

Senate State, Veterans, & Military Affairs
 03/08/2023 Upon Adjournment
 SB23-168 Gun Violence Victims' Access To Judicial System
 Typed Text of Testimony Submitted

Name, Position, Representing	Typed Text of Testimony
EUGENE Adkins Against himself	<p>Hello, I am totally against sb23 168. Please protect the gun manufacturer. The evil and destruction comes from the person pulling the trigger.</p> <p>Sincerely,</p> <p>Eugene Adkins</p>
Diana Bara Against herself	<p>I oppose HB23-168 because history proves that gun control does not save lives. It leaves the law-abiding citizens vulnerable and defenseless against a criminal environment, such as the one that our state legislators have created. It also leaves them defenseless against a government that is prone to oppress people, an occurrence that is increasing in our country. I would prefer that our legislators pass bills that are tough on crime, keep criminals off the streets, and not for more gun control for its law-abiding citizens.</p> <p>Last year the 73rd General Assembly introduced 657 bills between the months of January and May. None of them did anything to make our cities safer. Violent crime in Colorado is at a 25 year high with murder on the rise. Cars are stolen from our driveways. Homeless occupy our parks and tents are starting to line our streets. We have 266 registered sex offenders residing in Longmont where I live. Also, on the rise is aggravated assault, larceny theft and the Sinaloa Cartel with their Fentanyl business. With the current criminal environment, the lack of concern for its citizens well-being, more gun control will make us more vulnerable. The criminal will not obey the laws and will hit soft targets where there is gun control. When the government no longer protects us, we need to protect ourselves.</p> <p>It is obvious to me that with the types of legislation introduced and passed by the "group think" Democratic majority that they have an agenda. Bills for more gun control and against free markets and property ownership, that give power to the state and take it away from the people, reek of a communist socialist movement in Colorado. In 1935, Communist China established gun control and 50 million political dissidents were arrested and killed. In 1938, Hitler used gun control to render the Jewish population defenseless sending them to concentration camps. In 1970, Uganda established gun control and from 1970-1979, 300,000 Christians were killed by the dictatorial government. These are not the only examples, and now Colorado is leading the nation with a socialist agenda, with laws that gnaw away at our Bill of Rights. Stop the agenda and start working for the benefit of the people and not the state.</p>

<p>Anthony DeAngelis Against themselves</p>	<p>Manufacturers can not be held liable for how individuals use their products. PERIOD! Regardless if it's a firearm or alcoholic beverage or vehicle. The importance of the precedent of passing this kind of law surpasses well beyond the firearm industry. If I get carpal tunnel injury I can't hold Logitech liable for that because I didn't use a mouse and keyboard designed to help reduce this. If I kill someone by drinking and driving I can't hold the alcohol Manufacturers liable for my decision making. Firearm Manufacturers can't be liable for an individual's personal decisions to use it unlawfully or lawfully. This is pretty common sense and allowing this kind of bill to pass only encourages the departure of common sense. It is a bill that is being put forward out of a sense of public relations for personal political gain and not public safety. Safety starts with the individual and Manufacturers can not be held liable for an individual's personal misunderstanding of safety or complete disregard of morals.</p>
<p>Salam Hindawi Against themselves</p>	<p>Hello, I am vehemently opposed to Bill23-168 because it places an undue burden on gun manufacturers. If we are to apply the same logic allowing someone to sue the manufacturer of a commodity if they misuse it then people should be able to sue car companies if they drive recklessly, and McDonald's joints if they choke while eating even though the burger was well-done. A manufacturer should not be held liable for the bad intentions or misuse of a buyer. Thank you.</p>
<p>Thomas Greco Against themselves</p>	<p>SB-168, shifts an unlawful act from the perpetrator to a lawfully conducted action. This shifts the blame of action from an individual to an unwitting third party. Would we sue a football company for manufacturing a football that hit somebody in the eye? The person throwing the football is the culprit – not the manufacturer. This piece of legislation seems to target the firearm industry and would not equally apply to industries. In states where we have seen an increase in gun restrictions, like Chicago, we have seen a dramatic increase in crime. If you truly want to reduce violent crime, two things must happen. First, the state must punish violent crimes. Second, the state should provide no barrier to the tolls of self-defense – the criminal must be afraid of the victim – there is no other way.</p>
<p>Jon Stoll Against themselves</p>	<p>This proposal is blatantly restrictive to the free trade of a legal product! It is an unabashed measure aimed at driving gun manufacturers out of business and as a result, destroying the Constitutional right to bear arms. Please reread and understand what the phrase “ will not be infringed “ means and then look at your oath when you accepted your position, to defend the Constitution of the United States. That includes the 2 amendment sir.</p>

