

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

COLT'S MANUFACTURING
COMPANY LLC, COLT DEFENSE
LLC; DANIEL DEFENSE, INC.;
PATRIOT ORDNANCE FACTORY;
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.

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District of Nevada in
Case No 2:19-cv-01189-APG-
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[continued on following page]

CERTIFIED QUESTIONS
From the U.S. District Court for the District of Nevada
The Honorable Andrew P. Gordon

**RESPONDENTS' JOINT ANSWER
TO PETITION FOR REHEARING**

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SUPPLEMENTAL NRAP 26.1 DISCLOSURE STATEMENT

The list below supplements Respondents' initial NRAP 26.1 Disclosure Statement. New information regarding the individuals and entities having an interest in the outcome of this case or that are related to entities interested in the case is bolded:

- Colt's Manufacturing Company LLC:
 - Colt Defense LLC and New Colt Holding Corp. own Colt's Manufacturing Company LLC. **Colt Defense LLC wholly owns New Colt Holding Corp.**
 - Evans Fears & Schuttert LLP and Renzulli Law Firm, LLP have represented Colt's Manufacturing Company LLC in this matter.
- Colt Defense LLC:
 - CDH II HoldCo Inc. wholly owns Colt Defense LLC. **CDH II HoldCo Inc. is now wholly owned by CZ-US Holdings, Inc., which is wholly owned by CZG – Česká Zbrojovka Group SE.**
 - Evans Fears & Schuttert LLP and Renzulli Law Firm, LLP have represented Colt Defense LLC in this matter.
- Daniel Defense, LLC:
 - **Daniel Defense, LLC, is now wholly owned by Daniel Defense Holding, LLC, instead of M.C. Daniel Group, Inc.**
 - Snell & Wilmer L.L.P. has represented Daniel Defense, LLC in this matter.

There are no other changes to Respondents' initial NRAP 26.1 Disclosure Statement.

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Introduction

In unanimously holding that NRS 41.131 precludes the Parsons’ theory of liability, this *en banc* Court interpreted and applied the statute’s plain text, which “does not limit the gun companies’ immunity to the manufacture and distribution of *legal* firearms.” *Parsons v. Colt’s Mfg. Co. LLC*, __ P.3d __, 137 Nev. Adv. Op. 72 at 11 (2021). “Instead, the Legislature provided that ‘[n]o person has a cause of action against the manufacturer or distributor of *any firearm* or ammunition’ . . . , and ‘any’ conventionally means ‘all’ or ‘every.’” *Id.* (citations omitted).

The Parsons’ Petition for Rehearing (“the Petition”) fails to address the Court’s substantive analysis and pejoratively mischaracterizes its decision, labeling it “the most absurd reading possible[.]” Pet. at 2. In fact, the Petition does not engage with “the points of law or fact” underlying the decision – let alone try to demonstrate that the Court “overlooked or misapprehended” any of these germane issues. *See* NRAP 40(a)(2). Instead, the only portion of the opinion that the Petition analyzes is the hypothetical of the negligent

store clerk, which this Court posed in dictum to counter the Parsons' hyperbolic portrayal of the Companies'¹ arguments. Adv. Op. at 13–14.

Ultimately, the Petition presents a policy disagreement – a belief that the law should not immunize the Companies from civil suit. But as this Court recognized, that is a question reserved to the Legislature and thus cannot be a basis for rehearing. Nor is there any merit to the Petition's reprised policy argument that the Court's interpretation of NRS 41.131 will encourage firearms manufacturers and distributors to sell illegal firearms. As with Nevada's dram shop laws, the Legislature has determined that criminal – not tort – law is the *only* proper tool to address illegal conduct in this area.²

¹ As in Respondents' Joint Answering Brief, "Companies" refers to all the firearms manufacturers and distributors that are parties to this suit. See Ans. Br. at 1.

² The Petition spends nearly seven pages explicating the impact of its warped reading of the store-clerk hypothetical on tort law. Pet. at 11–17. However, because the Legislature made clear that tort law is inapplicable to suits like the instant action, that analysis is misplaced. For the sake of completeness, the Companies will briefly address the Petition's straw-man interpretation of the hypothetical in Section III below.

I. The Petition Fails to Address the Court’s Analysis of Statutory Text, Case Law, or the History of Firearms Regulations.

To justify relief, a petition for rehearing must state “with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended” in its opinion. NRAP 40(a)(2). But the Petition fails to address any of the components of the Court’s holding, instead taking issue with the legislatively set policy embodied in NRS 41.131. The Petition’s failure to address any of the reasoning or facts that support the Court’s holding warrants summary denial of the Petition.

