



# Frequently Asked Questions About Gun Industry Immunity

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*This fact sheet will be periodically updated to account for new policy developments. It was last updated on May 4, 2021. [Click here](#) to view other fact sheets in this series.*

## **What is the Protection of Lawful Commerce in Arms Act?**

The Protection of Lawful Commerce in Arms Act (PLCAA) was enacted in 2005 following extensive lobbying by the gun industry to shield gun manufacturers and dealers from civil litigation.<sup>1</sup> The effort to enact this law was a reaction to numerous lawsuits in the early 1990s filed on behalf of more than 40 cities; these lawsuits advanced a novel legal argument alleging that gun manufacturers created a public nuisance through sales practices that enabled firearms to be sold illegally in secondary markets and to be illegally trafficked, after which they ended up being used to commit violent crimes.<sup>2</sup> Not all of these lawsuits were successful, but many resulted in settlement agreements through which gun manufacturers were required to implement new practices and standards to help reduce illegal gun trafficking—such as videotaping sales, implementing a computerized system to track crime gun traces, and increasing training for employees.<sup>3</sup>

The PLCAA marked an effort to put an end to such litigation, which sought to hold gun manufacturers and dealers accountable for the harm caused by their products and for negligent business practices that enabled gun trafficking. The law provides broad immunity to gun manufacturers and dealers in federal and state court, protecting the gun industry from most civil liability claims. Generally, the PLCAA prevents plaintiffs from filing lawsuits against the gun industry, even in cases where these parties have been negligent and there was “criminal or unlawful misuse” of a firearm or ammunition.<sup>4</sup> However, there are narrow exceptions to this blanket immunity that allow for lawsuits to be filed in cases where a gun manufacturer or dealer knowingly transferred a gun to a person with the knowledge that they intended to use it to commit a crime; violated state or federal regulations; was guilty of negligent entrustment or breach of a contract; or, in limited cases, caused harm to individuals due to design defects.<sup>5</sup>

## How has the PLCAA prevented efforts to hold the gun industry accountable through litigation?

Since its enactment, the PLCAA has largely closed the courthouse doors to victims and municipal leaders seeking redress from the courts for the harm caused by gun violence. The act has largely succeeded in preventing lawsuits attempting to hold the gun industry accountable. Since 2005, only a handful of cases against the gun industry have survived pretrial dismissal efforts and made it to a jury trial,<sup>6</sup> meaning many valid cases are dismissed before evidence of industry wrongdoing is even considered:

- Lonnie and Sandy Phillips, whose daughter was fatally shot in the 2012 Aurora, Colorado, theater shooting, filed a lawsuit against online retailer Lucky Gunner for selling thousands of rounds of ammunition and a 100-round ammunition magazine to the shooter. The lawsuit alleged that Lucky Gunner’s internet business practices failed to provide reasonable safeguards to prevent dangerous people from acquiring weapons. The case was dismissed under the PLCAA, and the Phillips were ordered to pay the ammunition retailer more than \$200,000 in legal fees.<sup>7</sup>
- In 2001, 11-year-old Billy Swan accidentally shot and killed his friend, Josh Adames, while playing with his father’s gun. In 2009, Josh’s father sued the firearm manufacturer Beretta for both failing to include a common and inexpensive device on the firearm that would have prevented the gun from firing without a magazine and failing to include a warning label indicating the gun could be used without a magazine. The case was dismissed under the PLCAA.<sup>8</sup>
- In 2003, the family of officer Matthew Pavelka sued a gun dealer and manufacturer after Pavelka was fatally shot in the line of duty, arguing that the defendants failed to take adequate steps to prevent illegal gun purchases. The case was dismissed under the PLCAA.<sup>9</sup>
- In 2016, the families of the victims of the 2012 Sandy Hook Elementary School shooting sued Remington Arms, alleging that the firearm manufacturing company promoted and marketed the Bushmaster XM-15—the gun used by the shooter—in an “unethical, oppressive, immoral and unscrupulous manner” that was in violation of Connecticut state law. The case was originally dismissed by a trial court judge under the PLCAA; however, in 2019, the Connecticut Supreme Court reversed this ruling, allowing the plaintiffs to proceed in their suit against Remington. The case is still ongoing.<sup>10</sup>
- In 2007, David W. Logsdon purchased firearm ammunition and magazines from a local gun store using a credit card he stole from his neighbor, who was later found dead in her home. A few days later, he used the ammunition and magazines he purchased to go on a shooting spree, killing two and injuring several others in a Kansas City, Missouri, shopping center. The families of the deceased filed a lawsuit

against the gun shop, alleging that it was negligent in its sale of firearm ammunition and magazines and that it should have been alerted that Logsdon presented a serious risk after he used a stolen credit card. The case was dismissed under the PLCAA.<sup>11</sup>