Dale Theiling For themselves	As a concerned citizen of Colorado, I would like to state my position of support for SB23-168, allowing gun violence victims access to the judicial system. Thank you.
Peter Maher Against themselves	Stop trying to infringe on the rights of citizens and their rights to own a gun. We send our sons and daughters to the military at age 18 and sometimes younger. Some people join law enforcement at the age of 18. We know that there are responsible individuals at age 18. Why not create a bill that teaches gun safety to HS students. That used to be in all schools. All students by the time they graduated had taken a course and understood firearms.
Jennifer Bird Against themselves	<p>This is a scapegoat bill. Manufacturers of firearms and ammunition cannot control the actions of criminals, nor should they be held liable for third-party criminal acts.</p> <p>It is unjust to hold a person accountable who has no control over someone else. Hold the criminal accountable, not the manufacturer of the firearm or ammunition!</p> <p>Please keep in mind also, that it is possible a gun sold lawfully could later fall into a criminal's hands, whether through theft, secondary transfer, or some other circumstance wholly beyond a manufacturer's or dealer's control. If every such occasion could subject an industry member to liability, it would be all but impossible for businesses that support the Second Amendment to exist.</p> <p>Consider this bill as an underhanded attempt to remove our second amendment rights by removing firearm/ammunition manufacturers.</p>
Tom Verzuh Against themselves	<p>I am strongly opposed SB23-168: Gun manufacturer/retailer liability bill.</p> <p>This will effectively put all gun manufacturers and retailers in the state out of business. Not only would this fly in the face of the 2nd Amendment, but it is also unfair to all the business and retailers who sell firearms for hunting, sport and all other legal purposes.</p> <p>If you follow the same logic in this bill, we should hold bars, liquor stores and liquor producers responsible for things that happen to people after purchasing alcohol from them, or auto manufactures and car dealerships for car accidents.</p> <p>The real agenda for this bill is the attempt to stop firearm sales in the state. This will not eliminate any problems with guns. People will simply find another tool, purchase a firearm illegally or steal them. The problem isn't the gun, it is the person using it.</p>
Kristen Bara Against themselves	I oppose SB23-168. Gun or ammo manufacturers should not be liable for an injury caused by their product. This law is intended to tie the hands of gun manufacturers and is yet another infringement on our 2nd Amendment rights. Are car manufacturers held liable if the car they

	<p>manufactured is involved in a car accident? No. That's because the manufacturers have no control over how their product is used and thus should not be held liable. We all know what the real intent of this law is. To put up more red tape and make it more costly for gun manufacturers to make guns and law abiding citizens to purchase firearms. Please oppose this bill.</p>
<p>Mark Kaiser Against themselves</p>	<p>Pharmaceutical makers, namely Moderna and Pfizer have immunity from their products, airlines enjoy a certain amount of immunity, and car makers are not responsible for a driver using their product to either intentionally or accidentally killing or injuring someone. A gun is a tool. In the hands of a criminal, it becomes weapon of terror. In the hands of a law abiding citizen, it becomes protection against a criminal that would do harm to the same citizen. A gun manufacturer, like an auto manufacturer cannot control what the end user does with their product. A gun and a car, hurt no one until they are under the control of a person. This morning I placed my handgun on my sofa, the mailman has delivered my mail, about 20 people have walked by my front door, even the school bus picked up the kids for the neighborhood school. I just checked the gun, it had not killed or injured anyone, and was still in the same place I left it. My car in the driveway has not run over anyone, and like the gun, has had ample opportunities to commit various acts of destruction. So in conclusion, it comes back to the same deduction—that it is the person, not the tool that commits the atrocity.</p>
<p>Justin Beard Against themselves</p>	<p>Do you want to kill Colorado's multi billion dollar hunting industry? Among all the anti-freedom bills currently working up the chain, Senate Bill 168 is especially bad. Being that it opens up civil liability for any entity that deals with nearly any firearms related item in the state, not just "assault weapons", it will effectively ban sales of ALL firearms, components, and ammo. No company will want to continue to do business in CO if it opens them up for civil liability, even if the product is used unlawfully:</p> <p>"AN INTERVENING ACT BY A THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, THE UNLAWFUL MISUSE OF A FIREARM INDUSTRY PRODUCT, DOES NOT PREVENT A FIREARM INDUSTRY MEMBER FROM BEING LIABLE FOR HARM CAUSED BY THE FIREARM INDUSTRY MEMBER'S VIOLATION OF THIS ARTICLE 27."</p> <p>This bill is bad for the citizenry, bad for businesses, and will most certainly cost the State not only lost revenue but also lots of legal fees that will be needed to defend this bill in court should it pass.</p>
<p>Ian Estis Against themselves</p>	<p>This law blatantly violates federal law protecting gun manufacturers. Sueing a gun manufacturers for someone misusing there product to kill someone is like Sueing a car manufacturers if someone drove their car into a crowd of people. How's it their fault if their product is used wrecklessly? Companies cannot be responsible for babysitting all their customers. Also, Protection of Lawful Commerce in Arms Act (PLCAA) makes this law null and void you will just waste tax money in federal court battle.</p>