Most importantly, the Petition fails to address the statute’s plain language – the starting point for interpreting its meaning and scope. *See* Adv. Op. at 10 (citing *Harris Assocs. v. Clark Cty. Sch. Dist.*, 119 Nev. 638, 641–42, 81 P.3d 532, 534 (2003)). As this Court correctly reasoned, “[b]ecause the phrase ‘any firearm’” in the statute’s first sentence “means ‘all firearms,’ whether legal or illegal—a point that the Parsons’ counsel conceded at oral argument—NRS 41.131 does not require that the firearm manufactured or sold be legal for a gun company to seek shelter from civil liability under it.” Adv. Op. at 11. To conclude

otherwise, “[t]his court would have to insert the word ‘legal’ or ‘lawful’ between ‘any’ and ‘firearm’ . . . , and this court does not read in implied terms that the Legislature omitted.” *Id.* And though this analysis alone is dispositive of the claims at issue, the Court confirmed that inclusion of words like “legal” or “lawful” in other states’ statutes, unlike NRS 41.131, expressly limits the scope of immunity. Adv. Op. at 11–12.

But the Petition does not attempt to reconcile NRS 41.131 with these expressly narrower statutes or seek to distinguish it from Indiana Code § 34-12-3-3(2), which, like NRS 41.131, lacks language limiting its scope to “lawful” firearms or sales. Adv. Op. at 12. Nor does the Petition even acknowledge this Court’s favorable citation to *KS&E Sports v. Runnels*, wherein “the Indiana Supreme Court held that this analogous statute limited gun companies’ liability for harms caused by third parties, *even if the gun company acted unlawfully*, because the Indiana Legislature purposefully omitted the term ‘lawful’ from the statute’s second subsection.” Adv. Op. at 12–13 (emphasis added) (citing *KS&E Sports v. Runnels*, 72 N.E.3d 892, 899 (Ind. 2017)).

And the Petition does not acknowledge – let alone allege a factual error in – this Court’s analysis of Nevada’s history of firearms

regulations. That history demonstrates that Nevada had already criminalized certain types of firearms and ammunition by the time the Legislature enacted NRS 41.131 and thus could and would have limited the phrase “any firearm” to *lawful* firearms had the Legislature so intended. Adv. Op. at 14–16. Nor did Nevada amend NRS 41.131 as it criminalized the sale of certain additional firearms and eventually bumpstocks. Adv. Op. at 15–16.

Ultimately, the *only* portion of the Court’s opinion that the Petition addresses is the hypothetical regarding the customer injured by a fellow shopper examining a firearm that the store clerk negligently left loaded on a store counter. But because those facts are clearly not the circumstances alleged in this case, the hypothetical is mere dictum. *See St. James Vill., Inc. v. Cunningham*, 125 Nev. 211, 216, 210 P.3d 190, 193 (2009) (“A statement in a case is dictum when it is unnecessary to a determination of the questions involved.” (internal quotation marks and citation omitted)). Accordingly, the Petition has not addressed any of the reasoning or facts supporting the Court’s conclusion that NRS 41.131 precludes civil liability even if the firearms are allegedly illegal. For this reason, the Petition should be denied.

II. The Petition's Public Policy Arguments Cannot Justify Rehearing.

A. The Petition Ultimately Raises a Question of Public Policy Exclusively Within the Province of the Nevada Legislature.

Instead of attempting to demonstrate a flaw in this Court's analysis, the Petition instead focuses on arguing why the holding is purportedly poor public policy. Specifically, the Petition's extensive discussion of deterrent effects, accountability, culpability, and moral fault makes clear that it is premised on the *policy* question of whether Nevada law *should* immunize firearms manufacturers and distributors from civil suit, rather than the *legal* question of whether NRS 41.131, as written, *does* provide such immunity. Pet. at 3, 9, 10–12, 16–17.

This same flaw plagued much of the Parsons' underlying briefing. Indeed, the Court analogized the Parsons' attempts to limit the scope of NRS 41.131 to similar calls decades ago to impose civil liability on taverns for harm resulting from the unlawful sale of alcohol. Adv. Op. at 18; see *Hamm v. Carson City Nugget, Inc.*, 85 Nev. 99, 450 P.2d 358 (1969). In ultimately maintaining the common-law rule precluding liability in such instances, this Court explained:

Clearly a decision whether to abrogate such a fundamental rule as the one under consideration is the function of the legislative, not the judicial, branch of government. Where, as here, the issue involves many competing societal, economic, and policy considerations, the legislative procedures and safeguards are well equipped to the task of fashioning an appropriate change, if any, to the settled rule.

