

Civil Litigation as a Tool in a Public Health Approach to Gun Violence

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Executive Summary

Civil litigation against the gun industry can play an important role in efforts to address the public health crisis of gun violence. In recent decades, mass shootings, unintentional firearm deaths, and other instances of gun violence have become increasingly common. But artificial barriers have largely shielded gun manufacturers and dealers from legal accountability for the harm caused by their products.

Several legislative and legal obstacles prevent the gun industry from being successfully sued. These include:

- The Protection of Lawful Commerce in Arms Act (PLCAA), a 2005 law that bars most civil litigation against the gun industry, with narrow exceptions,
- The Dickey Amendment, which restricts funding for gun violence research, and the Tiahrt Amendments, which prevent the government from releasing gun trace data, and
- The uncertain application of public nuisance law in product liability litigation.

Past litigation against the gun industry produced mixed results, although lawsuits against the industry became significantly more difficult to pursue after PLCAA's enactment. The history of gun industry litigation falls broadly into two periods:

- Litigation before PLCAA, which initially consisted of individual personal injury claims and then developed into city and state-led lawsuits against the gun industry, and
- Litigation after PLCAA, which has often been unsuccessful but has also resulted in a few notable outcomes for plaintiffs.

Despite the obstacles it faces, litigation can be a meaningful way to confront the gun industry and the harm it enables. We discuss the direct and indirect public health benefits of civil litigation, including:

- Shaping industry behavior by incentivizing product safety,
- Generating media attention and raising public awareness about important health and safety issues, and
- Uncovering industry information and exposing corporate misconduct.

Finally, we examine next steps that could make it easier to bring gun industry litigation, which include:

- Repealing and/or amending PLCAA and other laws restricting litigation against the gun industry,
- Government efforts to pursue litigation and legislation targeting the gun industry, and
- Legal strategies that could overcome PLCAA's constraints.

Introduction

Gun violence in America is a public health crisis. In 2020, more than 45,000 Americans died from gun-related injuries—an average of more than 120 gun deaths per day.¹ Guns are the leading cause of death among children and adolescents in the United States.² The U.S. firearm homicide rate is more than 25 times higher than in other high-income countries, and the firearm suicide rate is eight times higher.³ Prominent medical organizations, including the American Medical Association and the Centers for Disease Control and Prevention, have identified gun violence as a major public health problem.⁴ Gun violence also disproportionately affects certain groups of people—for example, domestic violence victims are five times more likely to be murdered when their abusive partner has access to a gun,⁵ and Black Americans are twice as likely as white Americans to be killed by gun violence.⁶

Simply put, “gun violence shapes the lives of millions of Americans who witness it, know someone who was shot, or live in fear of the next shooting.”⁷ This white paper considers the role that civil litigation could play in responding to this public health crisis.

For other consumer products, civil litigation has helped prevent injuries by creating an incentive for industries to design safer products or engage in safer distribution practices. Civil litigation can improve public health and safety because the risk of liability incentivizes manufacturers “to invest in prevention rather than to pay the penalty of neglect.”⁸ In this paper, we explore whether, and how, the threat of civil liability for the gun industry might have similar effects. Could civil litigation become a useful tool in a public health approach to gun violence? And, if so, under what conditions?

We acknowledge the unique challenges associated with reducing gun violence and holding the gun industry accountable. For example, earlier this year in *New York State Rifle & Pistol Association v. Bruen*,⁹ the Supreme Court struck down a New York law restricting the public carry of guns, finding that the law violated the Second Amendment. Since the Supreme Court decided that the right to bear arms was an individual right in 2008,¹⁰ debate over the extent to which the Second Amendment permits gun regulations has grown. This white paper takes no position in that debate—we focus on the role of civil litigation, not restrictions on gun possession. But during a time when laws and policies seeking to reduce gun violence face many obstacles (as evidenced by *Bruen*), civil litigation has the potential to be a creative and effective way to address the gun violence crisis.

We begin with a discussion of key barriers to civil litigation against the gun industry, including the Protection of Lawful Commerce in Arms Act (PLCAA) and similar state immunity laws, which shield gun manufacturers from significant liability, as well as laws restricting access to gun violence data and limitations on government funding for gun violence research. Together, these barriers make it difficult for victims of gun violence to sue the gun industry and prevent researchers from understanding and addressing the serious public health problems caused by gun violence. We also provide an overview of gun violence litigation in recent decades and

consider how restrictions on suing the gun industry have affected these cases. We then discuss the use of civil litigation in addressing other threats to public health, with a focus on the automobile and tobacco industries, and explore how similar litigation might affect the gun industry. Finally, we examine potential strategies for future gun violence litigation in the pursuit of public health.

I. Barriers to Civil Litigation Against the Gun Industry

A. The Protection of Lawful Commerce in Arms Act and State-Level Immunity Laws

The Protection of Lawful Commerce in Arms Act,¹¹ enacted by Congress in 2005, provides significant immunity to the gun industry and remains one of the main obstacles to civil litigation in this area. Under most circumstances, PLCAA prevents victims of gun violence from filing legal claims against gun manufacturers similar to lawsuits brought against other manufacturers for injuries caused by other consumer products. Specifically, PLCAA immunizes the gun industry from most lawsuits where plaintiffs were injured by the criminal or unlawful misuse of a gun, unless a legislature has enacted a law to authorize such a lawsuit. As a result of PLCAA, most gun violence victims cannot hold gun manufacturers and dealers accountable using the legal system.

“PLCAA prevents victims of gun violence from filing legal claims against gun manufacturers similar to lawsuits brought against other manufacturers for injuries caused by other consumer products.”

Nonetheless, PLCAA includes six exceptions that allow litigants to overcome the gun industry’s protection from liability. Gun manufacturers and distributors can be found civilly liable if the case against them qualifies for one of these exceptions:

1. They knew the firearm would be used to commit a violent crime;
2. They “negligently entrusted the firearm” or committed “negligence per se;”
3. They “knowingly violated a State or Federal statute” applicable to the sale or marketing of firearms and “the violation was a proximate cause of the harm” (known as the *predicate exception*);
4. They breached a contract or warranty;
5. A design or manufacturing defect directly caused death, injury, or property damage where the firearm was used as intended; and
6. The suit was brought by the Attorney General to enforce the Gun Control Act or the National Firearms Act.

