

No. 23-1141

IN THE
Supreme Court of the United States

SMITH & WESSON BRANDS, INC., ET AL.,
Petitioners,
v.
ESTADOS UNIDOS MEXICANOS,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

**BRIEF OF *AMICUS CURIAE* THE
SECOND AMENDMENT FOUNDATION
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE*¹

The Second Amendment Foundation is a non-profit membership organization founded in 1974 with more than 720,000 members and supporters in every State of the Union. SAF is dedicated to promoting a better understanding of the constitutional right to privately own and possess firearms. To that end, it carries out educational and legal action programs designed to inform the public about the gun control debate.

SAF has a strong interest in this case because many of its members will suffer the downstream consequences of the First Circuit's decision. Allowing foreign governments to hold American firearm manufacturers legally responsible for the criminal activity of others will directly affect the supply and designs of commonly owned firearms across the nation. SAF thus urges the Court to reverse the decision below.

¹ Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus curiae* or its counsel has made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In response to a surge of novel litigation by gun control advocates aimed at burying firearm manufacturers in litigation costs, Congress passed the Protection of Lawful Commerce in Arms Act to prevent the industry's collapse and protect the individual right to access and own firearms. The PLCAA's framework is straightforward. So long as a firearm manufacturer properly makes and transfers a firearm into commercial channels, it is generally not liable for the actions of a criminal who later misuses that firearm. Until recently, that framework has shielded firearm manufacturers and protected consumers from downstream effects.

Enter the Mexican government—and Mexican drug cartels. Mexico and its lawyers allege that American firearm manufacturers—by creating and marketing legal firearms in the United States—have aided and abetted firearms trafficking in Mexico and proximately caused the damage Mexican drug cartels inflict on Mexican citizens and the Mexican government. And according to the First Circuit, Mexico's suit seeking billions of dollars in damages can proceed because it fits within a narrow exception provided in the PLCAA. That “predicate exception” applies when a company “knowingly” violates a state or federal firearms law, and that violation “was a proximate cause of the harm for which relief is sought.” 15 U.S.C. §7903(5)(A)(iii). Even though Mexico fails to identify a single action taken by American firearm manufacturers that would enable criminals to procure their guns, the First Circuit expanded principles of proximate

cause and aiding-and-abetting liability beyond recognition to create liability where it would not otherwise exist.

Such a massive expansion of liability undermines Congress's choice to protect gun manufacturers and consumers alike. If allowed to stand, the decision below promises to spur a new wave of lawsuits against firearm manufacturers—bringing massive litigation costs along with it. Those costs will inevitably pass to consumers in the form of higher prices and restricted inventory. These increased costs will price many Americans out of the ability to lawfully own and possess firearms. Inevitably, many manufacturers will be unable to survive this new onslaught of lawfare, which will further shrink the pool of firearms that Americans may choose from to arm themselves for self-defense and other lawful purposes. Indeed, Americans who seek to exercise their Second Amendment rights will suffer most. Mexico's attempt to hold Petitioners legally responsible for the criminal activity of others is precisely the type of lawsuit that Congress designed the PLCAA to block.

With this suit, Mexico tries to control how American firearm manufacturers lawfully advertise, market, and distribute their products. It also seeks to dictate which design features American firearm manufacturers must make available to consumers in the United States. Among other things, Mexico seeks to force manufacturers to implement “personalized or authorized-user features,” like so-called “smart gun” technology that allegedly “inhibit[s] all but a gun's authorized user from discharging it.” Pet. App. 39a-40a. But this technology suffers from serious problems,

and American consumers have shown that they neither trust nor want such features.

The Court should reverse the decision below.

ARGUMENT

I. Allowing a foreign government to pierce the PLCAA’s protections poses significant risks to firearm manufacturers that flow to the American people.

In the 1980s, after failing to convince Congress or the American people to implement their favored policies restricting firearms, gun control advocates, interest groups, and state and local governments turned to the courts. Employing tort law, they sought to impose liability on firearm manufacturers for the criminal misuse of their products. The goal of this effort was clear: force firearm manufacturers to rack up exorbitant litigation costs that would be passed down to consumers or ultimately drive them out of business—limiting the supply of firearms to choose from and increasing the cost of gun ownership for law-abiding Americans.

