

THE PENNSYLVANIA STATE UNIVERSITY  
SCHREYER HONORS COLLEGE

DEPARTMENT OF POLITICAL SCIENCE

The Future Legal Status of The Protection of Lawful Commerce in Arms Act

MASON MILLIARD

Fall 2023

A thesis  
submitted in partial fulfillment  
of the requirements  
for a baccalaureate degree  
in Political Science  
with honors in Political Science

Reviewed and approved\* by the following:

Robert Speel

Associate Professor of Political Science

Thesis Supervisor and Honors Adviser

Joseph Beilein Jr.

Associate Professor of History

Faculty Reader

\* Signatures are on file in the Schreyer Honors College.

## Abstract

The future legal status of the Protection of Lawful Commerce in Arms Act was called into question because of a legal settlement between Remington Arms and the families of the victims of the Sandy Hook Elementary School shooting in 2012. This thesis answers the question, "Are states going to circumvent PLCAA?" as well as explores the history of guns in the United States and examines the purpose of PLCAA's creation, attitudes towards PLCAA, and related lawsuits. The history of guns in the United States includes a few major periods: the origins of the 2nd Amendment, including colonial America and the Revolution; the pre-1930s, including many local and state laws; and the post-1930s, including the beginning of federal firearms legislation to the present. Each of these periods includes crucial events, including new laws, ordinances, and court cases that have led the country to its current point.

## TABLE OF CONTENTS

Introduction.....	1
History of Firearms in the US.....	4
2 <sup>nd</sup> Amendment Origins.....	4
Colonial America.....	4
Post Revolution.....	7
Pre-1930s.....	12
War of 1812.....	12
The North.....	13
The South.....	15
The West.....	17
The Civil War.....	18
Reconstruction.....	19
Federal Gun Laws and Court Cases- Before PLCAA.....	22
Firearm Federal Court Cases- Post PLCAA.....	28
Attitudes Towards Guns in the Late 20th and Early 21st Centuries.....	30
Protection of Lawful Commerce in Arms Act.....	33
Background of PLCAA.....	33
Legislative History.....	38
Content.....	39
Lawsuits- Post PLCAA.....	41
Sandy Hook Settlement.....	43
Response to Sandy Hook Settlement.....	46
Lawsuits and State Legislation after US Supreme Court Refusal.....	49
The Future Legal Status of The Protection of Lawful Commerce in Arms Act.....	58
Works Cited.....	61
Academic Vita.....	70

The Protection of Lawful Commerce in Arms Act, also known as PLCAA, is a 2005 federal law regarding guns. It is best known for the section that makes it so gun manufacturers cannot be sued when their equipment is used in mass shootings. This controversial law was signed by President George W. Bush in his second term in office. The law has garnered cheers from many conservatives and gun owners but has also accumulated much ire from liberals and gun control advocates.

Since 2005, there have been numerous calls to repeal and remove the law; many of those instances are after a mass shooting at a school or large public gathering that usually involves some kind of “assault rifle.” Many attempts to bypass this law have occurred, but none have been successful until 2022. A 2012 shooting in Newtown, Connecticut, at an elementary school, began a decade-long legal battle that resulted in millions in damages being paid to the families of the victims by the remnants of Remington Arms. The process by which this occurred is what calls the future legal status of PLCAA into question.

The purpose of this thesis is to answer the questions, “Are states going to be able to circumvent PLCAA?” and “What is the future of PLCAA?”, as well as explore the history of guns in the United States, examine the purpose of PLCAA’s creation, examine attitudes towards PLCAA, and examine related lawsuits. The history of guns in the United States has a few major time periods; the origins of the 2nd Amendment, including colonial America and the Revolution, the pre-1930s, including before the Civil War and its aftermath, and the post-1930s, including the Prohibition and post-WWII America. Each of these periods includes crucial events, including new laws, such as the National Firearms Act, Gun Control Act, and Bipartisan Safer Communities Act, ordinances, such as the beginning of concealed carry or disarming oneself when visiting towns, ideological shifts, such as the individual’s right to own guns, and court

cases, such as *US v. Miller*, *DC v. Heller*, and *New York State Rifle & Pistol Association Inc v. Bruen*, that have led the country to where we are now.

PLCAA was passed for specific reasons which have become synonymous with the legal insulation of a contentious industry. There are numerous lawsuits; with new lawsuits almost reliably arising after every major mass shooting. Some that will be scrutinized are *White v. Smith & Wesson* from 2000, the *City of Philadelphia v. Beretta U.S.A. Corp* in 2002, *Ileto v. Glock Inc* from 2010, and the families' lawsuits from the Aurora Theater and the Sandy Hook shootings of 2012, the Pulse Nightclub shooting of 2016, and the Parkland shooting of 2018. Many other events, very similar to these, have resulted in almost identical outcomes. These events were followed by waves of nationwide outcries for reforms and, ultimately, accusations of who is at fault.

The public perception of guns is a major influence on the future of PLCAA, as legislators and legal officials are chosen by the people in most instances. The change in ideologies throughout US history shows trends in public perception. The state and federal governments have been at odds on multiple occasions, the Sandy Hook settlement highlighted another time of disconnect. Some states are beginning to turn their backs on PLCAA by passing laws that expressly allow lawsuits against the firearms industry. Other states are taking legal paths to make the law irrelevant.

The future legality of PLCAA may be uncertain in some regards, however, there is some evidence of the future that can be observed. These observations can be seen through the behavior of states. Some states have passed laws that strengthen PLCAA, such as Florida, while others, like New Jersey, have passed laws in an attempt to circumvent it. The future of PLCAA is dependent on the interpretations of the law by the state and national judiciaries. The US Supreme

Court, as of current, has not made a ruling on the law but has turned away an appeal from a gun manufacturer in 2019. The Connecticut Supreme Court has made rulings that seem to contradict PLCAA, and some states are attempting to imitate the Connecticut method. The introduction of laws strengthening or weakening PLCAA is setting the stage for a court battle that will determine the future of this law.

## 2<sup>nd</sup> Amendment Origins

The origins of the 2<sup>nd</sup> Amendment can be derived from Colonial America up until the writing and implementation of the Constitution in the late 1700s. Native hostility, monarchical overreach, and the redundancy of a military with armed citizens were the paramount motivations for this Amendment; recreation being a peripheral benefit. The Founders took inspiration from many avenues. Before the Revolution, the focus was on rising tensions and violent conflict. After the Revolution, the focus changed from war to how to govern the new country resulting in numerous political conflicts.

### Colonial America

The premise of the 2<sup>nd</sup> Amendment was debated for decades during the colonial era. The attitudes towards guns were mixed. Some of the forces behind the anti-gun attitudes were that firearms were not common in homes, religious politicians often legislated or executed laws in a pacifistic way, and, occasionally, firearms were not available. Opposed to this, the pro-gun attitudes were related to the need for firearms to defend from the British, on the approach of the American Revolution, as well as to defend against Native Americans and other threats. Hunting was also a great way to acquire food, as well as the sportsmanship of hunting game. Both forces clashed in the colonies, however, the pro-gun forces tended to win out closer to the revolution. State Constitutions and Declarations of Rights were a battleground for these ideologies.

The debate around the necessity of “well-regulated militias” and the “right to bear arms” culminated in the states. Before the American Revolution, there were pushes to have militias be added to a state’s constitution or to be allowed by its legislature. This was a movement across the colonies that came in different forms. In Virginia, the elite and more powerful class were the

ones that had pushed these ideas, with the knowledge of a potential incoming war. In Pennsylvania, the working class in the west advocated for it, hoping for viable protection against the Natives.

In early 1775, a Virginian planter and slave owner named George Mason championed the idea of a militia. He was a prominent figure, being a very wealthy man, as well as being very active in Virginian politics. This status gained a lot of support for his movement. Mason's militia push was added to Virginia's Declaration of Rights. Another prominent political figure in Virginia named Edmund Randolph said that Mason's push, "swallowed up all the rest, by fixing the grounds and plan, which after great discussion and correction, were finally ratified."<sup>[49]</sup> The addition of the state militia overshadowed all other additions to the Virginian constitution. Though the militia passed, a controversial portion of Mason's plans, which was a part of Randolph's mentions, was Mason's initial claim that "that all Men are born equally free and independent."<sup>[49]</sup> There was not as much backlash to the addition of militias as there was the insinuation that all people were equal, an underlying theme in the South. Some argued that Mason had gone too far with his militia and right to bear arms push, while others such as Thomas Jefferson, thought that he should have gone farther. The final draft of Mason's plans read:

"That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power."<sup>[49]</sup>

In Pennsylvania, there was a disconnect between the East and the West. In the East, the Quakers were in power, with control of the legislature. They repeatedly wanted to negotiate with



the Natives who were attacking the westerners, this being due to their religious beliefs. This pacifism angered the western Pennsylvanians who would be consistently harassed by the Natives. There were many attempts by westerners to sway the easterners, but no change came.

The hardline pacifism of the Quakers led to the westerners taking matters into their own hands. In 1763, a large massacre of Natives by the Paxton Boys occurred. It is widely believed the reason for this massacre was the denial of a fort being built; the denial coming from the failings of a Quaker-backed negotiator. The inaction of the Quakers before and during the French and Indian War, as well as the Revolutionary War, led the other groups in Pennsylvania to form their own militias.<sup>[96]</sup>

As the colonies drew closer to war, many of the Quakers became loyalists and/or remained pacifists. Many saw this as a traitorous action to the new country, to which, the group was largely deposed from power in many states.<sup>[96]</sup> John Adams said, "where no government sufficient to the exigencies of affairs existed . . . [the people should take control and create one] best conducive to their happiness and safety." In this quote, Adams directed his message at PA, who had a muted response to the revolution due to enforced pacifism.<sup>[49]</sup>

Closer to the Revolution, heightened tensions with the monarchy drove the colonists to arm themselves. Specific events and actions catalyzed the desire to be armed, including the Boston Massacre, Liberty Riot, and the Authoritarian British responses to colonist actions. After the Liberty Riot, the Governor of Massachusetts claimed that the mob chanted, "We will support our Liberties, depending upon the strength of our own Arms."<sup>[27]</sup> To the British, the militia and the mob protesting the seizure of the *Liberty* were unconstitutional and was to be met with violence if the need arose. To the colonists, those groups were seen as virtuous. The British eventually put Boston under martial law and sought to arrest the freedom movement's leaders.

The tensions continued to rise and culminated in the Boston Massacre. Colonists called this violence unprovoked and propagandized it, making the need to be armed ever more important as the days passed.<sup>[27]</sup>

Tensions exploded in April of 1775. The very first battles of the Revolutionary War began in Lexington and Concord. Paul Revere's midnight ride was famous for warning the militias of the coming British and lanterns were lit in the Old North Church of Boston to signal the method of their approach. The goal of the British was to seize the armaments of the colonists, to end any chance of rebellion. The outnumbered militia men kept falling back but continuously gained in numbers. The battles resulted in a shocking American victory; the British having over triple the casualties and failing to take the weapons of the colonists.<sup>[37]</sup> These battles in the outskirts of Boston are a major reason for militias being so heavily supported in the future. The most powerful army in the world was beaten back by farmers and commoners that banded together.

### Post Revolution

After the victory of the United States in the Revolutionary War, the conflicts changed from violent to political. In what ways should this new country be governed? The Federalists and Anti-Federalist factions rose to prominence from this conflict. The Founders created a weak national government under the Articles of Confederation in the early 1780s. This government style left the majority of power to the states. Importantly, there was no national army; the states were left to defend themselves. After only a few years, this weak federal government was seen as unfit. In 1787, a Constitutional Convention was called.

Debate arose almost immediately about a federal army among a multitude of other problems. Many states had a militia mentioned in their constitutions, but they could not be governed nationally. The US began to utilize the new constitution in 1789. One of the many problems addressed by the new constitution was a federal military. It made the President the Commander in Chief of “the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.” The passage of the national army was a Federalist victory, largely in part due to the Federalists from Virginia, led by James Madison and John Marshall.<sup>[49]</sup>

The constitution, as of ratification, listed the governmental setup, with no rights explicit. George Mason of Virginia, an Anti-Federalist, was a major proponent of a declaration of rights being added to the constitution. Mason was met with harsh criticism, but many states agreed with him. A list of rights needed to be added to the constitution. In 1791, the Bill of Rights was ratified. The ratification marked a concession for the Federalists and a major win for the Anti-Federalists. The foundation of the rights and freedoms of the individual was now explicitly listed.<sup>[49]</sup>

Much of the new constitution was based on British common law, with some of the amendments added being directly cited to have been significant in their additions. The 2<sup>nd</sup> and 3<sup>rd</sup> Amendments were added due to the English Declaration of Rights of 1689. The 2<sup>nd</sup> is related to “the subjects being Protestant may have arms for their defense.” The British recognized the right of Protestants to defend themselves. This is furthered by another portion stating, “adapted for the necessary defense of the community.” Each person in a community was required to have some sort of armament to defend the community if the need arose. This is what set the groundwork for the 2<sup>nd</sup> Amendment, the right to defend themselves and their community. Despite what the

Declaration of Rights said, during this time, the British only “respected” those who acted as part of a group, not just as an individual.<sup>[49] [103]</sup>

British law and British actions were not the only factors in the addition of the 2<sup>nd</sup> Amendment, however. Following the debate of a national standing army vs the state militias defending the US, the focus changed to the right to bear arms. In this regard, Pennsylvania’s Constitution was another avenue for the Founders’ inspiration. Robert Whitehill, a politician from PA, disagreed with the original passage of the constitution when it lacked the Bill of Rights. Anti-Federalists compiled Whitehill’s critiques and published them, called “The Dissent of the Pennsylvania Minority.” Many of these critiques were directly inspired by the PA constitution. The seventh of which stated,

“That the people have a right to bear arms for the defense of themselves and their own state, or the United States, or for the purposes of killing game; and no law should be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals...”<sup>[31]</sup>

Many critics of the piece, mainly Federalists, came forward. None of the critics said anything about the civilian’s right to bear arms, only focusing on the debate between a national military vs the state militias. The debate appeared to halt due to congressional elections, but Anti-Federalists continued to move.

The 2<sup>nd</sup> Amendment was scrutinized as time passed. Praise of its purpose was channeled by Judge St. George Tucker of Virginia, a “moderate” Anti-Federalist. In this praise, Tucker claimed that it was a check on the power of the Federal government. If the states needed to rise

up against federal tyranny, this is what would allow them to do so. The claim shocked and angered many Federalists.<sup>[49]</sup> Many militias took the judge's opinion to heart.