These exceptions can be challenging to prove. Since PLCAA was passed in 2005, it has been difficult for cases against gun manufacturers to proceed to verdict. As courts have interpreted it over the years, PLCAA has resulted in a “functional immunization of the gun industry from suit, unseen in any other areas.”¹²

Since the Supreme Court’s decision in *Bruen*, more states have sought to enact statutes that fit the predicate exception.¹³ We discuss some of these developments in greater detail in Section IV. On the federal level, and especially in the wake of many recent mass shootings, PLCAA has faced several legislative attacks, although none have succeeded so far.¹⁴ President Biden has also strongly criticized PLCAA and called on Congress to repeal it,¹⁵ but his administration continues to defend PLCAA’s constitutionality in court.¹⁶

Currently, 34 states have enacted similar laws that provide some level of protection for gun manufacturers and dealers from significant civil liability. For example, Colorado prohibits all tort lawsuits against the gun industry unless there is an “actual defect in the design or manufacture” of guns,¹⁷ Michigan does not allow lawsuits against federally licensed firearms dealers for damages arising from the use or misuse of guns,¹⁸ and Arizona does not allow lawsuits against gun manufacturers and sellers for the unlawful misuse of guns by a third party.¹⁹ The scope of these laws varies by state, and some are less restrictive than PLCAA—for instance, Idaho only prohibits municipalities and government agencies from suing gun manufacturers in most circumstances.²⁰ Many of these restrictive laws were enacted in response to lawsuits led by cities and states against the gun industry.²¹

Some scholars have argued that even if PLCAA was repealed, the absence of legal immunity might not have as notable of an impact as intended, because plaintiffs in many of these 34 states would largely still be barred from suing the gun industry.²² Despite recent efforts in some states to repeal gun industry liability shields,²³ the majority of U.S. states still have laws blocking most gun industry litigation, which presents further barriers to holding the gun industry accountable.

B. The Dickey and Tiahrt Amendments

Two other aspects of federal law also present obstacles to addressing gun violence through litigation. The 1996 Dickey Amendment states that “none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention (CDC) may be used to advocate or promote gun control.”²⁴ The lack of federal funding to support gun violence prevention research contrasts with sustained federal grants given to other injury prevention fields. The Dickey Amendment has historically been interpreted to mean that the CDC is prohibited from conducting research on gun violence.²⁵ In 2019, Congress provided the CDC with funds to conduct gun violence research for the first time in decades.²⁶ Still, because of the Dickey Amendment, there is a lack of researchers trained in gun violence prevention research and relatively little expert information for civil litigants to rely upon.

The 2003 Tiahrt Amendments, which prevent the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) from publicly releasing the trace data of all guns used in crimes, also have implications for gun violence litigation. Only law enforcement agencies and prosecutors can see specific data about how guns are misused after sale.²⁷ As a result, researchers and policymakers

cannot access information about where “prohibited purchasers or perpetrators of gun violence are obtaining their guns.”²⁸ At UC Berkeley’s Gun Violence Litigation Symposium in June of 2019, Rose Kagawa, an emergency medicine professor at UC Davis, and Mary Fan, a law professor at the University of Washington, noted that this information blackout negatively impacts efforts to address the public health crisis of gun violence.²⁹

Before the Tiahrt Amendments, the ATF gun trace databases provided a rich source of information on gun trafficking. Every gun recovered from a crime was tracked in the database, and because it was public information, researchers could follow the flow of firearms from manufacturers to distributors to dealers. This information could demonstrate that the gun industry knows its products are distributed to criminal elements and are misused—while it takes no steps to prevent these tragedies. For example, in *Hamilton v. Accu-tek*, discussed in more detail in Section III, lawyers used ATF data to explain the links between gun manufacturers and gun violence. Courts have relied upon the Tiahrt Amendments when deciding cases about the disclosure of ATF data. For example, in 2020, the U.S. Court of Appeals for the Second Circuit invoked the Tiahrt Amendments when it held that the ATF’s gun trace data cannot be disclosed when a request for the data is made under the Freedom of Information Act (FOIA).³⁰ In 2021, however, the U.S. Court of Appeals for the Ninth Circuit held that the Tiahrt Amendments did not exempt the ATF from disclosing data under FOIA.³¹ The availability of the data could lead to the increased transparency of ATF gun trace information.

“The Dickey and Tiahrt Amendments make it difficult for researchers to understand the public health effects of gun violence”

Nonetheless, today, the Dickey and Tiahrt Amendments make it difficult for researchers to understand the public health effects of gun violence. This, in turn, prevents courts from having access to this information in litigation against the gun industry.

C. The Uncertain State of Public Nuisance Law

Public nuisance law is another avenue for gun litigation. With origins in 12th-century English common law, public nuisance law seeks to abate interference with public rights and address harm inflicted on the general public, rather than harm suffered by a particular individual or group of people. In modern times, public nuisance lawsuits have served as a vehicle for certain mass tort product liability claims, with mixed results. For example, public nuisance lawsuits have confronted chemical manufacturers for dumping waste into the public water supply, asbestos manufacturers for causing diseases decades after installation, tobacco companies for defrauding the public about the link between cigarettes and cancer, oil companies for contributing to climate change, and drug companies for enabling the opioid crisis.

While some of these cases were successful, both courts and commentators have questioned the use of public nuisance as a vehicle for this type of litigation. Some scholars argue that public nuisance is not an appropriate tool to address social problems or regulate dangerous products,

and that this should be the responsibility of legislators, not the judiciary.³² Others, though, find public nuisance a welcome alternative to political paralysis³³ and argue that it has historically played an important role in regulating harmful products.³⁴

Public nuisance lawsuits against other industries have faced many substantive and procedural barriers, even without industry-specific statutory limits such as PLCAA. In 2021, the Oklahoma Supreme Court reversed a historic ruling against Johnson & Johnson, which had previously been found liable for fueling the opioid epidemic through its marketing and distribution practices.³⁵ The justices wrote that Oklahoma’s public nuisance law could not be used to hold Johnson & Johnson accountable because the case was about individual harm, not public rights violations, and because Johnson & Johnson had no control over how its drugs were used once prescribed.³⁶ Climate change public nuisance lawsuits brought by cities against fossil fuel companies have also been delayed and obstructed as courts consider whether these cases belong in state or federal court, examine issues of causation and standing, and question whether they can be litigated as public nuisance claims at all.³⁷

As we discuss in Sections II and IV, although public nuisance lawsuits against the gun industry have faced similar obstacles (and extra obstacles, because of PLCAA), cities and states continue to rely on this doctrine to confront gun manufacturers. Public nuisance lawsuits brought by private plaintiffs against the gun industry face additional barriers. For instance, in *NAACP v. AcuSport*,³⁸ a pre-PLCAA case in the Eastern District of New York, the court acknowledged that the gun manufacturer caused a public nuisance but rejected the lawsuit because the plaintiffs failed to establish a “special injury” distinct from the harm inflicted on the general public.³⁹ While public nuisance litigation can be a creative way to remedy the collective harm caused by gun violence, courts have been reluctant to accept this theory. Gun industry litigation based on public nuisance law experienced a resurgence in 2022, but it remains to be seen whether these lawsuits will succeed.

