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117-

EQUAL ACCESS TO JUSTICE FOR VICTIMS OF GUN
VIOLENCE ACT OF 2022

JULY --, 2022.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

____ VIEWS

[To accompany H.R. 2814]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2814) to repeal the Protection of Lawful Commerce in Arms Act, and provide for the discoverability and admissibility of gun trace information in civil proceedings, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Equal Access to Justice for Victims of Gun Violence Act of 2022”.

SEC. 2. REPEAL OF CERTAIN PROVISIONS OF THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT.

Sections 2 through 4 of the Protection of Lawful Commerce in Arms Act (15 U.S.C. 7901–7903) are repealed.

SEC. 3. DISCOVERABILITY AND ADMISSIBILITY OF GUN TRACE INFORMATION IN CIVIL PROCEEDINGS.

The contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms and Explosives shall not be immune from legal process, shall be subject to subpoena or other discovery, shall be admissible as evidence, and may be used, relied on, or disclosed in any manner,

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and testimony or other evidence may be permitted based on the data, on the same basis as other information, in a civil action in any State (including the District of Columbia) or Federal court or in an administrative proceeding.

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July 21, 2022 (4:53 p.m.)

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PURPOSE AND SUMMARY

Introduced by Rep. Adam Schiff (D-CA) on April 22, 2021, H.R.2814, the “Equal Access to Justice for Victims of Gun Violence Act of 2022,” would remove limitations on the civil liability of gun manufacturers, distributors, and dealers and permit the disclosure of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) gun trace data in civil and administrative proceedings.

BACKGROUND AND NEED FOR THE LEGISLATION

I. The Protection of Lawful Commerce in Arms Act

A basic feature of American law is that victims of harm may seek redress in court against wrongdoers. One of the bedrocks of American jurisprudence, tort law, was established to provide relief to injured parties for harms caused by others and to deter others from committing harmful acts. In every state, a business or an individual can be sued for negligence when their conduct lacks reasonable care that foreseeably results in harm to others. In general, consumers may bring civil legal claims

against manufacturers when a product is defective, does not operate in a manner for which it is designed, or is negligently distributed.

Beginning in the 1980s, firearm victims began filing lawsuits against gun manufacturers, distributors, and dealers presenting a variety of legal theories intended to show that the firearms industry's negligent practices led to their harm.¹ Following the success of litigation against the tobacco industry in the 1990's, more than 30 municipalities filed suit against federally licensed firearm manufacturers, distributors, and dealers.² These lawsuits advanced three arguments: (1) the firearms sold were defective (products liability); (2) the gun industry had engaged in improper marketing techniques and distribution practices;³ and (3) the proliferation of firearms in certain urban areas constituted a public nuisance.⁴ In addition to seeking damages for recovery of Medicaid dollars and the public health costs of gun violence, municipalities pursued recovery of government funds spent on crime prevention and responding to gun-related crime.⁵ Cities also requested injunctive relief to change or put an end to dangerous firearms design and marketing practices.⁶ Some of the manufacturers and dealers sued were located outside the state where the harm occurred. The plaintiffs based their claims against businesses on data and studies that traced the interstate movement of firearms.⁷

¹ T. D. Lytton, *Introduction: An Overview of Lawsuits Against the Gun Industry, Suing the Gun Industry: A Battle at the Crossroads of Gun Control and Mass Torts* 1 (2005), <https://www.press.umich.edu/pdf/0472115103-intro.pdf>.

² *Id.* at 11.

³ *Hamilton v. Accu-Tek*, 62 F. Supp. 2d 802 (E.D.N.Y. 1999), vacated sub nom., *Hamilton v. Beretta U.S.A. Corp.*, 264 F.3d 21 (2d Cir. 2001).

⁴ *In Search of a Smoking Gun: A Comparison of Public Entity Tobacco and Gun Litigation*, 66 BROOK. L. REV. 549 (2000).

⁵ See, e.g., *City of Philadelphia v. Beretta U.S.A. Corp.*, 126 F. Supp. 2d 882, 894 (E.D. Pa. 2000) (noting the various public expenditures that the city sought reimbursement for); *City of Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136, 1140, 1150 (Ohio 2002) (stating that the city was seeking reimbursement of police, emergency, health, and corrections costs, as well as changes to manufacturing, marketing, and distribution practices).

⁶ See, e.g., *City of Cincinnati*, 768 N.E.2d at 1150 (stating that the city sought changes to manufacturing, marketing, and distribution practices); *City of Boston v. Smith & Wesson Corp.*, No. 1999-02590, 2000 Mass. Super. LEXIS 352, at *58 (July 13, 2000) (summarizing the city's request to enjoin the manufacture, distribution, or sale of firearms without safety devices and warnings).

⁷ See, e.g., *Hamilton v. Beretta*, 96 N.Y.2d 222, 750 N.E.2d 1055 (2001) (plaintiffs asserted that defendant gun makers oversupplied guns to dealers in states with weak gun control laws (primarily in the Southeast); *Hamilton v. Accu-Tek*,

Courts largely rejected the individual and municipalities' civil claims during the pleadings stage, although a handful of cases forced firearms manufacturers to settle claims and, in some cases, required changes to their practices.⁸ Of those lawsuits that were allowed to proceed, several were successfully used to secure the adoption of new safety measures and other best practices within the gun industry. For plaintiffs and gun control advocates, these somewhat minimal accomplishments provided a glimmer of hope for greater change in the industry.

In his second term, President Bill Clinton vowed to pursue a class action civil litigation against Smith & Wesson, a large firearms manufacturer, under the theory that it negligently manufactured and distributed firearms, leaving the federal government to incur the cost of firearm violence. This approach led to early dividends. In 2000, the Department of Housing and Urban Development (HUD) settled numerous firearms negligence claims on behalf of the federal government, which in turn led to a series of substantive changes to marketing and distribution practices.⁹ Smith & Wesson ultimately agreed to adopt additional safety practices, including selling safety devices with each handgun, and establishing a code of conduct for its authorized dealers and distributors. In 2004, another major weapons manufacturer, Bushmaster, and the dealer who sold the firearms used by John Allen Muhammad and Lee Boyd Malvo during a nine-month crime spree were held liable in a \$2.5 million settlement.¹⁰ The victims' families argued that the dealer, Bull's Eye Shooter Supply, was responsible

supra, at 830 (knowing that many of those excess guns would be smuggled into states with stricter gun laws such as New York for use in crime. Plaintiff's expert analyzed ATF trace database and concluded that between 1993 and 1996, approximately 43% of New York crime guns came from the southeast and 85-90% of all of those crime guns came from out of state.)

⁸ T. Jackman, *Gunmaker, Store Agree to Payout in Sniper Case*, WASH. POST, Sept. 10, 2004.

⁹ J. Dao, *Under Legal Siege, Gun Maker Agrees to Accept Curbs*, N.Y. TIMES, Mar. 18, 2000, <https://www.nytimes.com/2000/03/18/us/under-legal-siege-gun-maker-agrees-to-accept-curbs.html?pagewanted=all&src=pm>.

¹⁰ After the guns were traced back to Bull's Eye Shooter Supply, it was discovered that the retailer failed to keep required records of the gun sales and had lost more than 238 guns over the previous three years – guns that were supposed to be in their inventory.

because of its negligent sales practices and that Bushmaster was responsible because it continued to supply firearms to the store despite the store's known negligence. In addition to monetary damages paid by both parties, Bushmaster also agreed to change its distribution practices.

