.
\end{footnotes}
The AR-15 and M16 are highly lethal weapons that are engineered to deliver maximum carnage with extreme efficiency. Rapid semiautomatic fire “unleashes a torrent of bullets in a matter of seconds.” The ability to accommodate large capacity magazines allows for prolonged assaults. Exceptional muzzle velocity makes each hit catastrophic. [B]ullets fired from these rifles travel at such a high velocity that they cause a shockwave to pass through the body upon impact, resulting in catastrophic injuries even in areas remote to the direct wound. Finally, the fact that the AR-15 and M16 are lightweight, air-cooled, gas-operated, and magazine fed, enabling rapid fire with limited recoil, means that their lethality is not dependent on good aim. “The net effect is more wounds, of greater severity, in more victims, in less time.”

The court noted that these deadly features, combined with the availability of such guns, have made the AR-15 the “weapon of choice for mass shootings, including school shootings.” In fact, the seven deadliest mass shootings of the past decade have involved the use of some adaptation of the semiautomatic assault rifle.

After emphasizing the lethality of the Defendants’ product, the court turned to the two legal questions at hand: (1) whether the Plaintiffs had pled a cognizable CUTPA violation, and (2) whether a CUTPA violation qualifies as a predicate offense under PLCAA’s predicate exception. The Plaintiffs’ remaining CUTPA claim relied on the argument that the Defendants’ marketing tactics were unlawful because they encouraged the use of the XM15-E2S for “offensive[] [and] assaultive purposes,” rather than lawful uses, such as “self-defense, hunting, target practice, collection, or other legitimate civilian firearm use.”

Before analyzing the sufficiency of the Plaintiffs’ CUTPA claim, the Soto court addressed the threshold issue of whether the Plaintiffs had statutory standing. The lower court concluded that the Plaintiffs could not bring an action under CUTPA because the deceased victims had no direct business relationship with the Defendants. The Connecticut Supreme Court rejected this argument on textual and policy grounds. First, the court noted that CUTPA’s language broadly permits “[a]ny person” to bring a private action. Second, it reasoned that the “evils associated with unscrupulous and illegal advertising are not ones that necessarily arise from or infect the relationship between an advertiser and its [direct] customers, competitors, or business associates.” After all, the ultimate victims of the gun industry’s misfeasance are often innocent third parties.

The Soto majority’s interpretation of CUTPA frequently relies on Federal Trade Commission (FTC) decisions. The FTC is charged with enforcing the FTC Act, a broad piece of federal legislation intended to protect consumers from dangerous products. Many states—including Connecticut—have modeled their own trade practice laws after the FTC Act. As a result, the FTC’s decisions serve as the “lodestar” for interpreting CUTPA’s language when Connecticut’s own courts are

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82 Soto, 202 A.3d at 283–84.
83 Id. at 284.
84 Id. at 285.
85 Id. at 287–88.
86 Id. 285–91.
87 Id. at 285.
88 Soto, 202 A.3d at 285.
89 Id.
90 Id. at 299–300, 304, 306.
91 Id. at 299.
silent on an issue.\textsuperscript{93} After analyzing the FTC’s treatment of similar unfair trade practices claims, the majority held that a company could violate the FTC Act by marketing its products in ways that are likely to result in physical injury.\textsuperscript{94} The court concluded, “It is clear, then, that wrongful advertising that poses a genuine risk of physical harm falls under the broad purview of the FTC Act and, by incorporation, CUTPA.”\textsuperscript{95} Thus, the Plaintiffs surpassed their first major hurdle when the court concluded they had standing to assert a CUTPA claim.\textsuperscript{96} Despite this initial victory, however, the Plaintiffs’ battle was not yet won.