<p>Michael Koenig Against themselves</p>	<p>Being a small business owner is hard enough and now this bill is being presented as if it is going to stop the criminals from acquiring firearms. If allowed to pass this bill may force me to close my business as well it may also cost myself and my employees the loss of jobs. This bill does nothing to keep firearms out of the hands of criminals as well it does not punish the criminal only the law abiding citizens / FFL dealers.</p> <p>Two questions I have are</p> <p>1 - Since a FFL dealer is a middleman only being able to sell to someone once we get an approval from the ATF / CBI. Are they the ATF / CBI going to be fined and held liable as well? I mean they are the only way the transaction can take place.</p> <p>2 - If down the road someone is unable to defend their home because all the firearm stores in Colorado had to close down. Does that mean that their family can now come after you the law makers named on this bill?</p>
<p>Tiffany Taylor Against themselves</p>	<p>Hello my name is Tiffany Taylor i am a colorado resident In regards to SB23-168 Suing gunmakers for intentional misuse of their products would be like suing car makers for drunk driving deaths. Or suing spoon manufacturers for obesity. It's illogical.</p> <p>There is NO protection for firearm manufacturers for product liability. If the product fails and harm is done, they can be sued like any other manufacturer.</p> <p>What protection DID occur is the manufacturer can not be sued for the misuse of the product by a criminal. What was happening is anti-gun activists were creating law suits for all criminal misuse. Ultimately, the cases were tossed out. ALL OF THEM. But the costs to go through the motions were creating a huge cost for the firearms industry - which was the goal of the tactic. To bankrupt them.</p> <p>So, a law was passed to prohibit the filing of such cases.</p> <p>If that protection is taken away and the anti-gun activists again file their suits, the costs will be recovered in counter suits or passed along to consumers. Just like any other manufacturer.</p> <p>It's not like suddenly the gun industry is going to be found liable. The suits have no merit. No manufacturer has ever been found guilty of the actions of criminal use.</p> <p>However, if for some reason one of these cases do manage to succeed, it will be the poster child for suing any industry over the misuse of their product by the hands of criminals who seek to do harm.</p> <p>Politicians and prosecutors spent a long time suing gun companies for the criminal use of their products. The purpose was not to win; the purpose was to bankrupt or control the firearms industry by other means since gun control wasn't getting passed in the legislature or upheld in the courts.</p> <p>As it become more common and it was clear this was a pattern of conduct, Congress passed the Protection in Lawful Commerce in Arms Act . It forbids gun manufacturers for being sued when their products are used criminally when they are not involved in the sale or transfer of said arms. The Act does not forbid lawsuits for manufacturing defects,</p>

	<p>the gun manufacturer transferring firearms illegally and so on. It only provides explicit means to stop a third party liability lawsuit from moving forward.</p> <p>So explain, exactly, why this law should be repealed? Why shouldn't gun makers get the same protections other industries do for third-party litigation that is solely intended to bankrupt them?</p> <p>Today I urge you to vote No on SB23-168</p>
<p>Tiffany Taylor Against themselves</p>	<p>Hello my name is Tiffany Taylor i am a colorado resident In regards to SB23-168 Suing gunmakers for intentional misuse of their products would be like suing car makers for drunk driving deaths. Or suing spoon manufacturers for obesity. It's illogical. There is NO protection for firearm manufacturers for product liability. If the product fails and harm is done, they can be sued like any other manufacturer. What protection DID occur is the manufacturer can not be sued for the misuse of the product by a criminal. What was happening is anti-gun activists were creating law suits for all criminal misuse. Ultimately, the cases were tossed out. ALL OF THEM. But the costs to go through the motions were creating a huge cost for the firearms industry - which was the goal of the tactic. To bankrupt them. So, a law was passed to prohibit the filing of such cases. If that protection is taken away and the anti-gun activists again file their suits, the costs will be recovered in counter suits or passed along to consumers. Just like any other manufacturer. It's not like suddenly the gun industry is going to be found liable. The suits have no merit. No manufacturer has ever been found guilty of the actions of criminal use. However, if for some reason one of these cases do manage to succeed, it will be the poster child for suing any industry over the misuse of their product by the hands of criminals who seek to do harm. Politicians and prosecutors spent a long time suing gun companies for the criminal use of their products. The purpose was not to win; the purpose was to bankrupt or control the firearms industry by other means since gun control wasn't getting passed in the legislature or upheld in the courts. As it become more common and it was clear this was a pattern of conduct, Congress passed the Protection in Lawful Commerce in Arms Act . It forbids gun manufacturers for being sued when their products are used criminally when they are not involved in the sale or transfer of said arms. The Act does not forbid lawsuits for manufacturing defects, the gun manufacturer transferring firearms illegally and so on. It only provides explicit means to stop a third party liability lawsuit from moving forward. So explain, exactly, why this law should be repealed? Why shouldn't gun makers get the same protections other industries do for third-party litigation that is solely intended to bankrupt them?</p>