In response to a flood of litigation, Congress passed the Protection of Lawful Commerce in Arms Act to protect the manufacture and sale of firearms in the United States. Now, nearly 20 years later, a foreign government is trying to accomplish what the earlier litigation did not. Mexico seeks to enlist federal courts to enact de facto gun control regulations across the country. But the PLCAA “bars exactly this type of action from being brought in [U.S.] courts.” Pet. App. 233a. The First Circuit’s decision holding otherwise will result in endless litigation that could bankrupt

the firearm industry and thus undermine Americans' ability to access and afford firearms and to exercise their Second Amendment rights. As one law professor recently explained, "a victory by Mexico would provide a template for a wave of future lawsuits that could change the way the gun industry operates." Timothy D. Lytton, *Mexico's Lawsuit Against US Gunmakers Could Drive Manufacturers into Bankruptcy*, *The Conversation* (Feb. 16, 2024), perma.cc/N4W9-799P. And those changes will harm consumers by increasing costs and limiting the types of available firearms.

A. A wave of novel litigation prompted Congress to pass the PLCAA to limit liability for manufacturers and to protect consumers' access to firearms.

The 1980s saw aggressive litigation seeking to hold gun manufacturers liable for the criminal misuse of firearms. *See* Allen Rostron, *Shooting Stories: The Creation of Narrative and Melodrama in Real and Fictional Litigation Against the Gun Industry*, 73 UMKC L Rev. 1047, 1049-50 (2005); *see also* Hillel Y. Levin & Timothy D. Lytton, *The Contours of Gun Industry Immunity: Separation of Powers, Federalism, and the Second Amendment*, 75 Fla. L. Rev. 833, 841 (2023); Richard C. Ausness, *Public Tort Litigation: Public Benefit or Public Nuisance*, 77 Temple L. Rev. 825, 840-53 (2004). Plaintiffs' lawyers brought dozens of suits that "aimed very broadly" and "often rel[ie]d] on theories that could essentially make every manufacturer liable for every harmful use of a firearm." Rostron, *supra*, at 1050.

One major purpose of this litigation was to impose de facto gun control restrictions across the nation. As the Wall Street Journal explained at the time, “[g]un-controllers have responded [to gun-related crimes] by avoiding legislatures and going to court, teaming with trial lawyers and big city mayors to file lawsuits blaming gun makers for murder.” *Gun Liability Control*, Wall St. J. (July 27, 2005), on.wsj.com/3wCxs94. Rather than engage in the legislative process, plaintiffs could simply “ask[] judges to impose the sort of ‘remedies’ that Congress ha[d] refused to impose,” and that consumers had rejected, including regulating certain firearm designs and imposing “tougher restrictions on gun sales.” *Id.*; see also 151 Cong. Rec. H590 (daily ed. Feb. 15, 2005) (statement from Sen. Craig) (“[These lawsuits] are part of a politically inspired initiative trying to force social goals through an end-run around the Congress and state legislatures.”).

A federal agency also joined in these efforts to circumvent the legislative process. In 1999, the Secretary of the Department of Housing and Urban Development “announced that he would file a class action on behalf of local housing authorities unless gun manufacturers agreed to greater regulation.” Ausness, *supra*, at 853. Faced with the threat of bank-breaking litigation, firearm manufacturers agreed to accept several new regulations, including design alterations. *Id.*; see U.S. Dep’t of Hous. & Urban Dev., *Agreement Between Smith & Wesson and the Departments of the Treasury and Housing and Urban Development, Local Governments and States* (archived Dec. 13, 2009), perma.cc/K2QB-KWMV.