The court next addressed the question of whether a wrongful death claim could fall within PLCAA’s predicate exception.\textsuperscript{97} The court began its inquiry by applying the plain meaning rule: if a statute’s language is clear and unambiguous, the court will adopt it as written;\textsuperscript{98} if, however, the court is unable to reach a conclusion based on the statutory language, it may consider other factors, such as the statutory framework, statements of legislative findings and purpose, legislative history, or policy considerations, to resolve any ambiguities.\textsuperscript{99} In the end, the \textit{Soto} court held that both the plain language of the predicate exception and a broader, more contextual analysis of the statute would support a finding in favor of the Plaintiffs.\textsuperscript{100} On its face, the text of the predicate exception permits suit against the manufacturer or retailer of a gun if the defendant has violated any state statute applicable to the sale or marketing of firearms.\textsuperscript{101} Thus, the court concluded that, in enacting PLCAA, Congress never intended “to preclude actions alleging that firearms companies violated state consumer protection laws by promoting their weapons for illegal, criminal purposes.”\textsuperscript{102}

\textsuperscript{93} \textit{Soto}, 202 A.3d at 299.  
\textsuperscript{94} \textit{Id.} at 299–300. \textit{See}, e.g., In re AMF, Inc., 95 F.T.C. 310, 313–14 (1980) (prohibiting advertising that depicted children using bicycles and tricycles in an unsafe or unlawful manner); In re Mego International, Inc., 92 F.T.C. 186, 189–90 (1978) (finding violations where an advertisement showed an electric hairdryers being used by children in near a bathroom sink); In re Uncle Ben’s, Inc., 89 F.T.C. 131, 136 (1977) (advertising that depicts children attempting to cook food without close adult supervision; In re Philip Morris, Inc., 82 F.T.C. 16, 19 (1973) (requiring Philip Morris to discontinue a promotional practice that had the potential to expose young children to razor blades)).  
\textsuperscript{95} \textit{Soto}, 202 A.3d at 300.  
\textsuperscript{96} \textit{Id.}  
\textsuperscript{97} \textit{Id.}  
\textsuperscript{98} \textit{Id.} at 300–01.  
\textsuperscript{99} \textit{Id.} at 301.  
\textsuperscript{100} \textit{Id.} 302.  
\textsuperscript{101} \textit{Soto}, 202 A.3d at 302–03; \textit{see also} Goodyear Atomic Corp. v. Miller, 486 U.S. 174, 185 (1988) (concluding that Congress is presumed to have knowledge of federal and state law relevant to legislation it is considering).  
\textsuperscript{102} \textit{Soto}, 202 A.3d at 302.
The Soto opinion also cited heavily to congressional statements made during debates over PLCAA. The majority directly quoted Senator Jeff Sessions (R-Ala.) and various other co-sponsors of the bill, who had "emphasized that [PLCAA] must be narrowly construed and that it protects only those firearms sellers who have not engaged in any illegal or irresponsible conduct." Even Senator Craig reiterated the limited purpose of the bill:

As we have stressed repeatedly, 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. Well recognized causes of action are protected by the bill. Plaintiffs can still argue their cases for violations of law . . . . The only lawsuits this legislation seeks to prevent are novel causes of action that have no history or grounding in legal principle.

The substance of Senator Craig’s assurances to other members of Congress proved instrumental in the court’s decision in Soto. The court found that these comments reflected that PLCAA was not intended to limit the offenses that may trigger the predicate exception to those that “are directly, expressly, or exclusively applicable to firearms.” As such, under PLCAA’s predicate exception, a Connecticut plaintiff has standing to invoke any state or federal law that could be applied to the sale of a firearm. The court reasoned: “If Congress intended to limit the scope of the predicate exception,” it would have explicitly stated so in the text of PLCAA, as Congress did in other sections of the law. The court’s straightforward logic led to a historic conclusion: gun violence plaintiffs had standing to pursue a claim against the gun industry.

