

DISPELLING THE MYTHS: PROTECTION OF LAWFUL COMMERCE IN ARMS ACT (PLCAA)

- Despite political rhetoric to the contrary, the PLCAA does not grant the firearm and ammunition industry immunity from suit different than that enjoyed by other industries.
- The PLCAA was enacted by a broad bipartisan margin in response to the dozens of frivolous lawsuits orchestrated and largely funded by gun control groups solely to put gun companies out of business based on circumstances entirely beyond their control.
- Members of Congress need to hear how this crucial law is what stands between law-abiding industry members and gun control advocates that want to punish the industry for the illegal actions of criminals.

The 16 year old Protection of Lawful Commerce in Arms Act (PLCAA) blocks lawsuits that attempt to hold firearm and ammunition industry companies liable for the criminal actions of third parties who misuse the industry’s lawful non-defective products.ⁱ More specifically, this common sense law ensures that responsible and law-abiding federally licensed manufacturers and retailers of firearms and ammunition are not unjustly blamed in federal and state civil actions for “the harm caused by those who criminally or unlawfully misuse” these products that function as designed and intended.

The PLCAA was enacted in 2005 by a broad bipartisan margin in response to dozens of frivolous

lawsuits orchestrated and largely funded by gun control groups solely to put gun companies out of business based on circumstances entirely beyond their control.ⁱⁱ Lawsuits brought by zealous plaintiff’s attorneys, municipalities and victims of crimes attempted to blame everyone in the supply chain — manufacturers, distributors, retailers — for the illegal acts of criminals. After 33 states passed similar lawsⁱⁱⁱ, Congress and former President George W. Bush enacted the PLCAA to stop this never before seen abuse of America’s judicial system hell-bent on weakening principles of federalism, State sovereignty, and comity by circumventing the legislative process.^{ix} Having effectively thwarted the efforts of gun control advocates and activist judges from exploiting the legal system to further their own agendas for more than a decade, the PLCAA is under attack by the Biden administration.

Myth: PLCAA shields gun companies from being sued for wrongdoings.

Fact: Six exemptions in the law expressly allow suits based on knowing violations of federal or state law related to gun sales, or on traditional grounds including negligence or breach of contract.^x Congress specifically carved out exceptions to allow claims of negligence and negligent entrustment to proceed where allowed under state law (i.e. retailer sells a firearm to someone under age or someone visibly intoxicated who then uses the firearm to injure themselves or others).^{xi} The bill also allows product liability cases involving actual injuries caused by a defective firearm or criminal misconduct on the part of the company.^{xii}

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The Congressional Record shows the law was deliberately drafted to allow lawsuits where companies have violated the law. For example, then-Rep. Cliff Stearns (R-FL6) stated, “This legislation will end these coercive and undemocratic lawsuits... this legislation is very narrowly tailored to allow suits against any bad actors to proceed. It includes carefully crafted exceptions to allow legitimate victims their day in court for cases involving defective firearms, breaches of contract, criminal behavior by a gun maker or seller, or the negligent entrustment of a firearm to an irresponsible person.”^{xiii}

Suing gun companies for the criminal misuse of their products is akin to suing a hardware store if a hammer it sells is used in a murder or a car manufacturer for one of its cars being used to purposely run down someone. Without the PLCAA, such frivolous claims would be allowed to proceed and while some industry defendants may be able to recoup attorney fees, litigation is an expensive and lengthy process, which could be devastating for a manufacturer or retailer that relies upon their good reputation to maintain their business. We also have to consider the bigger picture. If advocates are victorious in their frivolous lawsuits against the firearm and ammunition industry, what is stopping them from expanding their litigious actions to other industries?

Myth: Gun companies are singled out under federal law for special treatment.

Fact: Despite political rhetoric to the contrary, the PLCAA does not grant the firearm and ammunition industry immunity from suit different than that enjoyed by other industries, including small aircraft manufacturers and vaccine makers.^{ix} Instead, the PLCAA codifies common law and common sense principles to prevent baseless litigation from bankrupting an entire industry. Without these

protections many of America's most critical industries would go out of business from the time and costs of frivolous lawsuits. Industries cannot and should not be held culpable for the wrong-doings of individuals who purchase their properly functioning products legally and then proceed to use them in a criminal manner.