	Today I urge you to vote No on SB23-168
Kristine Peterson Against themselves	This bill is unreasonable. No other industry is subject to such potential liability claims. The law is intentionally vague and over-reaching.
Jacob Hodges Against themselves	The absurdity of this bill should be self evident; allowing lawsuits against "industry members" due to "An intervening act by a third party, including unlawful misuse of an industry product" shifts responsibility away from the individual who commits a crime onto the manufacturer of a product used in a crime, setting a dangerous precedent, both legally and morally. This opens the door for ridiculous lawsuits that will waste everybody's time in court.
Noah Shurz For themselves	Hi, my name is Noah Shurz and I go to East High School. Gun manufacturers must be held accountable as tragedies continue to strike. Senate Bill 23/168 would allow for those manufacturers to be held responsible for changes that were able to be made for guns, such as what happened in Las Vegas in 2018 with a bump stock. Manufacturers who allow for modifications unnecessarily cause mass tragedy and will continue to cause mass tragedy. Please take the power you have to make a change and make our beautiful state safer.
Matt Gillette Against themselves	This bill is wholly opposed to the basic tenants of the 2cnd amendment both in its structure and intent. Further this bill has no basis in studies or empirical data that would suggest it would increase public safety. I would ask that this bill be tabled immediately.
Kenneth Nova For themselves	<p>Thank you Chairman Coleman and the rest of the committee for the opportunity to write to you today. I am writing to say that I'm in favor of SB23-168, SB23-169, and SB23-170. I am a senior citizen residing in south Boulder. I regularly shop at the Table Mesa King Soopers, and enter the store 2-4 times a week since I retired from my public elementary school teaching position. To be honest, it's just plain good fortune for me that I didn't choose to go into the store on March 22, 2021. I was out on my daily walk around my Martin Acres neighborhood that afternoon when I heard an inordinate cacophony of sirens converging on south Boulder. I was horrified to see the scene at Broadway and Table Mesa, and an RTD driver told me about an active shooter in the King Soopers.</p> <p>I could so easily have been at the store at that time on that day! Now that the store has reopened, the perpetual presence of a security guard in the front area of the store only serves as a reminder to me as I enter, always with a twinge of concern, that it could happen again while I'm there. One should not have to have those sort of feelings merely going grocery shopping!</p> <p>Gun violence is an epidemic without vaccination. The only way we can check some of the rampant gun violence is through common sense laws</p>

	<p>like 168, 169, and 170. Some will say that because we don't have similar federal laws, that these will fall short. They're not ideal, given this context, but states like Colorado need to step up and pass common sense laws that address the issues. People should not be able to walk into a gun store and walk right out with it -- a 3-day waiting period would take care of those who are angry about something or at someone and who impulsively want to purchase a weapon and kill and maim. There's plenty of research that shows that young men under 21 lack some levels of brain development that might otherwise self-stifle violent urges. The gun industry should be able to be legally held accountable and responsible for violence that occurs because of gun use. Extreme risk protection orders should be able to be placed by a wider net of accountable people who interact with a potential gun user, since some county sheriffs have irresponsibly refused to issue extreme risk protection orders when they are warranted.</p> <p>Thank you for your consideration of these bills!</p> <p>Kenneth Nova</p>
<p>Joanne Brothers For themselves</p>	<p>Thank you Chairman Coleman and the rest of the committee for the opportunity to address you today. My name is Joanne Brothers and I am here representing myself.</p> <p>I am here in support of Senate Bill SB 23-168.</p> <p>I am in favor of this bill for several reasons. I am a member of the Boulder community that lives 2 miles from the Table Mesa King Soopers where the tragic event took place over a year ago. It is over time that we make manufacturers responsible for the use of their weapons. We need to give citizens access to naming manufacturers responsible for what happens in our communities. It gives manufacturers no responsibility and ownership for what is perpetrated on the community. And so it goes on. More and more children, families and people are being killed, injured and traumatized. Something must be done. This is a step in the right direction. Colorado should be a leader in protecting their citizens.</p> <p>Thank you, Joanne Brothers Boulder, Co</p>
<p>Joseph Wilkey Against themselves</p>	<p>I am STRONGLY Against SB23-168 and others like it. They do nothing but hurt law abiding citizens and gun store manufacturers that are constitutionally protected. Anyone that votes for this bill and others like it, should be removed from their post as they are voting against the Constitution of the United States of America. Which they swore to uphold!</p> <p>You are on the wrong side of the line and of history.</p>
<p>Tracey Mackey Against themselves</p>	<p>I am opposed to the Gun Violence Victims access to the judicial system bill. Why allow victims of gun violence to sue manufacturers unless Colorado is just looking to destroy the gun industry? A gun is a tool. Why would the manufacturer or any retailer be liable for the actions of the buyer of a tool? If someone is a victim of attack by hammer, are you</p>