II. An Overview of Gun Violence Litigation

The history of gun violence litigation can be divided into two periods: litigation before PLCAA became law, and litigation after PLCAA’s passage in 2005. But even before PLCAA was enacted, civil lawsuits against gun manufacturers were often unsuccessful and frequently dismissed before trial.⁴⁰ In this section, we discuss some of the approaches taken in pre-PLCAA and post-PLCAA cases and examine the trajectory of gun industry litigation over the past few decades.

A. Gun Violence Litigation Before PLCAA

Lawsuits against the gun industry emerged in the 1970s and 1980s as gun homicides became more prevalent. During this time, researchers began to describe gun violence as a public health problem to be addressed through an injury prevention approach. Anti-gun violence advocates

also expanded their focus from individual perpetrators and started to confront gun manufacturers and dealers for enabling gun violence.⁴¹

1. Liability for Abnormally Dangerous Activities

Many early lawsuits against the gun industry argued that the manufacturing and marketing of guns is an abnormally dangerous activity that should be subject to strict liability. In other words, because guns are uniquely dangerous products, the gun industry could be held legally accountable without plaintiffs having to prove that gun manufacturers and dealers were negligent or at fault.

Most of these cases were dismissed, but one was initially successful: *Kelley v. R.G. Industries*,⁴² decided in 1985. In this case, Olen G. Kelley was shot and injured during an armed robbery of the grocery store where he worked. He argued that R.G. Industries, a subsidiary of the gun company that made and sold the gun that shot him, should be held strictly liable for engaging in an abnormally dangerous activity. The Maryland Court of Appeals, the state's highest court, agreed with Kelley. It imposed strict liability on manufacturers and sellers of "Saturday Night Specials": cheap, widely available, and easily concealable handguns like the one used in the shooting. As a result of this case, R.G. Industries stopped making and selling these guns.⁴³ However, in the following years, the Maryland legislature passed a law invalidating *Kelley*, and courts in other states rejected strict liability against gun manufacturers.⁴⁴

2. Negligent Sales and Marketing Practices

In another common approach taken in early gun litigation, plaintiffs sued gun manufacturers for negligently marketing their guns and not taking reasonable precautions to prevent their guns from being criminally misused.

In *Merrill v. Navegar*,⁴⁵ a 2001 California case, plaintiffs argued that the guns used in a 1993 California mass shooting were marketed in a way that emphasized their militaristic aspects and increased their appeal to people likely to commit crimes. The trial court granted gun manufacturer Navegar's motion for summary judgment, but the court of appeal reinstated the lawsuit, finding that Navegar negligently marketed its guns in a way that increased the risk of harm they could cause.⁴⁶ However, the California Supreme Court reversed and decided that the lawsuit could not proceed because a section of the California Civil Code exempted non-defective firearms from liability.⁴⁷

Although *Hamilton v. Accu-tek*,⁴⁸ a New York federal case decided in 1999, was also ultimately unsuccessful, it represented a turning point in the history of gun violence litigation. Accu-tek and 30 other gun manufacturers were sued for negligently oversupplying firearms dealers and enabling the sale of handguns to people likely to commit crimes. *Hamilton* was the first case where a jury decided that gun manufacturers were collectively liable for the harm caused when

their guns were illegally obtained.⁴⁹ The jury returned a verdict for millions of dollars, and the case received widespread public attention.⁵⁰ The verdict was eventually overturned on appeal after New York's highest court held that state law imposed no duty on the gun manufacturers to exercise care toward third parties in the marketing and distribution of firearms. Despite this, *Hamilton* still had a significant impact because it allowed plaintiffs to show that gun manufacturers knowingly engaged in actions that resulted in harm. *Hamilton* was also a precursor to later cases asserting an alternative public nuisance theory, discussed in more detail below, which were modeled after other industry-targeted nuisance actions and contributed to the eventual passage of PLCAA.

Other lawsuits against the gun industry resulted in settlements paid by gun manufacturers and dealers. In 2004, the families of the victims of the Washington, DC sniper attacks obtained a \$2.5 million settlement from the manufacturer and dealer of the gun used in the shootings.⁵¹ Although there had been previous settlements paid by gun manufacturers in defective design cases, this was the first settlement where a gun manufacturer paid damages for negligence that led to the criminal misuse of a gun.⁵²

3. The Rise of Municipal Lawsuits Against the Gun Industry

The pre-PLCAA period also saw affirmative litigation against the gun industry led by cities and states. Many early municipal gun violence lawsuits were inspired by state lawsuits against the tobacco industry.⁵³ In *City of Chicago v. Beretta*,⁵⁴ Chicago sued numerous gun manufacturers and distributors for creating a public nuisance by enabling the illegal trafficking of guns used to commit crimes in the city.⁵⁵ Several other cities, including Atlanta, Philadelphia, and San Francisco, as well as the state of New York, filed similar lawsuits.⁵⁶ New York City's lawsuit against the gun industry, led by Mayor Bloomberg and argued before Judge Jack Weinstein, particularly worried gun manufacturers and drove them to lobby legislators for special protections from litigation.

City and state public nuisance claims against gun manufacturers were frequently rejected by courts, who usually found that plaintiffs could not demonstrate a direct connection between the gun industry's marketing practices and the illegal trafficking of guns.⁵⁷ Despite this, municipal suits represented an important development in gun violence litigation: a transition from individual personal injury lawsuits to broader claims alleging widespread and collective harm.⁵⁸

B. Gun Violence Litigation After PLCAA

PLCAA was a direct response to the increase in gun violence litigation, especially municipal lawsuits, in the 1990s and early 2000s. The conditions that resulted in PLCAA can be better understood when considering that many types of product litigation were initially unsuccessful before suddenly leading to significant liability for manufacturers. Litigation against the tobacco

industry provides an example of this phenomenon. Many early tobacco lawsuits failed, but after years of litigation, the lawsuits began to succeed when they started to portray the tobacco industry’s actions as harmful to the public as a whole, not just to smokers.⁵⁹ Gun manufacturers feared a similar trajectory for gun litigation, especially when cities and states started bringing public nuisance lawsuits against the industry.

To avoid future liability, the gun industry and pro-gun interest groups such as the National Rifle Association (NRA) aggressively lobbied for and eventually obtained the passage of PLCAA. The NRA’s CEO celebrated PLCAA as a “historic piece of legislation.”⁶⁰ Today, PLCAA remains one of the primary barriers to civil litigation against the gun industry. While PLCAA does not completely preclude all gun violence litigation, and a few lawsuits against the gun industry have been able to proceed, it does significantly obstruct access to justice for victims of gun violence.

