
IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.: 81034

District Court Case No.: 2:19-CV-01189-APG-EJY

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JAMES PARSONS, Individually and as Special Administrator of the Estate of
CAROLYN LEE PARSON; ANN-MARIE PARSONS,

Appellants,

v.

COLT'S MANUFACTURING COMPANY
LLC, COLT'S DEFENSE LLC; DANIEL DEFENSE, INC.; PATRIOT
ORDNANCE FACTORY, INC.; FN AMERICA, LLC; NOVESKE
RIFLEWORKS LLC; CHRISTENSEN ARMS; LEWIS MACHINE & TOOL
COMPANY; LWRC INTERNATIONAL LLC; DISCOUNT FIREARMS AND
AMMO LLC; DF&A HOLDINGS LLC; MAVERICK INVESTMENTS LP;
SPORTSMAN'S WAREHOUSE, INC.; GUNS AND GUITARS, INC.

Respondents.

Certified Questions from the United States District Court for the District of Nevada

APPELLANTS' PETITION FOR REHEARING

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INTRODUCTION

Nevada forbids, in the strongest terms possible, any person to “[m]anufacture or cause to be manufactured, or import into the State, or keep, offer or expose for sale, or give, lend, possess or use a machine gun.”¹

It is inconceivable that the Nevada legislature intended to immunize the gun industry for intentionally breaking that law by selling machine guns. Yet that is exactly what this Court has held.

It is equally inconceivable that the legislature would immunize defendants who knowingly violate that law by manufacturing or selling machine guns, but not those who negligently convey machine guns to the public. Yet that is exactly what this Court has held.

This Court has stated these two irreconcilable readings of NRS 41.131:

(1) a gun store “clerk’s negligence in leaving [a] loaded firearm out on [a] display case [would] give[] rise to [a] cause of action for direct or vicarious liability”;² but

¹ NRS 202.350(1)(b).

² *Parsons v. Colts Mfg. Co. LLC*, ___ P.3d ___, 2021 WL 5751828, at *5 (2021).

(2) that same clerk's knowing "distribution of illegal machineguns" would be "immaterial" under NRS 41.131 and would not "give[] rise to [a] cause of action for direct or vicarious liability."³

Statutes must not be interpreted to lead to absurd results.⁴ Yet, in holding that the legislature intended to allow suits based on the negligence of firearms manufacturers and distributors but intended to immunize manufacturers and sellers when they knowingly break the law, this Court has given the most absurd reading possible to NRS 41.131. That reading raises the question: why would the Nevada legislature do that? The Court must grant rehearing of such an anomalous and unsupported holding.

The federal district court, confronting that unreasonable interpretation of NRS 41.131 offered by the defendants, expressed that it was "particularly concerned by the defendants' concession in oral argument that under their interpretation § 41.131 would immunize even a defendant that manufactured and sold Tommy guns or M-16 rifles to civilians."⁵

³ *Id.* at 4-5.

⁴ *See, e.g., Bank of Nevada v. Petersen*, 132 Nev. 644, 654 (2016).

⁵ *Parsons v. Colt's Mfg. Co., LLC*, 2020 WL 1821306, at *7 (D. Nev. Apr. 10, 2020), *modified on reconsideration*, 2020 WL 2309259 (D. Nev. May 8, 2020), *and reconsideration denied*, 2020 WL 4059685 (D. Nev. July 20, 2020).

Despite the defendants' blatantly illegal conduct, this Court has held that they, and all other manufacturers and sellers who violate Nevada's firearm laws, are free to continue to produce and sell illegal weapons without any accountability to victims or their families.

For all these reasons, the Court should grant this Petition for Rehearing.

I. BACKGROUND

On October 1, 2017, twelve AR-15s spitting automatic fire were used to rain terror, eviscerate, and indiscriminately slaughter residents and guests of Nevada attending a concert. In less than 10 minutes 1,049 rounds projected from the barrels of 12 military weapons resulted in the death of 58 human beings and grievously injured hundreds more. In a nation where mass shootings are routine, the "Las Vegas Shooting" stood out as the deadliest mass shooting in the history of America. One of the human beings killed was Carrie Parsons, a recently engaged young woman from Washington, who had met up with old friends in Las Vegas for the weekend. James and Anne-Marie Parsons are Carrie Parsons' parents,⁶

⁶ Carrie's parents and her estate are all plaintiffs in this case, collectively referred to as "the Parsons" in this petition.