There are several lessons to be gleaned from the Soto opinion. First, it is important to note that Soto represents the beginning, not the end, of a protracted legal battle. While the Plaintiffs have established standing to pursue their claim, they still face the uphill battle of proving a CUTPA violation. In the same decision that the court handed the Plaintiffs a huge procedural victory, the Soto majority acknowledged that it would be a “herculean task” to demonstrate a causal link between

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103 See, e.g., id. at 315–16, 318–20, 323–24.
105 151 Cong. Rec., 18,096 (2005), remarks of Senator Larry Craig.
106 Soto, 202 A.3d at 302.
107 Id. at 302–03.
108 Id. at 303.
109 Id. at 308.
the shooter’s actions and the Defendant’s advertisements.\textsuperscript{110} In other words, the \textit{Soto} decision does not evaluate the merits of the underlying cause of action under CUTPA.\textsuperscript{111} Rather, it merely acknowledged that PLCAA did not categorically bar the Plaintiffs’ unfair trade practices claim.\textsuperscript{112}

Nonetheless, the decision in \textit{Soto} was the first since PLCAA to hold that a state’s unfair trade practices laws can be used against the gun industry. The court’s reasoning is instructive because several states have adopted the relevant provisions of the FTC Act. Thus, \textit{Soto} can serve as a model case for other plaintiffs seeking to overcome PLCAA. The \textit{Soto} majority concluded that “[s]tatutes such as the FTC Act and state analogues that prohibit the wrongful marketing of dangerous consumer products such as firearms represent precisely the types of statutes that implicate and have been applied to the sale and marketing of firearms.”\textsuperscript{113} Moreover, \textit{Soto} reveals the types of gun industry marketing tactics that a court may find offensive. In particular, the court zeroed in on advertisements for Bushmaster’s AR-15 that used language referencing the gun’s military-style capabilities and a shooter’s masculinity.\textsuperscript{114}

While the \textit{Soto} ruling is a far cry from gun reform advocates’ ultimate goal of repealing PLCAA, plaintiffs would be wise to apply the court’s interpretation of PLCAA in other states. Justice Richard Palmer, writing for the majority, succinctly encapsulated the argument that PLCAA does not eliminate a state’s broad authority to protect its citizens from dangerous advertising:

Following a scrupulous review of the text and legislative history of PLCAA, we also conclude that Congress has not clearly manifested an intent to extinguish the traditional authority of our legislature and our courts to protect the people of Connecticut from the pernicious practices alleged in the present case. The regulation of advertising that threatens the public’s health, safety, and morals has long been considered a core exercise of the states’ police powers.\textsuperscript{115} Armed with the \textit{Soto} decision, plaintiffs across the country will surely begin to search for ways to include unfair trade practices claims in suits

\begin{footnotesize}
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\item \textsuperscript{110} \textit{Id.} at 290
\item \textsuperscript{111} \textit{Id.} at 290–91.
\item \textsuperscript{112} \textit{Soto}, 202 A.3d at 291.
\item \textsuperscript{113} \textit{Id.} at 306.
\item \textsuperscript{114} \textit{Id.} at 284.
\item \textsuperscript{115} \textit{Id.} at 272–73.
\end{itemize}
\end{footnotesize}
against the gun industry. Nonetheless, the question of whether the Soto decision is a trendsetter or an outlier remains largely unanswered.

IV. ADVERTISEMENTS FOR SEMIAUTOMATIC RIFLES AND OTHER QUASI-MILITARY FIREARMS AS A POTENTIAL SOURCE OF FUTURE LITIGATION

The gun industry, like any profit-driven enterprise, invests resources in commercial advertising to reach its target demographic and sell more products. Unlike most products, however, firearms (particularly high-capacity guns) can injure or kill dozens of people in mere minutes. This Part will first provide a brief overview of the marketing tactics employed by the gun industry. It will then discuss whether the victims of recent mass shootings in Florida and Ohio may have a cognizable claim if those states adopted the reasoning in Soto.

A. The Gun Industry’s Use of Militaristic Advertising

When facing economic peril, gun manufacturers and sellers have historically launched massive marketing campaigns to broaden their customer base.\(^{116}\) Recall that in Soto, the court permitted the plaintiffs’ unfair trade practices claim to proceed based on the theory the Bushmaster defendant’s use of unscrupulous advertisements increased the number of fatalities in the Sandy Hook shooting.\(^{117}\) Specifically, the complaint alleged that “the [D]efendants have sought to grow the AR-15 market by extolling the militaristic and assaultive qualities of the AR-15 rifles, and, specifically, the weapon’s suitability for offensive combat missions.”\(^{118}\)