Enacted with bipartisan support in 2005 after intense lobbying from the gun industry,¹¹ the Protection of Lawful Commerce in Arms Act, or PLCAA, was introduced in response to the litigation brought by the municipalities and the victims of shooting incidents and the appearance of shifting attitudes towards guns in America. The legislation was meant to prevent civil lawsuits against segments of the gun industry, including manufacturers, distributors, dealers, and importers of firearms, ammunition, or firearms parts, when the product worked as intended and was used unlawfully. The scope of the civil liability protections applied retroactively upon enactment, leading to the dismissal of pending litigation against the gun industry at the time of the Act's passage.

The PLCAA broadly immunizes the industry from civil liability in federal and state court for criminal or unlawful misuse of a qualified product.¹² While perhaps an unintended consequence, the law's broad language presents a serious obstacle to victims in cases where a gun dealer's negligent business practices have put guns in the hands of gun traffickers and other criminals, while its broad definitions mean that the immunity from civil liability extends to a wide range of firearms, ammunition, and their component parts. Beyond the basic injustice of depriving victims harmed by the gun industry access to the courts—access that is available to victims of negligent acts by other industries—civil litigation is also necessary to incentivize industry actors to act responsibly; take steps to prevent negligent or criminal use of their products; and improve product safety. Seventeen years after its

¹¹ NRA-ILA Press Release, "President Bush Signs 'Protection of Lawful Commerce in Arms Act' – Landmark NRA Victory Now Law," press release, October 26, 2005, <https://www.nraila.org/articles/20051026/president-bush-signs-protection-of-br>.

¹² Protection of Lawful Commerce in Arms Act, Pub. L. 109-92, 119 Stat. 2095-2103 (2005).

passage, the PLCAA, which the National Rifle Association (NRA) lauded as “the most significant piece of pro-gun legislation in twenty years,”¹³ has provided unprecedented insulation to the gun industry for dangerous business practices that no other industry in the United States enjoys. Although the immunity does not apply to products that are sold as defective and a limited number of other circumstances, the law has generally been interpreted to bar most claims related to inappropriate practices surrounding the sale and manufacture of firearms. The PLCAA has foreclosed nearly all attempts to hold the firearms industry civilly liable, as most lawsuits brought after enactment have been dismissed, notwithstanding the law’s exceptions that would permit a civil suit to proceed against a federal firearms licensee (FFL). In practice, by preventing plaintiffs from filing lawsuits against gun manufacturers or dealers in cases when they have been negligent and there has been criminal or unlawful misuse of a firearm or ammunition, the law has shifted the cost industry misconduct to victims, communities and the Federal government.

A. Provisions of the PLCAA

The PLCAA generally shields licensed importers, manufacturers, dealers, and distributors of firearms or ammunition, as well as trade associations, from any civil action “resulting from the criminal or unlawful misuse” of a firearm or ammunition but lists six exceptions where civil suits may be maintained. The main provision of the Act provides that “[a] qualified civil liability action may not be brought in any Federal or State court.”¹⁴ Whether a civil suit is barred depends on whether the action brought is a “qualified civil liability action,” which is defined as: a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement,

¹³ NRA-ILA Press Release, *supra*.

¹⁴ 15 U.S.C § 7902(a).

restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party.¹⁵

Although a qualified civil liability action, by its own definition, appears to bar administrative proceedings, it is unclear whether the Act actually does so because the main provision of the PLCAA prohibits civil suits from being brought in courts. Notably, administrative proceedings are not brought in courts—although appeals of such proceedings may be subject to judicial review. If the statute is meant to cover administrative proceedings, the effect of it doing so is unclear because there is no indication that administrative proceedings have been instituted against gun manufacturers or dealers other than those undertaken by ATF that do not implicate the PLCAA.¹⁶

B. Exceptions to the Prohibition on Civil Liability Action

The PLCAA lists six exceptions to its civil immunity or types of lawsuits that do not qualify as a “qualified civil liability action,” and are, therefore, not barred by the statute.¹⁷ The law permits civil lawsuits against gun manufacturers and dealers for knowingly transferring a firearm or ammunition to a person with knowledge that they will use it to commit a felony; violating state or federal laws governing the conduct of the gun industry; negligent entrustment or negligence per se; breach of contract or warranty; or in limited cases involving harm to individuals caused by design defect.¹⁸ Each of these exceptions is discussed in greater detail below. It is important to note that relatively few reported decisions have substantively interpreted the PLCAA’s exceptions; and no direct constitutional challenges to the law have been upheld thus far.

¹⁵ *Id.* at § 7903(5)(A). A “qualified product” means a firearm, including any antique firearm, or ammunition as defined in title 18 of the U.S. Code, or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce. *Id.* at § 7903(4). The term “unlawful misuse” is defined as “conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.” *Id.* at § 7903(9).

¹⁶ See ATF, *Firearms Compliance Inspections FY 2019* (ATF took administrative action against over 4,500 FFLs, but only revoked or denied the renewal of 43 licenses).

¹⁷ *Id.* at § 7903(5)(A)(i)-(vi).

¹⁸ 15 U.S.C. § 7903(5)(A).

Under the **first exception**, a civil suit is not prohibited against a transferor (i.e., a federal firearms licensee) convicted under 18 U.S.C. § 924(h) or a comparable state felony law which makes it unlawful for anyone to knowingly transfer a firearm or ammunition, knowing that the firearm or ammunition will be used to commit a felony or one of several enumerated federal felonies, including a crime of terrorism or a drug trafficking crime.¹⁹ For the civil action to proceed against the transferor, the transferee (or receiver) of the firearm must also have been convicted, but the type of conviction necessary is unclear; and the lawsuit must be brought by someone directly harmed by the conduct of which the transferee is convicted. To date, there have been no recorded instances of individuals receiving a favorable court verdict under this exception.

The **second exception** permits actions brought against a seller of a qualified product for negligent entrustment or negligence per se. This exception specifically refers to actions against a “seller,” which is defined in the Act as an importer, dealer, or a person engaged in the business of selling ammunition in interstate or foreign commerce. The PLCAA’s definition of “seller” may exclude some manufacturers from being included under this second exception, in which case they would continue to be immune from suits for negligent entrustment or negligence per se. Under the PLCAA, a seller includes a “dealer (as defined in section 921(a)(11) of title 18) ... who is engaged in the business as such a dealer and who is licensed to engage in the business” under title 18. A “dealer,” under § 921(a)(11), includes a person who is “engaged in the business of selling firearms at wholesale or retail,”²⁰ and thus could include a manufacturer that sells its products at wholesale. However, under limited circumstances,²¹ federal regulation provides that a firearms manufacturer is *not* required “to

¹⁹ Prior to enactment of the Bipartisan Safer Communities Act, Pub.L. 117-159, on June 25, 2022, section 924(h) included the knowing transfer of a firearm or ammunition to a person with knowledge that the person intended to use the firearm or ammunition to commit a crime of violence.

²⁰ 18 U.S.C. § 921(a)(11).

²¹ 27 C.F.R. § 478.41(b). (“Payment of the license fee as an importer or manufacturer of destructive devices, ammunition

obtain a dealer’s license in order to engage in the business on the licensed premises as a dealer of the same type of firearms authorized by the license to be imported or manufactured.”²² If a manufacturer meets this condition, then it is not required to obtain a dealer’s license, in which case it would likely be excluded from the definition of a seller under the PLCAA.