They filed suit for the wrongful death of their daughter, against the gun manufacturers and gun sellers⁷ (“the Gun Companies”) who manufactured and sold the AR-15s used in the shooting. The Parsons alleged that the Gun Companies’ conduct violated both federal and Nevada laws that make it illegal to manufacture and sell machine guns.⁸

The district court held: 1) that the Parsons stated sufficient claims that the AR-15s used in the shooting were machine guns; 2) that the Parsons sufficiently set forth allegations that the Gun Companies knowingly violated the National Firearms Act, 18 U.S.C. § 922(b)(4) and Nevada Revised Statutes § 202.350(1)(b), which prohibit gun manufacturers and distributors from manufacturing, selling or delivering machine guns; 3) that the defendants’ knowing violations of the law

⁷ The manufacturers are Colt’s Manufacturing Co., LLC, Colt Defense, LLC, Daniel Defense, Inc., Patriot Ordnance Factory, FN America, FN Herstal, Herstal Group, Noveske Rifleworks, LLC, Christensen Arms, Lewis Machine & Tool Co., and LWRC International LLC. The sellers are Discount Firearms and Ammo LLC, DF&A Holdings LLC, Maverick Investments LP, Sportsman Warehouse, and Guns & Guitars Inc.

⁸ Federal law has sought to prevent the sale of machine guns since 1934, casting them in the same category as “bombs, grenades, mines, rockets, and large caliber weapons including mortars, anti-tank guns, and bazookas.” *United States v. Freed*, 401 U.S. 601, 616 (1971) (Brennan, J., concurring); *see* 18 U.S.C. § 922. Since 2003, it has been illegal under Nevada law to manufacture and sell machine guns to the public. *See* NRS 202.350. Laws seeking to prohibit the sale of machine guns are among the strongest, oldest, and most bipartisan firearms laws in this country for one reason: machine guns are uniquely capable of wreaking murderous violence on the public and law enforcement.

proximately caused Carrie Parsons’ death; and 4) that the defendants were not entitled to immunity from the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-03, because Congress chose not to immunize manufacturers and sellers who “knowingly violate state or federal law applicable to the sale or marketing of firearms.”⁹

Although this Court was required to “accept[] the facts stated by the forwarding court in its certification order”¹⁰ – and the district court was crystal clear that the Parsons’ claim was premised not on the inherent danger of machine guns but on the Gun Companies’ illegal conduct in knowingly violating federal and Nevada law by manufacturing and selling machine guns¹¹ – this Court held that NRS 41.131 prohibits the Parsons’ claim because, in its view, the case was brought “merely because the firearm or ammunition was capable of causing serious injury, damage or death.”¹²

This Petition for Rehearing follows that decision.

⁹ On December 14, the Fifth Circuit released an opinion affirming the Bureau of Alcohol, Tobacco, Firearms and Explosives’ promulgation of a rule stating that bump stocks are machine guns for purposes of the federal statutory bar on the possession or sale of machine guns. *See Cargill v. Garland*, ___ F.4th ___, 2021 WL 5905604 (5th Cir. Dec. 14, 2021).

¹⁰ *Parsons*, 2021 WL 5751828, at *2.

¹¹ *See Id.*, at *4.

¹² *Id.*, at *5.

II. THE COURT’S DECISION GIVES THE GUN INDUSTRY A FREE PASS FOR KNOWINGLY ILLEGAL CONDUCT WHILE PRESERVING LIABILITY FOR NEGLIGENT CONDUCT. THIS IS AN ABSURD RESULT.

The law “should not be read to produce absurd or unreasonable results.”¹³ This is the “golden rule” of statutory interpretation.¹⁴ Laws are written for real people in the real world. They must be interpreted “in the context of what actually happens when humans fulfill [the law’s] purpose.”¹⁵ The Court has strayed dangerously from this fundamental precept. It has read NRS 41.131 to produce not just an absurd result, but the *inconceivable* result that Nevada law gives the gun industry a free pass to break firearms laws knowingly and intentionally but preserves the possibility that the industry could be liable for merely negligent acts.¹⁶

Under the Court’s ruling, the unintentional conveyance of a machine gun to a customer – by, to use the Court’s example, a store clerk leaving a machine gun

¹³ *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 123 Nev. 468, 477 (2007); *see, e.g., Bank of Nevada v. Petersen*, 132 Nev. 644, 654 (2016); *State v. Tatalovich*, 129 Nev. 588, 590 (2013).