The Whiskey Rebellion involved western Pennsylvanian farmers taking up arms against the federal government over alcohol taxes. Alexander Hamilton, a Federalist, in reaction to this, said, "there can therefore be no such thing as a 'constitutional resistance' to laws constitutionally enacted." George Washington assembled thousands of troops to deal with the rebellion. The "rebels" communicated they were not rebels, but a militia formed due to being called out by the federal authority. They were acting out of political obligation to protect their liberties.<sup>[49]</sup> Anti-Federalist officials in PA clashed over what should be done, to praise the efforts of the militia or to hope they submit to the federal government. Some, including William Petrikin, hoped that it could even lead to another revolution, after which a new form of militia-friendly government could be made. The rebellion reached its end with the federal government's troops decimating the rebels. Some of the leaders were put on trial for treason, but Washington eventually pardoned them, fearing that their execution would make them martyrs.<sup>[49]</sup> Continued resistance to the new constitution and the federal authority continued for decades.

The attitudes toward guns before and at the beginning of the United States were conflicted. The Federalists initially won out over the Anti-Federalists, having much more federal control with their governmental structure. However, in a major concession, the Federalists added a list of guaranteed rights in the new country. The Bill of Rights allowed for the private ownership of firearms and a guaranteed right for militias. Guns were seen as tools of a militia. Militias did not hesitate to use these tools in multiple instances against the federal government; it had worked well against the British, so why not use the same practice. Judge St. George Tucker's interpretation of the 2<sup>nd</sup> Amendment added fuel to the Anti-Federalists' fire. Issues with

wording and interpretations is still encountered in the following decades and centuries. The time period consisting of the 1800s until the 1930s was just as significant in the attitudes towards firearms as the beginning of the country.

## PRE-1930s

Though a new Constitution and an arms-related amendment were established, there were questions of specifics among a nation that was going in three separate directions. The North, South, and West were radically different in their cultures; this had an impact on how guns were treated. The expansion of the ideologies in these areas in the US tended to culminate in the highest courts of the nation, whose decisions sculpted the developing nation. The old debates between militias and an army raged on. Along with the separation of ideologies, multiple wars heightened the tensions in the debates surrounding firearms.

## War of 1812

The turn of the century set the precedent for the rest of the 1800s, bickering and war. The War of 1812 was the largest conflict for the USA since its Revolution. This war, which spanned multiple years, has been coined the “Forgotten War” by some due to it changing very little and few people knowing much about it.<sup>[126]</sup> Military technology had not significantly changed in the decades leading to it. Very similar armaments to the Revolution were used, muskets, pistols, and cannons.<sup>[56]</sup> The story of the Star-Spangled Banner and the burning of the White House are the most well-known parts of this war in the United States.

What is not as well-known is the militias’ impact on the success of the war. The previous half-century of debate over the 2<sup>nd</sup> Amendment and its militias came to a head again. Militiamen again protected the new country from Britain. They partnered with the standing Army and Navy set up by the federal government.<sup>[116]</sup> A US House Representative, George Troup, stated after the end of the war, that the war showed the “triumph of the militia over regular troops.”

Contradicting this, a report from the Senate claimed the military was the more important force

and the militias only aided. Eventually, both sides were declared to be as useful as the other by Congress, prolonging the debate.<sup>[116]</sup>

After the War of 1812, the United States began focusing on geographic and economic expansion. The North had an industrial society, where guns were usually kept in armories instead of the home. The South had a largely agricultural economic system with deep roots of racism. The West, thought by most to be wild and lawless, had some of the first gun ordinances in the country. These three parts of the country were radically different. The North and South bickered constantly politically, while the West planted its roots in newly acquired land. Society turned more aggressive; defense technology expanded, concealment of weapons was more common, and more people carried weapons.<sup>[49]</sup>

### The North

The North was the industrial heart of the United States. Textiles were the main export of the North, mainly from New England. The North was also renowned for its shipbuilding. Railroads were most common in this half of the country. Shoes and some of the first interchangeable firearm components were pioneered in factories instead of artisans. These interchangeable firearms components were some of the first of their kind in the US and changed the landscape of arms in the nation. These firearms innovations were mirrored by Eli Whitney in the South.<sup>[83]</sup>

Everyday life grew more contentious with these developments in the firearms industry. Guns were becoming more common in the North, in urban and rural areas. In the rural areas, guns were used as a food source and defense against the native populations. Urban areas had a growing population of people carrying guns; largely beginning in the 1830s.<sup>[49]</sup> This change took



hold in the following decades. The book *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* stated an occurrence from 1851,

“One Philadelphia clergyman lamented that ‘carrying deadly weapons, and avenging affronts, real or imaginary, with instant death’ had become a common practice in the cities of the Northeast. Indeed, he complained that ‘the generation of young men now coming forward in our cities, seem to think it manly to wear dirks and pistols, and to use them on the slightest provocation.’”<sup>[49]</sup>

The North’s industrial lead over the rest of North America led them to produce over 30 times more firearms than the South, even before the Civil War.<sup>[77]</sup> Mass production led to much more widespread availability. Armories were beginning to phase out in the 1800s in many northern states, only lingering for a few decades in the South.<sup>[94]</sup> In many places, the home was where these arms were kept. In the other states which kept armories, had laws which stated, “armories and gun houses were subject to regular inspection.” This was according to an 1859 Connecticut law. As late as 1919, Massachusetts passed a law that made having a suspiciously large number of firearms grounds for them to be forfeited to the state.<sup>[118]</sup>

Many state laws and constitutions encouraged individual ownership of firearms, but public carry of firearms was frowned upon. In 1836, a respected Massachusetts jurist, Peter Oxenbridge Thacher, instructed a jury that in Massachusetts:

“no person may go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to apprehend an assault or violence to his person, family, or property.”<sup>[50]</sup>

The Massachusetts model was used by seven other states; Wisconsin, Maine, Michigan, Virginia, Minnesota, Oregon, and Pennsylvania.<sup>[50]</sup> Another problem the North had with public carry was dueling. After the Hamilton-Burr Duel, many states began to have harsher punishments for these practices.<sup>[118]</sup>

### The South

The South was the agricultural powerhouse of the United States. The economic reach of the South was international; with Britain and other European nations being consumers of the southern states' cotton. Other cash crops that benefited the South were tobacco, rice, and sugar. Large railroads and telegraph lines webbed through the states. Expansive infrastructure decorated the land. The White House and Capitol Building were some of the major public works. All of these things had one common trait; they were built on the backs of slavery.

The Antebellum South is the period after the War of 1812 until the beginning of the Civil War. This period benefited greatly from the invention of the cotton gin, as well as the Fugitive Slave Act; both of which bolstered the influence of the South.<sup>[34]</sup> Slavery continued to worsen at this time, but regulations on weapons in some states got stricter. Kentucky was the first to pass laws to limit the concealment of weapons in 1813. This was done out of fear of assassinations. Fines for the concealed carrying of weapons, such as pistols and bowie knives, and taxes on the sale of them skyrocketed throughout many Southern States.<sup>[49]</sup>

In these states, firearm ownership was important for plantation owners, public officials, and everyday use by white Americans. Slaves outnumbered any other group in the South, posing a threat to the power structure. According to Saul Cornell, "Southern men thus carried weapons both 'as a protection against the slaves' and also to be prepared for 'quarrels between

freemen.”<sup>[50]</sup> Men in the South used these firearms to show that they were armed, to deter slaves from rising up, while also using it as a symbol of masculinity. This is similar to major cities in the North, where it was seen as “manly” to carry a firearm.

These laws led to a statewide court case in Kentucky, known as **Bliss v. Commonwealth** (1822). The court struck down the new laws limiting the concealment of weapons, saying that it violated Kentucky’s constitution.<sup>[40]</sup> Many other states with regulations on weapons followed suit with Kentucky’s Courts, empowering the individual’s right to defend themselves. In other states in the South, the right to firearms was intentionally strengthened further. Specifically, an adjustment to Mississippi’s constitution in 1819 stated: “to bear arms in defense of himself and the state.” Mississippi was used as a model in many other states, like Connecticut and Maine.<sup>[49]</sup> The constitutions in many southern states swung towards the right to bear arms for the individual. In Georgia, this swing was reinforced with the **Nunn v. State** decision in 1846. It supported the public carrying of firearms.<sup>[1]</sup> Open carry was applauded; concealed carry was vilified.

The South’s entanglement with slavery began one of the first US Supreme Court decisions related to firearms. The 1857 US Supreme Court ruling was the infamous **Dred Scott v. Sanford** case. The case is most known for the main element of the Taney Court’s ruling, that those of African descent living in America could not be citizens.<sup>[54]</sup> However, there is a much less known element, the individual’s right to bear arms under the federal constitution. Part of the ruling states,

“It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as

they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went.”<sup>[54]</sup>

In this excerpt, Chief Justice Roger Taney was elaborating on the potential repercussions of allowing blacks in the US to become citizens. The wording of “keep and carry arms wherever they went” expedited the individual’s right to bear arms. The ruling expanded the rights of citizens, though the “horrible repercussions” that Taney despised were the basic rights granted in the US Constitution. Hatred of another race is what dominated the culture and this ruling, clouding the other elements from mainstream knowledge.

The deep-rooted racism in the South’s culture and class system made cohabitation with the North impossible. The culture of this part of the country embraced guns in a way that the North did not. Many laws in the South supported the carrying of firearms in a “manly” way; openly carried. A New York journalist in the 1840s highlighted the North’s differences from the South; “north and east, where we are unprovided with such facilities for taking life.”<sup>[50]</sup> The South continued on its gun and racism trajectory and seceded from the United States.

### The West

The West has the reputation for widespread lawlessness, sheriffs, and vigilantes. While these were part of this side of the country in the early 1800s, so were the nation’s first versions of gun control. This side of the country was in its early developmental stages in the 1800s; the Louisiana Purchase was made in 1803 and the annexation of Texas was in 1845.<sup>[74]</sup> These

additions were accompanied by other large swaths of land being acquired and attributed. The Era of Manifest Destiny had a necessity for firearms, to protect oneself from animals and people alike. Many areas were dangerous and state governments were not strong if they were present at all.

Gun Laws and Ordinances were a constant presence; they were in flux before and after the Civil War. In the early days, and occasionally even in the Reconstruction period, ordinances could change from town to town. One common trait was that many cities did not tolerate the open carrying of weapons. Many towns also incorporated themselves relatively quickly to have official police forces to deal with crimes. The stand-offs and large shootouts were almost "unheard of." From 1870 through 1885, there were 45 killings, much less than the common romanticized western myths.<sup>[118]</sup>

Well-known "Wild West" towns, including Tombstone and Deadwood, had strict gun regulations. Law Enforcement posted these rules on signs on the outskirts of the towns. Some of these laws included the requirement of visitors to "disarm themselves at a hotel or a lawman's office."<sup>[84]</sup> In the rest of the nation, these kinds of restrictions were unheard of. According to Adam Winkler, a UCLA Professor, the town of Tombstone "had much more restrictive laws on carrying guns in public in the 1880s than it has today."<sup>[84]</sup> The West's reputation of gunslingers and lawlessness was far from the entire truth. The truth was that the West had stricter and longer-standing firearms regulations than the North and South.

### The Civil War

In the years leading up to the Civil War, slavery was the predominant issue, causing the nation to divide. The political conflicts turned into violent conflicts, Bleeding Kansas and John

Brown's Raid being prime examples of this.<sup>[53]</sup> Guns were the tool of change in these times. The election of the anti-slavery party's Abraham Lincoln was enough to rend the final ties of the country. Months before Lincoln's inauguration many Southern States began seceding. The mass succession triggered the deadliest war in American history.<sup>[124]</sup> The United States of America now fought the Confederate States of America. Many of the Southern and Western States joined the Confederacy, with only a few joining the North.

Military technology had changed since the War of 1812. The army had changed the type of bullet used, now slightly pointed. This ammunition could more effectively fly and shatter bones from a longer distance. Balloons were now able to be part of scouting missions. Another change was to the Navy. Ironclads, the precursor to the submarine, and ships had more armaments, largely increasing their firepower.<sup>[87]</sup> The new technologies were helped exponentially by the new railways and telegraph systems that were erected during the Antebellum period. The firearms themselves did not change much; they were still flintlock revolvers and muskets. Military Strategy had also improved with these technologies. The Civil War lasted from 1861 until 1865 and culminated in a US victory. The most notable action with a firearm was the first assassination of a US President, which was not followed by any gun control.

### Reconstruction

After the Civil War, Reconstruction began. With this new age in American history, many regulations on firearms were put into place. Categories of these new laws were Gun Bans, Brandishing, and Carry laws. Some States, including Arkansas and Tennessee, banned pistols. Wyoming banned all firearms. Brandishing laws were put into place to prevent and criminalize the threatening of others with weapons, including firearms. Though not new to the Reconstruction Era, types of weapons could not be openly carried in public with the Gun Carry

Restrictions.<sup>[39]</sup> In Texas, there was a “Prohibition on public carry” in 1871. Large amounts of opposition arose against this law; entire benches of judges were removed and elected to strike it down. A case called **English v. State** arose in Texas’s Semicolon Court, the name of Texas’s Supreme Court at the time.<sup>[61]</sup> In this 1872 case, the court upheld Texas’s constitution and included that the Federal constitution prevented the state from barring the carrying of weapons.<sup>[55]</sup> Many other states had similar tries to limit the carry of weapons.

Three Presidents had been assassinated in the first 150 years of the US. Lincoln was famously killed by John Wilkes Booth after the end of the Civil War. No additional laws were passed. In 1881, James Garfield was shot en route to a speech and died due to the injuries sustained. The Pendleton Civil Service Act was passed due to the assassin being a person that believed that he was "cheated" of an ambassadorship after helping the President on the campaign trail. William McKinley was shot in 1901 and died due to his injuries. His death is attributed to the creation of the Secret Service. McKinley was killed by an anarchist who had concealed a pistol.<sup>[82]</sup> Other Presidents were shot or shot at but did not die, one being Theodore Roosevelt. The assassination attempts and successful assassinations did not change much of the legislation regarding firearms, only influencing peripheral matters.