Although the PLCAA defines negligent entrustment as “the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others,”²³ a plaintiff’s claim of negligent entrustment will be asserted under state law. For example, Washington state courts have held that a common-law tort claim of negligent entrustment can be brought against both retail firearms dealers and manufacturers.²⁴ However, even if a state has its own interpretation and permits a suit for negligent entrustment to proceed against a manufacturer, the federal definition of seller might preclude such a suit.²⁵ This means that a manufacturer excepted from the federal requirement to obtain a dealer’s license, as described above, would not qualify as a seller under PLCAA and therefore would continue to be immune from suits for negligent entrustment. Alternatively, a manufacturer who is licensed as a dealer under federal law *would* qualify as a seller and would be subject to suits for negligent entrustment.

for destructive devices or armor piercing ammunition or as a dealer in destructive devices *includes the privilege of importing or manufacturing firearms other than destructive devices and ammunition ..., or dealing in firearms other than destructive devices, as the case may be, by such a licensee at the licensed premises.*”) (emphasis added).

²² *Id.*

²³ 15 U.S.C. 7903(5)(B).

²⁴ See *Berthony v. Walt Failor’s, Inc.*, 653 P.2d 280 (Wash. 1980) (holding that firearms dealers (1) owe a common law duty not to provide weapons to unfit persons and (2) owe a common law duty to third parties injured by weapons made available to an unfit person by a firearms dealer). See also *Johnson v. Bulls Eye Shooter Supply*, No. 03-2-093932-8, 2003 WL 21629244, at *4 (Wash. Jun. 27, 2003) (citing *Knott v. Liberty Jewelry and Loan, Inc.*, 748 P.2d 661 (Wash. Ct. App. 1988), as not precluding civil actions against retail dealers or manufacturers of firearms).

²⁵ U.S. Const., art. VI, cl. 2. (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

Under the **second exception**, a seller may also be subject to an action for negligence per se, a term that the PLCAA does not define. This term generally means negligence established as a matter of law, so that breach of the duty is not a jury question.²⁶ In other words, a court could adopt the requirements of a legislative enactment or regulation as the standard of conduct for a reasonable person.²⁷ If it does so, then the individual who violates the statute or regulation is automatically deemed negligent and the jury is not asked to determine if such individual acted in a reasonable manner.²⁸ Thus, whether a violation of a statute constitutes negligence per se is a question of state law.²⁹ Accordingly, a plaintiff may proceed under the second exception of the PLCAA if the suit alleges that the seller violated a statute and that relevant statute provides that one may be held strictly liable for violating the particular statute or regulation. Conversely, if applicable state law allows the question of negligence to go to the jury even when the defendant has violated a statute or regulation—in other words, there is no negligence per se rule—then the second exception would not apply, and such a suit would be barred by the PLCAA unless it qualified as another listed exception.

The negligent entrustment/negligence per se exception is among the most frequently litigated of the exceptions to the PLCAA. There have been a few instances of wronged persons recovering damages under the negligent entrustment exception, though they required extreme situations.

²⁶ Black's Law Dictionary (7th ed. 1999) at 1057 ("Negligence per se usually arises from a statutory violation.").

²⁷ Restatement (Second) of Torts § 286 (1965). A court may choose to adopt a law or regulation for the standard of a reasonable person if the law's purpose is found to be, exclusively or in part, "(a) to protect a class of persons which includes the one whose interest is invaded, (b) to protect the particular interest which is invaded, (c) to protect that interest against the kind of harm which has resulted, and (d) to protect that interest against the particular hazard from which the harm results."

²⁸ *Id.* at § 288B(1). This is the rule followed in a majority of courts. See S. M. Speiser, C. F. Krause and A. W. Gans, 2 *The American Law of Torts* (1985 cum. supp. 1998) at 1029. However, some courts appear to have limited the "per se" rule to situations where there has been a violation of a specific requirement of a law, i.e., legislation that expresses rules of conduct in specific and concrete terms as opposed to general or abstract principles. *Id.* at 1034- 35

²⁹ The statute in question in a negligence per se claim is most frequently statutes adopted by state legislatures, "but equally applies to regulations adopted by state administrative bodies, ordinances adopted by local councils, and federal statutes as well as regulations promulgated by federal agencies." Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 14 cmt. a (2010)

Nonetheless, the vast majority of negligent entrustment and negligence per se claims made by victims and survivors of gun violence have been rejected by the courts.³⁰ Courts have stated that a person cannot sue the gun industry using only the negligent entrustment exception outlined in PLCAA. Instead, anyone trying to use this exception must first find a pre-existing state or federal law that pertains to the negligent entrustment of firearms that was violated first.³¹ Since states have a variety of different laws pertaining to firearms, and there are no on-point federal laws to handle these issues, PLCAA exception outcomes can vary widely depending on where they are brought.

The **third exception** to the PLCAA, known as the “predicate exception,” requires the plaintiff to assert, as part of their claim, that the manufacturer or seller knowingly committed a violation of an underlying statute, i.e., a “predicate statute.” This exception has been the most examined by courts, though with mixed results. A case that proceeds under the third exception often turns on whether the predicate statute is applicable to the sale or marketing of the product. Courts have tended to interpret this exception narrowly, applying it only to laws that explicitly pertain to the sale or marketing of firearms and ammunition. However, some courts have diverged from this interpretation and held that “applicable” statutes do not have to specifically address the gun industry to merit the exception.³²

The only federal appellate courts to consider the issue—the Second³³ and Ninth Circuits³⁴—have both found in split decisions that the PLCAA barred claims brought under generally applicable

³⁰ See *Jefferies v. District of Columbia*, 916 F.Supp.2d 42 (D.D.C. 2013) and *Estate of Kim v. Coxe*, 295 P.3d 380 (Alaska 2013).

³¹ See *Phillips v. Lucky Gunner, LLC*, 84 F.Supp.3d 1216 (D. Colo. 2015) (a negligent entrustment claim brought by surviving family members of victims of Aurora, Colorado mass shooting under PLCAA would not be recognized without a state law claim).

³² See *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422 (Ind. App. 2007).

³³ *City of New York v. Beretta USA Corp.*, 524 F.3d 384 (2d Cir. 2008) (Predicate exception was meant to apply only to statutes that actually regulate the firearms industry, in a manner similar to enumerated examples of predicate statutes in the Act that regulate record-keeping and prohibiting participation in direct illegal sales).

³⁴ *Ileto v. Glock Inc.*, 565 F.3d 1126 (9th Cir. 2009) (PLCAA intended to preempt general tort theories of liability like public nuisance statutes).

public nuisance and negligence statutes. The same result has been reached by state courts in Alaska³⁵ and Illinois³⁶ and a federal district court in the District of Columbia. State appellate courts in Connecticut,³⁷ Indiana,³⁸ and New York,³⁹ however, have allowed such suits to proceed. Unlike these cases, the two cases in the federal appellate courts involved allegations that gun manufacturers and distributors knowingly sold firearms to straw purchasers who, in turn, were selling the firearms to criminals. Despite its limitations, the predicate exception has shown itself to be the most viable means for victims and survivors of gun violence to circumvent PLCAA at present.