¹⁴ 2A Shambie Singer & Norman J Singer, *Sutherland Statutes and Statutory Construction* § 45:12 (7th ed. 2010).

¹⁵ *Id.*

¹⁶ The Parsons raised the issues discussed in this section on pages 8, 10, and 14 of their Brief and on page 1 of their Reply Brief.

on the store counter – “gives rise to [a] cause of action for direct or vicarious liability,” notwithstanding NRS 41.131, because that cause of action would not arise “‘merely because’ the gun ‘was capable of causing serious injury, damage or death.’”¹⁷

But at the same time the Court has held that if that clerk knowingly illegally delivers a machine gun to a customer, any cause of action brought against the clerk or store would be barred by NRS 41.131 because the cause of action would arise “‘merely because’ the gun ‘was capable of causing serious injury, damage or death.’”¹⁸ The Parsons respectfully submit that this is an artificial distinction that the legislature could not have intended to draw.

In both instances a machine gun is being conveyed to a customer. The only difference is the degree of the wrongfulness of the conduct. In one the conveyance is merely negligent, while in the other it is knowingly illegal. The Court has held, in other words, that “NRS 41.131(1) does not categorically immunize firearm manufacturers and distributors from liability for independent acts of negligence,”¹⁹ but does “categorically immunize” firearm manufacturers and distributors from liability for independent acts of knowingly illegal conduct.

¹⁷ *Parsons*, 2021 WL 5751828, at *5.

¹⁸ *Id.*

¹⁹ *Id.*

A moment's reflection on the hypothetical offered by the Court in its decision shows the absurdity of that interpretation. The Court offered this hypothetical:

[C]onsider the sporting goods store (a gun distributor) whose clerk leaves a loaded firearm out on the counter that a patron picks up and pulls the trigger on, thinking the chamber was empty, injuring the person next to her. In that case, the cause of action does not arise “merely because” the gun “was capable of causing serious injury, damage or death, was discharged and proximately caused serious injury, damage or death.” NRS 41.131(1). *The clerk's negligence in leaving the loaded firearm out on the display case gives rise to the cause of action for direct or vicarious liability, not the firearm's inherent capacity to shoot and, when shot, to injure or kill.*²⁰

The Parsons agree that such negligence is not immunized by the statute.

Nevertheless, this hypothetical demonstrates just how widely the Court's decision has missed the mark. Both the Parsons and the district court have been crystal clear that the Parsons' claim is premised on the Gun Companies' independent wrongful conduct of manufacturing and selling AR-15s designed and advertised to be equipped with bump stocks, thereby knowingly breaking Nevada and federal machine gun laws,²¹ not merely “the firearm's inherent capacity to shoot and, when

²⁰ *Id.* (emphasis added).

²¹ *See Parsons*, 2020 WL 1821306, at *4 (“The Parsons' wrongful death claim is premised on the defendants' violations of 18 U.S.C. § 922(b)(4) and NRS § 202.350(1)(b), which prohibit firearms manufacturers and dealers from selling ‘machinegun[s].’”); Appellants' Br. at 11-12.

shot, to injure or kill.” The Court’s fundamental misinterpretation of the Parsons’ claim mandates on its own that the Court grant this Petition for Rehearing.

Even setting aside that error, the Court’s hypothetical demonstrates the absurd results of the Court’s decision. Consider a similar hypothetical – one that essentially mirrors the facts of the Parsons’ case – involving the same sporting goods store and the same clerk. In this scenario, however, consider that the store and the clerk offer machine guns for sale, which they know to be a violation of Nevada and federal law. They don’t care. In blatant disregard of the law, they have decided to sell machine guns. A customer enters the store and says, “I’d like to buy that machine gun.” The clerk sells the machine gun to the customer, knowing the sale to be illegal, just as he has done countless times before and as he intends to do indefinitely. Not long after, the customer uses the machine gun to commit a heinous mass shooting, killing dozens and injuring hundreds, inflicting slaughter at a scale that only automatic fire is capable of. The parents of a young woman killed by a bullet fired from this machine gun sue the store that sold it in knowing violation of the law.

The trial court would be bound by this Court’s decision to dismiss the case. The trial court would have to explain to the young woman’s parents that the Nevada legislature intended to immunize the store from any accountability to the families of mass shooting victims when the store knowingly breaks the law. If the

store's conduct had been merely negligent, the victim's parents would have a case. But because the store's conduct was *far worse*, because it sold the machine gun in knowing violation of the law instead of merely negligently leaving it on the counter, the legislature has decided the store should be immune.

