



House Presents New Argument Against Mexico Gun Lawsuit

[Another brief in support of Smith &](#)

[Wesson's defense](#) against Mexican interference with the American gun industry came from an unexpected source, using a new but persuasive argument. The House's Bipartisan Legal Advisory Group filed it on Tuesday, claiming that Mexico's move violates the constitutional principle of separation of powers.

The brief makes the telling argument that, if the First Circuit Court of Appeals' overturning of a lower court's decision that Mexico could not bring its lawsuit remains in force, it would be a *de facto* overriding of the House's prerogative to make laws under the U.S. Constitution (Article 1, Section 1, Clause 1: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.")



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The New American has been following the development of this extraordinary and dangerous effort by the Mexican government to inflict its anti-gun agenda onto the American gun industry, using its own horrendous gun violence (15 times that of the United States) as an excuse. In October, *TNA* noted that the notorious anti-gun First Circuit Court of Appeals, populated almost completely by judges nominated by left-wing presidents Clinton, Obama, and Biden, found what appeared to be an exception to the law passed by Congress in 2005 to protect the gun industry from lawsuits such as this one: the Protection of Lawful Commerce in Arms Act (PLCAA).

The Exception

That exception: A lawsuit may successfully be brought if the defendant can be shown to knowingly be part of the "proximate cause" of a plaintiff's injuries. The First Circuit, as noted by attorneys representing Smith & Wesson and the other U.S. gun makers named in the lawsuit, "held that Mexico plausibly alleged [that] America's firearms companies have violated the federal law against aiding and abetting firearms trafficking ... the proximate cause of the many diffuse harms and costs that Mexico incurs from cartel violence."

Wrote Judge William J. Kayatta, nominated by then-president Barack Obama, "We ... hold that Mexico's complaint plausibly alleges a type of claim that is statutorily exempt from the PLCAA's general prohibition."

Kayatta added:



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Fairly read, the complaint alleges that defendants are aware of the significant demand for their guns among the Mexican drug cartels, that they can identify which of their dealers are responsible for the illegal sales that give the cartels the guns, and that they know the unlawful sales practices those dealers engage in to get the guns to the cartels.

It is therefore not implausible that, as the complaint alleges, defendants engage in all this conduct in order to maintain the unlawful market in Mexico, and not merely in spite of it.

If allowed to stand, the breach of the PLCAA by Mexico “would short-circuit the legislative process and usurp Congressional authority [under the Constitution],” according to the House’s advisory group. “The Constitution assigns firearms-related policy decisions to the American people’s elected representatives, subject to the constraints of the Second Amendment. The Mexican government’s radical request for injunctive relief would instead allow federal courts to make those important decisions. Such a result would turn our constitutional structure on its head, and the Court should not permit it.”

It expanded on the potential threat not only to the American gun industry, but to the Constitution itself:

The Mexican government ... aims to hold American firearms companies (Petitioners) liable for harms that criminal drug cartels have caused in Mexico.

And it is asking a federal court to impose regulations — like a requirement for firearms to include certain features that would prevent unauthorized users from firing them — that Congress has declined to adopt.

This is the posterchild for what the Protection Act was meant to prevent.

No Laws Broken

The House brief noted that the American firearms manufacturers have not broken any laws:

Petitioners themselves have violated no law. They sell lawful products to firearms wholesalers or retail dealers that have the federal government’s stamp of approval (through government-issued licenses)....

Nor is any purported legal violation by firearms companies the proximate cause of the damage that the cartels caused.

Cartels are, after all, criminal enterprises.

And Petitioners’ (lawful) conduct in the United States is far removed from harms inflicted by the cartels in Mexico. Their firearms pass through other hands and even cross the U.S. border before finding their way into criminal enterprises, which independently choose to use them in a manner that inflicts harm.

Mexico’s Agenda

The brief then accused the Mexican government into forcing the U.S. judicial system into violating the Separation of Powers inherent in the American government:

The Mexican government, at bottom, is trying to dragoon the judiciary into exercising legislative power.



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It is asking the lower court to impose regulations that Congress has consistently refrained from enacting.

Such an outcome would run afoul of the separation of powers and is exactly what Congress sought to prevent when it passed the Protection Act. Affirming the judgment below would therefore gut the Protection Act and threaten our constitutional order.

The Court should reverse the First Circuit's decision.

The high court will have the opportunity to do precisely that when it hears arguments in March 2015, with its opinion expected next June.

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