	<p>going to allow them to sue the hammer manufacturer or the store that sold it?</p> <p>This bill is not about helping victims of gun violence. It is a flagrant attempt to destroy gun businesses and ultimately it is an attack on our second amendment rights to defend ourselves from tyrannical governments.</p>
<p>Ronnie Broyles Against themselves</p>	<p>I am here to speak against SB23-168. This bill is promoted as giving victims of gun violence their “day in court” in that it removes long standing liability protection from a single industry—the firearm industry. The sponsors of this bill intend that this bill disincentivize firearms manufacturers and distributors from offering for sale their products within the borders of the state of Colorado.</p> <p>This bill is hypocritical at best in that the sponsors attack a single industry. I don’t see anyone in the legislature rushing to hold alcohol manufacturers liable when someone abuses liquor or beer and gets out and drives drunk and injures or kills another human being. I don’t see the legislature rushing to open up marijuana growers to liability when their products are used and someone drives high and injures or kills another, nor do I see the legislature rushing to hold vehicle manufacturers liable when someone misuses their products and causes a collision resulting in injury or death.</p> <p>In Colorado between 2014-2019 there were 3,249 fatal motor vehicle collisions within the borders of the state of Colorado—where is the self-righteous indignation against vehicle manufacturers? Where is the push by the legislature to hold pharmaceutical manufacturers liable when there are vaccine injuries? I don’t see the legislature rushing to open up Pfizer or Moderna to claims of liability...you hyperfocus on a SINGLE industry because it panders to pro-gun control groups who are pouring money into Colorado in an effort to make this state a battle ground in their push to restrict the 2nd Amendment and piecemeal away the RIGHT to keep and bear arms. The problem is—the minds of this committee on how it would vote was made up before today.</p> <p>The passage of this bill is a foregone conclusion, because it panders to big money lobbyists who are seeking turn our Constitutional rights into a privilege to be restricted at your whim. Yet I still urge you to vote NO on SB23-168 and uphold the oath that each of you took to defend, protect and preserve the Constitutions of both the state of Colorado, as well as the United States of America.</p> <p>Thank You</p>
<p>Darrell Dinges Against themselves</p>	<p>Do we hold car manufacturers accountable for crashes caused by reckless drivers. Should we hold boot makers liable when a person kicks someone with a boot. Knife manufacturers responsible for stabbing. What justification do we have to hold firearm manufacturers responsible</p>

	<p>for criminal misuse of their products. This sets a bad precedent to hold manufacturers liable for misuse of their products. Should liberal, social justice District Attorneys, be held liable when repeat offenders are released on low or no cost bail and commit additional violent crimes.</p> <p>If firearm manufactures become liable for criminal misuse of their products, some manufacturers will choose to discontinue sales within Colorado. Others will raise prices to cover lawsuits expenses. This will drive up prices for firearms for legal uses, like hunting, sport shooting, self-defense and law enforcement.</p>
<p>Tarif Ahmed Against themselves</p>	<p>I vehemently oppose this legislation which would accomplish absolutely nothing and would not stand up in court.</p> <p>Let's ask ourselves a rhetorical question - should the store owners who got looted during the summer of 2020 be allowed sue the various non-profit organizations that funded their travel and bailed them out of jail? Should the government officials who encouraged that so-called peaceful protest be held liable judicially for their terrible judgment? Should car companies be sued for car crashes? Knife makers sued because of criminals who stab their victims?</p> <p>It seems like legislators in this state saw Texas' abortion bill and actually thought it was a good idea to allow punitive retribution based on social differences. Like the rest of the bills regarding gun control, this will get the state locked up in court and will waste tax payer money.</p> <p>Furthermore, it's incredibly sad that I've attempted to contact my state senator, who sponsored this embarrassing bill, on multiple occasions and could not hear a single response. To say she is out of touch with her residents is an understatement. Please oppose this bill and save some tax payer money instead of opening another front for the state to be sued.</p>
<p>Travis Couture-Lovelady Against National Rifle Association of America</p>	<p>SB23-168 holds gun industry members liable for third-party criminal acts, by "knowingly or recklessly creating, maintaining, or contributing to a public nuisance." It is possible a gun sold lawfully could later fall into a criminal's hands, whether through theft, secondary transfer, or some other circumstance wholly beyond a manufacturer's or dealer's control. If every such occasion could subject an industry member to liability, it would be all but impossible for businesses that support the Second Amendment to exist. This bill aims to undermine the PLCAA and subject licensed firearm manufacturers and sellers to frivolous lawsuits brought to recover damages for the criminal misuse of their products. Protecting the firearms industry, like other lawful industries, is necessary because our legal system generally does not punish anyone for the criminal actions of others. This bill simply seeks to sue the firearms industry out of existence in the state of Washington. The firearms industry supplies thousands of jobs in Washington and the excise tax on the sale and purchase of firearms, ammunition, and accessories produces millions of dollars for conservation in our state</p>