Even under former President Obama, the Department of Justice (DOJ) has continued to defend the constitutionality of the PLCAA. In a recent brief, DOJ struck back at gun control advocates' claims and asserted the position that the PLCAA's "narrowly crafted limitation is not a general bar of civil actions against firearms manufacturers and sellers. The statute includes a safe harbor that allows several types of actions to go forward..."^x DOJ further argued that in enacting the PLCAA, Congress properly exercised its legislative powers within the constraints afforded by the Commerce Clause and that any arguments that the PLCAA commandeers state governments by forcing them to enact or implement a regulatory scheme in contravention of the 10th Amendment are wholly without merit.^{xi}

Although the President is tasked with the duty to "take Care that the Laws be faithfully executed," DOJ is not bound to intervene to defend

the constitutionality of a challenged law.^{xii} In recent years, DOJ declined to do just that in the string of cases challenging the Defense of Marriage Act in which it intervened and sided with the plaintiffs to argue against the constitutionality of a duly enacted statute. Against this backdrop, it is clear that if former President Obama and his DOJ believed that the PLCAA was unconstitutional, that belief already would have been played out in the courts.

Whether it is providing firearms or ammunition to military, law enforcement, and law-abiding citizens or ensuring that they have access to shooting ranges for training, the firearm and ammunition industry is a critical component of our nation's security, public safety, and economic well-being. The PLCAA protects the lawful manufacture and sale of products that provide for the exercise of the constitutionally protected, fundamental right to keep and bear arms and ensures the industry is not sued out of existence because of the criminal or unlawful misuse of these products. Despite the political rhetoric of gun control advocates, our nation's laws should be used to punish criminals, not the lawful and legally-compliant manufacturers and retailers of the industry.

ⁱ Pub. L. No. 109-92 (2005), codified at 15 U.S.C. §§ 7901-7903.

ⁱⁱ See, e.g., *City of Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136 (Ohio 2002) (appellate court reversing lower court dismissal and holding that distributors could be held liable for creating alleged nuisance); *NAACP v. AcuSport, Inc.*, 271 F. Supp. 2d 435 (E.D.N.Y. 2003) (firearms industry held to have created public nuisance after trial; case dismissed due to lack of organizational standing); *Jefferson v. Rossi*, No. 01-CV-2536, 2002 WL 32154285 (E.D. Pa. Jan. 22, 2002) (remanding case to state court to hear claims including negligent distribution, sale and public nuisance).

ⁱⁱⁱ Representative Clifford Stearns, Congressional Record, H8998, Oct. 20, 2005.

^{iv} 15 U.S.C. § 7901.

^v 15 U.S.C. § 7903(5)(a)(i)-(vi).

^{vi} See, e.g., *Phillips v. Lucky Gunner, LLC*, 84 F. Supp. 3d 1216 (D. Colo. 2015), appeal dismissed (July 21, 2015) (dismissing negligent entrustment claims after plaintiffs failed to plead that defendants knew, or reasonably should have known, that the perpetrator of the tragic Aurora, Colorado shooting was likely to use the product sold to him in a manner "involving unreasonable risk of physical injury to others").

^{vii} 15 U.S.C. § 7903(5)(a)(iii)-(v).

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^{viii} Representative Clifford Stearns, Congressional Record, H8998, Oct. 20, 2005.

^{ix} See, e.g., the 1994 General Aviation Revitalization Act which prevents lawsuits against small aircraft makers for accidents involving products over a certain age. <https://www.govtrack.us/congress/bills/103/s1458>. See also Section 230 of the Communications Decency Act which limits the liability of service and content providers for defamatory posts uploaded by customers. <https://www.eff.org/issues/cda230>.

^x *Br. of the United States as Intervenor at 2, Delana v. CED Sales, et al.* (Mo. No. SC95013) (Oct. 16, 2015).

^{xi} *Id.* at 6.

^{xii} U.S. Const. Art. II, § 3, cl. 5.

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