In the early 1900s, attitudes began to swing towards firearms restrictions. In New York, the Sullivan Law was enacted in 1911. This law required people to purchase two permits to own a handgun; one to purchase the gun and the other to own it. Another provision of the law was that prospective buyers had to convince local police that they had a good reason to purchase the firearm. The buyers were fingerprinted and had to provide references and photos of themselves. The gun was confiscated after the death of the owner. The US House of Representatives passed a

ban on sending handguns through the mail in 1924, which failed to pass through the Senate. The stated purpose of this legislation was to lower crime in the major cities.<sup>[71]</sup>

Through the Post-Civil war period, the nation's ideological backgrounds still influenced how guns were treated. The spotlight of the 2<sup>nd</sup> Amendment debate had swung from the militias' rights to the individuals' rights. States continued to govern their laws for firearms, going in various directions. They looked to one another as to how to move forward with firearms and other deadly weapons. Some tended to impose limitations on them, while others expanded the rights regarding them. Many legal and violent battles were waged to get to this point and will continue to rage on until and in the 21<sup>st</sup> century. The federal government decided to get directly involved in the regulation of firearms in the early 1900s, changing the course of gun attitudes in America.



## Federal Gun Laws and Court Cases- Before PLCAA

Federal laws restricting firearms were not put into effect until the Great Depression and Prohibition eras. As time progressed, the original restrictions eroded, with only the strongest remaining. Gun control was limited and expanded on multiple occasions, occasionally decades apart, but sometimes only months. A federal agency was established to regulate arms and enforce laws surrounding them. Just as previously, the court system reigned in the rapidly expanding landscape of federal gun laws. States continued to create firearms laws, either working in tandem with the federal government or against it. The American public's attitudes toward guns and the 2<sup>nd</sup> Amendment are continuously separated into two distinct ideologies.

Under President Franklin D. Roosevelt, the first gun restrictions were passed to combat organized crime. Part of FDR's "New Deal for Crime" was the **National Firearms Act of 1934**. This was the first federal gun control law. It added a \$200 tax, the modern-day equivalent of over \$4,200, on the sale and manufacturing of machine guns and sawed-off shotguns, created a national registry for firearms, and required stamped serial numbers on manufactured parts. At the time of its origin, this only applied to firearms involved in interstate commerce.<sup>[88]</sup> According to the ATF,

"the NFA was enacted by Congress as an exercise of its authority to tax, the NFA had an underlying purpose unrelated to revenue collection. As the legislative history of the law discloses, its underlying purpose was to curtail, if not prohibit, transactions in NFA firearms. Congress found these firearms to pose a significant crime problem..."<sup>[42]</sup>

The NFA of 1934 was further compounded by the **Federal Firearms Act of 1938**. This law was also championed by President Roosevelt. The FFA of 1938, made sellers,

manufacturers, and importers of firearms required to have a “federal firearms license,” commonly known as an “FFL.” This license required holders to keep records of sales and forbid the sale of firearms to specific groups of people, like convicted or indicted felons, called “prohibited persons”.<sup>[58]</sup> While this law had the backing of the President and Congress, many were against it. The government used an ongoing US Supreme Court case, **United States v. Miller** (1939), as a springboard to pass this law. In the case, Jack Miller, along with his co-defendant Frank Layton, was charged with transporting an unregistered, short-barreled shotgun between Oklahoma and Arkansas. Miller argued that his 2<sup>nd</sup> Amendment rights were violated by the NFA, and a US District Court sided with Miller.<sup>[11]</sup> However, the US Supreme Court issued a final ruling in 1939, stating,

“In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.”<sup>[11]</sup>

The next instances of federal gun control laws were in 1968. Ushered in by the assassinations of prominent political figures, John F. Kennedy and Martin Luther King Jr., President Lyndon B. Johnson advocated for the **Omnibus Crime Control and Safe Streets Act of 1968** and the **Gun Control Act of 1968**. The OCCSSA focused on combating crime. It did so by giving grants to local law enforcement, adding handgun regulations, increasing the age to buy handguns to 21, expanding the FBI, and many more crime related regulations. Handguns specifically were not allowed to be moved between states and it banned the sale of them from unlicensed persons.<sup>[95]</sup> The GCA expanded the list of prohibited persons, mandated FFLs for a

larger group, required more markings on manufactured parts, and limited imports of firearms.<sup>[66]</sup> The GCA is still the central law regulating guns today.

Four years after the passing of the GCA and OCCSSA, the modern-day **ATF was formed**. This agency was around before any form of gun control, its origins can be traced to the 1800s. It rose to prominence in the 1920s and 1930s as the Alcohol Tax Unit, or ATU, during Prohibition. The ATU was part of the Prohibition Unit, a part of the Bureau of Internal Revenue. The ATU was a part of the Treasury Department after the end of Prohibition and was briefly a part of the FBI. In 1942, the duty of enforcing federal firearms regulations was given to the ATU. In the 1950s, the ATU was also given the responsibility of enforcing tobacco laws. In response to this, the agency was renamed the Alcohol and Tobacco Division or ATTD. After the passing of the GCA, the agency underwent another name change, to the present Bureau of Alcohol, Tobacco, Firearms, and Explosives, also known as the ATF or BATFE.<sup>[33]</sup>

The new beginning of the ATF started in July of 1972 when the agency was established as an independent part of the Treasury Department. This saw the ATF division in the IRS be transferred to the Treasury Department. In 2003, the Department of Justice took over control of the agency.<sup>[33]</sup> The ATF, presently, is a controversial, federal law enforcement agency focused on the administration of laws regarding alcohol, tobacco, firearms, and explosives. The controversies of the ATF made it into a report done by the US Senate's Judiciary Subcommittee on the Constitution. This happened after a group of hearings and reviews on federal enforcement tactics on firearms.<sup>[125]</sup> In 1982, the report, called *The Right to Keep and Bear Arms*, stated:

“Based upon these hearings it is apparent that enforcement tactics made possible by the current federal firearms laws are constitutionally, legally, and practically reprehensible.

Although Congress adopted the Gun Control Act with the primary objective of limiting access of

felons and high-risk groups to firearms, the overbreadth of the law has led to neglect of precisely this area of enforcement.”<sup>[125]</sup>

One of the first examples of gun control revision is the **Firearm Owners’ Protection Act of 1986**. This law was directly related to ATF actions. Under this new law, ATF inspections could only happen once a year. It allowed federal protection of firearm transportation in specific states, known as the “safe passage” provision, allowed the interstate sale of certain rifles, allowed the shipment of ammunition through the US Postal Service, and removed the previously necessary record keeping on regular ammunition. While some regulations were reigned-in, there were elements of gun control: such as the banning of the sale of machine guns dated after 1986 to civilians.<sup>[59]</sup>

Seven years later, in 1993, the **Brady Handgun Violence Prevention Act**, commonly called the Brady Bill, was enacted. The bill was named after James Brady, the press secretary to President Reagan, who was shot in an assassination attempt on Reagan. This law requires FBI and state agency background checks for any purchase of a firearm from a dealer and added a five-day waiting period until 1998. The law had a temporary provisional period, where it only applied to handguns, which also ended in 1998. The permanent provisions of the Brady Bill apply to all firearms.<sup>[41]</sup> This law was occasionally called unconstitutional after its passing due to its “commandeering” of state agencies to enforce federal law. The National Rifle Association funded lawsuits against the bill across the US. In the US Supreme Court case **Printz v. US** (1997), the court ruled 5-4 that certain provisions of the Brady Bill were unconstitutional.<sup>[17]</sup>

The **Violent Crime Control and Law Enforcement Act** was passed in 1994. This law added over \$15 billion of funds for prisons and crime prevention programs. It hired over 100,000 new police officers. It set up and strengthened programs regarding violence against women and

juvenile delinquency. It cracked down on drug and drinking crimes. These provisions are directly related to the rising incarceration rates for the next decade after the passage of the bill. The law also restricted the manufacture, transfer, and possession of certain semiautomatic “assault” weapons; this section is also known as the Federal Assault Weapons Ban, which lasted for 10 years.<sup>[129]</sup>

The US Supreme Court case **US v. Lopez** occurred in 1995. This case was related to the **Gun-Free School Zones Act of 1990**. The Gun-Free School Zones Act made it illegal to possess or fire a firearm in a school zone or within 1000ft surrounding one. Congress claimed that they had the power to enforce this through the Commerce Clause in the US Constitution.<sup>[67]</sup> Lopez, a high school student in Texas, carried a firearm on school property and was charged for doing so under Texas law. The charge was dropped in Texas, then Lopez was charged in federal court for his actions. The US Supreme Court ruled 5-4 that Congress could not regulate this under the Commerce Clause due to it not being an economic activity.<sup>[16]</sup> Congress passed a new **Gun-Free School Zones Act of 1995** for many kinds of firearms involved in interstate commerce.<sup>[68]</sup>

The Commerce Clause used by Congress has shown up in other court cases, including **US v. Rybar** (1996) and **US v. Kirk** (1997). The Rybar case was in the 3<sup>rd</sup> Circuit Court of Appeals, which ruled that Rybar’s convictions for owning a Type 54 machine gun were legitimate and violated the Firearm Owners’ Protection Act.<sup>[3]</sup> The Kirk case was heard in the 5<sup>th</sup> Circuit Court of Appeals, which ruled that Congress would be able to regulate the sale of machine guns under the Commerce Clause if dated after 1986.<sup>[4]</sup>

After the turn of the 21<sup>st</sup> Century, a few more firearm-related laws and rules were passed. The **Tiahrt Amendment** was added to an appropriations bill in 2003. This amendment, which was compounded upon in the following five years, made it so the ATF can only release their data

on gun ownership to law enforcement agencies in a criminal investigation and that the ATF was no longer allowed to require inspections of gun dealers' inventories. It also included that the FBI must delete background check data within a day.<sup>[123]</sup> A year later, in 2004, the **assault weapons ban**, from the Violent Crime Control and Law Enforcement Act, expired.<sup>[129]</sup> In 2005, the **Protection of Lawful Commerce in Arms Act** was enacted.<sup>[99]</sup>

### **Firearm Federal Court Cases- Post PLCAA**

In 2008, the **DC v. Heller** case was decided by the US Supreme Court. Washington DC had laws that required guns in the home to have trigger locks on them or be disassembled. It also banned the registration of handguns. Heller, a police officer, applied for a one-year license to keep a handgun in his home. He sued the government after his application was denied, saying these laws violated his right to have a gun in his home. In this 5-4 ruling, it was concluded that these laws violated the US Constitution.<sup>[18]</sup> In 2016, another case involving the 2<sup>nd</sup> Amendment took place. The US Supreme court unanimously ruled in **Caetano v. Massachusetts**, that stun guns are protected by the 2<sup>nd</sup> Amendment. The ruling iterated that the 2<sup>nd</sup> Amendment covers all weapons that may be defined as "bearable arms," even if they did not exist when the Bill of Rights was drafted and are not commonly used in warfare.<sup>[20]</sup>

**McDonald v. City of Chicago** was decided in the US Supreme Court in June of 2010. The court ruled 5-4 that the 2<sup>nd</sup> Amendment was incorporated into the 14<sup>th</sup> Amendment's Privileges and Immunities clauses.<sup>[19]</sup> In the majority opinion, Justice Alito stated:

“The city of Chicago (City) and the village of Oak Park, a Chicago suburb, have laws that are similar to the District of Columbia’s, but Chicago and Oak Park argue that their laws are constitutional because the Second Amendment has no application to the States. We have previously held that most of the provisions of the Bill of Rights apply with full force to both the Federal Government and the States. Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States.”<sup>[19]</sup>

In June 2022, **New York State Rifle & Pistol Association Inc v. Bruen** was decided. The US Supreme Court ruled 6-3 that the “State’s denial of petitioners’ applications for concealed-carry licenses for self-defense violated the 2<sup>nd</sup> Amendment.” This ruling undid the Sullivan Act of 1911 which had a “may issue” clause, which requires citizens to convince police to allow them to purchase a firearm.<sup>[5]</sup> Other states such as Delaware and Connecticut had similar clauses in laws. This ruling would seem to require that states, at minimum, have to have a “shall issue” clause, which requires states to allow citizens to conceal carry firearms if they pass a background check.



### Attitudes Towards Guns in the late 20<sup>th</sup> and early 21<sup>st</sup> Centuries

The federal laws enacted that regulated guns changed how people thought of them. In the early 1900s, many Americans saw guns as part of crime, including FDR. This led to a wave of firearm legislation. This wave continued into the 1980s until the Firearm Owners' Protection Act was passed. The ATF was viewed as overstepping its bounds as an agency and was reigned in for it. The National Rifle Association and other gun rights groups were also responsible for this change; these groups lobbied Congress.

While the federal government was enacting these laws, states were making different laws. Just as in the 1800s, in some parts of the country, firearm ownership was being expanded, while in other places it was being restricted. In California, an "assault" weapons ban was put into place in 1989. In 2021 challenges to this ban started in the court system. This ban was put into place due to a mass shooting at a school. Washington DC enacted the handgun laws which resulted in the DC v. Heller decision. Contrary to these areas, some states in the 2000s began opening up to "constitutional carry" as opposed to "shall issue." As of 2021, over 20 states claim to allow the concealed carry of firearms unrestricted. In addition, many states will honor permits given in other states.<sup>[48]</sup>

The public's attitudes toward guns are widely divided. Mass shootings are the primary cause of this. Thousands of mass shootings have occurred throughout the US's history. Many that occurred in the earlier 1900s were racially motivated, including the Tulsa Race Massacre of 1921 and the Rosewood Massacre of 1923.<sup>[61][63]</sup> Many of the other shootings in this period were related to organized crime, such as the St. Valentine's Day Massacre of 1929.<sup>[111]</sup> In the later part of the 1900s, extremism and mental instability tended to be the causes of the shooting. The US Capitol was the host of a shooting by Puerto Rican Nationalist Party Members in 1954,

wounding five House members.<sup>[7]</sup> The University of Texas shooting in 1966 resulted in the death of 17 people.<sup>[127]</sup> The McDonald's massacre in California resulted in 21 deaths in 1984.<sup>[78]</sup> Shootings in schools became prominent by the end of the 1900s and continued into the 2000s. The Cleveland Elementary School shooting in 1989 resulted in 6 dead.<sup>[32]</sup> In 1998, the Thurston High school shooting left 25 injured and 4 dead.<sup>[131]</sup>

Many modern shootings have gone unremedied with legislation restricting firearms. In 1999 the Columbine High School massacre occurred resulting in 13 dead. The West Nickel Mines shooting in 2006 left 6 dead. In 2007, the Virginia Tech shooting resulted in 33 deaths.<sup>[128]</sup> The Fort Hood shooting had 14 deaths in 2009.<sup>[110]</sup> The Seal Beach shooting in 2011 had 9 deaths.<sup>[117]</sup> In 2012 the Sandy Hook and Aurora Theater shootings occurred, totaling 39 dead.<sup>[35]</sup> <sup>[128]</sup> In 2015, the Charleston Church shooting resulted in 9 deaths.<sup>[133]</sup> The Pulse Nightclub shooting had 50 deaths in 2016.<sup>[132]</sup> The Parkland shooting at the Stoneman Douglas High School in 2018 had 17 deaths.<sup>[128]</sup> In 2018, the Pittsburgh synagogue shooting resulted in 11 deaths.<sup>[107]</sup> The El Paso shooting resulted in 23 deaths in 2019.<sup>[79]</sup> The few shootings to have gun regulations directly result from were in 2017 and 2022. In 2017, the Las Vegas shooting killed 60 people with almost a thousand injured from the chaos.<sup>[119]</sup> This shooting resulted in a bump-stock ban. Also in 2017, the Sutherland Springs Church shooting was the deadliest in Texas history, resulting in 22 injured and 26 dead.<sup>[72]</sup> The largest anti-Semitic attack in US History occurred in 2018 with the Tree of Life Synagogue shooting; resulting in 11 dead.<sup>[100]</sup> The 2022 shooting in Uvalde, Texas, resulted in 17 dead.<sup>[128]</sup> The **Bipartisan Safer Communities Act** followed that shooting. This law removed the boyfriend loophole, which barred individuals who have been convicted of domestic violence crimes against spouses, partners with whom they shared children or partners with whom they cohabitated from having guns.<sup>[38]</sup>

These, along with many others similar to them, have divided the country on how guns should be treated, as tools, or weapons of violence. Most firearms legislation attempted in the 21<sup>st</sup> century is in direct relation to a mass shooting. Large public outcries happen after every mass shooting but are usually met with no new laws, further increasing the division among Americans. Many pro-gun groups see proposed gun control laws as draconian. Many anti-gun groups see the lack of modern gun control as an injustice. One common call of the anti-gun groups since 2005 is to repeal the Protection of Lawful Commerce in Arms Act.