That is incomprehensible.

Yet that is exactly what the Court has held.

Everything about this last scenario is worse. Far more culpable is the store's conduct; immeasurably more devastating is the damage inflicted; and orders of magnitude greater is the need for the law's remedy, however incomplete, for those injured. But the Court has inexplicably and against all legal principles and common sense set a ceiling on the degree of misconduct the law will hold gun manufacturers and sellers accountable for in Nevada. Victims may have a remedy when the manufacturer or seller's misconduct remains below that ceiling. But when that misconduct rises to the level of knowing, even willful violations of state and federal law, the law comes to the rescue of the wrongdoers.

Countless variations on this final scenario could be offered to show the absurdity of the Court's holding. The Parsons' case concerns machine guns, but there is nothing limiting the Court's holding to machine guns. The illegal sale and

possession of other weapons that are defined as “firearms” under Nevada law²² – for example, grenade launchers, mortars, rocket launchers, or surface-to-air missile launchers – would receive the same immunity, as long as the delivery of these weapons into civilian hands was done in knowing violation of the law, rather than merely negligently.

Whatever the scenario, the Court’s message to wrongdoers is clear: If you are going to give the public access to weapons that it is illegal for you to manufacture and sell and illegal for them to possess, make sure you do so in knowing violation of the law. Otherwise, you might be held accountable.

III. THE COURT’S DECISION VIOLATES BASIC PRINCIPLES OF TORT LAW

A. The Decision Makes a Wrongdoer Who Acts Knowingly *Less* Liable than a Wrongdoer Who Acts Negligently

The Court’s decision runs afoul of the most basic maxims of tort law.²³ First, that liability must increase with culpability.²⁴ “[R]esponsibility for harmful consequences should be carried further in the case of one who does an intentionally

²² See NRS 202.253 (3) (“‘Firearm’ means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion.”).

²³ The Parsons raised the issues discussed in this section and its subsections on pages 8 and 14 of their Brief and pages 2-3 and 10-11 of their Reply Brief.

²⁴ Of course, in some situations the law imposes liability without any showing of culpability – as in the case of strict liability.

wrongful act than in the case of one who is merely negligent or is not at fault.”²⁵

Under no circumstances should a wrongdoer’s liability *decrease* as the wrongfulness of his actions increases. Yet, that is precisely what the Court has held.

“It would shock the feelings of a court to be as lenient with the intentional or even the reckless wrongdoer as with the person merely failing, perhaps by very little, to live up to the standard of care required.”²⁶ It should “shock the feelings” of the Court even further to be *more lenient* with gun manufacturers and sellers who knowingly break firearms law than with those who merely negligently convey firearms.

“Negligence liability is predicated on the existence of a duty that has been breached. . . . under common law theory, breach of this duty is deemed less culpable than an intentional wrong.”²⁷ One is hard pressed to find a principle more universally accepted by courts and legal commentators than the axiom that as an actor’s misconduct increases in culpability from negligence to recklessness, to knowing or intentional wrongdoing, his liability must increase. This principle is the

²⁵ Restatement (Second) of Torts § 435B cmt. a (Am. Law Inst. 1965).

²⁶ Ralph S. Bauer, *The Degree of Moral Fault as Affecting Defendant's Liability*, 81 U. Pa. L. Rev. 586, 588 (1933).

²⁷ Note, *A Theory of Negligence for Constitutional Torts*, 92 Yale L.J. 683, 687 (1983).

legal equivalent of “2 + 2 = 4”. It is so long-standing, so unassailable, and so inherent to the operation of our legal system that it typically goes unstated. This Court has embraced it.²⁸ It is endemic throughout our nation’s courts.²⁹ But now, in direct contradiction of that rule, the Court has held that gun makers and sellers are

²⁸ See, e.g., *State v. Inzunza*, 135 Nev. 513, 519-20 (2019) (explaining that government’s delay between charging defendant and arresting him was “something more than mere negligence, but less than bad-faith intentional misconduct” and that “intentional delay on the State’s part would present ‘an overwhelming case for dismissal,’” but “it is less obvious whether something less than intentional delay—here, gross negligence—should result in dismissal”); *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1468 (1998) (evidence was sufficient to support a verdict that defendant was negligent, but not that defendant knowingly assisted in committing a fraud), *abrogated on other grounds by GES, Inc. v. Corbitt*, 21 P.3d 11 (2001).