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1. Increased Difficulties Suing Gun Manufacturers

Although gun litigation faced barriers before PLCAA was enacted, PLCAA made it much easier for courts to dismiss lawsuits against the gun industry. In *Ileto v. Glock*,⁶¹ survivors of a 1999 white supremacist mass shooting in Los Angeles sued the gun manufacturers and distributors for negligently marketing their guns and increasing the risk of their guns being used for criminal purposes. While this case was being litigated, PLCAA was enacted in 2005. The district court dismissed the case, finding that PLCAA preempted the plaintiffs’ claims.⁶² The plaintiffs appealed to the Ninth Circuit, arguing that their lawsuit under the California public nuisance statute qualified for PLCAA’s predicate exception as a statutory cause of action. But the Ninth Circuit disagreed and prevented the case from going forward because the nuisance law did not specify applicability to the firearms industry.⁶³

Phillips v. Lucky Gunner,⁶⁴ a case following the 2012 movie theater mass shooting in Aurora, Colorado, illustrates the wide-ranging consequences of the restrictions imposed by PLCAA. The parents of one of the victims sued Lucky Gunner, an online ammunition company, for negligently selling large amounts of ammunition to the shooter, who had a recorded history of dangerous and unstable behavior. The plaintiffs did not ask for any monetary damages; instead, they requested an injunction requiring the company to improve their business practices. The U.S. District Court for Colorado decided that the lawsuit was barred by PLCAA. Under unique provisions of the Colorado state law protecting the gun industry from liability, the deceased victim’s parents were also required to pay Lucky Gunner’s legal fees.⁶⁵

PLCAA also impeded city-led public nuisance lawsuits against the gun industry. In *City of New York v. Beretta USA Corp.*,⁶⁶ New York City sued many U.S. gun suppliers for causing a public nuisance with their “negligent and reckless” marketing practices, which contributed to the city’s

gun violence problem. As explained above, this case motivated the gun industry to lobby for the passage of PLCAA, and PLCAA did ultimately result in the dismissal of this case. The Second Circuit decided that PLCAA was constitutional, and that New York’s criminal nuisance law did not meet the requirements for PLCAA’s predicate exception because it was not applicable to the sale or marketing of firearms.⁶⁷

Other post-PLCAA gun industry lawsuits have achieved more positive results, although they have also faced many delays and obstacles.

In *City of Gary v. Smith & Wesson Corp.*,⁶⁸ the city of Gary, Indiana brought public nuisance and negligent marketing claims against some of the leading gun manufacturers and distributors. The city alleged that the gun industry was complicit in the massive criminal gun market affecting local residents. Before PLCAA was passed, similar lawsuits were brought in other cities such as Cincinnati⁶⁹ and Boston,⁷⁰ and courts allowed this litigation to proceed. The *City of Gary* litigation began pre-PLCAA in 1999, but after PLCAA was enacted, the defendants argued that PLCAA prevented the case from being heard. Over the past 20+ years, the gun industry has unsuccessfully sought to dismiss the lawsuit on PLCAA grounds three times. Most recently, it argued that the case should be dismissed after an Indiana gun industry immunity statute was made retroactive.⁷¹ The Indiana Court of Appeals reversed a trial court judgment on the pleadings, finding that neither PLCAA nor Indiana’s state law barred the lawsuit. And in 2019, the gun manufacturers’ request for review to the Indiana Supreme Court was denied, allowing the case to proceed to discovery.⁷²

Williams v. Beemiller, a New York case that similarly went on for many years, also attempted to overcome PLCAA’s barriers. In 2003, 16-year-old Daniel Williams was severely injured in a drive-by gang shooting. The gun used was traced back to gun manufacturer Beemiller, gun distributor MKS Supply, and Charles Brown, who sold it at a gun show in Ohio. Williams sued Brown, MKS, and Beemiller for negligently distributing and selling the gun. In 2013, the New York Appellate Division allowed the case to proceed under PLCAA’s predicate exception because Brown violated New York’s Gun Control Act, which prohibited knowingly selling guns to people convicted of a felony.⁷³ In 2019, the New York Court of Appeals, the state’s highest court, threw out the case against Brown on personal jurisdiction grounds.⁷⁴ *Williams v. Beemiller* eventually resulted in a settlement against Beemiller and MKS, and the settlement included guarantees that MKS would change its sales practices.⁷⁵

2. Turning to State Consumer Protection Law

The successful litigation following the Sandy Hook tragedy, *Soto v. Bushmaster*,⁷⁶ provides a blueprint for future gun industry litigation that can overcome PLCAA’s constraints. The families of the victims of the 2012 Sandy Hook Elementary School mass shooting, which resulted in the deaths of 20 children and six adults, filed suit against the gun manufacturers and distributors. They alleged that the gun used by the shooter—an AR-15 semi-automatic rifle—was “knowingly marketed, advertised, and promoted” to people who wanted to use it “to carry out offensive,

military style combat missions against their perceived enemies.”⁷⁷ The plaintiffs argued that because the gun manufacturers’ actions violated the Connecticut Unfair Trade Practices Act, the lawsuit fell under PLCAA’s predicate statute exception and should proceed.

A Connecticut Superior Court judge originally dismissed the case on grounds that PLCAA barred the lawsuit. The Connecticut Supreme Court reversed this ruling, finding that the plaintiffs’ claims fell within PLCAA’s predicate exception. In 2019, the U.S. Supreme Court denied the gun manufacturer’s request for review, allowing the case to proceed to trial in 2021. In February of 2022, the Sandy Hook families settled with Remington, the gun manufacturer, for \$73 million—the largest-ever settlement paid by a gun manufacturer in a mass shooting case. The settlement

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was described as a rare victory over PLCAA and a “significant setback” for the firearms industry.⁷⁸

The Sandy Hook litigation provides a framework that other mass shooting victims might follow, potentially representing a change in the legal landscape.⁷⁹ We discuss this further in Section IV. Like Connecticut, where

the Sandy Hook shooting took place, many other states have their own consumer protection and unfair trade practices laws which gun manufacturers might be violating when they knowingly market products for illegal purposes.

