

IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY,  
FLORIDA

CASE NO.

FREDERIC GUTTENBERG and  
JENNIFER GUTTENBERG, as  
Co-Personal Representatives of the  
Estate of Jaime T. Guttenberg, and  
MAX SCHACHTER as Personal  
Representative of the Estate of  
ALEX SCHACHTER,

Plaintiffs,

v.

AMERICAN OUTDOOR BRANDS  
CORPORATION (f/k/a Smith & Wesson),  
a Nevada corporation, and  
SUNRISE TACTICAL SUPPLY, LLC,  
a Florida limited liability company,

Defendants.

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**COMPLAINT FOR DECLARATORY RELIEF**

Plaintiffs, Frederic Guttenberg and Jennifer Guttenberg, as Co-Personal Representatives of the Estate of Jaime T. Guttenberg, and Max Schachter as Personal Representative of the Estate of Alex Schachter (collectively “Plaintiffs”) bring this action against Defendants American Outdoor Brands Corporation, formerly known as Smith & Wesson (“American Outdoor Brands”), and Sunrise Tactical Supply, LLC (collectively “Defendants”), for declaratory relief, and allege as follows:

**NATURE OF THE ACTION**

1. The Guttenbergs’ 14-year-old daughter, Jaime, and Max Schachter’s 14-year-old son, Alex, were shot and killed on February 14, 2018 during the mass shooting at Marjory

Stoneman Douglas High School in Parkland, Florida. Jaime died from injuries she sustained when she was shot in the back by Nikolas Cruz, who used a Smith & Wesson M&P15 (commonly referred to as an AR-15) semi-automatic rifle. Alex also was mortally wounded when bullets fired from the M&P15 penetrated the classroom door where he was working on an English paper. Jaime and Alex were among the thirty-four students, teachers, and administrators who were killed and/or seriously wounded in a matter of minutes during perhaps the deadliest mass shooting at any high school in the United States.

2. The Guttenbergs and Schachter seek to hold Defendants legally responsible for their complicity in the entirely foreseeable, deadly use of the assault-style weapons that they place on the market. However, before the Guttenbergs and Schachter can assert those claims for damages and other relief, a confusingly written Florida statute stands in the way, threatening the possibility that if Defendants claim that it entitles them to immunity from such claims, and the courts agree, the penalty provision of the statute would saddle the Guttenbergs and Schachter with paying for all economic losses these corporate defendants could attribute to having been sued. That is not a financial risk the Guttenbergs and Schachter can, or should have to, afford.

3. To avoid the risk of crushing financial liability for merely attempting to hold Defendants legally responsible, the Guttenbergs and Schachter instead presently seek only a declaration from this Court that § 790.331, Florida Statutes, does not prohibit them from bringing future claims for damages, abatement and/or injunctive relief against Defendants. A declaration that the statute does not shelter firearms manufacturers and sellers with immunity from civil suits by private individuals, and hence that the financial penalty provisions of the statute would not apply, will permit the Guttenbergs and Schachter to assert those other claims.

4. To the extent that the Court reads the statute as the Guttenbergs and Schachter anticipate Defendants will argue—to confer immunity for firearms manufacturers and sellers beyond just suits brought by governmental entities but to suits by private individuals as well—the Guttenbergs and Schachter alternatively seek a declaration that the statute violates their constitutional right of access to courts, protected by Article I, § 21 of the Florida Constitution.

### **PARTIES**

5. Plaintiffs, Frederic and Jennifer Guttenberg, are residents of Parkland, Florida.

6. The Guttenbergs are in the process of being appointed co-personal representatives of the Estate of Jaime T. Guttenberg, their 14-year old daughter who was killed at Marjory Stoneman Douglas High School.

7. Plaintiff, Max Schachter, is a resident of Parkland, Florida.

8. Plaintiff Max Schachter is in the process of being appointed personal representative of the Estate of Alex Schachter, his 14-year-old son who was killed at Marjory Stoneman Douglas High School.