The **fourth and fifth exceptions** permit breach of contract or warranty actions against a seller, as well as tort actions for death, injuries, or property damage incurred as a result of a design defect or manufacturing defect. Though the fourth exception appears straightforward on its face, no claimant to date has successfully used this exception. In fact, there are no known cases where the breach of contract, warranty, or defect in design exceptions have been used to assist victims and survivors of gun violence or hold the gun industry accountable for business practices that endangered or ended people's lives. The design defect exception is limited to situations where a firearm is used as intended or in a reasonably foreseeable manner. PLCAA precludes a suit for a claim of product defect against a manufacturer if the discharge of the product was caused by a volitional act that constitutes a crime.⁴⁰

Notably, there is an exception to the **fifth exception**. The exception precludes a suit "where the discharge of the product was caused by a volitional act that constituted a criminal offense"⁴¹ because

³⁵ *Estate of Kim v. Coxe*, 295 P.3d 380 (Alaska 2013) (Defendant could not be held liable for negligence per se or knowingly violating applicable statutes if the firearm was stolen; firearm theft would preclude dealer's liability under PLCAA's negligent entrustment exceptions).

³⁶ *Adames v. Sheehan*, 909 N.E.2d 742 (Ill. 2009).

³⁷ *Soto v. Bushmaster Firearms Int'l, LLC*, 202 A.3d 262.

³⁸ *Smith & Wesson Corp. v. City of Gary*, 875 N.E.2d 422 (Ind. App. 2007).

³⁹ *City of New York v. Bob Moates' Sport Shop, Inc.*, 253 F.R.D. 237 (E.D.N.Y. 2008).

⁴⁰ See *Adames*, *supra*, 909 N.E.2d 742 (Ill. 2009).

⁴¹ 15 U.S.C. § 7903(5)(A)(v).

that act would be considered “the sole proximate cause of any resulting death, personal injuries, or property damage.”⁴² In other words, causes of action premised on defect in design are only viable if the use of the product was *not* a “volitional act that constituted a criminal offense.”⁴³

The **last exception** to the PLCAA permits actions or proceedings commenced by the Attorney General to enforce the Gun Control Act (chapter 44 of title 18)⁴⁴ or National Firearms Act (chapter 53 of title 26)⁴⁵ against federal firearms licensees through the administrative or civil proceedings provided for in those statutes.

II. Gun Industry Immunity from Civil Liability Disadvantages the Public Interest

Negligence—the duty to use reasonable care to not injure others—is the most basic principle of our civil justice system. In any other industry, businesses owe a duty of care to their clients and to the greater public. A person harmed by a consumer product other than guns can generally bring a claim in court to recover damages if they can prove the manufacturer designed a defective product or otherwise acted dangerously or irresponsibly. Federal law sets caps on the amount a plaintiff may recover through civil lawsuits against certain industries, such as the railroad and nuclear power industries, but no other consumer product industry enjoys the extensive immunity granted to the gun industry by the PLCAA. For example, though both the vaccine and automotive industries are afforded some protection from civil liability, they have compensation mechanisms for people injured by their products.⁴⁶

In the context of a public health emergency, such as the COVID-19 pandemic, immunizing

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Gun Control Act, codified at 18 U.S.C. § 921 et seq.

⁴⁵ National Firearms Act, codified at 26 U.S.C. § 5801 et seq.

⁴⁶ See Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, Pub. L. 109-148, Div. C, codified at 42 U.S.C. §§ 247d-6d, 247d-6e.

certain persons and entities from liability was necessary to ensure that potentially life-saving countermeasures could be efficiently developed, deployed, and administered. The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (HHS) to limit legal liability for losses relating to the administration of medical countermeasures such as diagnostics, treatments, and vaccines temporarily, while PLCAA bestows a permanent limitation on liability upon the gun industry. The sole exception to PREP Act immunity is for death or serious physical injury caused by “willful misconduct.” However, individuals who die or suffer serious injuries directly caused by the administration of covered countermeasures may be eligible to receive compensation through the Countermeasures Injury Compensation Program (CICP).⁴⁷

Despite the crucial role civil liability plays in public safety and injury prevention, the PLCAA affords the gun industry broader immunity than other consumer product industries. Civil litigation against the tobacco, automotive, and pharmaceutical industries based on harm their products caused to the public triggered significant, industry-wide safety improvements for potentially dangerous products. Numerous lawsuits against the tobacco industry in the 1990s resulted in a historic settlement and many changes in the way the industry marketed its products. Lawsuits against car manufacturers have been a crucial element of ongoing efforts to ensure the safety of motor vehicles. In contrast, because the PLCAA has been read to exempt gun companies from negligence liability generally, unless a knowing violation of law is proven, bad actors in the gun industry are given more protection from litigation than makers of cars, opioids, or tobacco products.⁴⁸

Even though the PLCAA provides exceptions, they are narrow and difficult to prove. It has

⁴⁷ 42 U.S.C. § 247d-6e.

⁴⁸ See J. S. Vernick, L. Rutkow, and D. A. Salmon, “Availability of Litigation as a Public Health Tool for Firearm Injury Prevention: Comparison of Guns, Vaccines, and Motor Vehicles,” *American Journal of Public Health* 97, no. 11 (2007): 1991–97.

deterred, limited, or blocked lawsuits brought against gun manufacturers and dealers under theories of general negligence, public nuisance, and/or product defect brought by both private parties and municipal entities. As previously stated, to fit within a narrow exception to overcome the PLCAA’s special protection, generally a plaintiff must establish a knowing violation of a state or federal statute prior to bringing a general negligence or nuisance claim, and the law effectively precludes any product liability claims.⁴⁹ Very few lawsuits against the gun industry have survived pretrial efforts to dismiss since passage of the PLCAA in 2005.

In terms of product liability, it is critical to note that PLCAA disadvantages non-gun owners and gun-owners alike who are victims of gun violence. PLCAA makes it nearly impossible for gun owners injured because of a failure to include basic safety features, such as magazine disconnect safeties or load chamber indicators, to file suits and compel the gun industry to design, manufacture and sell safer firearms. Worse, since guns are the only consumer product exempt from federal health and safety oversight—thanks to another special carve out from the Consumer Product Safety Act—the gun industry is not required to include reasonable, lifesaving safety features.⁵⁰ The products produced by the vaccine and automotive industries also have their safety governed by federal law, while the gun industry does not. Since there are very few laws governing gun manufacturers and dealers, they are effectively allowed to operate without accountability.

The PLCAA has also prevented victims and survivors from bringing suits premised on theories commonly brought on behalf of victims of every other industry—that they otherwise would bring—

⁴⁹ See 15 U.S.C. 7903(5)(A)(iii) and (v); *Adames v. Sheahan*, 909 N.E.2d 742 (Ill. 2009) (PLCAA prohibited product liability claims of defectively designed handgun and failure to warn); *Travieso v. Glock Inc.*, 526 F. Supp. 3d 533 (D. Ariz. 2021) (similar).

⁵⁰ The firearm industry is not subject to federal safety regulations because firearms do not come under the jurisdiction of the Consumer Product Safety Commission (CPSC) since they are outside the definition of “consumer product” under the Consumer Product Safety Act (CPSA) pursuant to a special exemption, 15 U.S.C. 2052(a)(5)(E).

based on the belief that such suits will only waste time and money to be dismissed eventually. For example, a repeal of PLCAA could allow actions to hold the gun industry accountable for the negligent distribution of guns that supply the criminal gun market.

III. ATF and the National Tracing Center

A. Firearms Tracing Data

The ATF National Tracing Center (NTC) is the United States' only crime gun tracing facility. The NTC is the only agency authorized to trace U.S. and foreign manufactured firearms for international, Federal, State, and local law enforcement agencies through the Firearm Trace System database, which it maintains. It only traces crime guns for the purpose of providing investigative leads for law enforcement agencies for such purposes as combatting violent crime and terrorism and enhancing public safety. In response to requests from law enforcement, the NTC provides ATF special agents and other law enforcement agencies with Firearms Trace Result Reports commonly referred to as "trace data."