- On March 20, 2016, 13-year-old J.R. Gustafson was accidentally shot and killed by another child, who believed the gun was unloaded when the magazine was detached. The gun, which was manufactured by Springfield Armory and sold by a local gun store, was missing several common safety measures, including a magazine disconnect feature. Brady: United Against Gun Violence sued the gun manufacturer and the dealer for product liability for failing to include these features. In 2019, a trial judge dismissed the suit under the PLCAA. Brady has since appealed the decision to the Superior Court of Pennsylvania.<sup>12</sup>

### **How has the PLCAA prevented the gun industry from implementing important safety measures?**

Civil litigation has historically been an invaluable method of incentivizing industry actors to adopt best practices. By increasing general knowledge around public health issues, obtaining guarded company information to change public opinion, and prompting legislation, it has helped promote systemic change and hold industries accountable.

Specifically, consumers and the general public have significantly benefited from the strategic use of civil litigation to incentivize large-scale safety improvements for potentially harmful products in the automotive, tobacco, and pharmaceutical industries.<sup>13</sup> Litigation against automotive manufacturers directly led to safety innovations such as seat belts, air bags, and conspicuous break lights.<sup>14</sup> Class-action lawsuits against the tobacco industry prompted a drastic shift in advertising practices and messaging and established a fund to support public health efforts related to smoking abatement. More recently, civil litigation against opioid manufacturers and distributors has allowed individuals and communities to turn to courts for monetary relief, while also holding the industry accountable for harms caused by these actors in facilitating the opioid epidemic.<sup>15</sup>

However, the PLCAA removes the ability to use civil litigation as a way to pressure gun industry actors into improving product safety and preventing negligent or criminal use of their products. This vast legal protection has allowed the gun industry to relax its safety measures and has promoted sloppy manufacturing at many gun-makers, including the removal of proven mechanical features designed to prevent unintentional shootings. Safety defects among gun manufacturers are not uncommon, and there are numerous reports of consumer injuries and deaths as a result of guns firing when jostled or dropped, firing without a trigger pull, and firing when being disassembled, as well as safety recall notices issued by the manufacturers themselves.<sup>16</sup>

Prior to the PLCAA, plaintiffs could address these numerous safety defects through civil litigation. In fact, there were several cases in which civil lawsuits successfully incentivized the gun industry to adopt new safety measures and other best practices:

- In 2000, several lawsuits against Smith & Wesson resulted in a settlement agreement in which the company agreed to adopt a number of safety practices, such as selling safety devices with each handgun; establishing a code of conduct for authorized dealers and distributors; and including a hidden set of serial numbers on the inside of all new guns to make it harder for criminals to scratch off identifying markings.<sup>17</sup>
- In 2002, John Allen Muhammad and Lee Boyd Malvo murdered 17 people and injured seven in the span of nine months, killing 10 individuals during the infamous Beltway sniper shootings. The guns used in the shootings were traced back to a gun retailer known as Bull's Eye Shooter Supply, which had failed to keep required records of gun sales and had lost more than 238 guns in the previous three years. In response, the families of the victims sued the snipers, Bull's Eye, and the gun manufacturer, Bushmaster Firearms, alleging that the store was responsible for the shootings because of its negligence and that Bushmaster was responsible because it continued supplying the gun store with its firearms, despite having knowledge of negligent sales practices. As a result of the settlement, Bushmaster agreed to change its distribution practices to ensure product safety.<sup>18</sup>

### **Do other industries receive the same legal protection as the gun industry?**

The PLCAA provides the gun industry with uniquely vast legal protections. Congress has passed laws limiting litigation it considers unfair—for example, the Foreign Intelligence Surveillance Act of 1978, which provided legal immunity to telecommunications businesses that participated in the government's warrantless wiretapping.<sup>19</sup> It has also set limits on the amount a plaintiff can recover through civil suits against other industries, such as the railroad<sup>20</sup> and nuclear power industries.<sup>21</sup> Yet never before has Congress granted blanket immunity from civil litigation to an entire industry, as opposed to specific industry behavior.

### **What efforts are underway to reduce the harm caused by the PLCAA?**

Legislation has been introduced in Congress to repeal the PLCAA and reinstate the right of individuals harmed by the gun industry to seek redress in civil court.<sup>22</sup> In addition, several lawsuits have challenged the constitutionality of the PLCAA. In September 2020, a Pennsylvania court ruled that the PLCAA was unconstitutional after the family of J.R. Gustafson, a 13-year-old who was accidentally shot and killed by his friend, sued the Illinois-based gun manufacturer Springfield Armory. The case alleges that Springfield Armory manufactured a defective firearm because it failed to make the gun inoperable without a magazine attached, a common safeguard against accidental shootings. According to the presiding judge, by protecting gun manufacturers from lawsuits grounded in “common law,” the PLCAA violated the 10th amendment. An appeal of this decision is pending.<sup>23</sup>

## Endnotes

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