Aug. 23, 2019: Advocacy spotlight on High court should hear case on site skirting gun background checks

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The daughter of a woman who was killed by a man barred from gun possession has sued the website that facilitated the killer's purchase of the weapon used in the crime. The AMA and the Wisconsin Medical Society (WMS) are supporting the daughter, Yasmeen Daniel, and requesting that her case be heard by the U.S. Supreme Court.

The Wisconsin State Supreme Court dismissed the suit in April, overturning a state appeals court decision. The top state court ruled that the website, Armslist.com, was protected by the federal Communications Decency Act, holding that interactive websites cannot be held liable for content posted by third parties.

In an amicus brief (PDF) prepared by the Litigation Center of the AMA and State Medical Societies in the case, Daniel v. Armslist (PDF), the AMA and WMS argue that the Wisconsin high court misinterpreted the statute. They state that the case does not involve the content of the website, but its design, which allowed the killer, Radcliffe Haughton, to obtain a gun even though a court-issued restraining order prohibited him from having a firearm for four years.

"This website was created, at least in part, to facilitate the sale of guns to persons who are likely to use them to commit crimes, such as persons prohibited from possessing guns by a court restraining order," the brief states. "Although Wisconsin and federal laws prohibit the sale of firearms to certain persons, including those with protection orders against them, Armslist was designed to evade those laws—and to profit from those evasions."

A licensed gun dealer would have been required to do a background check on Haughton and would have learned of his legal status. So, instead, he found a seller on the Armslist website and completed the sale in a cash transaction that took place in the parking lot of a fast-food restaurant.
The next day he went to the workplace of his wife, Zina Haughton—Daniel's mother—and murdered Haughton. He also killed two other people and shot four more before taking his own life. Daniel witnessed her mother's murder and was one of those injured in the shooting.

The brief notes that the issue before the court is the legislative intent of the Communications Decency Act.

"Immunizing Armslist would do nothing to advance communications decency," the brief states. "In fact, immunization would be an action of indecency."

The website allows readers to distinguish between licensed arms dealers who must perform background checks and private sellers who don't have to. Also, the site allows readers to view ads anonymously without registering an account.

"These features do not derive from neutral or innocuous design decisions," the brief argues. "They are intended to—and do—facilitate illegal sales."

The law was designed to protect websites from traditional publishing lawsuits such as libel and copyright infringement arising from user-generated content.

"The suit is premised on Armslist's having deliberately designed its website to facilitate and enable the illegal sale of firearms," the brief says. "Those are far from traditional publisher functions, and the claim of aiding and abetting a murder does not depend on whether Armslist is treated as a publisher."

The brief further argues that, because of the gun violence public health crisis, the Communications Decency Act's immunity provisions "should not be misapplied to frustrate state laws that seek to curb this scourge."

For women in domestic violence situations like the one experienced by Zani Houghton, the risk of homicide increases 500% in the presence of a firearm, the brief notes.

The "do-nothing approach" to the public health crisis of gun violence is unacceptable to physicians who lead health care teams that shoulder "the emotional weight of firearm violence," the brief adds. "Physicians not only repair the wounds of this epidemic, but they bear the toll it takes on their colleagues and the profession."

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