9. Defendant, American Outdoor Brands, is a corporation organized under the laws of the state of Nevada with its principal office located at 2100 Roosevelt Avenue, Springfield, Massachusetts, 01104, and is authorized to transact business in Florida as a registered Foreign Profit Corporation. American Outdoor Brands is the manufacturer of the Smith & Wesson M&P15 semi-automatic rifle that was used to kill Jaime Guttenberg and Alex Schachter. American Outdoor Brands makes its firearms, including its line of Smith & Wesson M&P semi-automatic firearms, available to Florida's residents through more than four dozen dealers located throughout South Florida, including Broward County.

10. Defendant, Sunrise Tactical Supply, LLC, is a company organized under the laws of Florida with its principal location at 7600 Wiles Road, Coral Springs, Florida 33067. Sunrise Tactical Supply sold the M&P15 semi-automatic rifle that was used to kill Jaime Guttenberg and Alex Schachter.

### **JURISDICTION AND VENUE**

11. This is an action for declaratory relief, pursuant to Chapter 86, Florida Statutes, seeking a declaration that the provisions of § 790.331, Florida Statutes, prohibit civil actions for damages, abatement, and/or injunctive relief against firearms manufacturers and dealers *only* when they are brought by governmental entities and are otherwise wholly inapplicable to civil suits brought against firearms manufacturers and dealers by individual persons. This Court has jurisdiction to grant declaratory relief. *See* §§ 86.011, 86.021, Fla. Stat.

12. Plaintiffs request that this Court expedite consideration of this matter as provided by § 86.111, Fla. Stat., so that they can bring the claims they wish to assert against Defendants within the statute of limitations applicable to such claims.

13. Defendant American Outdoor Brands is subject to personal jurisdiction in Florida because at all times material it was operating, conducting, engaging in, or carrying on business in Florida, § 48.193(1)(a)1., Fla. Stat.; committed a tortious act within Florida, § 48.193(1)(a)2., Fla. Stat.; and/or caused injury to persons within Florida through its out-of-state activities at or about the time that its firearms products were being used within Florida in the ordinary course of commerce, trade, or use, § 48.193(1)(a)6.b., Fla. Stat.

14. Venue is proper in Broward County because Defendant Sunrise Tactical Supply is located in Broward County and also because the claims the Guttenbergs and Schachter wish to assert against the Defendants accrued in Broward County. *See* §§ 47.011, 47.021, Fla. Stat.

## GENERAL ALLEGATIONS

15. The Guttenbergs and Schachter wish to sue Defendants for damages, abatement and/or injunctive relief for their role in manufacturing, marketing, and selling the M&P15 semi-automatic rifle which was used to kill their children, but they are unable to do so without first obtaining a declaration from this Court that they would not be exposing themselves to potentially crushing financial liability by merely bringing those claims, for the reasons explained below.

16. Section 790.331, Florida Statutes addresses the limitations that the Florida Legislature placed on the types of civil actions that *governmental entities* can bring against firearms manufacturers, trade associations, distributors or dealers.

17. Subsection (2) of the statute provides:

Except as permitted by this section, *a legal action* against a firearms or ammunition manufacturer, firearms trade association, firearms or ammunition distributor, or firearms or ammunition dealer *on behalf of the state or its agencies and instrumentalities, or on behalf of a county, municipality, special district, or any other political subdivision or agency of the state*, for damages, abatement, or injunctive relief resulting from or arising out of the lawful design, marketing, distribution, or sale of firearms or ammunition to the public *is prohibited*.

(emphasis added).

18. The same language is essentially repeated in the first half of subsection (3) of the statute, reiterating that “[*a*] county, municipality, special district, or other political subdivision or agency of the state may not sue for or recover from” a firearms manufacturer or seller “damages, abatement, or injunctive relief in any case that arises out of or results from the lawful design, marketing, distribution, or sale of firearms or ammunition to the public.” § 790.331(3), Fla. Stat. (emphasis added).