The history of guns in the United States has been strenuous. In the colonial and revolutionary periods, guns were seen as tools of the militia. In and between the War periods of the 1800s, guns were mainly seen as tools of the military. Only after the Dred Scott case and the end of the Civil War was the individual's right to bear arms seriously discussed. At the turn of the 1900s, guns were seen as the individuals' right to own and bear, with certain restrictions. The battle of the differing ideologies in these periods resulted in numerous court cases, state and federal laws, and swings of majority perceptions on guns. With evolving technologies, the gun debate has become more complex. The nation today is as divided as the founders.

### **Background of PLCAA:**

The Protection of Lawful Commerce in Arms Act, also known as PLCAA, became law on October 26th, 2005. It was passed through the Republican-controlled 109th Congress. The purpose of PLCAA is “to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages or injunctive or other relief resulting from the misuse of their products by others.” PLCAA was passed due to many major cities attempting to sue gun manufacturers for the large amounts of shootings that were happening in urban areas. Lobbying by large gun rights groups, such as the NRA, was a major factor in the passage of the law.

Many cities sued gun manufacturers. These attempts were often due to the claim that gun manufacturers created a ‘public nuisance.’ These allegations towards the industry claimed that the sale practices of these companies allowed guns to be sold on secondhand markets, which then could be used in violent crime. This was a strategy that was created with the help of David Kairys, a Temple University Law School professor and civil rights lawyer.<sup>[80]</sup> According to him, the inspiration for this strategy was due to tobacco-related cases. In an interview, he claimed that the gun industry knows that it is selling guns to criminals, and this was a motivation for his entrance into gun-related lawsuits.<sup>[121]</sup>

Very few of these kinds of cases made it to trial. Many of the most influential court cases in the creation of PLCAA occurred only a few years before its passage. All of these cases used the "public nuisance" strategy. In 2000, **White v. Smith & Wesson** was an attempt by the Mayor of Cleveland to sue multiple firearms manufacturers. The companies eventually agreed to implement the changes asked for by the defendants; including only selling through specific dealers.<sup>[25]</sup> In 2002, the **Cincinnati v. Beretta** case occurred. In this case, the city sued Beretta

on behalf of multiple citizens. It was dismissed in the trial court. The Ohio Supreme Court then said that the case could continue. In April 2003, the lawsuit was dropped by the city.<sup>[23]</sup> Also in 2003, the NAACP sued major handgun distributors in the **NAACP v. AcuSport Inc.** case. It was eventually dismissed after months of litigation “since [the] plaintiff has not proved all elements of its cause of action as required by applicable New York Law.”<sup>[8]</sup> There were no penalties given to either party.<sup>[8]</sup>

**Shirley Graham v. Glass** was a court case from Kansas that began in 2003. This was a long legal battle that concluded in 2013. A firearms dealer sold a shotgun to a man who had not filled out the paperwork to obtain the firearm correctly. The man then shot his child and himself with that firearm.<sup>[10]</sup> The suit was initiated by the mother of the slain child. The case was dismissed by the trial court, which was then reversed by the court of appeals. The courts ruled with Graham, saying that the “standard of care necessary” for the gun shop that sold the firearm to keep firearms from dangerous people was not fulfilled. The case was settled with a large payout to Graham from the gun shop.<sup>[10]</sup>

A large lawsuit also came from San Francisco. **Merrill v. Navegar, Inc.** (2001), was a case brought by the Merrill family against the arms manufacturer Navegar Inc. The suit was over the murder of eight people and the wounding of six others using three firearms, two of which were TEC-9s manufactured by Navegar. Navegar won the suit, not having to pay anything to the family.<sup>[7.1]</sup> The majority opinion included,

“The issue requires an interpretation of subdivision (a) of Civil Code section 1714.4, which provides that in an action for products liability “no firearm . . . shall be deemed defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when

discharged." I agree with the majority that plaintiffs' cause of action for "common law negligence" falls within that provision. As the majority explains, in enacting that provision, the Legislature intended to bar the kind of action that plaintiffs here brought against Navegar."<sup>[7.1]</sup>

The sole dissenting opinion stated,

"I cannot accept the majority's conclusion that plaintiffs are statutorily barred from suing the maker of the semiautomatic assault weapon used to massacre the victims in this case. Neither the letter of Civil Code section 1714.4 nor the legislative policy it embodies bars this action for negligence in the marketing of a firearm."<sup>[7.1]</sup>

Another strategy used to attempt to sue gun manufacturers was targeted towards their marketing. One of the largest cases brought against the firearm industry was **Hamilton v. Accu-Tek** in 1999. In this case, New York families sued 25 different gun manufacturers for negligent marketing. The result was over \$500,000 being paid in damages from three companies: American Arms, Beretta, and Taurus International.<sup>[21]</sup> Many similar cases resulted in settlements for the families and cities that sued or resulted in changes to the process by which guns and ammunition were sold. Some of these changes include videotaping of sales, a computer system to track guns related to crimes, and more training for employees.<sup>[21]</sup>

**City of Chicago v. Beretta** (2002) was another example of a city suing a gun manufacturer over negligent marketing.<sup>[22]</sup> Chicago alleged that, "Defendant dealers sell firearms to Chicago residents even when the purchasers' words and/or behavior indicate that they intend to possess or use the firearms illegally" and that "Defendant manufacturers design and advertise

their guns to appeal to the significant market for illegal firearms, including to those who wish to use them for criminal purposes.”<sup>[22]</sup> The case resulted in nothing paid to the plaintiffs.

Also in 2002, Philadelphia sued Beretta in the case **City of Philadelphia v. Beretta U.S.A. Corp.** The city argued that Beretta “knowingly distributed guns to straw purchasers, who then sold them to criminals, and that this activity constituted a public nuisance.”<sup>[9]</sup> The case ultimately settled with Beretta agreeing to measures aimed at curbing the flow of illegal guns into the city; including stricter gun safety measures, like the addition of a magazine disconnect feature to certain handguns, and the creation of a fund to help police investigate gun crimes.<sup>[9]</sup>

In addition to the multitude of lawsuits being attempted against the firearms industry, cities began to make laws which expressly allowed their citizens to sue firearm manufacturers. As reported by the Gotham Gazette in 2005, the New York City Council passed a resolution which,

“Allows New Yorkers who are victims of gun violence to bring civil lawsuits against any gun manufacturer or dealer in the nation that does not require background checks at gun shows, fails to limit buyers to one gun a month and does not maintain inventories of all guns and records of all sales.”<sup>[64]</sup>

The results of the vote on this resolution were 45 “yes” and 2 “no”, there were five council members absent for this vote. Of the three Republicans on the city council, two voted “no.”<sup>[64]</sup>

After the 1999 New York case and cities beginning to pass laws about suing gun manufacturers, gun rights groups were hoping for George W. Bush to win the presidency. This was because of his pro-gun views. Many gun rights groups lobbied fiercely to have protections for gun manufacturers passed for years prior to this.<sup>[52]</sup> The lobbying resulted in PLCAA being

proposed under the Bush presidency. Other agencies, such as the Department of Defense, expressed support for the bill's passage. According to the New York Times, "Pentagon officials wrote a letter saying they supported it as a way to "safeguard our national security" by limiting lawsuits against companies that supply weapons to the military."<sup>[130]</sup> The result of these efforts was the passage of PLCAA.



### **Legislative History**

PLCAA was introduced in the US House of Representatives on February 15th, 2005, by Representative Cliff Stearns with H.R.800. It was referred to the House Judiciary Committee and then to the Subcommittee on Commercial and Administrative Law. Multiple markup sessions were held. It was eventually amended to reflect the Senate's version. It acquired a total of 257 cosponsors throughout the legislative process: 210 Republicans and 47 Democrats.

PLCAA was introduced in the US Senate on February 16th, 2005, by Senator Larry Craig as S.397. It was read to the Senate a second time on July 17th. A filibuster was attempted, but a cloture motion with 66 votes, including 53 Republicans and 13 Democrats, ended the attempt on July 26th. Many amendments were added, such as how PLCAA does not apply to actions by the US Attorney General to enforce the Gun Control Act or the National Firearms Act. Other additions are related to certain civil liabilities, expanding legal definitions, and child-related additions. It had a total of 61 cosponsors: 50 Republicans and 11 Democrats. The final vote to pass the bill was 65-31. It was then sent to the House, which passed the Senate's version with a 283-144 vote.

PLCAA was then presented to President Bush, who signed it. The passage of PLCAA marked a new era for firearms. Manufacturers could no longer be sued unless,

“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.”

### **Content of PLCAA**

The Protection of Lawful Commerce in Arms Act has content that reaches further than only prohibiting civil litigation against firearm manufacturers. In addition to its most well-known clause, there are others that refer to economics, the rights of citizens, and the rights of businesses.

According to the law, the purposes of PLCAA are:

“To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products, ammunition products by others when the product functioned as designed and intended.

To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.”<sup>[99]</sup>

An amendment added to PLCAA was the Child Safety Lock Act of 2005. This act “promoted the safe storage of handguns”, “prevent unauthorized persons from gaining access to or use of a handgun”, and “to avoid hindering industry from supplying firearms to law-abiding citizens for all lawful purposes.” The content of this act also includes standards for safely storing firearms and the transfer of them.<sup>[99]</sup>

Armor Piercing Ammunition Standards is the final section of PLCAA. These standards state that it is unlawful to make or import armor-piercing ammunition unless, it is made for the US, State, and/or any of their departments, the testing of this ammunition that was approved by the Attorney General, and the ammunition is made for export, which has another list of limitations added to the exportability of this kind of ammunition. This section also explores the penalties for breaking these standards; including 15 years or up to life in prison depending on the circumstances that involved the ammunition.<sup>[99]</sup>

The passage of this law was met with both waves of backlash and waves of support. The support came from conservative gun owners and the gun rights groups that had lobbied for the law for years. The backlash has come from the liberal side of US politics. In their presidential runs, Hillary Clinton, in 2016, and Bernie Sanders, in 2020, called for PLCAA to be repealed and echoed how the gun industry was the only industry to have these exemptions from being sued. Aside from the many liberal politicians who oppose PLCAA, many lawsuits have been filed in an attempt to circumvent the law.

### **Lawsuits: Post PLCAA**

One of the first lawsuits that attempted to take down PLCAA was **Ileto v. Glock Inc.** This was a long-running lawsuit that began before the passage of PLCAA. The suit was started by a tragic event in 1999, which ended with several children and a postal worker being shot and killed. The postal worker's mother, Jillian Ileto, began the suit against Glock and other gun manufacturers due to the gunman carrying a 9mm handgun, a firearm made by Glock, as well as a Bushmaster XM15, a Norinco 9mm short rifle, two Imbel .308 rifles, and a .22 caliber handgun made by Davis Industries.<sup>[75]</sup> In 2003, Ileto's suit was dismissed in the US District Court, but was revived by the US Court of Appeals on the claims of negligence, public nuisance, survival, and wrongful death.<sup>[75]</sup> The lawsuit continued after the passage of PLCAA. It was used to try and dismantle the law by attempting to find out if it was constitutional under the "Takings Clause" of the Fifth Amendment.<sup>[75]</sup> PLCAA required the dismissal of pending lawsuits against manufacturers and sellers. Ileto's appeal was to the US Supreme Court, but a Writ of Certiorari was denied in 2010.<sup>[75]</sup>

Many cases against gun manufacturers were dismissed before trial following the passage of PLCAA. Many of the most infamous shootings in the last decade have resulted in attempted lawsuits, some of which made it to trial. A previous lawsuit, **New York v. Beretta U.S.A. Corp.** (2013), which began a decade earlier, was dismissed due to PLCAA.<sup>[14]</sup> Another lawsuit was filed against a gun dealer, Shawnee Gun Shop, over the use of a stolen credit card to purchase a firearm. It was dismissed due to PLCAA in **Noble v. Shawnee Gun Shop Inc** in 2013.<sup>[2]</sup>

Another case that was attempted was related to the Aurora Theater shooting in 2012. In the shooting on July 20, 2012, James Holmes opened fire in the Aurora Movie theater during a showing of "The Dark Knight Rises." Holmes killed 12 people and injured 70. He was sentenced

to life in prison without parole. The families of the victims filed a lawsuit against the seller of the ammunition used in the shooting, Lucky Gunner LLC. The case, named **Phillips v. Lucky Gunner, LLC** (2015), was dismissed due to PLCAA.<sup>[24]</sup> Along with the dismissal, the families had to pay \$203,000 in legal fees to Lucky Gunner.<sup>[24]</sup>

The results of lawsuits began to change as time progressed. The Las Vegas shooting in 2017 prompted a large wave of lawsuits against the gun industry. In **Prescott v. Slide Fire Sols., LP** (2018), families of the victims sued the manufacturer of bump stock devices that were used by the shooter. Bump stocks allowed Stephen Paddock, the shooter, to fire more rapidly. This case was eventually dismissed<sup>[13]</sup>; however, regulations were changed to ban bump stocks after this event, making the shooting one of the first to directly change gun regulations since 2005.<sup>[51]</sup>

Several lawsuits, including the Parkland shooting and the Tree of Life synagogue shooting, are still ongoing. In Florida, an appeals court allowed the Parkland lawsuit against Smith & Wesson, the manufacturer, and Sunrise Tactical Supply, the dealer, to proceed.<sup>[30]</sup> The Tree of Life lawsuit targets Colt, the NRA, and the shooter. The suit claims that the Colt firearm “is more akin to a military-style weapon than a civilian product.”<sup>[113]</sup> Other lawsuits against gun shops or manufacturers were discussed but never attempted, including a lawsuit connected to the Pulse Nightclub shooting in 2016 in Orlando, Florida, being leveled against Glock and Sig Sauer, and the WDBJ shooting in Virginia against Roanoke Firearms.