Hinegardner v. Marcor Resorts, L.P.V., 108 Nev. 1091, 1096, 844 P.2d 800, 803–04 (1992); *see also* Adv. Op. at 18 (citing *Hamm* and *Hinegardner* with approval).

Similarly, the opinion here recognizes that firearms regulation “is an area the Legislature has occupied extensively. If civil liability is to be imposed against firearm manufacturers and distributors in the position of the gun companies in this case, that decision is for the Legislature, not this court.” Adv. Op. at 19. Given that clear declaration, the Petition’s reliance on policy arguments provides no basis for granting rehearing.

B. The Petition’s Policy Arguments Also Ignore the Fact that Nevada Deters Certain Conduct Through *Criminal Penalties* While Providing *Civil Immunity* for the Same Conduct.

The Petition’s reliance on public policy also fails because it largely reprises a flawed policy argument from the Opening Brief³ that the Companies demonstrated was without merit. Specifically, the Petition asserts that this “Court’s decision *rewards and encourages* illegal sales of machine guns[.]” Pet. at 17 (emphasis added). Aside from being inflammatory and baseless, this argument is materially identical to the Parsons’ contention that “[c]onstruing NRS 41.131 to provide civil immunity to manufacturers and distributors who violate [criminal prohibitions on the sale of illegal firearms] would undercut the public health and safety purposes of these statutes.” Op. Br. at 21.

As the Companies correctly countered, that “argument fails to acknowledge that both this Court and the Nevada Legislature regularly recognize civil immunity from suit for conduct that results in criminal liability.” Ans. Br. at 30. This principle is exemplified in the Court’s rulings on Nevada’s dram shop laws in *Hamm* and its progeny, as well

³ “Matters presented in the briefs and oral arguments may not be reargued in the petition for rehearing[.]” NRAP 40(c).

as the Legislature’s subsequent codification of those holdings. Well before 1969, and to this day, Nevada law *criminalizes* serving alcohol to an underage individual, while simultaneously providing taverns with *civil immunity* for any harm resulting from that same conduct. *Compare Hinegardner*, 108 Nev. at 1096, 844 P.2d at 803, *and* NRS 41.1305, *with* NRS 202.055.

Ultimately, and contrary to the Petition’s portrayal, there is nothing “incomprehensible” about the Legislature’s intentional provision of both criminal penalties *and* civil immunity. *See* Pet. at 17. Immunity from civil suit does not encourage violation of the law in the face of more significant criminal prosecution and penalties, especially in the heavily regulated field of firearms. Although selling alcohol to someone underage will result in a misdemeanor, selling an illegal machinegun or similar device is a felony under Nevada law. *Compare* NRS 202.055(1), *with* NRS 202.350(2)(b) *and* NRS 202.274(2). Transferring an illegal machinegun is also a felony under federal law. 18 U.S.C. §§ 922(o), 924(a)(2). Thus, there are also the additional deterrents of separate federal prosecution and the loss of the federal firearms license required to manufacture and distribute firearms.

III. The Petition's Misplaced Arguments Depend on an Erroneous Interpretation of this Court's Narrow Hypothetical.

Lacking a cognizable basis for rehearing, the Petition fuels its misplaced policy arguments by misconstruing the store-clerk hypothetical. For example, the Petition limits the hypothetical to machineguns. It is not so limited. The Petition assumes the hypothetical deals with conveying a firearm. It does not. The Petition distorts the hypothetical to manufacture a false distinction between negligent and intentional torts. Under NRS 41.131, there is no such distinction. Based on these mistaken positions, it is unsurprising that the Petition's articulation of the Legislature's policy is unsound. And, in any event, the Petition's quarrel with that policy simply cannot support granting rehearing.

The Petition treats the hypothetical as the foundation and sole component of the Court's opinion. The Court, however, crafted the example merely to refute the Parsons' hyperbolic argument that, to preclude their theory of liability, NRS 41.131 must also "categorically immunize firearm manufacturers and distributors from liability for independent acts of negligence" Adv. Op. at 13. The store-clerk

hypothetical demonstrates that liability can still arise from an *independent* “act[] that create[s] an unreasonable risk of harm above and beyond that posed by the firearm’s inherent dangerousness,” as explained below. *Id.*

A. Under Both NRS 41.131 and the Court’s Hypothetical, the Type of Firearm is Irrelevant.

The Petition incorrectly limits the hypothetical to illegal machineguns. Pet. at 6–7, 9–10. Instead, the hypothetical simply refers to a generic “firearm.” Adv. Op. at 13. The Court’s hypothetical remains applicable whether that firearm is a machinegun, a shotgun, a revolver, or something else. If a clerk left any of these firearms loaded and out on the counter such that “Customer A” picked it up and pulled the trigger thinking the chamber was empty, thus injuring “Customer B” next to him, the theory of liability for the clerk’s independent act would be precisely the same. *See* Adv. Op. at 13–14.