3. Attacking PLCAA’s Constitutionality

Another notable example of recent civil litigation against firearms manufacturers is *Gustafson v. Springfield*.⁸⁰ In 2016, J.R. Gustafson, a 13-year-old boy, was shot and killed by a friend with a Springfield Armory semi-automatic handgun. While Gustafson’s friend had removed the handgun’s magazine, the gun still held a bullet, and his friend accidentally fired the gun, killing J.R. J.R.’s parents then sued Springfield Armory, the gun manufacturer, and Saloom Department Store, which sold the gun, claiming that the handgun was defective due to a lack of safety features that would have prevented the gun from firing. The gun manufacturers moved to dismiss the Gustafsons’ suit under PLCAA, but the Gustafsons argued that the PLCAA was unconstitutional and of no effect. In 2019, the trial court dismissed the constitutional challenge and decided that PLCAA barred the case. The Gustafsons appealed to the Superior Court, which declared PLCAA unconstitutional. Specifically, a three-judge panel found that PLCAA violates the 10th Amendment because it allows Congress to “nationalize tort law” and control the ways in which states manage state actions in state courts.⁸¹ The entire Superior Court (as opposed to just the three-judge panel) was asked to rehear the case. In a fractured August 2022 *en banc* decision, the Superior Court upheld PLCAA as

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constitutional by a 5-4 vote, but also decided that PLCAA was inapplicable to the dispute and the case could proceed. In April 2023, the Pennsylvania Supreme Court agreed to hear the case, asking the parties to address three questions. The first two questions ask whether the underlying claims fit within any of PLCAA's exceptions, while the third question squarely poses the issue of PLCAA's constitutionality.⁸² Briefing in the case will be completed during the summer of 2023.

In sum, qualifying for PLCAA's exceptions remains challenging for plaintiffs, but recent interpretations of PLCAA have opened new opportunities for potential claims against gun manufacturers and dealers. Still, the Pennsylvania Supreme Court's interest in the constitutional question provides some hope that the issue will be decided. Still, it remains much more difficult to sue gun manufacturers than it is to sue other purveyors of consumer products that pose a threat to public health as long as PLCAA remains law.

III. The Use of Civil Litigation as a Tool for Addressing Other Threats to Public Health

Because the gun industry has special protections from liability, civil litigation is often unable to play a major role in a public health approach to reducing gun violence. The Sandy Hook litigation and other cases suggest that while it is difficult to hold the gun industry accountable under existing law, it is not impossible. Many legal scholars have argued that civil litigation can be an effective way to address public health issues and reduce societal harm.⁸³ In this section, we discuss the effects of other public health litigation, particularly against the automobile and tobacco industries. We also examine the lessons that litigation against other industries could provide for gun industry litigation.

A. Shaping Industry Behavior and Promoting Safety

Historically, one way that civil litigation has resulted in important benefits for public health is by regulating industry behavior. The threat of liability can motivate manufacturers to adopt certain safety standards or modify their business practices—industries might voluntarily regulate their own products because they fear the compensation costs and potential punitive damages that can be incurred by a stubborn refusal to fix known problems. In other words, civil litigation can improve public health by incentivizing product safety.

Litigation against the automobile industry provides one of the most salient examples of civil litigation's ability to encourage product safety. In the highly publicized Pinto exploding gas tank litigation,⁸⁴ passenger Richard Grimshaw suffered severe burns when his Ford Pinto caught fire after a collision. Grimshaw sued Ford for defectively designing the car.⁸⁵ Although Ford was aware that it was dangerous to place gas tanks in the backs of cars, the company decided that it was more cost-effective to leave the design in place and instead just pay the damages awarded to injured individuals.⁸⁶ This backfired when juries learned of Ford's decision-making policy and

began to make large punitive damage awards to punish Ford for placing profits above public health. In Grimshaw's case, for example, the jury awarded him a \$3.5 million verdict.

Litigation against Ford for failing to place airbags in the Ford Pinto had a similar result. Rebecca Burgess sued Ford for not including an airbag in her car after another car struck the passenger side of the Pinto that she was driving, and she became a quadriplegic suffering severe brain damage. Ford settled for \$1.8 million after a ten-day trial. Soon after, Ford announced that it would offer airbags in future models, and many other manufacturers followed suit.⁸⁷

These lawsuits, and many others like them, have made the automobile industry much safer than it was a few decades ago. For instance, as a result of litigation against car manufacturers for not including seatbelts, the Department of Transportation adopted new safety standards requiring seatbelts.⁸⁸ From 1966 to 2004, there was a 74% decrease in car crash deaths per million miles traveled, which some researchers attribute to increased liability for manufacturers.⁸⁹ Litigation incentivized manufacturers to implement not only airbags and seatbelts, but also safer tires, engine placements, and ignition systems, to name a few improvements. In fact, automobile manufacturers now often go above and beyond to reduce the risk of consumer injuries, providing "greater safety than the standards require."⁹⁰ Some researchers credit litigation for making manufacturers more safety-conscious even in the absence of new lawsuits or regulations.⁹¹

Examples from the tobacco litigation also provide insight into how civil litigation can promote public health by shaping industry behavior. In *Engle v. Liggett Group*,⁹² the Florida Supreme Court held that a lawsuit against a tobacco company could not proceed as a class action, but it permitted the lawsuits to go forward as individual cases, finding that smoking cigarettes causes dangerous health problems and that the tobacco industry was negligent when making and selling its products.⁹³ In addition, as a consequence of the settlement agreement that resulted from lawsuits brought by state attorneys general against the tobacco industry, tobacco companies were required to adopt more comprehensive warning labels, compensate states for health care costs, and fund research into reducing youth smoking.⁹⁴ Despite its limitations, the tobacco litigation was able to influence the industry's actions by imposing an "increased cost of doing business" onto tobacco companies.⁹⁵

Civil litigation's potential role in shaping industry behavior is especially important when it comes to industries that manufacture dangerous products with minimal regulation and oversight. For example, although the tobacco industry was aware of its products' ability to cause serious harm, it was one of the least regulated industries in the country for decades.⁹⁶

Similarly, guns are uniquely exempt from many federal laws and regulations, making it difficult to address the public health problems caused by gun violence. Although guns can arguably be considered consumer products, the Consumer Product Safety Commission (CPSC) lacks any

“Guns are uniquely exempt from many federal laws and regulations, making it difficult to address the public health problems caused by gun violence.”

authority over them. Because of this, “firearms and ammunition have no federal regulations requiring safety features, warning labels, or manufacturing specifications.”⁹⁷ The CPSC cannot issue recalls for guns or remove guns from the market, even when they are defective and might harm their users.⁹⁸ The public generally learns about defective guns only when voluntary recalls are issued by gun manufacturers themselves, and these recalls are often inconsistent and contain exculpatory language.⁹⁹ Also, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) can only enforce restrictions on sales and ownership—there is no federal

agency that regulates firearm safety, as there is for most other products.¹⁰⁰ And, most laws concerning guns focus on gun owners and sellers, not gun manufacturers.¹⁰¹