On top of imposing new firearm restrictions, these lawsuits also served to “drain profit” from manufacturers. *Gun Liability Control, supra*. Plaintiffs sought hundreds of millions of dollars in damages against manufacturers. *See, e.g.*, Tribune News Servs., *Detroit, Its County Suing Gun Industry*, Chi. Tribune (Apr. 27, 1999), perma.cc/49A7-8WTV (seeking \$800 million in damages); *City Takes on Gun Industry*, Chi. Tribune (Nov. 13, 1998), perma.cc/M9Q8-9D7D (seeking \$433 million in damages). And these suits “could drag on for years,” bankrupting firearm manufacturers in the process. *Gun Liability Control, supra*.

For the gun-control lobby and their lawyers, bankrupting firearm manufacturers was precisely “the point.” *Id.* “Bankruptcy is a very useful negotiating tool,” one lawyer bragged, “and predictably the more suits that are filed, the more these gun companies are going to file for bankruptcy.” Fox Butterfield, *Lawsuits Lead Gun Maker To File for Bankruptcy*, N.Y. Times (June 24, 1999), nyti.ms/3wshZZo. Other lawyers hoped that “the costs alone of defending these suits” would “eat up the gun companies.” *Id.* And one of the most prominent lawyers bringing these cases “boasted that he could force substantial increases in the gun industry’s insurance costs and the price of handguns, and perhaps even drive manufacturers out of the handgun business, even if he never won a single case.” Rostron, *supra*, at 1050; *see* Elizabeth Peer, et al., *Taking Aim at Handguns*, Newsweek, at 42 (Aug. 2, 1982).

For a time, this litigation accomplished its goals. Although firearm manufacturers largely prevailed in the cases that did not settle, the lawsuits cost the gun

industry “more than \$200 million.” See *Gun Liability Control*, *supra*; see also Roxana Tiron, *Frist: Lawsuits Threaten Gun Supply*, The Hill (July 28, 2005), bit.ly/3UZYVe9 (estimating the lawsuits cost the gun industry “at least \$225 million”); see also Fox Butterfield, *Sniper Victims in Settlement with Gun Maker and Dealer*, N.Y. Times (Sept. 10, 2004), nyti.ms/3QMMos2 (detailing a \$2.5 million settlement against Bushmaster). As a result, several gun companies filed for bankruptcy, including Charco 2000 and Davis Industries. See Tiron, *supra*; Fox Butterfield, *Lawsuits Lead Gun Maker To File for Bankruptcy*, *supra*. And other companies raised “legitimate concerns about their continued vulnerability to litigation,” especially considering the success of other similar mass litigation against the tobacco industry. See Linda S. Mullenix, *Outgunned No More?: Reviving a Firearms Industry Mass Tort Litigation*, 49 Sw. L. Rev. 390, 399 (2021).

These concerns plus the financial strain limited the supply and kinds of firearms available to consumers. For example, in 1999, mounting litigation costs forced Colt to “abandon[] much of its 144-year-old retail gun business in an effort to limit its liability in lawsuits.” Mike Allen, *Colt’s to Curtail Sale of Handguns*, N.Y. Times (Oct. 11, 1999), nyti.ms/3wqkhbv. Colt announced that it would have to limit its supply of firearms and “effectively stop selling handguns to civilians.” *Id.* A senior executive reported that Colt would “cancel[] seven product lines” in favor of a “pared-down product line.” *Id.* Colt explained that it “could no longer get loans to finance manufacturing” or pay suppliers because “the lawsuits ‘could be worth

zero, or a trillion dollars.” *Id.* Thus rather than invest in making better products for consumers, the company was forced to “pour[] money into legal fees that could otherwise have been going to research and development.” *Id.*

Concerned that the ongoing litigation against manufacturers would ultimately harm consumers, Congress enacted the PLCAA. *See* 15 U.S.C. §7901(b). The PLCAA aimed “to put a stop to the unmeritorious litigation that threaten[ed] to bankrupt” gun manufacturers and to prevent downstream harm to consumers. *See* 151 Cong. Rec. S9062 (daily ed. July 27, 2005) (statement of Sen. Coburn). Indeed, Congress expressly designed the law “[t]o preserve a citizen’s access to a supply of firearms and ammunition.” 15 U.S.C. §7901(b)(2).