19. The Florida Legislature, however, did not bestow absolute immunity on firearms manufacturers, trade associations, distributors, and/or sellers from *all* civil suits by governmental entities. For example, it expressly excepted from the bar against governmental suits actions for breach of contract or warranty related to their purchase of firearms, § 790.331(4)(a), Fla. Stat., or for injuries sustained due to a malfunction caused by a design or manufacturing defect, § 790.331(4)(b), Fla. Stat.

20. Nothing in the statute would seem to bar suits by private individuals. Unlike the express prohibition against most civil suits by governmental entities, § 790.331 contains no explicit bar on any cause of action that a private party could bring against a firearms manufacturer, trade association, distributor, and/or seller. The statute lacks any express indication that the Legislature intended to abrogate an individual cause of action for common law torts against a firearms manufacturer or seller.

21. The legislative history also shows that the intent of § 790.331 was to prohibit certain suits by governmental entities and not bar individual persons from bringing damages, abatement, or injunctive relief suits. The Senate Staff Analysis to Senate Bill 412 – the bill that became the law – states that the “specified entities prohibited from bringing such suits are the state or its agencies and instrumentalities, counties, municipalities, special districts or other political subdivisions of the state.” The analysis also opined that the bill would not run afoul of Florida citizens’ constitutional right of access to courts because governmental entities are not “persons” protected by Article I, § 21 of Florida’s Constitution.

22. Yet the statute does contain a cryptic and confusing reference to suits by private individuals. That sole reference follows the prohibition against civil suits by governmental entities in the first sentence of § 790.331(2) and states:

However, this subsection does not preclude a natural person from bringing an action against a firearms or ammunition manufacturer, firearms trade association, firearms or ammunition distributor, or firearms or ammunition dealer for breach of a written contract, breach of an express warranty, or injuries resulting from a defect in the materials or workmanship in the manufacture of a firearm or ammunition.

23. Because this “natural person” provision is couched as an exception to “subsection” (2)’s prohibition on suits by governmental entities, it merely clarifies what the ban in the first sentence of subsection (2) does not cover.

24. Nonetheless, the Guttenbergs and Schachter suspect that if they were to bring the claims they would like to against the Defendants for damages, abatement and/or injunctive relief, one or both Defendants might assert that the natural persons provision should be read expansively to imply an immunity from such claims.

25. If that were to occur, the Guttenbergs and Schachter would then be placed at risk of exposure to potentially ruinous financial penalties in the event that a court were to construe § 790.331 as immunizing Defendants from such a suit. That is because another subsection of the statute commands that a court must impose a daunting array of monetary penalties on a plaintiff who sues a firearms manufacturer or seller found to be immune from suit.

26. Specifically, subsection 790.331(6), states:

- (a) If a civil action is brought in violation of this section, the defendant may recover *all expenses* resulting from such action from the governmental entity bringing such action.
- (b) In any civil action where the court finds that the defendant is immune as provided in this section, the court *shall* award the defendant *all attorney’s fees, costs and compensation for loss of income, and expenses incurred as a result of such action.*

(emphasis added).

27. These potentially draconian financial penalties create a real and significant risk of financial ruin to an individual who would bring a suit against a firearms manufacturer or dealer. Given even the slightest chance that the statute's prohibition on certain civil suits might be construed to apply to private litigants, these penalties, for all practical purposes, completely chill individuals from bringing damages suits against firearms manufacturers or dealers in Florida.

28. This is precisely the position that the Guttenbergs and Schachter find themselves in as they contemplate the various avenues of legal redress available to them in their effort to seek justice by holding to account all those who bear some share of responsibility for the horrible events that befell their children. In their view, these Defendants—who manufactured, marketed and sold the M&P15 firearm that was used to kill their children—are partly to blame for placing on the market and selling a semi-automatic assault-style weapon, and Plaintiffs intend to assert claims for damages, abatement and/or injunctive relief against them.