It is neither novel nor uncommon for gun advertisements to include references to war, combat, or the U.S. Armed Forces.\(^{119}\) A 2004 study of firearm advertisements in twenty-seven gun-related subscription magazines found that 15% of the ads referenced “patriotism,” and 7.1% discussed the weapons “combat/military” attributes.\(^{120}\) Advertisements fell into the latter classification if the images or language on the page were “associated with aggression, evoking a fantasy of tactical shooting in a combat situation” or made

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\(^{116}\) See Debra Doray & Arthur J. Waldrop, Regulating Handgun Advertising Directed at Women, 12 WHITTIER L. REV. 113 (1991) (noting that, facing thirty percent drops in gun sales in the 1980s, three leading gun manufactures had chosen to “aggressively market guns to certain demographic groups such as women.”).

\(^{117}\) Id., 202 A.3d. at 277.

\(^{118}\) Id.

\(^{119}\) See generally Yamane, supra note 25, at 11–12.

\(^{120}\) Elizabeth A. Saylor, Katherine A Vittes, & Susan B Sorenson, Firearm Advertising: Product Depiction in Consumer Gun Magazines, 28 EVALUATION REV. 5, 426 (October 2004).
“reference[s] to military or survival use.”\textsuperscript{121} The specific messages in gun advertisements paint a clearer picture. A recent promotion for a semiautomatic assault rifle in popular gun publication \textit{Guns & Ammo} read, “Never a victim. Always the victor.”\textsuperscript{122} The surrounding images showed soldiers in full military uniforms using the weapon.\textsuperscript{123} \textit{Guns & Ammo} is one of the nation’s most well-known gun magazines in the country, with 378,000 print subscribers, more than half the number of weekday print subscribers of the \textit{New York Times}.\textsuperscript{126}

As other media companies have struggled to maintain print subscriptions in the Internet era, gun magazines have managed to increase readership in recent years.\textsuperscript{125} \textit{Ad Week} has called gun magazines a "beacon of hope for the American publishing industry."\textsuperscript{126} Moreover, while the majority of gun advertisements are limited to materials distributed to avid firearm enthusiasts in specialized trade publications, the gun industry markets in mainstream media sources.\textsuperscript{127} The ubiquity of gun advertisements is even more ominous in the age of social media. Gun manufacturers can reach younger audiences through Instagram, Twitter, and Facebook sponsorships, paying attractive influencers thousands of dollars to post pictures of themselves holding assault rifles.\textsuperscript{128}

The overall decline in the sale of less dangerous guns, such as pistols, shotguns, and handguns, has only further exacerbated the problem of mass shootings.\textsuperscript{129} Facing such an existential crisis, the gun industry has begun prioritizing the sale of military-style weapons, sometimes referred to as “tactical weapons,” as a way to acquire new customers.\textsuperscript{130} This marketing strategy was laid bare in a 2013 edition

\textsuperscript{121} Id. at 424.
\textsuperscript{123} Id.
\textsuperscript{125} Id.
\textsuperscript{126} Id.
\textsuperscript{130} Id.
of the trade magazine *Shooting Sports Retailer* 2013.\(^{131}\) The issue was aptly named the “Annual How to Sell Issue,” as it provided detailed guidance to gun retailers seeking to increase sales of tactical weapons.\(^{132}\) In a chilling excerpt, the article’s author bluntly explains how retailers should market their most dangerous weapons to young, first-time gun owners:

Hunters, quite frequently, will not be impressed by the “tactical coolness factor” that has drawn many shooters into the shop looking for a new gun. In fact, some of them will likely be put off by the military-esque attitude and marketing that is so common in the tactical firearms market [...]. The tactical coolness factor does, on the other hand, attract a lot of first-time gun buyers. Many of them are younger and unfamiliar with firearms, making them prime candidates to be unsure of what to look for or even what they want. Unlike many of the hunting demographic, these potential buyers will likely be interested only in tactical guns, and the military-ish looks and features will be big a [sic] selling point with them.\(^{133}\)

Such unscrupulous marketing tactics are not dissimilar to those identified in *Soto*. Josh Koskoff, counsel for the plaintiffs, argued that Remington, Bushmaster’s parent company, had intentionally marketed military-style weapons toward unstable, dangerous individuals as a way to sell more products.\(^{134}\) Koskoff specifically pointed to advertisements that encouraged young men to buy semiautomatic assault rifles in order to have their “man card reissued.”\(^ {135}\) Another Remington advertisement

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\(^{132}\) Id.

