Hold website accountable for selling guns with no background checks

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What’s the news: The 7th U.S. Circuit Court of Appeals should reinstate a lawsuit to hold accountable the website Armslist and its proprietor Jonathan Gibbon, argues an amicus brief filed by the Litigation Center of the American Medical Association and State Medical Societies and the Wisconsin Medical Society (WMS). The website gives people who cannot pass the background check required for legal gun ownership a path to buy firearms.

The lawsuit that the district court dismissed, Webber v. Armslist (PDF), was filed by Sara Schmidt’s estate after her estranged husband shot and killed her with a handgun he bought through an Armslist advertisement. When the husband bought the gun, he was under a court restraining order mandating he wear a GPS monitor, and he was barred from buying or possessing guns. He could not have passed a background check required for legal gun ownership under state or federal law.

Why it’s important: Physicians recognize that gun violence is a public health crisis. Yet the Armslist website was “specifically created to facilitate illegal gun sales by persons, such as Sara’s husband, who could not pass a background check,” the amicus brief, prepared by the AMA Litigation Center, says, adding that “it cannot be sound policy to favor a scheme that subverts, rather than supports, statutory law and a court restraining order.”

AMA President Gerald E. Harmon, MD, said that “as physicians, we often carry the emotional weight of telling families when their loved ones are killed. We also bear the responsibility of healing and treating gun violence victims and telling patients their wounds are forever—their scars, paralysis, brain injuries, depression, colostomies and more.

“The AMA supports commonsense measures to prevent injuries and death from gun violence, and a perfect place to start is holding accountable a website designed to subvert the law and funnel
dangerous weapons into the hands of dangerous people,” added Dr. Harmon, a family physician in South Carolina.

The U.S. District Court for the Eastern District of Wisconsin dismissed the lawsuit, saying that the Armslist website and its proprietor’s breach of duty was not a “substantial factor” in causing the murder and that Wisconsin public policy barred the claim because “the injury was too remote from and out of proportion to the conduct.” The lower court also said allowing a claim to go forward “would place an unreasonable burden on Armslist.”

The AMA Litigation Center and WMS brief tells the appellate court that the district court got it wrong. Allowing recovery against Armslist, they argue, is entirely reasonable.

“Armslist makes its money by catering to those who want to avoid the rigors of background checks. Deterrence in this case is a crucial consideration: Armslist should be deterred from operating with such lack of care toward the public,” the brief says. “Forcing Armslist to internalize the costs of its dangerous business model is entirely in keeping with the accepted role of tort law.”

In addition, the brief says that “in light of the serious dangers to public health that arise from the proliferation of illegal weapons and in view of the expectable consequences of the defendants’ website design, it would not have unduly burdened them to make the modest adjustments—as articulated in the complaint—needed to protect against unlawful sales and keep the website on the right side of the law.”

Further, the brief argues that the Armslist website was a “substantial factor” in the murder. Schmidt’s estranged husband, jailed for domestic violence, was released Jan. 5, 2018. On the same day, Schmidt filed for divorce. Three days later, the husband “purchased the gun unlawfully, through an Armslist advertisement meant to evade lawful restraints on such sales.”

“This was a crime of passion,” the brief says. “Properly, Sara’s husband should not have had access to a gun under any circumstances, but even if the gun had simply been less readily available, he could have cooled off, and the crime would never have happened.”

Learn more: The AMA and the WMS also filed an amicus brief in an earlier case, Daniel v. Armslist, brought against the online firearms marketplace. The U.S. Supreme Court ruled in that case that the site was protected by the Communications Decency Act.

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.