29. Out of a reasonable concern that if the Guttenbergs and Schachter were to assert those claims now the Defendants would respond by arguing that § 790.331 immunizes them from such claims, the Guttenbergs and Schachter have refrained from asserting any such claims until they first obtain a judicial declaration that Defendants would not be entitled to immunity under this statute for such claims and that subsection 790.331(6) consequently would not apply.

30. The limited claims for declaratory relief that the Guttenbergs and Schachter are asserting now do not risk exposing them to financial ruin at Defendants' hands because even if the Court were to conclude that § 790.331 does afford firearms manufacturers and sellers immunity from a private party's claims for damages, abatement and injunctive relief, the statute plainly does not confer immunity from claims that merely seek declaratory relief.



31. As a manufacturer and seller of firearms, Defendants have an actual, present, adverse, and antagonistic interest in construing § 790.331 in favor of prohibiting the Guttenbergs and Schachter—and likely other Marjory Stoneman Douglas High School shooting victims and their families—from bringing such claims against them and in finding that the statute bestows upon them immunity from private individual suits based on damages related to the lawful manufacture or sale of firearms.

## COUNT I

### DECLARATORY JUDGMENT

#### **(Inapplicability of § 790.331, Florida Statutes, to Private Claims for Damages, Abatement or Injunctive Relief)**

32. Plaintiffs repeat and incorporate the allegations in paragraphs 1 through 31, as if set forth herein.

33. Plaintiffs' desire to bring a cause of action for damages, abatement and/or injunctive relief against Defendants, American Outdoor Brands, the manufacturer, and Sunrise Tactical Supply, the seller, of the firearm that was used to kill their children presents a bona fide, actual, present and practical need for a declaration that § 790.331 does not prohibit an individual person from bringing such claims in Florida against firearms manufacturers and sellers.

34. The declaration that Plaintiffs seek will address a present controversy arising from the state of facts, delineated herein, regarding Plaintiffs' interest and lawful right to assert such claims.

35. Plaintiffs have doubts about their rights under § 790.331 given the uncertainty over how the courts will construe the scope of the statutory language addressing the rights and liabilities of individual persons to bring suit against firearms manufacturers and dealers and the

severe financial penalties that must be borne by the party bringing a suit found to be in violation of this statute.

36. Plaintiffs' and Defendants' interests in the subject matter of this complaint seeking a declaration regarding the legal construction of § 790.331 are actual, present, adverse, and antagonistic. (If it turns out that Defendants do not adopt the position Plaintiffs expect they will take regarding the meaning of the statute, then their answer to this Complaint can moot Plaintiffs' concerns and remove any obstacle under the Florida statute to Plaintiffs asserting their other claims.)

37. The adverse and antagonistic interests of the Plaintiffs and Defendants are properly before this Court.

38. Plaintiffs actually and presently face a serious threat of financial devastation should they bring potentially prohibited claims against Defendants and thus seek this declaratory relief not merely for the giving of legal advice or out of curiosity but because they have reasonable doubts about their rights and liabilities under § 790.331.

39. WHEREFORE, Plaintiffs respectfully request that a judgment be entered in their favor declaring that § 790.331, Florida Statutes, is inapplicable and does not prohibit an individual person from bringing any cause of action for damages, abatement, or injunctive relief against a firearms manufacturer, distributor, or dealer arising out of their design, marketing, distribution, or sale of firearms to the public and that the monetary penalty provisions of § 790.331(6) are accordingly inapplicable to such a cause of action brought by an individual person. In addition, Plaintiffs seek an award of costs as are equitable.