	<p>from Pittman-Robertson funds. This bill will eliminate thousands of jobs and deprive the state of millions of dollars annually.</p> <p>On behalf of our members in Colorado the National Rifle Association opposes this bill and urges a no vote.</p>
<p>Iris Gorelik Against themselves</p>	<p>My name is Iris Gorelik, I am a legal immigrant in the United States of America. I am calling the committee to use common sense and vote against a law which will open the doors to illogical lawsuits and will act as a precedent, from which we as a society will never recover. Let me ask you what is the difference between allowing victims of gun violence to sue the gun manufacturer, and allowing a coffee drinker to sue the coffee beans manufacturer in case he chokes or burns himself? Or how about we sue McDonalds for selling junk food because we got obese and perhaps died from a heart attack? Or how about we sue the Tobacco companies for getting sick and die from lung cancer? You understood the point... this is clearly a law that was made up not in order to protect us, the residents of Colorado, but a law that has a clear agenda and it is to take away our second amendment rights and to take away from me, a young woman, her right to defend herself. If you are for equality, you will not take this "equalizer" from me.</p> <p>Thank you for reading my testimony.</p>
<p>Kody Lostroh Against themselves</p>	<p>I, Kody Lostroh, am against this bill and think it is virtue signaling at best, and financial ruin for legal companies at worse. In no other legal industry do we punish the manufacturer for the bad decisions of consumers that choose to use products in the incorrect manner. If I choose to drive too fast and cause a car wreck, it is ridiculous to think that the person injured in the wreck could sue the vehicle manufacturer for simply creating a product for a particular use. It was MY choice to drive dangerously and the blame should fall on ME. The same is true of the firearms industry. The fault belongs to the user of the product, not the product manufacturer. This bill will cause completely undue financial burdens on manufacturers that employ thousands of people and create legal products. It is a back door ploy to make firearms manufacturers go out of business.</p>
<p>Travis Couture-Lovelady Against National Rifle Association</p>	<p>SB23-170 expands Colorado's "red flag" gun confiscation scheme by allowing additional "qualified" individuals to determine who will act out in dangerous and unlawful ways ahead of time and confiscate their firearms to prevent this from happening. Second Amendment rights are taken away based on mere speculation and hearsay evidence. "Red Flag" orders, or Emergency Risk Protection Orders, are designed to empower the government to confiscate Americans' firearms without due process of law. They can lead to the violation of citizens' rights.</p> <p>On behalf of our members in Colorado the National Rifle Association respectfully requests a no vote.</p>
<p>Joy Davidson Against themselves</p>	<p>As I understand this bill, it would attempt to hold gun manufacturers / retailers liable when a gun they made / sold was used in a crime.</p> <p>One, there is this minor issue of the lack of constitutionality of this law.</p>

	<p>Two, by that logic, we should hold automotive manufacturers / car dealerships liable, for example, whenever their cars are used in a crime such as a bank robbery or someone is killed when the driver is driving drunk. Heck, that driving drunk scenario would be a real money-maker if the car manufacturers / dealerships, the liquor manufacturers / stores, for instance, were held liable.</p> <p>It is time to remember that you are elected officials, elected to represent the citizens. You are not in your position to represent your party. You are not in your position to tow the party line. There are a lot of citizens of this state, including myself, that are responsible gun owners and you need to represent US. Stop treating us like second class citizens, because guns are not the problem. The criminals are the problem.</p> <p>Spending time / effort undermining the constitution and the constitutional freedoms of some of this state's citizens while NOT holding criminals accountable for their actions is unacceptable.</p> <p>With all due respect, I am watching!</p>
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SB23-168 Gun Violence Victims' access to the Judicial System

Testimony 230308 Keith Emerson, Individual (and not a lawyer)

Please kill SB233-168 Here and Now.