For many Members of Congress, the connection between this aggressive litigation and risks to American gun owners was obvious. “[B]y restricting the gun industry’s ability to make and sell guns and ammunition,” Senator Coburn explained on the floor, “the lawsuits threaten the ability of Americans to exercise their second amendment right to bear arms.” *See* 151 Cong. Rec. S9063 (daily ed. July 27, 2005); *see* 151 Cong. Rec. H8993 (daily ed. Oct. 20, 2005) (statement of Sen. Sensenbrenner) (“[Abusive] lawsuits threaten to rip tort law from its moorings in personal responsibility and may force firearms manufacturers into bankruptcy.”). In the other chamber, Representative Stearns explained that the PLCAA would “stop[] baseless lawsuits against gun manufacturers or dealers,

based upon the criminal or unlawful third-party misuse of firearms.” 151 Cong. Rec. H590 (daily ed. Feb. 15, 2005).

The House Report also identified several lawsuits that spurred the Act’s enactment. *See* H.R. Rep. No. 109-124, at 6, n. 1 (2005). These suits centered around firearm manufacturers’ advertising, design, and sales policies. In *First Commercial Trust Co.*, for example, the guardian of a shooting victim sued Colt after a crack-cocaine dealer engaged in a shoot-out with a rival and shot an innocent bystander. The plaintiff alleged that Colt’s “merchandising and promot[ion] [of] cheap handguns,” its failure to establish a “safe-sales policy,” and its “fail[ure] to properly warn retailers regarding probable misusers of handguns” constituted negligence. H.R. Rep. No. 109-124, at 6 (2005) (quoting *First Com. Tr. Co. v. Colt’s Mfg. Co.*, 77 F.3d 1081, 1083 (8th Cir. 1996)) (internal quotation marks omitted). In another case, the City of Philadelphia sued gun manufacturers, alleging that their marketing and methods of distributing guns “were negligent and a public nuisance.” *City of Philadelphia v. Beretta U.S.A. Corp.*, 126 F. Supp. 2d 882, 902 (E.D. Pa. 2000); H.R. Rep. No. 109-124, at 8 (2005). The City claimed that Beretta’s marketing was “designed to appeal to criminals” and that its distribution policies were “responsible for placing guns where they do damage to residents of the City.” *Id.* at 888. While both suits were dismissed, Congress aimed to foreclose lawsuits based on these (and other similar) theories of liability.

Such lawsuits would limit the supply of firearms and desirable firearm features for law abiding Americans. As one Senator explained, these lawsuits “put[]

at risk access” to “legal product[s] used for hundreds of years across this Nation for lawful purposes, such as recreation and self-defense.” 151 Cong. Rec. S9061 (daily ed. July 27, 2005) (statement of Sen. Craig); 151 Cong. Rec. H9007 (daily ed. Oct. 20, 2005) (statement of Rep. Graves) (noting how the lawsuits “seriously threaten the supply of guns and ammunition available for hunting, self-defense, collecting, competitive or recreational shooting, and other lawful activities”); *see also id.* at H9008 (statement of Rep. Otter). Yet another explained that these lawsuits “are part of a stealth effort to limit gun ownership.” 151 Cong. Rec. S9062 (daily ed. July 27, 2005) (statement of Sen. Coburn); *see id.* (“[M]ake no mistake, the lawsuits that will be prohibited under this legislation are intended to drive the gun industry out of business.”) After all, “[w]ith no gun industry, there is no second amendment right because there is no supply.” *Id.* At the very least, this kind of litigation would significantly raise the cost of gun ownership. *See also* 151 Cong. Rec. S9089 (daily ed. July 27, 2005) (statement of Sen. Craig) (“Hold onto your wallets, America, because those businesses [in the gun industry] will have to pass those costs directly on to the consumer if they plan to stay in business.”).