Civil litigation against the gun industry might help overcome the limited capacity of lawmakers and administrative agencies to regulate guns—often described as a “regulatory vacuum.”¹⁰² The threat of liability can hold the gun industry accountable by providing a powerful incentive to ensure that its products are manufactured and distributed safely. For example, gun manufacturers could adopt design changes, such as self-locking mechanisms or face and fingerprint recognition technology, to make it more difficult for children or other unintended users to access guns.¹⁰³

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Adames v. Sheahan,¹⁰⁴ a 2009 Illinois case, illustrates how civil litigation, *if it were permitted to proceed*, could compel gun manufacturers to adopt improved safety measures. The *Adames* lawsuit was filed after a 13-year-old accidentally killed his friend while playing with his father’s handgun. The plaintiffs argued that the gun lacked important safety mechanisms that could

“Civil litigation can aid in the pursuit of public health by pressuring manufacturers to implement design changes and prioritize consumer safety.”

have prevented the shooting. An expert in the case testified that if the gun had a magazine safety disconnect, which disables a semiautomatic pistol from firing when the magazine is removed, the shooting would probably not have occurred.¹⁰⁵ However, the plaintiffs’ claims were barred by PLCAA. Before PLCAA was enacted, lawsuits against the gun industry sometimes led to settlements requiring manufacturers to adopt design changes. For example, in a 2000 settlement resulting from city-led lawsuits, gun manufacturer Smith & Wesson agreed to install trigger locks on its guns.¹⁰⁶

From a public health perspective, improved gun safety measures could save lives. Although there are many barriers to suing the gun industry, civil litigation can aid in the pursuit of public health by pressuring manufacturers to implement design changes and prioritize consumer safety.

B. Increasing Awareness and Mobilizing Media Attention

Civil litigation can also influence public opinion and transform the ways in which certain issues are framed and perceived. By generating media coverage and energizing advocates, lawsuits can help draw attention to public health and safety issues.¹⁰⁷ For example, the publicity surrounding the Ford Pinto gas tank litigation helped trigger changes in industry practices. A *60 Minutes* TV segment and considerable media backlash followed the verdict, which contributed to Ford's decision to recall and modify the Pinto.¹⁰⁸

The Bridgestone/Firestone tire litigation is another example of the potential significance of civil litigation for public health. In 1991, Bridgestone/Firestone introduced new tires in the Ford Explorer, which resulted in car accidents due to tread separation. By May of 2001, Bridgestone/Firestone faced more than 2,000 property damage lawsuits and more than 280 personal injury lawsuits. The litigation received widespread publicity, and consumer interest in the story contributed to industry and legislative change.¹⁰⁹ The case ultimately led to federal legislation: the Transportation Recall Enhancement, Accountability, and Documentation Act ("TREAD Act"), which implemented consumer safety measures such as increased penalties for automobile manufacturers that failed to report defects.¹¹⁰

As with automobiles, litigation against the tobacco industry generated considerable public attention. In *Cipollone v. Liggett Group*,¹¹¹ the plaintiff argued that a tobacco company's cigarettes caused her to develop lung cancer. This was the first case where a jury held a cigarette manufacturer liable for injuries that its products inflicted on consumers.¹¹² Although the trial court's decision was reversed on appeal and *Cipollone* was not ultimately a clear "win" against the tobacco industry, it was a pivotal moment in tobacco litigation. The case preserved the possibility of future lawsuits against tobacco companies—the Supreme Court decided that warning labels on packages did not bar lawsuits against manufacturers. *Cipollone* received considerable media coverage that "exposed how tobacco companies had conspired to deceive the public, which in turn sparked hope that jury victories were possible."¹¹³ In general, the tobacco litigation was able to push back against the tobacco industry's misleading narratives by raising awareness about the health risks of tobacco and the deceptive actions of tobacco companies.¹¹⁴

Civil litigation against the gun industry could have similar results. Lawsuits might draw more attention to gun manufacturers, who are often absent from media coverage of gun violence. Observing the ways in which gun manufacturers operate during litigation can also shape public attitudes towards the gun industry. For example, during the Sandy Hook litigation, gun manufacturer Remington was accused of deliberately delaying discovery by filing thousands of

unrelated images¹¹⁵ and even subpoenaing the report cards and attendance records of some of the children killed in the massacre.¹¹⁶ This development received major media coverage, potentially influencing the public's perception of gun manufacturers.¹¹⁷ As we discuss below, the uniquely public process of litigation can shed light on the motivations and practices of secretive industries, which might create opportunities for change.

Moreover, even unsuccessful lawsuits can play an important role in mobilizing the growing movement against gun violence. Scholars have noted the ways in which litigation loss can nevertheless productively contribute to social change by recruiting more participants to advocacy movements, providing legitimacy to a cause, and shaping how activists frame their efforts.¹¹⁸ Litigation against gun manufacturers can additionally empower victims of gun violence and their families by allowing them to directly confront the powerful gun industry and demand justice.

C. Uncovering Industry Information

As described earlier, limitations on gun violence research and restrictions on access to gun-related data contribute to the lack of publicly available information about the gun industry. Civil litigation can help expose industry information that might otherwise be difficult to obtain. By enabling access to documents and records regarding the extent of manufacturers' knowledge about the safety of their products, civil litigation might reveal that manufacturers sometimes disregard or try to rationalize the harm that their products may cause.¹¹⁹

In the recent litigation against Monsanto over the herbicide Roundup, the discovery process revealed hundreds of company emails that acknowledged "a potential link between Roundup and cancer."¹²⁰ Litigation against Johnson & Johnson has similarly uncovered internal documents exposing significant corporate misconduct and secrecy. The discovery process revealed that the company knew for years that its baby powder contained cancer-causing asbestos and never disclosed this to the public,¹²¹ and it was aware its opioids were being abused even while it downplayed their addictive effects.¹²² Decades earlier, the *Cipollone* lawsuit against the tobacco industry resulted in the release of documents proving that the industry misrepresented the dangerous health impacts of smoking.¹²³

Litigation against the gun industry can have similar effects. Previous lawsuits against gun manufacturers have "produced testimony from former industry executives indicating that manufacturers know more about the relationship between their marketing strategies and criminal markets than they have been willing to admit."¹²⁴ Litigation has become an important tool for understanding the relationship between industry practices and gun violence, as well as industry executives' awareness of this relationship.¹²⁵ For example, in the Sandy Hook settlement, Remington Arms agreed to publicly release all of the discovery and depositions from the lawsuit.¹²⁶ Backlash from the release of

"Litigation has become an important tool for understanding the relationship between industry practices and gun violence."

information can encourage manufacturers to adopt safer design and distribution standards.¹²⁷ Because “tort plaintiffs are likely to dig deeper and more persistently into the highly secretive gun industry than any government regulatory agency,”¹²⁸ even unsuccessful litigation against gun manufacturers can promote transparency and have beneficial public health effects.