Firearms tracing is the systematic tracking of the movement of a firearm recovered by law enforcement officials (typically at a crime scene or criminal arrest) from its first sale by the manufacturer or importer through the distribution chain (wholesaler/retailer) to the first retail purchaser. It can be used to link a suspect to a firearm in a criminal investigation; to identify potential traffickers, to determine whether sellers are licensed or unlicensed; and to detect in-state, interstate, and international patterns in the sources and kinds of crime guns.

For many years, crime firearm tracing data was publicly available under the provisions of the Freedom of Information Act (FOIA) and was routinely used by city officials and law enforcement agencies to determine the sources of illegally trafficked firearms and to identify corrupt gun dealers

and the types of guns most often traced to crime. Of the lawsuits against gun manufacturers and dealers that were not dismissed, analyses of ATF firearms trace and investigative data by nongovernmental parties were submitted as evidence showing liability on the part of gun manufacturers and/or dealers. The city of New York pursued a public nuisance civil suit against multiple gun manufacturers based in part on ATF trace and investigative data that were acquired under a strict confidentiality order entered by a federal judge before the disclosure limits were enacted.⁵¹

B. The Tiahrt Amendment

In a series of appropriations acts enacted since 2003, language restricting release of firearm trace information has given ATF no discretion to disclose information from the database.⁵² Often referred to as the “Tiahrt Amendment,”⁵³ the rider prohibits ATF from releasing any data contained in the database, except on a case-by-case basis to individual law enforcement agencies. There is also a prohibition on use of the data in civil litigation. Over the years, the Amendment has been reenacted several times with some changes, including the addition of exceptions and clarifications, but the prohibition on public disclosure of firearms tracing data has remained the same. The most recent iteration of the Tiahrt Amendment provided that the prohibitions were to apply during the current fiscal year and each fiscal year thereafter.⁵⁴

The Tiahrt Amendment’s restriction on the release of firearm trace data represents an unwarranted restriction on public access to information that was historically available to law enforcement, policy makers, and the public under FOIA.⁵⁵ Proponents of the restrictions contend that

⁵¹ See *City of New York v. Beretta U.S.A Corp.*, 429 F.Supp.2d 517 (E.D.N.Y. April 27, 2006).

⁵² Section 644 of the Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7 (2003), provided that “except that such records may continue to be disclosed to the extent and in the manner that records so collected, maintained, or obtained have been disclosed” under FOIA before the date of enactment.

⁵³ The Tiahrt Amendment was first added by Todd Tiahrt (R-KS) to the 2003 federal appropriations bill and was signed into law on February 20, 2003.

⁵⁴ See Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55 (2011).

⁵⁵ See *City of Chicago v. U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms*, 423 F.3d 777 (7th Cir.

the business records of Federal Firearms Licensees (FFLs) should be confidential because the release of tracing data could interfere with ongoing criminal investigations and put the lives of law enforcement, confidential sources, witnesses, and others at risk. However, prior to implementation of the exemptions, FOIA enabled ATF to withhold any information that could interfere with law enforcement investigations.⁵⁶ When the agency released information to the public from the Firearms Tracing System, only a “Trace Data FOIA Extract” was released that included “only FOIA disclosable data elements.”

C. Republicans’ Letter Fuels “National Gun Registry” Conspiracy

“BREAKING: ATF gun registry includes almost 1 BILLION firearm records,” read a post from Gun Owners of America in January. Citing a letter from ATF in response to an inquiry from Representative Michael Cloud (R-TX) and 51 other Republicans regarding ATF’s Out of Business Records (OBR), the *Washington Free Beacon* reported that ATF manages a database of 920,664,765 firearm purchase records.⁵⁷ Gun advocacy groups and conservatives characterized the story as proof that the ATF was maintaining a registry to secretly track gun owners. However, no gun registry exists. There is no universal gun registration or licensing requirement for individuals at the federal level, and federal law explicitly prohibits a national gun registry.⁵⁸ Moreover, an ATF appropriations rider

2005) (2005 Appropriations Act amounted to a change in substantive FOIA law in that it exempted from disclosure data previously available to the public under FOIA).

⁵⁶ FOIA explicitly protects from disclosure any information that could reasonably be expected to interfere with enforcement proceedings; could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or could reasonably be expected to endanger the life or physical safety of any individual.

⁵⁷ A. Kredo, *Biden Admin Has Records on Nearly One Billion Guns*, WASHINGTON FREE BEACON, January 31, 2022.

⁵⁸ See the Firearm Owners’ Protection Act, Pub. L 99-308, codified at 18 U.S.C. § 926, prohibits “any system of registration of firearms, firearms owners, or firearms transaction or dispositions.”

prohibits DOJ from using government funds to create a firearm registry.

While dealers (FFLs) are normally the custodians of firearms transfer records, when they go out of business, their records must be sent to, and maintained by, the NTC to facilitate firearm traces.⁵⁹ The records include information about gun sales and transfers. But those records are not stored in a searchable database or a format consistent with a registry. Federal law prohibits ATF from keeping the records in a searchable format. Each time ATF receives out-of-business records, they are scanned as “non-searchable, static images” that cannot be detected using optical character recognition or searched for identifying information. The records may only be accessed to perform a firearm trace and staff must review each record individually. The NTC processes an average of 5.5 million of these records per month.

Because time is of the essence to develop leads in criminal investigations and any delay means a perpetrator remains on the street longer, modernization was necessary to improve the response time of tracing guns recovered in crimes (the records were originally stored using outdated microfiche technology). In 2006, ATF developed the OBR Imaging System due to practical concerns related to maintaining paper and microfilm records. This system was replaced by the Enterprise Content Management imaging repository system.

Among the questions asked in his letter, Representative Cloud asked, “How many records does the ATF’s Out-of-Business Records Center (OOB) have in total? How many of these records have been processed into a digitalized format?”⁶⁰ From 2011 through 2017, film records were converted to

⁵⁹ See 18 U.S.C. § 923(g)(4), which provides that where a firearms or ammunition business is discontinued and discontinuance of the business is absolute, records required to be kept shall be delivered within 30 days after the discontinuance to the Attorney General.

⁶⁰ Letter, Hon. Michael Cloud, U.S. House of Representatives, November 21, 2021, <https://www.scribd.com/document/541554443/Cloud-ATF-Letter-FINAL>.

digital images.⁶¹ As of November 2021, nearly 866 million of ATF’s more than 920 million out-of-business records were digitized.⁶²

HEARINGS

For the purposes of clause 3(c)(6) of House Rule XIII, the following hearing was used to develop H.R. 2814: “An Unending Crisis: Essential Steps to Reducing Gun Violence and Mass Shootings,” held on May 20, 2021, before the Subcommittee on Crime, Terrorism, and Homeland Security. The Subcommittee heard testimony from:

- The Hon. Vikki Goodwin, Member of the House of Representatives, State of Texas;
- Fred Guttenberg, Author and Gun Safety Advocate;
- J. Adam Skaggs, Chief Counsel and Policy Director, Giffords Law Center to Prevent Gun Violence;
- Michael E. Grady, Senior Pastor, Prince of Peace Christian Fellowship; and
- Dianna Muller, Founder, The DC Project.

The hearing explored firearm safety issues, including the need to repeal the PLCAA. A witness provided testimony about the problems presented by the unprecedented nationwide immunity from lawsuits bestowed upon the gun industry by the PLCAA.