\(^{133}\) Id. at 6. Notably, some courts have expressed hesitation over the ballooning of Second Amendment rights to protect a civilian’s right to quasi-military, semiautomatic assault rifles. *See Soto v. Bushmaster Firearms Int’l*, 202 A.3d 262, 310 (Conn. 2019) (“It is not at all clear, however, that the second amendment’s protections even extend to the types of quasi-military, semiautomatic assault rifles at issue in the present case.”); *see also* District of Columbia v. Heller, 554 U.S. 570, 627 (2008) (finding that constitutional protections do not extend to “dangerous and unusual weapons” and, therefore, that certain military-style rifles may be banned); Kolbe v. Hogan, 849 F.3d 114, 143 (4th Cir.) *cert. denied*, U.S., , 138 S. Ct. 469, 199 L. Ed. 2d 374 (2017) (interpreting the famous decision in District of Columbia v. Heller to mean that Second Amendment does not protect right to possess assault weapons featuring high capacity magazines, such as the AR-15); New York State Rifle & Pistol Ass’n v. Cuomo, 804 F.3d 242, 257 (2d Cir. 2015) (upholding outright prohibitions against civilian ownership of semiautomatic assault weapons).


\(^{135}\) Id.
referenced in the *Soto* decision read, “Forces of opposition, bow down.” The sentiments that these advertisements evoke are all too familiar: hyper-masculine language and images; references to the military, wartime, and the battlefield; and encouragement of offensive acts of violence, rather than self-defense.

B. *Replicating the Reasoning in Soto in Other States*

In light of the gun industry’s past behavior, plaintiffs bringing unfair trade practices claims will not need to look far to find evidence of unscrupulous marketing tactics. Courts in other states may echo the majority’s conclusion in *Soto*—that unfair trade practices claims fall under PLCAA’s predicate exception.

The first step in identifying which states may be most ripe for a legal challenge to PLCAA is to find those with unfair trade practices laws comparable to Connecticut. The language of CUTPA states, “No person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” While several states have analogous laws, this Section will look at two states in particular: Florida and Ohio. Florida and Ohio provide an especially useful case-study for three reasons. First, both states have strong, broad consumer protection laws. Second, courts in both states have liberally construed those laws to impose liability for unfair and deceptive trade practices. Finally, Parkland and Orlando, Florida, and Dayton, Ohio, are the sites of recent news-making mass shootings. Thus, the families of the victims in those shootings may circumvent PLCAA using the same reasoning as the Sandy Hook plaintiffs.

1. Florida

In Florida, the unfair trade practice law that serves as the counterpart to CUTPA states, in part, that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” The statutory language prohibiting “unconscionable acts or practices” is especially important because it permits a court to consider the moral implications of a defendant’s marketing tactics. As such, a gun company could theoretically be held liable for encouraging acts of offensive violence in its advertisements.

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136 *Id.*
In February of 2018, a young shooter entered Marjory Stoneman Douglas High School in Parkland, Florida.140 In less than ten minutes, seventeen students and school employees were killed, and seventeen more were injured.141 The weapon used to commit the heinous crime—an AR-15 semiautomatic rifle—was strikingly similar to the gun used in the shooting at Sandy Hook Elementary.142 Parents representing two of the Parkland victims have already filed suit against the manufacturer of the gun used in the shooting, American Outdoor Brands (formerly Smith & Wesson), and the retailer, Sunrise Tactical Supply.143 That suit, however, does not set forth any unfair trade practice claims, nor does it address PLCAA specifically.144 Rather, it argues that a Florida state law passed in 2001 does not bar suits against gun manufacturers and sellers, and should be overturned.145 Nevertheless, the Parkland plaintiffs have been closely following the events surrounding the Soto case and thus may employ the same tactics to circumvent PLCAA.146