## Sandy Hook

The lawsuit that called the future legal status of PLCAA into question stemmed from the 2012 Sandy Hook Elementary School shooting in Newtown, Connecticut. This shooting was one of the largest in US history, resulting in 26 deaths. Following the shooting, a lawsuit began.

The Sandy Hook Elementary School shooting involved a 20-year-old, mentally ill man named Adam Lanza, who targeted his elementary school. The shooting began on December 14th, 2012, when Adam Lanza killed his mother, who had bought him his firearms, at 9:30 a.m. Lanza then drove to the elementary school with a Bushmaster XM15-E2s rifle and ten 30-round magazines. He opened fire at 9:35 a.m. by shooting his way through the outer glass doors of the school. Lanza proceeded into the school where faculty accosted him to “not shoot” or to “put his gun down.” He shot 29 people and killed six school faculty members, including Victoria Leigh Soto, and twenty children.<sup>[114]</sup> Two people who were shot survived their injuries. The final shot of the day was Lanza committing suicide at 9:40 a.m. The shooting at the school lasted five minutes, with police showing up for the final minute of it.<sup>[114]</sup>

In December 2014, the families of the victims filed a class-action lawsuit against Remington Arms, the manufacturer of the Bushmaster XM-15. The lawsuit was named **Soto v. Bushmaster**, named after the family of the deceased Victoria Leigh Soto. The basis of the lawsuit was the marketing of the XM-15. Bushmaster had an advertisement campaign that conflated owning an XM-15 with masculinity. The most infamous of these ads included the phrase “Consider Your Man Card Reissued.” The campaign also allowed people to sign up other people’s emails or addresses to receive mail from Bushmaster calling out their masculinity.<sup>[62]</sup> “Unmasculine” men could have their names added to lists on the Bushmaster website.<sup>[90]</sup> The marketing lawsuit claimed that this weapon was marketed toward civilians when it was

“military-style.”<sup>[86]</sup> The families complained that the rifle should never have been sold to the public. The civil complaint states: “While the weapon is suitable for the military and for law enforcement where it’s used for combat and limited police purposes in civilian hands, the high-caliber, rapid-fire rifles are essentially killing machines.”<sup>[86]</sup>

This lawsuit began in Connecticut. Remington claimed that the suit should occur in North Carolina on the federal level.<sup>[106]</sup> Remington attorneys consistently requested that the suit be dismissed, claiming PLCAA protected the company. These motions were denied multiple times, but on October 14th, 2016, the lawsuit was dismissed at the trial court level. In March 2019, the Connecticut Supreme Court allowed the lawsuit to proceed with a 4-3 vote, remanding it back to the superior courts.<sup>[12]</sup> The appellate court ruled,

“the families' appeal to the Connecticut Unfair Trade Practices Act, demonstrating that the gun manufacturers had used advertising that presented the weapons in an "unfair, unethical, or dangerous manner", with Remington seeking to "expand the market for [its] assault weapons through advertising campaigns that encouraged consumers ... to launch offensive assaults against their perceived enemies", was not prohibited by PLCAA, and thus that the plaintiffs had sufficient standing to argue their case at trial court.”<sup>[120]</sup>

It also ruled that the plaintiffs can subpoena internal documents on how gun companies have marketed the AR-15.<sup>[120]</sup>

Following this ruling, Remington appealed to the United States Supreme Court on May 16th, 2019. Remington accumulated six amici curiae briefs following their petition. Some of those that filed briefs to support Remington were 22 Republican US House Representatives, the state of Texas, the NRA, and the National Shooting Sports Foundation.<sup>[104]</sup> On November 12th,

2019, Remington was denied a writ of certiorari with no comments from the court.<sup>[104]</sup> The National Rifle Association “told the justices in a filing that the lawsuit could put gun manufacturers out of business, making the [Second Amendment] meaningless,” according to *Reuters*.<sup>[47]</sup> Heidi Li Feldman, a professor at Georgetown University Law, said “it wasn’t surprising that the justices didn’t take the case because the court very rarely gets involved in cases in the middle of them rather than when they are resolved.” Feldman claimed, “Remington took a chance trying to get the case before the U.S. Supreme Court and now will have to go forward with a case they really want no part of.”<sup>[65]</sup>

The case was sent back to the Connecticut Supreme Court. Remington then appealed to the state Supreme Court, claiming the case “presents a nationally important question” about guns.<sup>[45]</sup> The Connecticut Supreme Court allowed the case to continue. In mid-2021, a dismissal request from Remington was refused. Following the refusal, Remington offered the families a \$33 million settlement. The families refused this. Then on February 15th, 2022, Remington agreed to settle the lawsuit for \$73 million.<sup>[108]</sup>



## **Response to the Settlement**

The families of the Sandy Hook victims claimed their victory was bittersweet. According to an *Associated Press* article from February 2022, the mother of one of the victims said,

“My hope for this lawsuit,” she said, “is that by facing and finally being penalized for the impact of their work, gun companies along with the insurance and banking industries that enable them will be forced to make their practices safer than they’ve ever been, which will save lives and stop more shootings.”<sup>[47]</sup>

The attorney for the families, Josh Koskoff, stated in a press conference, “These nine families have shared a single goal from the very beginning: to do whatever they could to help prevent the next Sandy Hook. It is hard to imagine an outcome that better accomplishes that goal.”<sup>[112]</sup> He followed up by saying,

“This victory should serve as a wake up call not only to the gun industry, but also the insurance and banking companies that prop it up. For the gun industry, it’s time to stop recklessly marketing all guns to all people for all uses and instead ask how marketing can lower risk rather than court it. For the insurance and banking industries, it’s time to recognize the financial cost of underwriting companies that elevate profit by escalating risk. Our hope is that this victory will be the first boulder in the avalanche that forces that change.”<sup>[112]</sup>

President Joe Biden weighed in on this “historic” moment by saying, “While this settlement does not erase the pain of that tragic day, it does begin the necessary work of holding gun manufacturers accountable for manufacturing weapons of war and irresponsibly marketing these firearms.”<sup>[47]</sup> The president called on Congress to repeal PLCAA. He also told the nation

to, “continue to urge state and local lawmakers, lawyers, and survivors of gun violence to pursue efforts to replicate the success of the Sandy Hook families.”<sup>[47]</sup>

Other politicians spoke about the settlement. Congressman Mike Thompson, Chairman of the House Gun Violence Prevention Task Force, said in a press conference,

"This settlement is a reminder that instead of seeing the Sandy Hook tragedy as a reason to come together and work on pragmatic solutions to prevent gun violence, gun manufacturers aligned themselves with the Washington D.C. NRA to prioritize profits over saving lives. The money the families are receiving will not bring their loved ones back nor provide them true justice, but it is a step towards accountability for gun manufacturers.”<sup>[44]</sup>

Thompson followed up this statement by advocating for the passage of the Bipartisan Background Checks Act, a bill he introduced, and saying,

“Background checks, red flag laws, safe storage, banning ghost guns, and other pragmatic reforms are all consistent with the Second Amendment, yet gun manufacturers and the NRA have attempted to shut the door on these reforms that we know will save lives. We must act now to prevent future mass shootings.”<sup>[44]</sup>

Remington had repeatedly claimed that there was no evidence to suggest that the marketing of the Bushmaster XM-15 was related to the shooting. Additionally, part of the settlement was the release of legal documents. These documents examined the marketing strategies of the XM-15.<sup>[47]</sup> Remington had declared bankruptcy two years before the settlement and had its assets sold off. The settlement was paid by Remington’s insurers.<sup>[28]</sup> A federal bankruptcy court in Alabama approved the insurance payment. These insurers were Ironshore,

James River Insurance Co., ACE, and North American Capacity Insurance Co.<sup>[115]</sup> The court claimed that the maximum payout that could be paid was \$73 million. The families hoped that their settlement was a “message to insurers and banks as well as to gunmakers and marketers.”<sup>[115]</sup> Koskoff claimed that the previous \$33 million settlement offer was from Ironshore and James River Insurance Co.<sup>[115]</sup>

Gun rights groups had mixed responses to the settlement. The National Rifle Association was silent on the ruling. In their press releases, February 15th, 2022, is blank, and the settlement is not mentioned on any following dates.<sup>[91]</sup> Gun Owners of America also did not release a statement.<sup>[57]</sup> The National Shooting Sports Foundation said the settlement was another example of “legislation through litigation.”<sup>[43]</sup> A statement was released that said,

“NSSF believes the Court incorrectly allowed this one claim to go forward to discovery. Nevertheless, plaintiffs never proved ROC’s (Remington Outdoor Company) marketing materials were ever observed by Nancy Lanza, who legally purchased her rifle, or by her son who murdered her and committed the atrocious crimes, let alone “inspired” either of them to select the rifle criminally misused in the tragedy. We remain confident ROC would have prevailed had this case proceeded to trial.”<sup>[43]</sup>

## **Lawsuits and State Legislation after US Supreme Court Refusal**

The Sandy Hook settlement galvanized many gun control groups. Following the rejection of Remington's appeal to the US Supreme Court, lawsuits against firearm manufacturers have reached their farthest extent since the passage of PLCAA. In addition to lawsuits, states are proposing and passing legislation to allow gun manufacturers to be sued. Some states are passing laws that protect firearm manufacturers.

In **Pollack v. Cruz** (2020), the families of the victims of the mass shooting at the Marjory Stoneman Douglas High School, commonly called the Parkland Shooting, sued the shooter, Nikolas Cruz, and multiple mental health centers.<sup>[98]</sup> In addition to suing the shooter, the families sued Smith & Wesson and other gun manufacturers in the case **Guttenberg v. Smith & Wesson**. The case was dismissed in January 2023 due to a lack of jurisdiction to issue a declaratory judgement.<sup>[15]</sup> The court dismissed the suit due to the reason that it lacked jurisdiction to issue declaratory relief because it was possible that the Guttenbergs would not file their tort claims.<sup>[15]</sup> The Florida Supreme Court has received an appeal from the families in February 2023.<sup>[109]</sup> In this appeal, the plaintiffs are saying that the dismissal due to the issue with declaratory judgment are unfounded, and claiming,

“This case offers a good vehicle for the Court to sharpen the focus of the jurisdictional inquiry under the Declaratory Judgment Act as well as to make clear that plaintiffs’ credible allegations concerning their intended future conduct must be taken as true for purposes of a motion to dismiss. There is a need beyond this particular case for such clarification of the law.”<sup>[15]</sup>

The Tree of Life Synagogue shooting lawsuit against Colt is still ongoing in the Allegheny Court of Common Pleas. Colt began the lawsuit by claiming that PLCAA protected the company from this lawsuit. The plaintiff, Marc Simon, an executor of an estate of a victim, contends that the AR-15 is too closely related to the M-16 to be sold to civilians. Simon's suit claims that "the risk of it [an AR-15] being used by mass shooters to commit murder outweighs the benefits of selling it the civilian market."<sup>[85]</sup>

In an attempt to circumvent PLCAA, Simon claims that the AR-15 used in the shooting was a machine gun, a type of firearm not protected by PLCAA.<sup>[85]</sup> It is also alleged that the firearm was defective as it left Colt's control for the reason "that [it] could be simply and easily modified to fire automatically, and that had military features and attributes of little or no use for legitimate civilian uses."<sup>[85]</sup> Public nuisance is another legal strategy that Simon is employing. Colt claims that these allegations are false and moved for dismissal in April 2021. This motion was denied in July 2021.<sup>[85]</sup> It is unclear if the lawsuit will be allowed under PLCAA.

Another lawsuit that is ongoing is **Gustafson v. Springfield Armory**. In this case, the parents of James Gustafson are claiming wrongful death against the manufacturer. James died after a friend shot him with a pistol made by Springfield Armory, which had the magazine removed, but still had a bullet in the chamber.<sup>[70]</sup> A trial court in Pennsylvania dismissed the suit. The Pennsylvania Superior Court agreed to hear the suit in February 2022 and said in their opinion when doing so that "PLCAA is an unconstitutional infringement upon the sovereign police powers of the fifty states."<sup>[70]</sup> According to the website *The Trace*, what makes this lawsuit in Pennsylvania different for any other is only the "appeals court judges presiding over it."<sup>[36]</sup>

According to Everytown.org, the states that currently have rejected legal immunity for the firearms industry include California, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, Wisconsin, and Wyoming.<sup>[105]</sup> These states either have laws that directly allow and encourage their citizens to sue gun manufacturers, like in New York or Delaware, or do not have any state legislation passed to bar citizens from suing. Some states are aiming to join this group, including Colorado.

In New York, the first “firearm manufacturer responsibility” law was passed in 2021, called **N.Y. Gen. Bus. Law § 898**. The law states:

“[n]o gun industry member, by conduct either unlawful in itself or unreasonable under all the circumstances shall knowingly or recklessly create, maintain or contribute to a condition in New York state that endangers the safety or health of the public through the sale, manufacturing, importing or marketing of [firearms or ammunition.]”<sup>[92]</sup>

If a gun industry member were to violate any of their stated duties under the law, which would be a public nuisance”, the NY attorney general can bring suit against them.