B. The decision below will increase costs and limit the supply of lawful firearms for American consumers.

For nearly two decades, the PLCAA has protected millions of peaceable, law-abiding gun owners from the downstream effects of this very type of litigation. Since the PLCAA’s passage, mass litigation against the firearm industry has declined, and most suits

have been dismissed. *See* Mullenix, *supra*, at 434; Vivian S. Chu, Cong. Rsch. Serv., R42871, *The Protection of Lawful Commerce in Arms Act: An Overview of Limiting Tort Liability of Gun Manufacturers* 8 (Dec. 20, 2012). But the decision below jeopardizes this protection of lawful commerce and constitutionally protected products by threatening to (once again) impose massive costs on firearm manufacturers that will be passed on to consumers. Mexico asks for billions of dollars in damages. “Everyone knows how detrimental runaway verdicts can be and one major verdict can bankrupt an industry.” *See* 151 Cong. Rec. S8908-10 (daily ed. July 26, 2005) (statement of Sen. Sessions). If Mexico succeeds here, it will force firearm manufacturers to limit the choices of firearms available to consumers through reduced selection or higher prices.

The economics are simple. Rising litigation costs will force manufacturers to increase their prices to survive with the added expenses. *See* Wayne Winegarden & Kerry Jackson, *Americans Pay \$1,300 ‘Tort Tax,’ Fixing Legal System Would Grow Economy by 2 Percent* (July 12, 2023), perma.cc/Y2G6-LTQR. Consumers will bear the brunt of this burden as they must pay higher prices to exercise a constitutionally protected right. “Even if the case were to settle for much less, a victory by Mexico would provide a template for a wave of future lawsuits that could change the way the gun industry operates.” Lytton, *Mexico’s Lawsuit Against US Gunmakers Could Drive Manufacturers into Bankruptcy*, *supra*. The mere threat of liability for the criminal misuse of firearms can force manufacturers to limit the types of firearms they offer. That,

in turn, harms consumers and prevents them from acquiring their preferred class of firearms for any number of lawful uses. In the end, American consumers who seek to exercise their Second Amendment rights will suffer most.

In recent years, “an unprecedented number of Americans [have] cho[sen] to exercise their fundamental right to keep and bear arms.” Nat’l Shooting Sports Found., *Firearm and Ammunition Industry Economic Impact Report* (2024), perma.cc/PMT2-JYEB. Consumer demand for firearms increased during the COVID-19 pandemic. *See* Daniel De Visé, *Americans Bought Almost 60 Million Guns During the Pandemic*, *The Hill* (Apr. 21, 2023), perma.cc/WG25-XUB9. And around 4.3 million consumers became first-time gun owners in 2023. *See* Nat’l Shooting Sports Found., *2024 Report*, *supra*. Today, “[a]bout four-in-ten U.S. adults say they live in a household with a gun.” Katherine Schaeffer, *Key Facts About Americans and Guns*, *Pew Rsch. Ctr.* (Sept. 13, 2023), perma.cc/E4XN-AAX8. And nearly half of non-gun owners “could imagine themselves as gun owners in the future.” *Id.*

The decision below risks curbing current and would-be gun owners’ access to firearms. Expanding the predicate exception, as the decision below does, would create an end-run around PLCAA and re-open the doors to costly litigation that Congress closed.

In short, the immense costs associated with this type of litigation will increase the price of gun ownership for peaceable, law-abiding citizens who seek to exercise their Second Amendment rights. Mexico’s attempt to hold Petitioners legally responsible for the

criminal activity of others is precisely the type of lawsuit that Congress designed the PLCAA to block. The PLCAA protects firearm manufacturers (and thus consumers) for this very reason, and it “bars exactly this type of action from being brought in [U.S.] courts.” Pet. App. 233a.

II. Mexico seeks to force firearm manufacturers to change their product designs, advertising, and distribution models in ways consumers do not want and legislature have refused to require.

Congress has refused to enact onerous restrictions on firearms that would limit consumer access or require firearms to have certain design features. See Adam Carlson, *The gun legislation Congress has passed and rejected amid mass shootings: Timeline*, ABC News (May 7, 2023), perma.cc/Y9YR-SJEP. Yet Mexico attempts to use a single lawsuit to dictate which features manufacturers must provide, how they may advertise, and how they supply their firearms to consumers.