IV. Next Steps for Gun Violence Litigation

As we have described, civil litigation against the gun industry has faced many obstacles, especially in the years after PLCAA was passed. However, when it is successful, and even sometimes when it is not, gun industry litigation can play a major role in the fight against gun violence.

In response to calls for political action after many highly-publicized mass shootings in recent months, legislators and lawyers across the country have taken steps to encourage litigation against gun manufacturers and circumvent the barriers imposed by PLCAA—although the gun industry and its allies have predictably opposed these efforts. In this section, we analyze some of these developments and provide suggestions and strategies that could make it easier to sue the gun industry in the future.

A. Efforts to Repeal and Amend Restrictions on Gun Industry Litigation

Repealing PLCAA would undoubtedly remove one of the primary barriers to holding the gun industry accountable through litigation. PLCAA “protects the gun industry to a degree that no other American industry enjoys,”¹²⁹ —the sweeping immunity provided to gun manufacturers prevents victims of gun violence from pursuing justice and disincentivizes meaningful industry change.

Previous attempts to repeal PLCAA have been unsuccessful. Most recently, in 2021, Representative Adam Schiff reintroduced the Equal Access to Justice for Victims of Gun Violence Act.¹³⁰ Versions of this bill have been introduced in Congress every year for the past five years, although none have succeeded yet—when the House Judiciary Committee passed the bill in July of 2022, this was the first time the bill made it out of a committee. If enacted, the bill would repeal PLCAA and would also permit the use of ATF gun trace data in civil proceedings, which is currently prohibited.

However, even if PLCAA was repealed, plaintiffs in many states would continue to face state laws limiting gun industry liability, and it has been suggested that the repeal of PLCAA would encourage the gun industry and its allies to “renew their efforts on a state-by-state basis to provide themselves with legal protection.”¹³¹ There have been current efforts to repeal state laws that provide immunity to the gun industry. In June of 2022, Delaware passed a historic law repealing a section of the Delaware Civil Code that protected gun manufacturers and dealers

from litigation.¹³² This new law additionally created a cause of action allowing gun manufacturers and dealers to be sued by the state.

Some gun violence prevention organizations have also suggested amending PLCAA to make it less restrictive. For example, legislators could broaden PLCAA’s exceptions and amend the law to describe specific situations where the gun industry should be protected from liability, instead of providing the gun industry with blanket immunity.

“Anti-gun violence advocates have additionally advocated for repealing the Dickey and Tiahrt Amendments, providing more funding and support for gun violence prevention research, and giving more resources to agencies tasked with monitoring firearms.”

Anti-gun violence advocates have additionally advocated for repealing the Dickey and Tiahrt Amendments,¹³³ providing more funding and support for gun violence prevention research,¹³⁴ and giving more resources to agencies tasked with monitoring firearms.¹³⁵ By enabling access to more information about the public health implications of gun violence, these developments could provide important information to be used in litigation against the gun industry.

B. Legislation and Government Litigation Targeting Gun Manufacturers

Over the past few months, some states have increased efforts to enact new gun liability laws that fit PLCAA’s exceptions and to bring state-led lawsuits against the gun industry.

For example, in 2021, New York amended the state’s public nuisance law to explicitly mention the gun industry. The law now allows the state and private individuals to sue gun manufacturers and sellers for creating a public nuisance by failing to take reasonable precautions to prevent the illegal use of guns in the state.¹³⁶ Despite the gun industry’s strong opposition, a federal court rejected a lawsuit by gun manufacturers challenging the law’s constitutionality, and the law remains in effect.¹³⁷ In May of 2022, a victim of the New York City subway mass shooting sued gun manufacturer Glock under the amended public nuisance law for negligently marketing its guns.¹³⁸ Soon after, the first state and city-led lawsuits based on this law were filed against gun companies for enabling the spread of untraceable firearms, or “ghost guns.”¹³⁹ As of September 2022, three of these lawsuits have resulted in settlements prohibiting online ghost gun retailers from illegally selling gun parts in New York City.¹⁴⁰ Additionally, in October, the federal government filed a statement in court supporting New York City’s lawsuit.¹⁴¹

New Jersey also recently enacted a law allowing the state to bring public nuisance claims against gun manufacturers and dealers.¹⁴² Soon after the law was passed, the state announced

the creation of a new government office, the Statewide Affirmative Firearms Enforcement Office, dedicated to enforcing this law and bringing civil lawsuits against the gun industry.¹⁴³

To get around PLCAA's constraints, other states can similarly amend their negligence or public nuisance statutes to include specific language targeting the firearms industry. Doing this could allow lawsuits to qualify for PLCAA's predicate exception and help plaintiffs avoid the obstacles seen in cases such as *Ileto v. Glock* and *City of New York v. Beretta*, discussed above, where courts rejected the predicate exception because state statutes were not specifically applicable to the gun industry.

Meanwhile, in California, Governor Gavin Newsom recently signed a law creating a private cause of action allowing the state, local governments, and private citizens to sue anyone who makes, transports, or sells illegal assault weapons and ghost guns.¹⁴⁴ Modeled after Texas's controversial anti-abortion law, California's law also offers up to \$10,000 to anyone who successfully sues gun manufacturers or dealers under the law.¹⁴⁵ The law is likely to face legal challenges, but if it prevails, it will go into effect in July of 2023.

There have additionally been legislative efforts at the federal level to regulate guns as consumer products. Two bills recently introduced in the House of Representatives were the Firearm Safety Act of 2021¹⁴⁶ and the Defective Firearms Protection Act,¹⁴⁷ which would amend the Consumer Product Safety Act to define firearms as consumer products and allow the Consumer Product Safety Commission to issue safety standards for firearms. Although they are unlikely to pass, these bills could aid civil litigation efforts by highlighting the need to hold guns to the same safety standards as all other consumer products.

C. Opportunities for Future Litigation

Concern over the firearms industry's sales practices, in particular, has been growing over the past few years. For example, in July of 2022, the House Oversight Committee held a hearing titled "Examining the Practices and Profits of Gun Manufacturers," where it framed gun violence as a public health epidemic partly fueled by the gun industry's profits. At the hearing, gun industry executives deflected responsibility for the gun violence crisis and refused to alter their marketing tactics.¹⁴⁸

Following this hearing, representatives introduced legislation directing the Federal Trade Commission (FTC) to investigate gun manufacturers' marketing and advertising practices.¹⁴⁹ Even if it does not succeed, this bill could encourage the FTC to apply increased oversight to the gun industry and to bring enforcement actions against gun manufacturers for deceptive and unfair marketing, as it has previously done with other industries including tobacco, e-cigarettes, and lead paint. Moreover, state consumer protection agencies could bring similar actions under state consumer laws—sometimes known as "little-FTC acts"—such as the Connecticut Unfair Trade Practices Act, which was found to qualify for PLCAA's predicate exception in the Sandy Hook litigation.