This law is the basis for a lawsuit in Buffalo, NY after a mass shooting in May 2022. Buffalo filed a suit against Beretta, Smith & Wesson, Glock, Remington, and Bushmaster in December 2022. Buffalo Mayor, Byron Brown, claimed the lawsuit is “another proactive strategy that we are utilizing in Buffalo to keep our community safe.”<sup>[122]</sup> A goal of this lawsuit according to the *Washington Post* is a US Supreme Court battle.<sup>[102]</sup>

In Delaware, the **Keshall ‘KeKe’ Anderson Safe Firearm Sales Act** was passed in June 2022. It was named after Keshall Anderson. She was a bystander who was killed in a 2016

shooting involving a firearm purchased through a straw purchase. The law allows the state's attorney general and/or any person who has been damaged as a result of a firearm industry member's actions to bring forward a lawsuit.<sup>[81]</sup> The law states that,

“The federal government has enacted the Protection of Lawful Commerce in Arms Act (“PLCAA”), which also limits the ability of those injured by firearms to bring civil actions. However, PLCAA was intended only to limit such claims under the common law, and recognizes the ability of the states to enact statutes applicable to the sale or marketing of firearms, and expressly provides that causes of action may proceed where there are violations of such statutes.

(5) Therefore, it is necessary and proper to promote and protect the health, safety, and welfare of the people of Delaware by amending § 1448A of Title 11 of the Delaware Code and establishing a statutory cause of action for public nuisance and other violations to address injuries to public health and safety and to seek relief, including abatement and other injunctive relief, damages, and attorneys' fees and costs..”<sup>[81]</sup>

Other sections of the law state that gun manufacturers:

“-Prevent the sale or distribution of a firearm-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under state or federal law, or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm themselves or unlawfully harm another or of unlawfully possessing or using a firearm-related product.

-Prevent the loss of a firearm-related product or theft of a firearm-related product from a firearm industry member.

-Ensure that the firearm industry member complies with all provisions of state and federal law and does not otherwise promote the unlawful manufacture, sale, possession, marketing, or use of a firearm-related product.”<sup>[81]</sup>

In New Jersey, a law was passed in 2022, called **NJ AB 1765**. This law: “Allows Attorney General to bring cause of action for certain public nuisance violations arising from sale or marketing of firearms.”<sup>[89]</sup> This law was blocked through a preliminary order by a federal judge in January 2023.<sup>[97]</sup> The order by U.S. District Judge Zahid Quraishi means the law cannot be enforced while the judge considers a legal challenge by the National Shooting Sports Foundation, a gun industry group.<sup>[97]</sup>

In California, the most recent responsibility act was passed, called the **Firearm Industry Responsibility Act**. The act was approved in July 2022 and is set to go into effect in July 2023.

This act will:

“(1) Prevent the sale or distribution of a firearm-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under state or federal law, or a person who the firearm industry member has reasonable cause to believe is at substantial risk of using a firearm-related product to harm themselves or another or of possessing or using a firearm-related product unlawfully.

(2) Prevent the loss or theft of a firearm-related product from the firearm industry member.



(3) Ensure that the firearm industry member complies with all provisions of California and federal law and does not otherwise promote the unlawful manufacture, sale, possession, marketing, or use of a firearm-related product.”<sup>[26]</sup>

Other parts of this legislation include rules and regulations that the firearms industry must follow, including the marketing of its firearms. The Act states:

“(1) A firearm-related product shall not be considered abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety based on a firearm’s inherent capacity to cause injury or lethal harm.

(2) There shall be a presumption that a firearm-related product is abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety if any of the following is true:

(A) The firearm-related product’s features render the product most suitable for assaultive purposes instead of lawful self-defense, hunting, or other legitimate sport and recreational activities.

(B) The firearm-related product is designed, sold, or marketed in a manner that foreseeably promotes conversion of legal firearm-related products into illegal firearm-related products.

(C) The firearm-related product is designed, sold, or marketed in a manner that is targeted at minors or other individuals who are legally prohibited from accessing firearms.”<sup>[26]</sup>

The addition allowing victims of violence to sue gun manufacturers states:

“3273.52. (a) An act or omission by a firearm industry member in violation of the firearm industry standard of conduct set forth in Section 3273.51 shall be actionable under this section.

(b) A person who has suffered harm in California because of a firearm industry member’s conduct described by subdivision (a) may bring an action in a court of competent jurisdiction.

(c) (1) The Attorney General may bring a civil action in a court of competent jurisdiction in the name of the people of the State of California to enforce this title and remedy harm caused by a violation of this title.

(2) A city attorney may bring a civil action in a court of competent jurisdiction in the name of the people of that city to enforce this title and remedy harm caused by a violation of this title.

(3) A county counsel may bring a civil action in a court of competent jurisdiction in the name of the people of that county to enforce this title and remedy harm caused by a violation of this title.”<sup>[26]</sup>

Other states are aiming to join this group. Colorado is posturing to remove the protections for manufacturers and sellers. After the Columbine shooting in 1999, Colorado gave extra protections to the industry, including heavy financial risks to those pursuing a civil case.<sup>[101]</sup> In 2015, a case from the parents of a victim in the Aurora theater shooting was dismissed and the plaintiffs had to pay over \$200,000 in legal fees to the defendant.<sup>[101]</sup> State Senator Sonya Jaquez Lewis introduced a bill in February 2023, which she claims,

“The bill that I’m introducing would not punish gun violence victims if they want to go to civil court . . . It evens the playing field so that (the gun) industry, those businesses, will just be put on the same playing field as every other business.”<sup>[101]</sup>

This measure is being backed by Democrats in Colorado and has accrued sponsors in both chambers of the state legislature.<sup>[101]</sup>

According to *Giffords*, the states that currently have some immunity for the firearms industry include Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, and West Virginia.<sup>[69]</sup> These states have varying degrees of protection for the gun industry. Some states like Arkansas and Georgia have passed laws stating that only the state government could sue firearm or ammunition manufacturers.<sup>[29] [93]</sup> This was passed to stop communities and people from suing. Others have laws that directly state that entities in the gun industry cannot be sued for anything other than a malfunction of the firearm, these states include Florida and Indiana.

Indiana has a law, **Ind. Code § 34-12-3-3**, which states, “a person may not bring or maintain an action against a firearms or ammunition manufacturer, trade association, or seller for: recovery of damages resulting from, or injunctive relief or abatement of a nuisance”<sup>[76]</sup> or for “recovery of damages resulting from the criminal or unlawful misuse of a firearm or ammunition for a firearm by a third party.”<sup>[76]</sup> This law was most recently amended in 2015.<sup>[76]</sup>

Florida passed law **790.331** in 2022. This law states that:

“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.”<sup>[60]</sup>

There are stated exceptions to the prohibition on lawsuits, which include: “a 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.”<sup>[60]</sup> It is expressly stated that the “potential to cause serious injury, damage, or death when discharged legally or illegally” does not deem a firearm or ammunition as defective.<sup>[60]</sup> If there is a violation of this prohibition, the plaintiff in the case would have to pay the legal fees of the defendant.<sup>[60]</sup>

In addition to states protecting the essence of PLCAA, the National Shooting Sports Foundation, a trade association in the firearms industry, is challenging the laws and lawsuits in New York, Delaware, and New Jersey. The NSSF is claiming that “the new laws are unconstitutional because they are too vague, regulate transactions that take place outside of the states and are preempted by the 2005 law.”<sup>[97]</sup> The senior vice president of the NSSF, Lawrence Keane, said that these laws are a “transparent and obvious attempt to circumvent the will of Congress.”<sup>[97]</sup>

### **The Future Legal Status of The Protection of Lawful Commerce in Arms Act**

PLCAA's legal status has been damaged enough that it is no longer enforceable as a federal law. With the US Supreme Court not issuing a writ of certiorari to Remington in 2019, a precedent was set that PLCAA must be enforced by the states, and if it is not, then it can be sidestepped. As the law stands, a lawsuit could circumvent PLCAA depending on where the suit begins due to loopholes that have been found within the law. The US Supreme Court's inaction led to the nation questioning the legal status of PLCAA. This questioning has led to all 50 states having opinions on immunity for the gun industry, which may lead to a different result in each state. In most gun-tolerant, conservative-leaning states, such as Florida or Indiana, almost no lawsuit will be able to succeed. In most gun-intolerant, liberal-leaning states, such as California or Connecticut, a lawsuit has the possibility of success.

Actions being taken to avoid PLCAA are being attempted in a growing number of states. California, Delaware, and New York are states that openly defy PLCAA. New Jersey has so far been halted by judges. Colorado is the perfect example of ongoing legislative retaliation with State Senator Sonya Jaquez Lewis's proposed legislation. Some appellate judges in Pennsylvania are trying to bring large change themselves, going as far as claiming PLCAA unconstitutional.

A court battle is the most likely to result in change. PLCAA may work its way back to the highest courts in one of the 50 states. If there are judges, like those in the case of *Gustafson v. Springfield Armory*, the US Supreme Court will have to eventually decide on the legality of PLCAA. A US Supreme Court battle in the next decade that could fully decide the current legal status of PLCAA. The *Washington Post* appears convinced that the lawsuit from Buffalo, NY will culminate there.<sup>[102]</sup>

The legal strategies of claiming public nuisance or marketing issues that had been done previously in cases such as *Hamilton v. Accu-Tek* in 1999, *White v. Smith & Wesson* in 2000, *Shirley Graham v. Glass* in 2013, and *Remington Arms Co. v. Soto* in 2019 are becoming convincing enough for state legislators and judges to side against PLCAA. The law would need to be compounded with another law that would strengthen it, similar to the National Firearms Act of 1934 and the Federal Firearms Act of 1938 or the Gun Free School Zones Act of 1990 and the Gun Free School Zones Act of 1995, or have the federal court system reinforce it, similar to *US v. Rybar* in 1996, which upheld a conviction over a machine gun, and *US v. Kirk* in 1997, which ruled that Congress could regulate machine guns if they are produced after 1986.

With changing attitudes toward firearms throughout US history, the purpose of PLCAA may have a future, but under a different law and a different name. PLCAA is intended to deal with business and civil law; it protects an industry that manufactures tools capable of large-scale violence from the people who use those tools inappropriately. Many people's concerns about the PLCAA are not about those reasons; they are about how firearms are perceived.

Public perceptions of guns have changed drastically throughout the United States' history. Firearms went from being kept in armories to being in the home. The current public perception of concealed carry is almost the exact opposite of what it was in the mid-1800s. There has always been a difference in how guns are perceived in different parts of the country. The South has been pro-gun for centuries, whereas the West Coast is strongly anti-gun and has trended in that direction for decades. Because of public perceptions of their actions, agencies such as the Bureau of Alcohol, Tobacco, Firearms, and Explosives have had their powers expanded and constrained. Gun rights have gone through similar upheavals, such as the expansion of both gun

rights and gun control spanning from the Gun Control Act in 1968 to the Firearm Owners' Protection Act in 1986 to the Violent Crime Control and Law Enforcement Act in 1994.

The government's stance on firearms has shifted multiple times in less than 100 years. For over a five-decade period, there was nothing but gun control measures being taken by the federal government. This changed, and since 1986, gun laws and legal rulings have trended in favor of gun rights, with the PLCAA being a major part of this wave. The federal government has played catchup with certain states since federal firearms legislation began in the 1930s. PLCAA was one of the few examples where the federal government acted before many of the states and due to this, during the last two decades, the states have been examining the law and seeing if it was reasonable.

The US Supreme Court will likely be the decider of the future legal status of PLCAA, through its actions or inactions. If the US Supreme Court reacts, all inferior courts will have to follow. If PLCAA is deemed federally unconstitutional, then the issue of legal immunity for the firearms industry will be reserved to the states. If an appeal is rejected for the second time, states will have the freedom to decide on legal immunity until it goes to the US Supreme Court again. If PLCAA or any of its major sections are deemed constitutional, then it is likely all states will forbid lawsuits against gun manufacturers until a new legal strategy is attempted. If this occurs, the Sandy Hook settlement would be a sole legal triumph that could never again be replicated.

## Works Cited

- [<sup>1</sup>] 1 Ga. 243 (1846)
- [<sup>2</sup>] 12 CR 1522 (2013)
- [<sup>3</sup>] 103 F.3d 273 (3d Cir. 1996)
- [<sup>4</sup>] 105 F.3d 997 (5th Cir. 1997)
- [<sup>5</sup>] 142 S.Ct. 2111 (2022)
- [<sup>6</sup>] “1921 Tulsa Race Massacre.” *Tulsa Historical Society & Museum*, 3 Nov. 2022, [www.tulsaohistory.org/exhibit/1921-tulsa-race-massacre/](http://www.tulsaohistory.org/exhibit/1921-tulsa-race-massacre/).
- [<sup>7</sup>] “1954 Shooting in the House Chamber.” *US House of Representatives: History, Art & Archives*, [history.house.gov/Oral-History/Events/1954-Shooting/](http://history.house.gov/Oral-History/Events/1954-Shooting/).
- [<sup>7.1</sup>] 26 Cal. 4th 469 (2001)
- [<sup>8</sup>] 271 F. Supp. 2d 435 (E.D.N.Y. 2003)
- [<sup>9</sup>] 277 F.3d 415 (3d Cir. 2002)
- [<sup>10</sup>] 297 Kan. 888, 308 P.3d 1 (2013)
- [<sup>11</sup>] 307 US 174 (1939)
- [<sup>12</sup>] 331 Conn. 53 (2019)
- [<sup>13</sup>] 341 F. Supp. 3d 1175 (D. Nev. 2018)
- [<sup>14</sup>] 401 F. Supp. 2d 244 (E.D.N.Y. 2005)
- [<sup>15</sup>] 48 Fla. L. Weekly D83, 2023 WL 28083, \*1 (Fla. 4th. DCA Jan. 4, 2023)
- [<sup>16</sup>] 514 US 549 (1995)
- [<sup>17</sup>] 521 US 898 (1997)
- [<sup>18</sup>] 554 US 570 (2008)
- [<sup>19</sup>] 561 US 742 (2010)
- [<sup>20</sup>] 577 US 411 (2016)
- [<sup>21</sup>] 62 F. Supp. 2d 802 (E.D.N.Y. 1999)
- [<sup>22</sup>] 785 N.E.2d 16 (2002)
- [<sup>23</sup>] 768 N.E.2d 1136
- [<sup>24</sup>] 84 F. Supp. 3d 1216 (D. Colo. 2015)



[25] 97 F. Supp. 2d 816 (N.D. Ohio 2000)

[26] AB 1594 (2022)

[27] “Account of the Boston Massacre.” *American Battlefield Trust*, 12 Mar. 1770, <https://www.battlefields.org/learn/primary-sources/account-boston-massacre>.