A. Mexico attempts to force firearm manufacturers to include design features consumers and their representatives have rejected.

To start, Mexico seeks to force manufacturers to implement “personalized or authorized-user features, such as internal locks or ‘smart gun’ technology,” that allegedly “inhibit all but a gun’s authorized user from discharging it.” Pet. App. 39a-40a. But there are seri-

ous problems with this developing technology and consumers have shown that they neither trust nor want such features.

Personalized firearms purport to “identify” an authorized user and refuse to operate for anyone else. “By only allowing the authorized user to fire the firearm,” so-called “smart guns” “have the potential to prevent ... accidental gun deaths, without preventing an authorized user from accessing a firearm in case of emergency.” Andres Paciuc, *Smart Guns: An Effective Solution or a Waste of Resources?*, Duke Ctr. For Firearms Law (June 5, 2020), perma.cc/EFU3-NPXX. Mexico claims that these features “have been technologically feasible for many years” and are “less likely to be attractive targets for theft and misuse by criminals because they cannot be fired by anyone except the authorized user.” Pet. App. 39a-40a.

But the promise of personalized firearm technology “remains elusive.” Jason Koebler, *Why Both the Pro- and Anti-Gun Lobby Are Against ‘Smart Guns,’* U.S. News & World Rep. (Feb. 1, 2013), perma.cc/5DCC-AGBC. While companies have been working on this technology since the 1990s, see Mark Greene, *A Review of Gun Safety Technologies*, U.S. Dep’t, Nat’l Inst. of Justice 13 (2013), there are still many “technical impediments,” Paciuc, *supra*. Various methods to identify authorized users have been studied and attempted. Yet these features are simply “not ready for prime time.” Larry Keane, *Don’t Believe the Hype. Smart Gun Tech Still Not Ready for Primetime*, Nat’l Shooting Sports Found. (Mar. 17, 2022), perma.cc/Y2QG-RFTG.

The two primary ways “smart guns” are equipped with authorized-user technology are by 1) fingerprint recognition or 2) embedded field communication (RFID) connected to a smartphone or Bluetooth device. Both have drawbacks. First, fingerprint recognition technology in personalized firearms is notoriously unreliable. “Biometrical based trigger locks, for example, may malfunction if the user’s hand is sweaty, dirty, or wet.” Paciuć, *supra*. And it relies on precise fingerprint placement which can pose a problem for users facing emergency situations.

Smartphone fingerprint scanners—which employ similar technology—suffer from some of the same issues. Users may need to make multiple attempts to unlock their phone, and fingerprint scanners produce false negatives around 5% of the time. See Yirong Yu, *A Review of Fingerprint Sensors: Mechanism, Characteristics, and Applications*, 14 *Micromachines* 1253, 1255 (2023).

But those issues can endanger the user’s safety when applied to firearms. As firearm owners know, “guns must work as designed each and every time. There’s no room for failure.” Keane, *supra*. “If the facial or fingerprint recognition on your iPhone doesn’t recognize you, you’re inconvenienced. If your firearm doesn’t unlock in a time of need, you could be dead.” *Id.* Even the fastest fingerprint scanners create a delay before giving users access. Such delays are unacceptable in the face of an emergency or when a user acts in self-defense. Indeed, an encounter with an armed attacker can end in as little as a quarter of a second. See Chris Butler, *Firearms Training for Real-*

World Assaults, Force Science (Feb. 24, 2022), bit.ly/3QOeNhn.

RFID technology also fails in personalized firearms. RFID trigger locks are subject to interference, copying, and hijacking by unsophisticated users. Thieves without specialized knowledge have used simple tools to steal brand-new cars in seconds using this technology. See Ben Slater, *How Easy Is It to Steal Your Car?, Which?* (Jan. 27, 2019), bit.ly/3wHFwpd. And this technology is just as unreliable when installed on a self-defense tool.