Similarly, the victims of the 2016 shooting at Pulse Nightclub in Orlando, Florida may have a cognizable claim against the manufacturer of the gun used to kill forty-nine people in the second-deadliest massacre in American history.147 Fortunately, the Violence Policy Center (VPC), a non-profit gun control advocacy group, has already done the work of investigating the impact of militaristic advertisements in the context of the Pulse shooting. VPC concluded that advertisements for the semiautomatic rifle used at the Pulse shooting included “military

141 Id.
145 Id.
147 See Foley, supra note 81.
imagery and language.”\textsuperscript{148} For example, a 2015 catalog advertisement described the rifle’s manufacturer, Sig Sauer, as having “battle-tested experience to engineer the world’s toughest, most devastatingly accurate pistols and rifles.”\textsuperscript{149} The advertisement further claimed that Sig Sauer’s mission was to “provide elite shooters with the complete weapon systems they need to prevail under any circumstance.”\textsuperscript{150} The use of language such as “battle-tested” provides ripe ground for a legal challenge in Soto’s wake. Like the Sandy Hook plaintiffs, Pulse plaintiffs filing suit in the future could identify Sig Sauer’s use of bombastic, hyper-masculine language in its commercial advertisements as a violation of unfair trade practice laws.

2. Ohio

Under Ohio’s Consumer Sales Practices Act (“CSPA”), “[n]o supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.”\textsuperscript{151} CSPA also sets forth the same prohibition against unconscionable acts or practices by suppliers.\textsuperscript{152} Importantly, Ohio’s state courts have endorsed a liberal interpretation of CSPA\textsuperscript{153} and rely heavily on decisions interpreting the FTC Act.\textsuperscript{154} Furthermore, Ohio law permits a plaintiff to recover treble damages for acts that violate CSPA or that were declared deceptive or unconscionable in a published court decision, exposing the gun industry to potentially significant liability in the state.\textsuperscript{155}

\textsuperscript{148} Violence Policy Center, Understanding the Sig Sauer MCX Assault Rifle Used in the Orlando Mass Shooting, 1–2 (June 2016), http://www.vpc.org/studies/Sig%20Sauer%20Backgrounder.pdf.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
\textsuperscript{151} Ohio Rev. Code Ann. § 1345.02(A).
\textsuperscript{152} See Ohio Rev. Code Ann. § 1345.03(A).
\textsuperscript{153} See generally Einhorn v. Ford Motor Co., 548 N.E.2d 933, 935 (1990) (“The Consumer Sales Practices Act is a remedial law which is designed to compensate for traditional consumer remedies and so must be liberally construed.”); see also Marrone v. Philip Morris USA, Inc., 850 N.E.2d 31, 34 (Ohio 2006) (finding that consumers only qualify for class actions under CSPA if the defendant had prior notice that its conduct was deceptive or unconscionable, in the form of either a rule adopted by the Attorney General or a published court decision).
\textsuperscript{154} See Ohio Rev. Code Ann. § 1345.02 (“[T]he court shall give due consideration and great weight to federal trade commission orders, trade regulation rules and guides, and the federal courts’ interpretations of subsection 45 (a)(1) of the ‘Federal Trade Commission Act.’”).
\textsuperscript{155} See Ohio Rev. Code Ann. § 1345.09(B).
Unfortunately, one need not look far into history for a mass shooting in Ohio with similar relevant facts to those in the Sandy Hook litigation. Shortly before this Comment was written, nine people were killed and twenty-seven others wounded after a shooting on a busy downtown street in Dayton, Ohio.156 The shooter managed to inflict this massive amount of damage in just thirty-two seconds because he was using an AR-15 equipped with a catastrophic 100-round drum magazine.157 But for the swift reaction time of police officers, the gunman undoubtedly would have killed or injured dozens, if not hundreds, more.158 The weapon used in the attack, like the one used in Sandy Hook, was effectively a weapon of war being employed against innocent Americans. Consequently, the victims of the shooting could use the plaintiffs’ strategy in Soto to circumvent PLCAA, either to obtain relevant discovery or reach a financial settlement.