[28] Altimari, Dave. “Sandy Hook Families Will Get Their Day in Court after Supreme Court Allows Their Lawsuit against Gunmaker Remington to Continue.” *Hartford Courant*, Hartford Courant, 13 Nov. 2019, <https://www.courant.com/2019/11/12/sandy-hook-families-will-get-their-day-in-court-after-supreme-court-allows-their-lawsuit-against-gunmaker-remington-to-continue/>.

[29] AR Code § 14-16-504 (2017)

[30] Associated Press. “Lawsuit Claims NRA's Rhetoric Spurred Tree of Life Shooting.” *90.5 WESA*, 22 Jan. 2021, [www.wesa.fm/local-headlines/2021-01-22/lawsuit-claims-nras-rhetoric-spurred-tree-of-life-shooting](http://www.wesa.fm/local-headlines/2021-01-22/lawsuit-claims-nras-rhetoric-spurred-tree-of-life-shooting).

[31] *The Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania, to Their Constituents*. 1787.

[32] “A Decade before Columbine, There Was Cleveland Elementary School.” *Brady*, [www.bradyunited.org/blog/a-decade-before-columbine-there-was-cleveland-elementary-school](http://www.bradyunited.org/blog/a-decade-before-columbine-there-was-cleveland-elementary-school).

[33] “ATF History Timeline.” *Bureau of Alcohol, Tobacco, Firearms and Explosives*, [www.atf.gov/our-history/atf-history-timeline](http://www.atf.gov/our-history/atf-history-timeline).

[34] “Antebellum Timeline for History.” *Antebellum Timeline*, 22 July 2002, [people.uwec.edu/duckswsm/Antebellum%20Timeline.htm](http://people.uwec.edu/duckswsm/Antebellum%20Timeline.htm).

[35] “Aurora Shooting Leaves 12 Dead, 70 Wounded.” *History.com*, A&E Television Networks, 2 Dec. 2013, [www.history.com/this-day-in-history/12-people-killed-70-wounded-in-colorado-movie-theater-shooting](http://www.history.com/this-day-in-history/12-people-killed-70-wounded-in-colorado-movie-theater-shooting).

[36] Barton, Champe. “The Case That Could Topple the Gun Industry's Special Legal Protections.” *The Trace*, 2 Oct. 2020, <https://www.thetrace.org/2020/10/gunmakers-wrongful-death-lawsuits-sue-springfield-armory/>.

[37] “Battles of Lexington and Concord.” *American Battlefield Trust*, [www.battlefields.org/learn/revolutionary-war/battles/lexington-and-concord](http://www.battlefields.org/learn/revolutionary-war/battles/lexington-and-concord).

[38] Bipartisan Safer Communities Act of 2022

[39] Bellesiles, Michael A. *The Origins of Gun Culture in the United States, 1760-1865*. Journal of American History, 1996.

- [40] *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90, 13 Am. Dec. 251 (1822)
- [41] Brady Handgun Violence Prevention Act of 1993
- [42] “Bureau of Alcohol, Tobacco, Firearms and Explosives.” *National Firearms Act / Bureau of Alcohol, Tobacco, Firearms and Explosives*, [www.atf.gov/rules-and-regulations/national-firearms-act](http://www.atf.gov/rules-and-regulations/national-firearms-act).
- [43] Cassidy, Daphane. “Gun Control's One – Two Punch; Attacking the First Amendment to Get to the Second.” NSSF, 25 Feb. 2022, <https://www.nssf.org/articles/gun-controls-one-two-punch-attacking-the-first-amendment-to-get-to-the-second/?hilite=Sandy%2BHook>.
- [44] “Chairman Thompson Releases Statement on Sandy Hook Families Receiving a Settlement from Remington.” *Representative Mike Thompson*, 15 Feb. 2022, <https://mikethompson.house.gov/newsroom/press-releases/chairman-thompson-releases-statement-sandy-hook-families-receiving>.
- [45] Chappell, Bill. “Supreme Court Allows Sandy Hook Families' Case against Remington Arms to Proceed.” *NPR*, NPR, 12 Nov. 2019, <https://www.npr.org/2019/11/12/778487920/supreme-court-allows-sandy-hook-families-case-against-remington-to-proceed>.
- [46] Chung, Andrew. “U.S. Supreme Court Declines to Shield Gun Maker from Sandy Hook Lawsuit.” *Reuters*, Thomson Reuters, 12 Nov. 2019, <https://www.reuters.com/article/us-usa-court-sandy-hook/u-s-supreme-court-declines-to-shield-gun-maker-from-sandy-hook-lawsuit-idUSKBN1XM1W8>.
- [47] Collins, Dave. “Sandy Hook Families Settle for \$73m with Gun Maker Remington.” *AP NEWS*, Associated Press, 16 Feb. 2022, <https://apnews.com/article/sandy-hook-school-shooting-remington-settlement-e53b95d398ee9b838afc06275a4df403>.
- [48] “Concealed Carry Permit Reciprocity Maps.” *USA Carry*, 1 Oct. 2022, [www.usacarry.com/concealed-carry-permit-reciprocity-maps/](http://www.usacarry.com/concealed-carry-permit-reciprocity-maps/).
- [49] Cornell, Saul. *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America*. Oxford University Press, 2008.
- [50] Cornell, Saul, and Eric Ruben. “The Slave-State Origins of Modern Gun Rights.” *The Atlantic*, Atlantic Media Company, 30 Sept. 2015, [www.theatlantic.com/politics/archive/2015/09/the-origins-of-public-carry-jurisprudence-in-the-slave-south/407809/](http://www.theatlantic.com/politics/archive/2015/09/the-origins-of-public-carry-jurisprudence-in-the-slave-south/407809/).
- [51] “Department of Justice Announces Bump-Stock-Type Devices Final Rule.” *The United States Department of Justice*, 18 Dec. 2018, [www.justice.gov/opa/pr/department-justice-announces-bump-stock-type-devices-final-rule](http://www.justice.gov/opa/pr/department-justice-announces-bump-stock-type-devices-final-rule).

- [52] Director, Madia Coleman Associate, et al. “Frequently Asked Questions about Gun Industry Immunity.” *Center for American Progress*, 9 Nov. 2021, [www.americanprogress.org/article/frequently-asked-questions-gun-industry-immunity/#:~:text=The%20PLCAA%20marked%20an%20effort,practices%20that%20enabled%20gun%20trafficking](http://www.americanprogress.org/article/frequently-asked-questions-gun-industry-immunity/#:~:text=The%20PLCAA%20marked%20an%20effort,practices%20that%20enabled%20gun%20trafficking).
- [53] Douglass, Frederick, et al. “The African American Odyssey: A Quest for Full Citizenship Abolition, Anti-Slavery Movements, and the Rise of the Sectional Controversy.” *Library of Congress*, 9 Feb. 1998, [www.loc.gov/exhibits/african-american-odyssey/abolition.html](http://www.loc.gov/exhibits/african-american-odyssey/abolition.html).
- [54] “Dred Scott v. Sandford (1857).” *National Archives and Records Administration*, National Archives and Records Administration, [www.archives.gov/milestone-documents/dred-scott-v-sandford](http://www.archives.gov/milestone-documents/dred-scott-v-sandford).
- [55] *English v. State*, 35 Tex. 473, 14 Am. Rep. 374 (1872)
- [56] “Equipment in the War of 1812.” *American Battlefield Trust*, 22 Feb. 2022, [www.battlefields.org/learn/articles/equipment-war-1812](http://www.battlefields.org/learn/articles/equipment-war-1812).
- [57] “February+2022: Search Results.” GOA, <https://www.gunowners.org/?s=February%2B2022>.
- [58] Federal Firearms Act of 1938
- [59] Firearm Owners’ Protection Act of 1986
- [60] FL 790.331
- [61] Frassetto, Mark Anthony. “The Law and Politics of Firearms Regulation in Reconstruction Texas.” *Texas A&M Law Review*, vol. 4, no. 1, 2016, pp. 95–122., doi:10.37419/lr.v4.i1.3.
- [62] F Riehl. “Proof of Your Manhood – the Man Card from Bushmaster.” *AmmoLand Shooting Sports News*, <https://www.ammoland.com>, 21 Feb. 2015, [www.ammoland.com/2010/05/bushmaster-man-card/#axzz7vyl3cLrd](http://www.ammoland.com/2010/05/bushmaster-man-card/#axzz7vyl3cLrd).
- [63] Goodloe, contributed by: Trevor. “Rosewood Massacre (1923).” *Blackpast*, 6 Jan. 2020, [www.blackpast.org/african-american-history/rosewood-massacre-1923/](http://www.blackpast.org/african-american-history/rosewood-massacre-1923/).
- [64] “Gotham Gazette: NYC City Council City Laws.” <https://web.archive.org/>, 6 Jan. 2005, [web.archive.org/web/20151222094336/www.gothamgazette.com/city/vote\\_records.php?s=3&id=138](http://web.archive.org/web/20151222094336/www.gothamgazette.com/city/vote_records.php?s=3&id=138).
- [65] Graziano, Frankie, and Laurel Wamsley. “Families of Sandy Hook Victims Reach \$73 Million Settlement with Remington.” *NPR*, NPR, 15 Feb. 2022, <https://www.npr.org/2022/02/15/1080819088/sandy-hook-victims-families-settlement-remington>.
- [66] Gun Control Act of 1968

- [67] Gun-Free School Zones Act of 1990
- [68] Gun-Free School Zones Act of 1995
- [69] “Gun Industry Immunity.” *Giffords*, 10 Nov. 2022, <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/gun-industry-immunity/>.
- [70] *Gustafson v. Springfield, Inc.*, 2022 Pa. Super. 140 (Pa. Super. Ct. 2022)
- [71] Hansen, Gary W., "The History of Gun Control in America" (1976). Dissertations and Theses. Paper 2281. <https://doi.org/10.15760/etd.2278>
- [72] Hernandez, Emily. “Air Force Ordered to Pay \$230 Million to Sutherland Springs Shooting Survivors and Families of Slain Victims.” *The Texas Tribune*, The Texas Tribune, 8 Feb. 2022, [www.texastribune.org/2022/02/07/sutherland-springs-shooting-air-force/](http://www.texastribune.org/2022/02/07/sutherland-springs-shooting-air-force/).
- [73] “History of Gun Control - Procon.org.” *Gun Control*, 21 Sept. 2022, [gun-control.procon.org/history-of-gun-control/](http://gun-control.procon.org/history-of-gun-control/).
- [74] History.com Editors. “Westward Expansion.” *History.com*, A&E Television Networks, 15 Dec. 2009, [www.history.com/topics/westward-expansion/westward-expansion](http://www.history.com/topics/westward-expansion/westward-expansion).
- [75] “Ileto v. Glock, Inc. - Opposition.” The United States Department of Justice, 4 Feb. 2016, [www.justice.gov/osg/brief/ileto-v-glock-inc-opposition](http://www.justice.gov/osg/brief/ileto-v-glock-inc-opposition).
- [76] Ind. Code § 34-12-3-3
- [77] “Industry and Economy during the Civil War (U.S. National Park Service).” *National Parks Service*, U.S. Department of the Interior, [www.nps.gov/articles/industry-and-economy-during-the-civil-war.htm#:~:text=By%201860%2C%2090%20percent%20of,100%20produced%20in%20the%20South](http://www.nps.gov/articles/industry-and-economy-during-the-civil-war.htm#:~:text=By%201860%2C%2090%20percent%20of,100%20produced%20in%20the%20South).
- [78] John Carroll / General Assignment Reporter & Anchor. “San Ysidro McDonald's Massacre - 35 Years Later.” *KPBS Public Media*, 18 July 2019, [www.kpbs.org/news/local/2019/07/18/san-ysidro-mcdonalds-massacre-35-years-later](http://www.kpbs.org/news/local/2019/07/18/san-ysidro-mcdonalds-massacre-35-years-later).
- [79] Jolie McCullough Oct. 10, 2022, et al. “El Paso Shooting.” *The Texas Tribune*, [www.texastribune.org/series/el-paso-walmart-shooting-texas-tribune/](http://www.texastribune.org/series/el-paso-walmart-shooting-texas-tribune/).
- [80] Kairys, David. “David Kairys on How Local Politics Almost Sank His New Strategy for Suing Gun Makers.” *Legal Affairs*, [www.legalaffairs.org/issues/May-June-2003/story\\_kairys\\_mayjun03.msp](http://www.legalaffairs.org/issues/May-June-2003/story_kairys_mayjun03.msp).
- [81] Keshall ‘KeKe’ Anderson Safe Firearm Sales Act

- <sup>[82]</sup> Konkel, Lindsey. “How Presidential Assassinations Changed U.S. Politics.” *History.com*, A&E Television Networks, 27 Apr. 2018, [www.history.com/news/how-presidential-assassinations-changed-u-s-politics](http://www.history.com/news/how-presidential-assassinations-changed-u-s-politics).
- <sup>[83]</sup> Lienhard, John. *No. 1252: INTERCHANGEABLE PARTS*. 1997, [www.uh.edu/engines/epi1252.htm](http://www.uh.edu/engines/epi1252.htm).
- <sup>[84]</sup> Magazine, Smithsonian. “Gun Control Is as Old as the Old West.” *Smithsonian.com*, Smithsonian Institution, 5 Feb. 2018, [www.smithsonianmag.com/history/gun-control-old-west-180968013/](http://www.smithsonianmag.com/history/gun-control-old-west-180968013/).
- <sup>[85]</sup> Malfitano, Nicholas. “Lawsuit versus NRA, Colt and Alleged Tree of Life Synagogue Shooter Sent to Allegheny County Complex Litigation Center.” *Pennsylvania Record*, 14 July 2021, <https://pennrecord.com/stories/605743002-lawsuit-versus-nra-colt-and-alleged-tree-of-life-synagogue-shooter-sent-to-allegheny-county-complex-litigation-center>.
- <sup>[86]</sup> Mark Obbie. “Will Bushmaster Be Held Liable for the Sandy Hook Massacre?” *The Atlantic*, Atlantic Media Company, 17 Feb. 2016, [www.theatlantic.com/politics/archive/2016/02/bushmaster-sandy-hook-liability/463245/](http://www.theatlantic.com/politics/archive/2016/02/bushmaster-sandy-hook-liability/463245/).
- <sup>[87]</sup> McNamara, Robert. “Innovations in Technology during the Civil War.” *ThoughtCo*, ThoughtCo, 27 Mar. 2019, [www.thoughtco.com/innovations-in-technology-during-the-civil-war-1773744](http://www.thoughtco.com/innovations-in-technology-during-the-civil-war-1773744).
- <sup>[88]</sup> National Firearms Act of 1934
- <sup>[89]</sup> NJ AB 1765
- <sup>[90]</sup> Nolan, Hamilton. “Bushmaster Firearms, YOUR MAN CARD Is Revoked.” *Gawker*, 17 Dec. 2012, [www.gawker.com/5969150/bushmaster-firearms-your-man-card-is-revoked](http://www.gawker.com/5969150/bushmaster-firearms-your-man-card-is-revoked).
- <sup>[91]</sup> Nra-Ila, and National Rifle Association. “Ila: Official NRA-Ila Press Releases.” NRA, <https://www.nraila.org/news/nra-ila-press-releases/?page=3&state=0&startDate=&endDate=&search=&contributor=0&contentBuckets=8186&geo=&isHomePage=False#latest-news>.
- <sup>[92]</sup> N.Y. Gen. Bus. Law § 898
- <sup>[93]</sup> O.C.G.A. 16-11-173 (2010)
- <sup>[94]</sup> Olmert, Michael. “Of Arms, Armorers, & Armories.” *Colonial Williamsburg*.
- <sup>[95]</sup> Omnibus Crime Control and Safe Streets Act of 1968
- <sup>[96]</sup> Pencak, William, and Randall Miller. “In Pennsylvania: a History of the Commonwealth: The Promise of Revolution 1750-1800.” *The Pennsylvania State University Press*, 2002.