The vulnerability of this technology was recently put on display. One of the few firearms previously sold in the United States that used RFID personalization was the Armatix iP1—a smart gun that promised to “usher in a new era of gun safety.” See Andy Greenberg, *Anybody Can Fire This ‘Locked’ Smart Gun With \$15 Worth of Magnets*, *Wired* (July 24, 2017), bit.ly/3wHFzkT. Only an individual wearing an RFID-paired watch could purportedly fire it. *Id.* But one hacker easily bested this technology. With \$15 worth of magnets, he “showed that he c[ould] extend the range of the watch's radio signal, allowing anyone to fire the gun when it's more than ten feet away,” “jam the gun's radio signals to prevent its owner from firing it—even when the watch is inches away and connected,” and “mechanically disable the gun's locking mechanism by placing some cheap magnets alongside its barrel, firing the gun at will even when the watch is completely absent.” *Id.* That the gun was so easy to hack show just how unreliable this technology is.

Nor do American consumers want these features. Fifty-four percent of surveyed gun owners reported they were not interested in personalized guns equipped with authorized-user technology. Keane, *supra*. And 70% reported they had “concerns about reliability.” *Id.* “Adding in electronics to guns adds points of failure and could have horrific consequences for those who rely on them for self-defense.” *Id.* Responsible firearms consumers simply do not trust their own or their loved ones’ safety to this technology. Yet the decision below could force the adoption of this unreliable and unsafe technology.

B. Mexico demands firearm manufacturers alter their longstanding marketing practices.

Mexico next finds fault with firearm manufacturers’ longstanding marketing practices. It claims that Petitioners “help boost unlawful firearms sales” by truthfully advertising their products. Pet. Br. 42. For example, Mexico claims that Petitioners entice criminals to buy their firearms by showing “U.S. military and law enforcement” using their firearms and by stating that their firearms can “quickly dispatch” bullets. Pet. App. 105a-106a, 257a. Because criminals may be attracted to a firearm’s “military-like applications,” Mexico claims, Petitioners must stop advertising in this way. Pet. App. 117a. But as Chief Judge Saylor explained, Petitioners’ firearms “do exactly what they are advertised to do.” Pet. App. 257a. Indeed, Mexico’s complaint comes down to the fact that “the firearm functions exactly as it is advertised to, and in doing so it has caused harm in Mexico.” Pet. App. 257a. That is not false advertising.

Nor is it “inflammatory” or “reckless” to advertise military and law enforcement personnel using firearms. The advertisements “show how these products work in the real world—including how some are used by police.” Pet. Br. 43; Pet. App. 255a-59a. Petitioner Glock produces the most popular police service pistol in the nation. *See* Police Exec. Rsch. F., Police Department Service Weapon Survey (2013); Glock, Inc., *Glock 22*, perma.cc/9BMM-HTDR. And Petitioner Colt has recently secured multiple contracts to supply the U.S. Army with its rifles. U.S. Dep’t of Defense, *Contracts for May 17, 2024* (May 17, 2024); U.S. Dep’t of Defense, *Contracts for May 1, 2024* (May 1, 2024). Consumers know the military and police use firearms at home and abroad. Associating military and police with firearms does not, as Mexico contends, spur potential buyers to carryout “military-style combat ‘missions.’” Pet. App. 111a. Instead, as Mexico itself concedes, Petitioners use these associations “to enhance the credibility” of their firearms in “the civilian market”—a market that includes countless peaceful, law-abiding citizens. Pet. App. 106a.

Mexico also claims Petitioners use “militaristic terms” (like “tactical”) or Spanish names (like “El Jefe” and “El Grito”) to pique the interest of criminals. Pet. App. 75a, 109a, 111a, 114a, 117a 121a, 192a. But Petitioners may use these terms to market their firearms to law-abiding citizens who are interested in buying firearms—including veterans and Hispanic Americans. Phrases “tactical” and “battle proven” may reach veterans, who are likely firearm buyers. Pet. App. 111a, 117a. Indeed, more than half of all veterans already own firearms. Ian Fischer, et al., *Firearm*

Ownership Among a Nationally Representative Sample of U.S. Veterans, 65 Am. J. Preventive Medicine 1129, 1131 (2023). Likewise, Petitioners may give their firearms Spanish names to advertise to Hispanic Americans. After all, twenty percent of Hispanic Americans already own guns, and forty percent of Hispanic non-gun owners saying they “could see themselves owning a gun in the future.” Schaeffer, *supra*. Mexico simply strains credulity when it claims that using these words must be targeted at criminals and cartels.