⁶¹ D. Funke, *Fact check: Claim that ATF has “gun registry” includes with 1 billion records is missing context*, USA TODAY, February 9, 2022.

⁶² Letter, Daniel L. Board, Jr., Ass’t Director, Public and Governmental Affairs, Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Dep’t of Justice, December 12, 2021, https://freebeacon.com/wp-content/uploads/2022/01/Letter-Response-Rep.-Michael-Cloud-R-TX-51-x-GOP-co-signers_Federal-Gun-Registry-signed-letter.pdf (At the time, ATF managed 920,664,765 OBR including digital and an estimated number of hard copy records awaited image conversion and an estimated 865,787,086 of those records were in digitalized format).

COMMITTEE CONSIDERATION

On July 20, 2022, the Committee met in open session and ordered the bill, H.R. 2814 favorably reported with an amendment in the nature of a substitute, by a rollcall vote of 24 to 18, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of House Rule XIII, the following rollcall votes occurred during the Committee's consideration of H.R. 2814:

1. An amendment by Mr. Massie, to condition the effective date of the Act (the Equal Justice for Victims of Gun Violence Act of 2022) on repeal of section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d), was defeated by a rollcall vote of 18 to 23. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives

117th Congress

Amendment # 1 (ANJ) to HR 2814 offered by Rep. Massie

PASSED
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)			
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)		✓	
Deborah Ross (NC-02)			
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES.
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)	✓		
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)			
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)	✓		
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	18	23	

2. The motion to report H.R. 2814, as amended, favorably was agreed to by a rollcall vote of 24 to 18. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives
117th Congress

Final Passage on: HR 2814

PASSED
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)			
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)	✓		
Hakeem Jeffries (NY-08)	✓		
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Veronica Escobar (TX-16)	✓		
Mondaire Jones (NY-17)	✓		
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)	✓		
	AYES	NOS	PRES.
Jim Jordan (OH-04)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Darrell Issa (CA-50)		✓	
Ken Buck (CO-04)		✓	
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Greg Steube (FL-17)			
Tom Tiffany (WI-07)		✓	
Thomas Massie (KY-04)		✓	
Chip Roy (TX-21)		✓	
Dan Bishop (NC-09)		✓	
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)		✓	
Scott Fitzgerald (WI-05)		✓	
Cliff Bentz (OR-02)		✓	
Burgess Owens (UT-04)		✓	
	AYES	NOS	PRES.
TOTAL	24	18	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of House Rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House Rule X, are incorporated in the descriptive portions of this report.

COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

Pursuant to clause 3(d)(1) of House Rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(2) of House Rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House Rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House Rule XIII, no provision of H.R. 2814 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of House Rule XIII, H.R. 2814 would restore the rights of victims of gun violence to hold the firearms industry accountable through civil and administrative proceedings when it acts carelessly and disregards reasonable safeguards that would protect the American public, by repealing the Protection of Lawful Commerce in Arms Act, which provides immunity to firearm or ammunition manufacturers, sellers, importers, dealers, and trade associations for damages resulting from the criminal or unlawful misuse of a firearm, and reversing limitations on the disclosure of gun trace data that could be useful in such proceedings.

ADVISORY ON EARMARKS

In accordance with clause 9 of House Rule XXI, H.R. 2814 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of House Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. Section 1 of the bill sets forth the short title of the bill as the “Equal Access to Justice for Victims of Gun Violence Act of 2022.”

Sec. 2. Repeal of Certain Provisions of the Protection of Lawful Commerce in Arms Act. Section 2 of the bill repeals sections 2 through 4 of the Protection of Lawful Commerce in Arms Act (15 U.S.C. 7901-7903), which prohibits civil actions against a firearm or ammunition manufacturer, seller,

importer, dealer, or trade association for damages resulting from the criminal or unlawful misuse of a firearm.

Sec. 3. Discoverability and Admissibility of Gun Trace Information in Civil Proceedings.

Section 3 would mandate that each agency develop a written application to be used by designated persons to request a case file review.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

* * * * *

[SEC. 2. FINDINGS; PURPOSES.

[(a) FINDINGS.—Congress finds the following:

[(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

[(2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

[(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

[(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

[(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

[(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

[(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foun-

dation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

[(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

[(b) PURPOSES.—The purposes of this Act are as follows:

[(1) 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 or ammunition products by others when the product functioned as designed and intended.

[(2) 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.

[(3) 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.

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

[(5) 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.

[(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

[(7) To exercise congressional power under article IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

[SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.

[(a) IN GENERAL.—A qualified civil liability action may not be brought in any Federal or State court.

[(b) DISMISSAL OF PENDING ACTIONS.—A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.

[SEC. 4. DEFINITIONS.

[In this Act:

[(1) ENGAGED IN THE BUSINESS.—The term “engaged in the business” has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

[(2) MANUFACTURER.—The term “manufacturer” means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

[(3) PERSON.—The term “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

[(4) QUALIFIED PRODUCT.—The term “qualified product” means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

[(5) QUALIFIED CIVIL LIABILITY ACTION.—

[(A) IN GENERAL.—The term “qualified civil liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

[(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

[(ii) an action brought against a seller for negligent entrustment or negligence per se;

[(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of

the product, and the violation was a proximate cause of the harm for which relief is sought, including—

【(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

【(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

【(iv) an action for breach of contract or warranty in connection with the purchase of the product;

【(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

【(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26, United States Code.

【(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term “negligent entrustment” means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

【(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

【(D) MINOR CHILD EXCEPTION.—Nothing in this Act shall be construed to limit the right of a person under 17 years of age to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

[(6) SELLER.—The term “seller” means, with respect to a qualified product—

[(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

[(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

[(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

[(7) STATE.—The term “State” includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

[(8) TRADE ASSOCIATION.—The term “trade association” means—

[(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

[(B) that is an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; and

[(C) 2 or more members of which are manufacturers or sellers of a qualified product.

[(9) UNLAWFUL MISUSE.—The term “unlawful misuse” means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.】

* * * * *

H.R. 2814, the “Equal Access to Justice for Victims of Gun Violence Act of 2022”
July 25, 2022

MINORITY VIEWS

H.R. 2814, the “Equal Access to Justice for Victims of Gun Violence Act of 2022,” is bad policy based on false premises that stem from the Democrats’ deep-seated desire to eradicate the Second Amendment to the United States Constitution. H.R. 2814 repeals the Protection of Lawful Commerce in Arms Act (PLCAA), a bipartisan law passed in 2005 to provide limited liability protections for firearms manufacturers, sellers, and trade associations. It also makes federal firearms trace data accessible and admissible for use in civil cases. With H.R. 2814, Democrats hope to entice the trial bar to harass otherwise lawful firearms manufacturers and retailers with frivolous litigation, eroding Americans’ Second Amendment rights.

The Protection of Lawful Commerce in Arms Act

H.R. 2814’s most significant feature is its repeal of the PLCAA. Repealing these provisions has been a long-standing objective for some Democrats, including President Biden.¹ Democrat want to “bankrupt[] the firearms industry through endless, meritless lawsuits,” and give “anti-gun extremists” what they need to “economically eviscerate lawful gun manufacturers and retailers.”² Repealing the PLCAA seems likely to achieve that goal.

Congress enacted the PLCAA on a bipartisan basis in response to aggressive, creative litigation that threatened to overwhelm the firearms industry.³ Congress’s findings in the PLCAA described the trial bar’s novel approach and its harmful effects on the American people.⁴ The

¹ Cf. *Assault on Firearms Industry Continues*, NATIONAL RIFLE ASSOCIATION (May 3, 2021), <https://www.nraila.org/articles/20210503/assault-on-firearms-industry-continues>.