²⁹ See, e.g., *Daniels v. Williams*, 474 U.S. 327, 328, 334 n.3 (1986) (Due Process Clause is not implicated by negligent act of prison official but would be implicated by intentional conduct); *United States v. Bailey*, 444 U.S. 394, 404 (1980) (referring to Model Penal Code’s “hierarchy” “in descending order of culpability” “as purpose, knowledge, recklessness, and negligence”); *United States v. Twine*, 853 F.2d 676, 680 (9th Cir. 1988) (same); *Gardner v. Las Vegas Metro. Police Dep’t*, 2019 WL 1923634, at *11 (D. Nev. Apr. 29, 2019) (“a pretrial detainee who asserts a due process claim for failure to protect must ‘prove more than negligence, but less than subjective intent—something akin to reckless disregard.’”) (quoting *Castro v. County of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016)), *aff’d*, 831 F. App’x 365 (9th Cir. 2020); *Mayer v. Town of Hampton*, 497 A.2d 1206, 1209 (N.H. 1985) (“The law of torts recognizes that a defendant who intentionally causes harm has greater culpability than one who negligently does so.”); *Rondini v. Bunn*, 2021 WL 1939171, at *4 (Ala. May 7, 2021) (same); *State v. Sewell*, 603 A.2d 21, 23 (N.J. 1992) (“the ‘knowingly’ level of culpability is lower than ‘purposely’ but higher than ‘recklessly’ or ‘negligently.’”); cf. George P. Fletcher, *The Theory of Criminal Negligence: A Comparative Analysis*, 119 U. Pa. L. Rev. 401, 402 (1971) (“Every interest protected by the criminal law is protected against intentional violations; but only a few – life, bodily integrity, and sometimes property – are secured against negligent risks.”).

immunized from liability if they knowingly illegally provide guns to the public, but not if they do so merely negligently .

$$2 + 2 = 5.$$

B. The Decision Rewards Wrongdoers for Their Wrongs

“Courts over the centuries . . . have been vigilant in withholding relief from parties who seek to profit from their own misdeeds.”³⁰ In the words of Chief Justice Steffen, that is required by “the well-established principle of law that a wrongdoer will not be allowed to profit from his or her own wrongdoing.”³¹

Justice Cardozo declared that this rule has “its roots deeply fastened in universal sentiments of justice.”³² It is also deeply rooted in the common law of

³⁰ *Goldstine v. Jensen Pre-Cast*, 102 Nev. 630, 633 (1986) (Steffen, J., dissenting).

³¹ *Igbinovia v. State*, 111 Nev. 699, 712 (1995) (Steffen, C.J., concurring in part and dissenting in part)

³² Benjamin N. Cardozo, *The Nature of the Judicial Process* 41 (1921).

this state. The Court has relied on this rule since the earliest years of Nevada's statehood.³³ And it is equally fundamental to the law of Nevada's sister states.³⁴

³³ See, e.g., *Vaile v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 118 Nev. 262, 287 (2002) (Young, J., dissenting) ("Our court should not close the doors of justice to the innocent and reward the wrongdoer."), *abrogated on other grounds by Senjab v. Alhulaibi*, 497 P.3d 618 (2021); *Life Ins. Co. of N. Am. v. Wollett*, 104 Nev. 687, 691 (1988) ("a malfeisor cannot profit from his wrong"); *Goldstine v. Jensen Pre-Cast*, 102 Nev. 630, 633 (1986) (Steffen, J., dissenting) ("[I]t is consistent with firmly established public policy and legal principle that wrongdoers will not receive state-sponsored aid in seeking advantage from their misbehavior."); *Wright v. Starr*, 42 Nev. 441, 179 P. 877, 878 (1919) ("[I]t would be most unjust that the procurer of the wrongful act should be permitted to profit by it."); *Robinson v. Imperial Silver Min. Co.*, 5 Nev. 44, 73 (1869) ("The law permits no person to profit by his own wrong."), *overruled in part on other grounds by Simmons v. Trivelpiece*, 98 Nev. 167 (1982); *O'Meara v. N. Am. Min. Co.*, 2 Nev. 112, 125 (1866) ("the law will not allow the wrongdoer to make a profit out of his own wrong."); cf. NRS 41B.200(1) ("[A] killer cannot profit or benefit from his or her wrong.").