At bottom, state and federal laws prohibit only false or misleading advertising—not truthful marketing of a product’s features. Pet. App. 191a-94a. Legislatures try to protect consumers from *lies* in marketing, not *truths*. Thus Mexico cannot employ the federal courts to prevent Petitioners from truthfully advertising their firearms to law-abiding consumers.

C. Mexico insists firearm manufacturers upend their distribution models.

Finally, Mexico seeks to overhaul Petitioners’ distribution systems via this lawsuit. Gun manufacturers generally use a three-tier system to get their products in the hands of consumers: they sell firearms to distributors, who sell to retailers, who sell to members of the public. Pet. App. 140a. But Mexico demands Petitioners abandon this three-tier distribution system. It proposes firearm manufacturers sell firearms “through their own dealerships” or “maintain in-house distribution departments that sell” to retailers. Pet. App. 140a. In the alternative, Mexico argues this Court should force firearm manufacturers to impose

onerous practices on distributors. Pet. App. 140a-41a. Congress and consumers alike have rejected these reforms.

Among other things, Mexico demands Petitioners stop doing business with distributors who sell to dealers vending firearms at gun shows or that operate virtual storefronts. Pet. App. 88a, 91a-92a. It insists that Petitioners require distributors to “limit[] multiple sales” and “repeat sales,” as well as ban lawful bulk sales to individual customers. Pet. App. 71a, 67a-87a, 133a. And it wants firearm manufacturers to require dealers to undergo “annual training”—expecting manufacturers to “visit[] dealers frequently.” Pet. App. 132a-33a, 136a.

Congress has rebuffed similar proposed reforms. Last year, a bill that would have cracked down on non-storefront firearm sales never left committee. *See* H.R. 1478, 118th Cong. (2023). Similarly, a bill that would have heightened requirements for sales at gun shows also failed to leave the House. *See* H.R. 3122, 118th Cong. (2023). Congress has not seen fit to eliminate gun shows or virtual storefronts, and Mexico cannot do so unilaterally. In the past year, Congress also rejected initiatives to track bulk ammunition or firearm purchases. *See* H.R. 7834, 118th Cong. (2023); H.R. 584, 118th Cong. (2023). And Congress recently rejected dealer trainings and inspections. *See* H.R. 7834, 118th Cong. (2023). Mexico’s proposed reforms could not pass Congress. They may not be enacted through the federal courts in the alternative.

Consumers have also rejected similar reforms. In 2000, Petitioner Smith & Wesson adopted some of

Mexico's proposed reforms, including placing "limits on the sales and distribution of firearms," that lead to a massive boycott. Christina Austin, *How Gun Maker Smith & Wesson Almost Went Out of Business When It Accepted Gun Control*, *Bus. Insider* (Jan. 21, 2013). Such reforms ultimately limit the availability and raise the cost of firearms and for law-abiding consumers. For example, two-thirds of gun owners own more than one gun. *See* Kim Parker, et al., *The Demographics of Gun Ownership*, Pew Rsch. Ctr. (June 22, 2017). Since firearms serve multiple purposes (such as sporting and self-defense), some firearms owners wish to buy more than one at a time. And millions of law-abiding Americans also purchase firearms at gun shows each year. *See* Garen J. Wintemute, et al., *Gun Shows and Gun Violence: Fatally Flawed Study Yields Misleading Results*, *Am. J. Pub. Health* (Oct. 2010). Mexico cannot employ the courts to upend these popular, lawful practices.

CONCLUSION

For these reasons, the Court should reverse the decision below.

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