² *See id.*

³ *See, e.g.,* Jason Ouimet, *Protecting the PLCAA*, NATIONAL RIFLE ASSOCIATION (Nov. 27, 2020), <https://www.americas1stfreedom.org/content/protecting-the-plcaa/>; *see also* Linda S. Mullenix, *Outgunned No More?: Reviving A Firearms Industry Mass Tort Litigation*, 49 SW. L. REV. 390, 398-99 (2021) (“In the late 1990s and early twenty-first century, various victims of crime and gun violence attempted to sue gun industry defendants for harms that were allegedly caused by the misuse of firearms by third parties (including criminals). One cluster of such lawsuits were pursued by individuals. Other gun violence litigation was pursued by municipalities, government officials, or other entities. Plaintiffs’ attorneys pursued these lawsuits based on a variety of legal theories These lawsuits largely either were dismissed before trial or were unsuccessful on the merits. . . . Although the firearms defendants could take some comfort in their continued deflection or defeat of gun litigation, *these defendants nonetheless had legitimate concerns about their continued vulnerability to litigation. The gun industry had growing concerns about its own exposure to mass liability against a backdrop of other evolving, successful mass tort litigation*, as well as the increasing state and federal receptivity to entertain aggregate litigation pursuant to a variety of legal theories. Moreover, the states’ attorney generals’ massive 1998 settlement with the tobacco defendants signaled that *even powerful industries that had long pursued ‘no settlement’ strategies, coupled with a record of litigation victories, could be vulnerable to continued, extensive litigation.*” (citations omitted; emphases added)).

⁴ *See* 15 U.S.C. § 7901(a)(3), (5)-(7) (“Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals. . . . Businesses . . . are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended. . . . The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation’s laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization

PLCAA enjoyed significant bipartisan support, including 59 Democrats in the House and 14 in the Senate (including then-Senate Minority Leader Harry Reid), and 34 states had similar protections in place at the time.⁵ Contrary to what Democrats claim, the PLCAA is not the only action Congress has taken to protect certain industries from the trial bar's efforts:⁶ "Vaccine producers, Internet platform providers, and small aircraft manufacturers, to name a few, all enjoy similar or even more expansive liability protection under federal law."⁷

Congress's purposes in enacting the PLCAA help to understand how its repeal would likely undermine the right to keep and bear arms. Congress's goals in 2005 included preserving "access to a supply of firearms and ammunition for all lawful purposes," and guaranteeing fundamental rights and freedoms.⁸ Repealing the PLCAA would invite a new avalanche of meritless lawsuits. If successful in overwhelming the industry, such litigation could effectively deny law-abiding Americans access to lawful firearms.

The firearms industry remains a significant part of the American economy. According to one recent report that looked at direct and indirect employment relating to firearms, "the gun industry is responsible for more than 300,000 jobs and more than \$15 billion in wages."⁹ Trying to cripple an industry that employs so many—during a time of sky-high inflation—is another example of how the Biden Administration pushes extreme policies that hurt hardworking Americans.

of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States. . . . *The liability actions commenced or contemplated . . . are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States.* Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution." (emphasis added).

⁵ S. 397, 109th Cong. (2005); David Kopel, *The Protection of Lawful Commerce in Arms Act: Facts and policy*, WASHINGTON POST (May 24, 2016) (explaining the bill "was passed by the U.S. House of Representatives in October 2005 by a bipartisan vote of 283 to 144. The measure had passed the Senate in July by a vote of 65 to 31. . . . Senate Minority Leader Harry Reid (D-Nev.) played a major role in passing the legislation. At the time, Bernie Sanders was U.S. representative, and he supported the bill . . .").

⁶ Ouimet, *Protecting the PLCAA*, *supra* note 3; *cf.* Chelsea Parsons et al., *The Gun Industry in America*, AMERICAN PROGRESS (Aug. 6, 2020) (describing Congressional consideration of a bill to limit "lawsuits against the restaurant industry for harm caused by obesity"), <https://www.americanprogress.org/article/gun-industry-america/>; *see generally* CURTIS WILKIE, *THE FALL OF THE HOUSE OF ZEUS: THE RISE AND RUIN OF AMERICA'S MOST POWERFUL TRIAL LAWYER* (CROWN 2011) (describing aggressive strategies of the trial bar in targeting defendants).

⁷ *See* Ouimet, *Protecting the PLCAA*, *supra* note 3.

⁸ 15 U.S.C. § 7901(b)(1)-(3) ("Purposes") ("(1) 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 or ammunition products by others when the product functioned as designed and intended. (2) 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. (3) 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." (emphasis added)).

⁹ Andrew Lisa, *Jobs the Gun Industry Creates for Your State*, YAHOO (June 7, 2019).

Repeal of the PLCAA could have a serious detrimental effect on our nation’s law enforcement and armed services readiness. During Committee Consideration of the PLCAA in 2005, then-Judiciary Chairman Sensenbrenner noted:

The police along with our military rely on the domestic firearms industry to supply them with reliable and accurate weapons that can best protect them in the line of fire. Abusive firearms lawsuits threaten to bankrupt the domestic firearms industry and leave our police and our troops relying on foreign manufacturers for their own protection.¹⁰

By repealing the PLCAA, H.R. 2814 would repeat the very same mistakes and create the circumstances for abusive litigation that led to the bipartisan passage of the PLCAA in 2005.

Despite Democrats’ Rhetoric, the PLCAA Does Not Offer “Blanket” Immunity

Although Democrats misleadingly argue that the PLCAA provides firearm manufacturers with blanket immunity,¹¹ Congress reasonably balanced the need to end frivolous litigation with the need to hold truly bad actors accountable. The PLCAA prevents a plaintiff from bringing a civil liability action in any Federal or State court against a firearms manufacturer, seller, or trade association resulting from the criminal or unlawful misuse of a firearm by the person or a third party.¹² The statute also includes six exceptions.¹³ They are:

1. An action against a someone convicted of knowingly transferring a firearm or ammunition with knowledge (or reasonable cause) that it will be used to commit a felony.
2. An action against a seller¹⁴ for negligent entrustment or negligence per se.
3. An action where a manufacturer or seller knowingly violated a law “applicable to the sale or marketing” of the product, and that violation was the proximate cause of the plaintiff’s injury.
4. An action for breach of contract or warranty in connection with the purchase of the product.¹⁵

¹⁰ H.R Rep. No. 109-124, at 56 (2005).

¹¹ *Equal Access to Justice for Victims of Gun Violence Act Sponsors: Representative Adam Schiff (D-CA) and Senator Richard Blumenthal (D-CT)*, <https://schiff.house.gov/imo/media/doc/One-pager.pdf> (last visited July 16, 2022) (claiming the “PLCAA immunizes the gun industry from their fundamental duty to act with reasonable care towards public safety, empowering the worst actors to act with impunity”).

¹² 15 U.S.C. § 7902(a).

¹³ *Id.* § 7903(5)(A).

¹⁴ A manufacturer or trade association that does not fall under the definition of “seller” could not be sued under this exception. *See, e.g.,* Vivian S. Chu, *The Protection of Lawful Commerce in Arms Act: An Overview of Limiting Tort Liability of Gun Manufacturers*, CRS, at 3 (Dec. 20, 2012) (explaining when a manufacturer may not fall under the definition of “seller”), <https://sgp.fas.org/crs/misc/R42871.pdf> [hereinafter “CRS Memo”].