The Justification Statement that Federal Law permits what you're doing here is a lie.

Section 67-27-102 Legislative Declaration (d) of this bill states: "The Federal Protection of Lawful Commerce in Arms Act' preserves states' critical authority to enact laws prescribing and enforcing standards of responsible conduct and accountability for firearm industry members."

You have in my written submission a copy of the Federal law mentioned above, Public Law 109-92- Oct.26, 2005. That the states have authority to do what you're doing is not only not to be found but is specifically prohibited in the Federal law! Just take a few minutes and read Sections 2 and 3.

Only one suit has been settled as far as I'm aware and that was Sandy Hook families versus Remington, a company in bankruptcy. The insurance company wanted to be able to proceed with the dissolution and settled. Although the Supreme Court of the State of Connecticut indicated the case could proceed, before it actually began the case was settled. No guilt was ever legally determined.

This is about lawyers getting rich. For instance, the term "reasonable" is used a number of times in this bill but never defined. I suspect there's a distinct difference, even in this room and on this committee itself on what that term means in the situations covered by this bill. How many hundreds of millions of dollars will it take to decide what is reasonable.



March 2023

To: Senate State, Civic, Military & Veterans Affairs Committee
Re: AAUW support for SB23-168, 169 & 170—Gun Safety

Dear Committee Members,

The American Association of University Women (AAUW) is one of the oldest women's organizations in the country, empowering women since 1881. The mission of AAUW is to advance equity for women and girls through research, education and advocacy

AAUW has declared that gun violence is a public health crisis, and women are especially vulnerable to domestic violence involving firearms. While there is no single solution to this problem, we believe each of these bills provides another small step toward a safer Colorado: SB168--Gun Violence Victims' Access To Judicial System, SB169--Increasing Minimum Age To Purchase Firearms, and SB170--Extreme Risk Protection Order Petitions

For these reasons, AAUW of Colorado requests your YES vote in committee and throughout the process of becoming law.

Respectfully submitted,

A handwritten signature in blue ink that reads "Su Ryden".

Su Ryden
AAUW Colorado Public Policy Co-Director

16699 E. Kentucky Ave.
Aurora, CO 80017
303.898.5797
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American Association of University Women--AAUW is a top-rated 501(c)3 charitable organization whose mission is to advance gender equity for women and girls through research, education, and advocacy.



Testimony of Liddy Ballard, State Policy Manager
Support for Senate Bill 168
Before the Colorado Senate State, Veterans, and Military Affairs Committee

March 8, 2023

Dear Chair Coleman, Vice Chair Sullivan, and distinguished members of the State, Veterans, & Military Affairs Committee,

Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America's gun violence epidemic. Brady today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah's legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence. **In furtherance of our goal to reduce firearm violence across Colorado, the Brady Campaign to Prevent Gun Violence is proud to support the passage of Senate Bill 168.**

Support: SB23-168; Victim's Access to Judicial Proceedings

A top priority of the gun industry, the Protection of Lawful Commerce in Arms Act (PLCAA) was signed into law by then-President George W. Bush in 2005.¹ PLCAA provides gun manufacturers, distributors, dealers, and importers of firearms or ammunition with special protections from civil liability that no other industry in the US is currently afforded. Although PLCAA does not provide complete immunity from all civil lawsuits, some courts have interpreted the law to effectively bar victims and survivors of gun violence from holding firearms businesses liable for injuries caused by negligence, defective products, or unreasonably dangerous conduct that would otherwise be actionable under civil justice principles.

Unfortunately, on top of the barriers created by PLCAA, Colorado also has a very dangerous state immunity law that not only indiscriminately insulates the industry from liability, but also punishes victims and survivors who do try to pursue a claim, through a fee shifting provision.

How SB 168 Will Work

¹Brady Campaign and Brady Center, *What is PLCAA?*. Brady. <https://www.bradyunited.org/fact-sheets/what-is-plcaa>.

PLCAA enumerates a few narrow exceptions that allow victims to bring lawsuits for very limited claims. Civil action is permitted when a manufacturer or seller of a firearm, ammunition, or component parts, “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,” also known as the “predicate exception.”² In practice, this limits possible causes of actions that can be brought within Colorado to *only* those where the gun industry knowingly violated a Colorado or federal law related to the sale or marketing of a firearm. The predicate exception listed in PLCAA is an invitation to state legislatures to create state law protecting gun violence survivors’ right to have their day in court and SB 168 will serve as that Colorado law. SB 168 will also repeal the punitive state immunity law. With the passage of this bill, gun industry members will be treated like all other businesses in the state of Colorado and will no longer be insulated from liability despite negligent, dangerous, or even unlawful behavior because of the special protections afforded under PLCAA and the state immunity bill.