V. CONCLUSION

The Soto plaintiffs have continued to defy the odds in their battle against the gun industry. In November of 2019, the United States Supreme Court issued a denial of certiorari on Bushmaster’s appeal of the decision in Soto.159 Therefore, for the time being, the ruling remains binding precedent in Connecticut. Although it is always difficult to interpret the nation’s highest court’s decision not to hear a case, its denial of review is the “first battle-ground on the merits” and can indicate that the Justices are not dissatisfied with the decision of the lower court.160 Additionally, in the most recent turn of events, the plaintiffs won another victory when the court granted their request for a trial in September of 2021, which the defendants strongly opposed.161

157 Id. In comparison, recall that the Sandy Hook shooter was using a 30-round magazine.
158 Id.
160 Peter Linzer, The Meaning of Certiorari Denials, 79 COLUM. L. REV. 1127 (Nov. 1979) (analyzing the implications of denials of certiorari throughout the history of the U.S. Supreme Court).
The overall impact that Soto and its progeny will have on the gun industry remains to be seen. The Soto case now continues at the trial level, but the court has yet to decide whether internal documents—including marketing and sales strategies, statistical information on gun sales, or firearm design drawings and engineering specifications—will be sealed, as the Defendants have adamantly requested. If the court permits public discovery of such documents, gun manufacturers and sellers may enter settlements rather than risk public embarrassment.

It is clear, however, that the judiciary has taken notice of the Soto case. Soon after the opinion was published, an Indiana appeals court cited Soto in its decision permitting a suit to move forward against a gun manufacturer. In City of Gary v. Smith & Wesson Corp., a panel of Indiana appellate judges found Connecticut’s statutory interpretation to be compelling and persuasive. Specifically, the majority quoted the portion of Soto concluding that Congress did not intend PLCAA to apply only to “violations of statutes that are directly, expressly, or exclusively applicable to firearms.” The court’s adoption of Soto’s reasoning is especially remarkable in Indiana, a conservative state and one where appellate judges face re-election. The ruling in Gary, therefore, provides hope that PLCAA’s predicate exception may be more broadly interpreted, even in pro-gun states. Meanwhile, efforts to overturn PLCAA persist. In June of 2019, House and Senate Democrats introduced the Equal Access to Justice for Victims of Gun Violence Act, which aims to dismantle PLCAA once and for all. Gun control activists have praised the bill and hope that it will pass through the House of Representatives. For the time being, however, the legislation is largely symbolic, as the current Republican-controlled Senate has expressed a refusal to vote on even the most meager of gun control proposals.

162 Id.
164 Id.
165 Id.
169 Id.
Ultimately, activists cannot rely on state courts to bring an end to gun violence. While the decision in Soto provides a new legal theory that may be viable in certain jurisdictions, there are still enormous barriers to recovery in suits against the gun industry for most plaintiffs. For example, even if Congress repealed PLCAA, some states have enacted their own versions of PLCAA, many of which are even stricter than their federal analog. Consequently, plaintiffs in future gun violence lawsuits may be unable to survive motions to dismiss irrespective of PLCAA. Furthermore, if the history of PLCAA has revealed anything, it is that the gun industry wields immense political power and will likely expend massive resources in the face of impending regulation.

This is not to say that the Sandy Hook plaintiffs’ accomplishment was short of spectacular. The relevance of Soto extends beyond the text of the decision. In challenging the gun industry, the plaintiffs stood in the place of many Americans who remain frustrated by Congress’ abject failure to pass meaningful gun reforms. As one reporter observed, “[m]ore than two decades of federal inaction on gun-control measures have understandably conditioned the public to expect little from Congress after mass shootings, no matter the death toll.” This cynical view of our democratic system is only reinforced when our representative body ignores the massacre of young children. The Sandy Hook plaintiffs, however, have chosen to reject this defeatist attitude, and through tireless advocacy, have chiseled a small crack in the impenetrable wall of PLCAA. In doing so, they have provided a small ray of hope that the victims of gun violence will finally have their day in court.

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172 Id. at 26.