This principle also finds expression at the heart of the Court’s holding. “Because the phrase ‘any firearm’” in NRS 41.131’s first sentence “means ‘all firearms,’ whether legal or illegal—a point that the Parsons’ counsel conceded at oral argument—NRS 41.131 does not require that the firearm manufactured or sold be legal for a gun company

to seek shelter from civil liability under it.” Adv. Op. at 11. Accordingly, the Petition’s extensive discussion of “illegal” firearms is misplaced. Pet. at 7, 9, 11, 16. That is a distinction without a difference; the Court’s narrow hypothetical and NRS 41.131 both apply regardless of the legality of the firearm involved.

B. The Hypothetical has Nothing to Do with the Sale of a Firearm or Whether the Store is a Firearm Distributor.

The Petition also incorrectly assumes the hypothetical deals with conveying a firearm. Pet. at 6–7. Instead, the store’s hypothetical liability has nothing to do with the sale of a firearm, or even the fact that the store is a firearm distributor. And that is the hypothetical’s point. The same theories of liability presented in the hypothetical would apply, for instance, if the clerk had left a kayak near the top of an escalator and, as a result of Customer A’s accidental joyride, Customer B was injured. Or if the clerk failed to mop up or alert customers to spilled water in front of the display case and a customer slipped and injured himself. *See* Adv. Op. at 13–14. Regardless of whether a loaded firearm, a precariously perched kayak, a simple puddle, or some other mechanism is the immediate cause of the customer’s injury, the store will potentially be

held liable for its own independent acts of vicarious and/or direct negligence.⁴ *See* Adv. Op. at 13–14.

C. The Hypothetical Does Not Distinguish Between Negligent and Intentional Torts.

The Petition incorrectly assumes that the hypothetical distinguishes between negligent and intentional torts. Pet. at 1–2, 6, 9, 11–14, 16–17. Nothing about that narrow hypothetical can reasonably be read to mean that, under NRS 41.131, a store is liable if its clerk *negligently* failed to check whether the firearm was loaded and left it out, but is immunized from suit if the clerk *intentionally* loaded the firearm and left it out hoping a customer would be shot.⁵ Neither the Companies nor this Court ever articulated such a theory. Instead, liability will attach as described above for independent acts of vicarious and/or direct (1) negligence or (2) intentional misconduct. *See* Adv. Op. at 13–14.

Just as this Court “does not read in implied terms that the Legislature omitted” that would limit the firearms covered by

⁴ An example of such a direct negligence claim would be negligent hiring.

⁵ The Petition makes the same misguided arguments regarding sales: “[T]he Court has held that gun makers and sellers are immunized from liability if they knowingly illegally provide guns to the public, but not if they do so merely negligently.” Pet. at 13–14.

NRS 41.131, so too it has not read in implied terms that would limit the legal theories covered by this statute. *See Adv. Op.* at 11. Thus, “[n]o person has a cause of action” under NRS 41.131(1), and it makes no difference whether that cause sounds in negligence or in intentional tort.

Conclusion

The Petition fails to raise “points of law or fact that the petitioner[s] believe[] the court has overlooked or misapprehended” in its opinion. NRAP 40(a)(2). It fails to address the Court’s reasoning and analysis at all, confining its arguments to an unfounded perspective on Nevada’s public policy. The Petition’s misguided focus on this Court’s narrow hypothetical is unavailing. The Companies respectfully request that this Court deny the Petition for Rehearing.

DATED: February 2, 2022

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CERTIFICATE OF COMPLIANCE

I hereby certify that the **RESPONDENTS' JOINT ANSWER TO PETITION FOR REHEARING** complies with the typeface and type style requirements of NRAP 32(a)(4)-(6), because this brief has been prepared in a proportionally spaced typeface using a Microsoft Word 2010 processing program in 14-point Century Schoolbook type style. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40(b)(3) because it contains approximately 2,684 words.

Finally, I hereby certify that I have read the **RESPONDENTS' JOINT ANSWER TO PETITION FOR REHEARING**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On February 2, 2022, I caused to be served a true and correct copy of the foregoing **RESPONDENTS' JOINT ANSWER TO PETITION FOR REHEARING** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

/s/ Maricris Williams
An Employee of Snell & Wilmer LLP