¹⁵ *See id.* § 7903(5)(A)(iv); *see also* CRS Memo, *supra* note 19, at 7.

5. An action raising a design- or manufacturing-defect claim. However, this exception does not apply if the firearm discharge “was caused by a volitional act that constituted a criminal offense”¹⁶
6. An action the attorney general brings to enforce the Gun Control Act or the National Firearms Act.¹⁷

H.R. 2814 upsets the careful balance crafted by Congress in the PLCAA. Instead of respecting the Constitutional rights of law-abiding Americans, H.R. 2814 would treat all firearm manufacturers and retailers as bad actors responsible for every criminal misuse of a firearm.

Courts Have Consistently Affirmed that the PLCAA is Constitutional

Plaintiffs have challenged the PLCAA on several constitutional grounds, but both federal and state courts have almost uniformly upheld the statute.¹⁸ For example, the U.S. Court of Appeals for the Ninth Circuit has rejected a separation-of-powers challenge, an equal protection challenge, substantive and procedural due process challenges, and a takings challenge.¹⁹ The Court of Appeals for the Second Circuit has similarly rejected a Commerce Clause challenge, a separation-of-powers challenge, a Tenth Amendment challenge, and a First Amendment challenge.²⁰

¹⁶ See *id.*; see also CRS Memo, *supra* note 19, at 7–8 (“For example, if a criminal fired a gun without aiming at his victim, but the bullet hit the victim as a result of a manufacturing or design defect, then the injured person would be statutorily barred from a suit against the manufacturer.”).

¹⁷ See 15 U.S.C. § 7903(5)(A)(vi); see also CRS Memo, *supra* note 19, at 8.

¹⁸ See, e.g., Mullenix, *supra* note 3, at 402 (“[A] handful of gun violence suits have broadly challenged the constitutionality of PLCAA, but none of these constitutional challenges have been successful. Both state and federal courts have upheld the constitutionality of PLCAA as a legitimate exercise of congressional legislative power.” (footnote omitted)).

¹⁹ See *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1142 (9th Cir. 2009) (“Like all appellate courts that have assessed the constitutionality of the PLCAA [the court then cited state court decisions], . . . we hold that the Act is constitutional on its face and as applied.” (citations omitted)); *id.* at 1139 (rejecting separation-of-powers claim and explaining “[h]ere, Congress has amended the applicable law; it has not compelled results under old law. The PLCAA sets forth a new legal standard—the definition (with exceptions) of a ‘qualified civil liability action’—to be applied to all cases”); *id.* at 1040–41 (rejecting the equal protection and substantive due process claims because the court had “no trouble concluding that Congress rationally could find that, by insulating the firearms industry from a specified set of lawsuits, interstate and foreign commerce of firearms would be affected.”); *id.* at 1141 (rejecting the takings claim because there is no vested property right in a cause of action until there is a final, unreviewable judgment); *id.* at 1142 (rejecting the procedural due process claim because “the PLCAA does not impose a procedural limitation; rather, it creates a substantive rule of law granting immunity to certain parties against certain types of claims”).

²⁰ See *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 395 (2d Cir. 2008) (rejecting the Commerce Clause challenge and noting “Congress has not exceeded its authority in this case” because “there can be no question of the interstate character of the industry in question and . . . Congress rationally perceived a substantial effect on the industry of the litigation that the Act seeks to curtail”); *id.* at 396 (rejecting the separation-of-powers challenge “[b]ecause the PLCAA does not merely direct the outcome of cases, but changes the applicable law”); *id.* at 397 (rejecting the Tenth Amendment challenge “because [the PLCAA] imposes no affirmative duty of any kind on” any branch of state government and thus “does not commandeer any branch of state government” (citation omitted)); *id.* at 398 (rejecting the access-to-the-courts First Amendment claim because the PLCAA “immunizes a specific type of defendant from a specific type of suit” and “does not impede, let alone entirely foreclose, general use of the courts by would-be plaintiffs”).

Releasing ATF Trace Data is Bad Policy

H.R. 2814 would also make the contents of a federal firearms trace database accessible and admissible for use in civil actions²¹—a policy Congress has rejected for years.²² The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), which maintains the relevant trace data, has explained how

Tracing is a systematic process of tracking the movement of a firearm from its manufacture or from its introduction into U.S. commerce by the importer through the distribution chain (wholesalers and retailers), to identify an unlicensed purchaser. That information can help to link a suspect to a firearm in a criminal investigation and identify potential traffickers.²³

ATF helps to “conduct firearms tracing to provide investigative leads for federal, state, local and foreign law enforcement agencies.”²⁴ Put simply, ATF’s trace data helps law enforcement agencies to track the “ownership path of individual firearms”²⁵ when necessary.

Making federal trace data more generally available will benefit the trial bar while harming law enforcement investigations.²⁶ The Fraternal Order of Police has advised against releasing trace data, indicating that doing so would damage ongoing investigations and place undercover officers in danger.²⁷ Such information has been misused by the plaintiffs’ bar in the past, as well. In the frivolous lawsuits leading up the PLCAA’s passage, plaintiffs “misused trace data as a substitute for actual evidence of wrongdoing by members of the [firearms] industry.”²⁸ Thus, a primary reason for making it accessible for use in civil litigation seems to be to further empower the trial bar.²⁹

Conclusion

H.R. 2814 is a thinly veiled effort by Democrats to incentivize trial attorneys to generate frivolous litigation against firearm manufacturers and retailers—litigation that could bankrupt the

²¹ H.R. 2814 § 3.

²² See, e.g., *The “Tiahrt Amendment” on Firearms Traces: Protecting Gun Owners’ Privacy and Law Enforcement Safety*, NATIONAL RIFLE ASSOCIATION (Jan. 15, 2013), <https://www.nraila.org/articles/20130115/the-tiaht-amendment-on-firearms-traces-protecting-gun-owners-privacy-and-law-enforcement-safety>.

²³ *National Tracing Center*, BUREAU OF ALCOHOL, FIREARMS, ALCOHOL, AND EXPLOSIVES (June 15, 2020), <https://www.atf.gov/firearms/national-tracing-center>.

²⁴ *Id.*

²⁵ *The “Tiahrt Amendment” on Firearms Traces*, *supra* note 42 (internal quotation marks omitted).

²⁶ *Id.*

²⁷ See, e.g., *Political Report: One On One With Chuck Canterbury, National President, Fraternal Order Of Police*, NATIONAL RIFLE ASSOCIATION (Jun. 16, 2011), <https://www.nraila.org/articles/20110616/political-report-one-on-one-with-chuck>

²⁸ See Keane, *supra* note 47.

²⁹ See generally H.R. 2814 § 3; *Assault on Firearms Industry Continues*, *supra* note 1 (explaining “[t]he problem” is “trace information is relatively useless for legitimate civil actions, and would be used merely for inflammatory and political purposes”), <https://www.nraila.org/articles/20210503/assault-on-firearms-industry-continues>; Keane, *supra* note 48; cf. generally Chris Eger, *Lawmaker Wants ATF Gun Trace Data Open for Use in Lawsuits*, GUNS.COM (Feb. 29, 2016), <https://www.guns.com/news/2016/02/29/lawmaker-wants-atf-gun-trace-data-open-for-use-in-lawsuits>.

American firearm industry and significantly restrict Americans' Second Amendment rights. I oppose this legislation.

A handwritten signature in blue ink that reads "Jim Jordan". The signature is written in a cursive, flowing style.

Jim Jordan
Ranking Member