³⁴ See, e.g., *Weaver v. Hollis*, 22 So. 2d 525, 527 (Ala. 1945) ("[N]o person can take advantage of his own wrong; [and] the law permits no one to profit by his own crime."); *Lanier v. Bryant*, 179 S.E. 346, 349 (Ga. 1935) ("Ordinarily a wrongdoer may not profit by his wrong"); *Phillips v. Chase*, 89 N.W. 1049, 1052 (Mass. 1909) ("The law will not allow a man to profit by his own wrong doing. . . . [I]t would be a reproach to the jurisprudence of the country if that were not so.") (quotation marks omitted); *Travelers Ins. Co. v. Thompson*, 163 N.W.2d 289, 296 (Minn. 1968) ("the wrongdoer may not profit from his own crime"); *Riggs v. Palmer*, 22 N.E. 188, 190 (N.Y. 1889) ("No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes."); *Murray v. J & B Int'l Trucks, Inc.*, 508 A.2d 1351, 1355 (Vt. 1986) ("A wrongdoer may not profit from his wrongful acts.").

Upending centuries of precedent applying that rule, the Court has held that the gun industry is welcome to profit from knowingly and wrongfully putting machine guns in the hands of civilians *as long as the industry does so illegally*.

C. The Decision Strips Tort Law of Its Deterrent Effect

By rewarding the gun industry for its knowingly illegal sales of machine guns, the Court's decision also defeats one of the foundational "purposes for which actions of tort are maintainable": "to punish wrongdoers and deter wrongful conduct."³⁵ The Court has long recognized this critical purpose of tort law.³⁶ As a

³⁵ Restatement (Second) of Torts § 901 (Am. Law Inst. 1979); *see also id.* at § 908 cmt. b ("[T]he purpose of punitive damages is not compensation of the plaintiff but punishment of the defendant and deterrence"); Dan B. Dobbs et al. *The Law of Torts* § 14 (2d ed.) ("Courts and writers almost always recognize that another aim of tort law is to deter certain kinds of conduct by imposing liability when that conduct causes harm.").

³⁶ *See, e.g., Petersen v. Am. Brands, Inc.*, 117 Nev. 34, 39 (2001) ("The tort system attempts to accomplish the goals of compensation, allocation of cost, and deterrence."); *Greco v. United States*, 111 Nev. 405, 417 (1995) (recognizing "the public policy objectives of tort law – to compensate injured parties and to deter future wrongful conduct.") (Shearing, J., concurring in part and dissenting in part); *New Hampshire Ins. Co. v. Gruhn*, 99 Nev. 771, 773 (1983) ("The policy behind punitive damages is to punish the wrongdoer for his conduct and to deter others from acting in a similar fashion."); *Forrester v. S. Pac. Co.*, 36 Nev. 247, 134 P. 753, 765-66 (1913) ("the law is firmly established that where the commission of a tort is attended with circumstances denoting malice, or oppression, or where the defendant acts willfully and with wanton disregard of the rights of others, exemplary or punitive damages may be allowed, as well for the punishment of the wrong inflicted as to deter repeated perpetration of similar acts.").

result, the Court has refused to interpret statutes in a manner that would defeat the deterrent effect of tort law.³⁷

The imposition of civil liability for illegally selling machine guns would deter the gun industry from continuing to flout federal law and the law of this state. Instead of fulfilling the law's purpose in providing a deterrent against wrongful, not to mention illegal, conduct, the Court's decision rewards and encourages illegal sales of machine guns and other murderously destructive firearms.

This result is incomprehensible. It is tort law through the looking glass. It is inconceivable that the legislature intended not to deter, but to incentivize illegal conduct.

CONCLUSION

The Court's decision is an anomaly, an outlier on every metric of law and reason. It immunizes illegal conduct but not negligent conduct. It makes a wrongdoer who acts knowingly less liable than a wrongdoer who acts negligently.

³⁷ See *New Hampshire Ins. Co.*, 99 Nev. at 774 (The "policy [behind the statute requiring posting of a bond to obtain a license to transact business as a mortgage company] would be thwarted if the tortfeasor is able to skirt the award [of damages] by passing the liability on to a surety. It cannot be said that the legislature intended to provide a means whereby a tortfeasor could avoid the penalty of paying punitive damages by allowing satisfaction to be sought from a surety.").

It rewards illegal conduct and undercuts the law's basic purpose of deterring wrongful acts.

The Court must grant rehearing to remedy this untenable decision.

DATED this 20th day of December 2021.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

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Dated this 20th day of December 2021.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of Matthew L. Sharp, Ltd., and that on this date, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to:

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DATED this 20th day of December 2021.

/s/ Cristin B. Sharp
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