- [97] Pierson, Brendan. “Judge Blocks Some of New Jersey's New Gun Restrictions.” *Usanews*, 31 Jan. 2023, <https://www.usnews.com/news/top-news/articles/2023-01-09/judge-blocks-some-of-new-jerseys-new-gun-restrictions>.
- [98] *Pollack v. Cruz*, 296 So. 3d 453 (Fla. Dist. Ct. App. 2020)
- [99] Protection of Lawful Commerce in Arms Act of 2005
- [100] Press, Associated. “April Trial Set for Man Charged in Tree of Life Shooting.” *90.5 WESA*, 20 Sept. 2022, [www.wesa.fm/courts-justice/2022-09-20/april-trial-set-for-man-charged-in-tree-of-life-shooting](http://www.wesa.fm/courts-justice/2022-09-20/april-trial-set-for-man-charged-in-tree-of-life-shooting).
- [101] Press, The Associated. “Judge Dismisses Jessica Ghawi's Parents' Lawsuit against Ammunition Sellers.” *Colorado Public Radio*, Colorado Public Radio, 1 July 2019, <https://www.cpr.org/2015/03/28/judge-dismisses-jessica-ghawis-parents-lawsuit-against-ammunition-sellers/>.
- [102] Raji, Tobi. “The Brewing Gun-Control Fight That Could Be Headed to the Supreme Court.” *The Washington Post*, WP Company, 21 Feb. 2023, <https://www.washingtonpost.com/politics/2023/02/21/gun-manufacturer-shooting-lawsuits-supreme-court/>.
- [103] Rakove, Jack N. *Original Meanings: Politics and Ideas in the Making of the Constitution*. Alfred A. Knopf, 1997.
- [104] *Remington Arms Co. LLC v Soto*, No. 19-168
- [105] “Repeal Gun Industry Immunity.” *Everytown*, 9 Jan. 2022, <https://www.everytown.org/solutions/industry-reform/>.
- [106] Richinick, Michele. “Gun Manufacturer Moves Sandy Hook Lawsuit to Federal Court.” *MSNBC*, NBCUniversal News Group, 22 Jan. 2015, [www.msnbc.com/msnbc/gun-manufacturer-moves-sandy-hook-lawsuit-federal-court-msna511626](http://www.msnbc.com/msnbc/gun-manufacturer-moves-sandy-hook-lawsuit-federal-court-msna511626).
- [107] Robertson, Campbell, et al. “11 Killed in Synagogue Massacre; Suspect Charged with 29 Counts.” *The New York Times*, The New York Times, 27 Oct. 2018, [www.nytimes.com/2018/10/27/us/active-shooter-pittsburgh-synagogue-shooting.html](http://www.nytimes.com/2018/10/27/us/active-shooter-pittsburgh-synagogue-shooting.html).
- [108] Romo, Vanessa. “Gun-Maker Offers Sandy Hook Families \$33 Million. Here's What They May Be Considering.” *NPR*, NPR, 29 July 2021, [www.npr.org/2021/07/28/1022035192/gun-maker-offers-sandy-hook-families-33-million-heres-what-they-may-be-consideri](http://www.npr.org/2021/07/28/1022035192/gun-maker-offers-sandy-hook-families-33-million-heres-what-they-may-be-consideri).
- [109] Rosenthal, Stephen. “Petition to the Supreme Court of Florida.” *Guttenberg v. Smith & Wesson Corp.*, --- *So.3d* ---- (2023), <https://efactssc-public.flcourts.org/>.

- [110] Roy, Reagan. "10 Years Later: Fort Hood Shooting." *cbs19.Tv*, KYTX, 5 Nov. 2019, [www.cbs19.tv/article/news/local/10-years-later-fort-hood-shooting/501-beceb5b1-d010-4e4a-8cb6-5c0f2aa84b06](http://www.cbs19.tv/article/news/local/10-years-later-fort-hood-shooting/501-beceb5b1-d010-4e4a-8cb6-5c0f2aa84b06).
- [111] "Saint Valentine's Day Massacre." *Crime Museum*, 11 Aug. 2021, [www.crimemuseum.org/crime-library/organized-crime/saint-valentines-day-massacre/](http://www.crimemuseum.org/crime-library/organized-crime/saint-valentines-day-massacre/).
- [112] "Sandy Hook Families Achieve Historic Victory Holding Gunmaker Accountable for Role in School Massacre." *Koskoff Koskoff & Bieder PC*, <https://www.koskoff.com/in-the-news/sandy-hook-families-achieve-historic-victory-holding-gunmaker-accountable-for-role-in-school-massacre/>.
- [113] Saunders, Jim. "A Court Rejects a Request from Parkland Parents Who Are Considering a Lawsuit against a Gun Maker and Store." *WMNF*, 4 Jan. 2023, [www.wmnf.org/court-rejects-request-parkland-parents-considering-lawsuit-against-gun-maker-and-store/](http://www.wmnf.org/court-rejects-request-parkland-parents-considering-lawsuit-against-gun-maker-and-store/).
- [114] Sedensky, Stephen J. "State's Attorney's Report on Sandy Hook Elementary School Shootings." *The New York Times*, The New York Times, 25 Nov. 2013, [archive.nytimes.com/www.nytimes.com/interactive/2013/11/26/nyregion/26newtown-report.html](http://archive.nytimes.com/www.nytimes.com/interactive/2013/11/26/nyregion/26newtown-report.html).
- [115] Simpson, Andrew G. "4 Insurers, 5 Policies to Pay \$73m Sandy Hook Settlement against Gunmaker Remington." *Insurance Journal*, 18 Feb. 2022, <https://www.insurancejournal.com/news/national/2022/02/17/654731.htm>.
- [116] Skeen, Carl Edward. *Citizen Soldiers in the War of 1812*. The University Press of Kentucky, 1999.
- [117] "Sole Survivor of Seal Beach Salon Shooting Opens up for 1st Time." *ABC7 Los Angeles*, 13 Oct. 2016, [abc7.com/salon-shooting-seal-beach-orange-county-meritage-scott-dekraai/1552729/](http://abc7.com/salon-shooting-seal-beach-orange-county-meritage-scott-dekraai/1552729/).
- [118] Spitzer, Robert. *Gun Law History in the United States and Second Amendment Rights*. 2017, [scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4825&context=lcp](http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4825&context=lcp).
- [119] "Statement by President Joe Biden Marking Five Years since the Las Vegas Shooting." *The White House*, The United States Government, 1 Oct. 2022, [www.whitehouse.gov/briefing-room/statements-releases/2022/10/01/statement-by-president-joe-biden-marking-five-years-since-the-las-vegas-shooting/](http://www.whitehouse.gov/briefing-room/statements-releases/2022/10/01/statement-by-president-joe-biden-marking-five-years-since-the-las-vegas-shooting/).
- [120] Stern, Mark Joseph. "Connecticut Supreme Court Issues Stunning Decision Allowing Sandy Hook Families to Sue Gun Manufacturer." *Slate Magazine*, Slate, 14 Mar. 2019, [slate.com/news-and-politics/2019/03/sandy-hook-connecticut-supreme-court-guns-nra-remington.html](http://slate.com/news-and-politics/2019/03/sandy-hook-connecticut-supreme-court-guns-nra-remington.html).

- [121] “Taking Aim at the Gun Makers: An Interview with David Kairys.” *The Free Library*, [www.thefreelibrary.com/Taking+aim+at+the+gun+makers%3A+an+interview+with+David+Kairys.-a021089283](http://www.thefreelibrary.com/Taking+aim+at+the+gun+makers%3A+an+interview+with+David+Kairys.-a021089283).
- [122] Tarrant, Tavleen. “City of Buffalo Sues Gun Manufacturers, Calling Them a Threat to Public Health in Lawsuit.” *CNN*, Cable News Network, 21 Dec. 2022, <https://www.cnn.com/2022/12/21/us/buffalo-lawsuit-firearm-manufacturers/index.html>.
- [123] “Tiahrt Amendments.” *Giffords*, 20 Oct. 2021, [giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/tiaht-amendments/](http://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/tiaht-amendments/).
- [124] “Timeline of the Civil War.” *The Library of Congress*, [www.loc.gov/collections/civil-war-glass-negatives/articles-and-essays/time-line-of-the-civil-war/1861/](http://www.loc.gov/collections/civil-war-glass-negatives/articles-and-essays/time-line-of-the-civil-war/1861/).
- [125] *The Right to Keep and Bear Arms: Report of the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, Ninety-Seventh Congress, Second Session*. U.S. G.P.O., 1982.
- [126] “The WAR of 1812: The ‘Forgotten War.’” *The War of 1812*, 2012, [sageamericanhistory.net/jeffersonian/topics/warof1812.html#:~:text=U.S.%20Objectives%20of%20the%20War,to%20freedom%20of%20the%20seas](http://sageamericanhistory.net/jeffersonian/topics/warof1812.html#:~:text=U.S.%20Objectives%20of%20the%20War,to%20freedom%20of%20the%20seas).
- [127] “University of Texas Tower Shooting (1966).” *TSHA*, [www.tshaonline.org/handbook/entries/university-of-texas-tower-shooting-1966](http://www.tshaonline.org/handbook/entries/university-of-texas-tower-shooting-1966).
- [128] Vigderman, Aliza. “A Timeline of School Shootings since Columbine.” *Security.org*, 3 Nov. 2022, [www.security.org/blog/a-timeline-of-school-shootings-since-columbine/](http://www.security.org/blog/a-timeline-of-school-shootings-since-columbine/).
- [129] Violent Crime Control and Law Enforcement Act of 1994
- [130] Waxman, Olivia B. “The History of the U.S. Gun Industry-and How Its Evolved.” *Time*, Time, 19 Aug. 2022, [time.com/6207280/gun-industry-us-history/](http://time.com/6207280/gun-industry-us-history/).
- [131] “Who Is Kip Kinkel? - Chronology | the Killer at Thurston High | Frontline.” *PBS*, Public Broadcasting Service, [www.pbs.org/wgbh/pages/frontline/shows/kinkel/kip/cron.html](http://www.pbs.org/wgbh/pages/frontline/shows/kinkel/kip/cron.html).
- [132] Zambelich, Ariel, and Alyson Hurt. “3 Hours in Orlando: Piecing Together an Attack and Its Aftermath.” *NPR*, NPR, 26 June 2016, [www.npr.org/2016/06/16/482322488/orlando-shooting-what-happened-update](http://www.npr.org/2016/06/16/482322488/orlando-shooting-what-happened-update).
- [133] Zapotosky, Matt. “Charleston Church Shooter: 'I Would like to Make It Crystal Clear, I Do Not Regret What I Did'.” *The Washington Post*, WP Company, 4 Jan. 2017, [www.washingtonpost.com/world/national-security/charleston-church-shooter-i-would-like-to-make-it-crystal-clear-i-do-not-regret-what-i-did/2017/01/04/05b0061e-d1da-11e6-a783-cd3fa950f2fd\\_story.html](http://www.washingtonpost.com/world/national-security/charleston-church-shooter-i-would-like-to-make-it-crystal-clear-i-do-not-regret-what-i-did/2017/01/04/05b0061e-d1da-11e6-a783-cd3fa950f2fd_story.html).



# Mason Milliard

---

## Education:

### **Bachelor of Arts: Political Science (Crime and Law)**

expected December 2023

Penn State Erie, The Behrend College

- Schreyer Honors College Fall 2021-Present
- Behrend Honors College Spring 2021-Present
- Dean's List Fall 2020, Spring 2021, Fall 2021, Spring 2022, Fall 2023

## Involvement:

- Pi Sigma Alpha Spring 2022-Present
  - Vice President
- Behrend Student Government Association Fall 2021-Present
  - Constitutional Review Committee
- Behrend Schreyer Council Fall 2021-Present
  - Treasurer
- National Society of Leadership and Success Spring 2021-Present
- Lion Ambassadors Fall 2020-Present
  - Webmaster
  - Constitutional Review Committee
- National Honor Society Fall 2019-Spring 2020

## Work Experience:

- Ridgway YMCA; Lifeguard Fall 2019-Fall 2022
- Lyle G. Community Pool; Lifeguard, Supervisor Summer 2019-Fall 2022
- Johnsonburg Community Center; Lifeguard Fall 2018
- BSA Camp Mountain Run; Lifeguard/General Employee Summer 2017-Fall 2018

## Accomplishments:

- Harriet Behrend Ninow Memorial Scholarship Recipient Fall 2022
- Johnsonburg American Legion Post #501 Scholarship Spring 2020
- Caribardi Family Scholarship Spring 2020
- Central Hose Hall Scholarship Spring 2020
- Alcohol and Drug Abuse Services Scholarship Spring 2020
- Eagle Scout April 2020
- Rotary Student of the Month November 2019
- Employee of the Year (Scouting BSA, Camp Mountain Run, Penfield, PA) August 2018