A potential strategy for gun industry litigation could be to reframe the gun industry’s behavior as a consumer protection issue. Lawyers could draw direct connections between the gun industry’s marketing practices and mass shootings, as they have sometimes successfully done in the past. This is especially important since, in recent years, the gun industry has been able to directly reach more consumers than it ever has before—particularly younger consumers—through targeted advertising on social media and the Internet.

Claims based on negligent marketing (as opposed to strict liability or defective design, for example) have historically been the most successful at circumventing PLCAA and proceeding in court. The most notable example of this is the Sandy Hook litigation, but other recent examples include a 2021 California trial court order¹⁵⁰ allowing victims of the San Diego synagogue shooting to sue the gun manufacturer and seller, and a 2022 Texas Supreme Court order¹⁵¹ permitting a lawsuit against an ammunition company for selling to an underage buyer who committed a mass shooting at his high school.

Negligent marketing gun industry litigation can also emphasize the ways in which gun manufacturers often explicitly market their products to certain groups likely to use guns in dangerous ways, such as white supremacists,¹⁵² young men seeking to prove their masculinity,¹⁵³ and children.¹⁵⁴ This is particularly relevant since some recent mass shootings have been motivated by white supremacist and misogynist ideologies.¹⁵⁵

In response to several mass shootings during the summer of 2022, there has been a new wave of litigation against the gun industry for these marketing and advertising tactics. These lawsuits employ the successful approach used in the Sandy Hook litigation and demonstrate that victims of gun violence are increasingly turning to negligent marketing claims in hopes of bypassing PLCAA’s restrictions.

The parents of the victims of the elementary school mass shooting in Uvalde, Texas recently filed a lawsuit against Daniel Defense, the manufacturer of the gun used by the 18-year-old shooter.¹⁵⁶ They allege that Daniel Defense intentionally targets young men under 18 through social media advertising that emphasizes the militaristic aspects of its guns.¹⁵⁷ Survivors of the Fourth of July mass shooting in Highland Park, Illinois filed a similar lawsuit against gun manufacturer Smith & Wesson.¹⁵⁸ Among other allegations, the complaint accuses Smith & Wesson of appealing to young men by deceptively implying that its guns are endorsed by the military and law enforcement.¹⁵⁹ Like the Sandy Hook litigation, the Highland Park lawsuit brings claims based on state consumer law—specifically, the Illinois Consumer Fraud and Deceptive Practices Act, which could be found to qualify for PLCAA’s predicate exception. Although these lawsuits face many obstacles, if successful, they could “reshape how guns are sold in America”¹⁶⁰ and provide a blueprint for future gun industry litigation seeking to overcome PLCAA.

Another possible avenue for gun industry litigation is to continue the trend of moving away from individual personal injury claims and instead turning to aggregate and government-led

litigation to address the systemic harm caused by gun manufacturers. Some scholars have suggested utilizing mechanisms such as class actions or multidistrict litigation to confront the gun industry—they argue that barriers to aggregate litigation have reduced over time because, unfortunately, “the changing reality of mass shootings makes commonality easier to find amongst plaintiffs.”¹⁶¹

Increased involvement by cities and states could similarly promote a collective approach to gun industry litigation. Although government litigation against the gun industry has been prevalent in the past, it has not been able to reach the level of the lawsuits brought by state attorneys general against the tobacco industry in the 1990s, or the similar litigation brought against the opioid industry today. Comparable lawsuits against the gun industry could open the door to creative solutions as the industry seeks to avoid the financial and reputational pressure inflicted by widespread litigation. A more collective strategy in gun industry litigation could emphasize the fact that gun violence is a public health crisis that negatively affects society as a whole, not just individual victims. Also, past state and private litigation against the tobacco industry was sometimes accompanied by corresponding litigation brought by the federal government. Similar coordinated efforts in gun industry litigation could potentially be eligible for PLCAA’s sixth exception, which exempts select actions brought by the Attorney General to enforce certain federal laws.

Conclusion

The widespread harm inflicted by the gun violence epidemic highlights the need to approach gun violence as a public health crisis. As the American Psychological Association recently explained, “The regularity of mass shootings is razing Americans’ mental health—heightening stress and dulling compassion in ways that demand broader concern, engagement, and change.”¹⁶² Civil litigation can be a meaningful way to call for change by demanding

“The widespread harm inflicted by the gun violence epidemic highlights the need to approach gun violence as a public health crisis.”

accountability from the gun industry and justice for victims and survivors of gun violence. However, successfully bringing lawsuits against the gun industry can be challenging.

Several barriers prevent gun industry litigation from proceeding, including PLCAA, similar state immunity laws, lack of access to gun violence data, and judicial hostility to public nuisance product liability claims. Despite these difficulties, several gun industry lawsuits have resulted in positive outcomes for litigants, such as favorable settlements and commitments from gun manufacturers to alter their practices. Historically, civil litigation against other industries has resulted in notable improvements to public health and safety. Although gun litigation faces unique industry-specific restrictions, it can still advance public health efforts even if it is unsuccessful—for example, by drawing attention to dangerous industry practices and uncovering hidden industry information.

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Recent developments present opportunities for future litigation targeting the gun industry. A major step forward would be to repeal or amend PLCAA and state laws shielding the gun industry from liability. Lawmakers have also made other efforts to facilitate gun violence litigation, such as amending state laws to qualify for PLCAA’s predicate exception and introducing legislation to apply established consumer safety standards to guns. Future gun violence litigation can benefit from targeting the gun industry’s sales and marketing practices and approaching the industry’s behavior as a consumer protection issue, as well as seeking increased involvement from cities and states.

Gun manufacturers currently enjoy unprecedented protection from legal accountability, which is especially disturbing considering the hundreds of thousands of deaths and injuries caused by their products every year. The status quo—where the gun industry is largely immunized from liability as well as from product safety rules—poses nearly insuperable obstacles for addressing gun violence as a public health crisis. Taking steps to remove these protections might encourage the gun industry to take a more proactive role in efforts to reduce gun violence. Additionally, by allowing victims to directly confront gun manufacturers, civil litigation can reduce the significant power imbalances between victims of gun violence and the gun industry. In sum, civil litigation has the potential to be a key aspect of a comprehensive public health strategy to end the gun violence epidemic.

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