## COUNT II

### DECLARATORY JUDGMENT

#### **(Infringement of the Florida Constitutional Right of Access to Courts)**

40. Plaintiffs repeat and incorporate the allegations in paragraphs 1 through 31, as if set forth herein.

41. Florida's Constitution contains an explicit "Access to courts" provision in Article I, Section 21, which states that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The constitutional guarantee of access to courts protects those rights which are part of the common law of Florida pursuant to § 2.01, Florida Statutes, or which existed prior to the Declaration of the Rights of the Constitution of the State of Florida.

42. Under Florida's common law, a plaintiff has the right to sue a party for negligence where the party owes a duty to the plaintiff that it has breached, and the breach is the proximate cause of the harm suffered by the plaintiff. Nothing under the common law precluded individual tort actions for damages, abatement, or injunctive relief against firearms manufacturers or dealers.

43. The provisions of §§ 790.331(2) and (3), Florida Statutes, which prohibit governmental entities from bringing a legal action against a firearms manufacturer, trade association, distributor, or dealer for damages, abatement, or injunctive relief resulting from the design, marketing, distribution, or sale of firearms or ammunition to the public, if applied to prohibit individual persons as well from doing the same, would to a significant degree obstruct and infringe Plaintiffs' common law right to seek redress for injuries suffered due to the

Defendants' tortious conduct, constituting a denial of their access to courts in violation of Article I, Section 21, Florida Constitution.

44. The penalty provisions of § 790.331(6), which require a court to award a defendant found to have immunity under § 790.331 "all attorney's fees, costs, and compensation for loss of income, and expenses incurred," would, if applied to individual persons who bring a civil suit deemed to be in violation of the statute, obstruct and infringe to a significant degree Plaintiffs' common law right to seek redress for injuries suffered due to the Defendants' tortious conduct by requiring Plaintiffs to bear the risk of financial ruin simply for filing a lawsuit, constituting a denial of their access to courts in violation of Article I, Section 21, Florida Constitution.

45. The Florida Legislature has not provided any other reasonable alternative to a common law tort claim for damages, abatement, or injunctive relief that would protect Plaintiffs' rights to seek redress from the courts against Defendants for the wrongful death of their children who were shot and killed with a semi-automatic rifle that Defendants manufactured, marketed and/or sold.

46. WHEREFORE, Plaintiffs respectfully request, in the alternative, a declaration that as applied to prohibit an individual person from bringing common law tort claims for damages, abatement, or injunctive relief against a firearms manufacturer and/or dealer, §§ 790.331(2), (3), and (6), Florida Statutes, are unconstitutional under Article I, Section 21, Florida Constitution. In addition, Plaintiffs seek an award of costs as are equitable.

Dated May 23, 2018

Respectfully submitted,

PODHURST ORSECK, P.A.

/s/ Stephen F. Rosenthal

Steven C. Marks  
Fla. Bar No. 516414  
Stephen F. Rosenthal  
Fla. Bar. No. 0131458  
Dayron Silverio  
Fla. Bar. No. 112174  
Kristina Infante  
Fla. Bar. No. 112557

SunTrust International Center  
One S.E. 3rd Avenue, Suite 2300  
Miami, Florida 33131  
Tel.: (305) 358-2800  
smarks@podhurst.com  
srosenthal@podhurst.com  
dsilverio@podhurst.com  
kinfante@podhurst.com

*Attorneys for Plaintiffs Frederic and  
Jennifer Guttenberg as Co-Personal  
Representatives of the Estate of Jaime T.  
Guttenberg*

COLSON HICKS EIDSON, P.A.  
255 Alhambra Circle, Penthouse  
Coral Gables, Florida 33134  
Telephone: (305) 476-7400  
Facsimile: (305) 476-7444

/s/ Patrick Montoya

Curtis B. Miner  
Fla. Bar No. 885681  
Julie Braman Kane  
Fla. Bar No. 980277  
Patrick Montoya  
Fla. Bar No. 0524441  
curt@colson.com  
julie@colson.com  
patrick@colson.com

*Attorneys for Plaintiff Max Schachter as  
Personal Representative of the Estate of  
Alex Schachter*