Why Gun Industry Immunity is so Dangerous

Industry immunity denies justice to victims and survivors.

Victims should have recourse for the gun industry’s negligence and dangerous practices, but PLCAA and Colorado state law currently protect gun dealers and manufacturers from being held responsible. Gun dealers and manufacturers should be held responsible for negligent and irresponsible sales practices that are the proximate cause of an individual’s injuries or death, and for selling to someone who is likely to harm themselves or others. Manufacturers who design firearms without life-saving safety features, such as chamber-loaded indicators and magazine disconnect safeties, or sell to someone who is clearly likely to harm themselves or others should be held liable for their design failures and malpractice. Instead, these bad actors are insulated from penalty.³

Industry immunity perpetuates the flow of crime guns into communities of color.

The implications of this lack of accountability cannot be overstated: gun violence in America disproportionately impacts communities of color. While a small minority of gun dealers are the sources of crime guns recovered in communities of color, these gun dealers typically sit outside those communities in less diverse and more affluent suburbs⁴. Residents of these communities suffer from the chronic stress of daily interpersonal gun violence and the negative impacts on their community’s economic prosperity, without recourse or compensation while irresponsible gun dealers face no consequences. Approximately 89 percent of America’s gun deaths occur in urban areas with large minority populations, and Black Americans are 11 times more likely than their White peers to be the victim of firearm homicide.⁵ This problem is exacerbated for Black males, who lose four years in life expectancy on the basis of gun violence

²Protection of Lawful Arms in Commerce Act, S. 297, 109th Cong. (2005). <https://www.congress.gov/109/plaws/publ92/PLAW-109publ92.pdf>

³ (January 2023) *Polymer 80 issues statement on ATF’s recent letter*. *The Outdoor Wire*. <https://www.theoutdoorwire.com/releases/5e0c59b4-be64-4be3-b631-a3249012986d>

⁴ *Crime guns in impacted communities*. Brady. (n.d.). <https://www.bradyunited.org/reports/crime-guns-in-impacted-communities>

⁵ Centers for Disease Control and Prevention (CDC), *WISQARS injury data*, <https://www.cdc.gov/injury/wisqars/index.html>

alone;⁶ in Colorado specifically, Black men are 10.1 percent more likely to be killed by gun violence than White men.⁷

Industry immunity disincentivizes responsible business practices.

The mere threat of civil liability motivates companies to adopt safe business practices that prevent future injuries and death.⁸ For example, car manufacturers made numerous safety improvements that cut automobile-related deaths by 50 percent since the 1960s, primarily because of technological advancements spurred by fear of liability.⁹ PLCAA and the state immunity law effectively remove this motivation for the gun industry, disincentivizing gun dealers from adopting safe sales practices and gun manufacturers from incorporating affordable life-saving safety devices into their products and monitoring their distribution practices.¹⁰ While the gun industry claims that mental health¹¹ and violent video games¹² are to blame for gun violence, it's actually common industry practices that create the conditions that enable most gun violence to occur.¹³ The limitations on the ability to hold the industry accountable prevent public awareness and deter regulatory changes, as well as disincentivize independent action by the industry to avoid liability, all of which would reduce gun violence and save lives.

SB 168 must be enacted because no industry should be above the law, especially not one that makes and sells lethal weapons. SB 163 will ensure bad actors in the gun industry are held accountable and victims of gun violence are able to get justice through the law.

Conclusion

Coloradans are reeling from numerous acts of gun violence in the last year, and these bills provide an opportunity to address the epidemic residents are facing. ***For the reasons described above, Brady urges the committee to support the passage of House Bill 1219.***

Sincerely,
Liddy Ballard

⁶ Howard, J. (2018, April 24). *The disparities in how black and white men die in gun violence, state by State*. CNN.

<https://www.cnn.com/2018/04/23/health/gun-deaths-in-men-by-state-study/index.html>

⁷ Centers for Disease Control and Prevention (CDC), *WISQARS Injury Data*, <https://www.cdc.gov/injury/wisqars/index.html>

⁸ Vernick, J., Mair, J., et al., (August 2003). *Role of litigation in prevention product-related injuries*. Society for Epidemiologic Research. 25(1):90-98. <https://academic.oup.com/epirev/article/25/1/90/718671>

⁹ LaFrance, A. (January 2016). *Why haven't gunmakers improved safety technology the way automakers did?* The Atlantic. <https://www.theatlantic.com/technology/archive/2016/01/guns-cars/424878/>

¹⁰ Brady. (September 2019). *Tobacco kills people. opioids kill people. but guns don't?* Medium.

<https://bradyunited.medium.com/tobacco-kills-people-opioids-kill-people-but-guns-dont-7852c288d496>

¹¹ Zeballos-Roig, J. (n.d.). *The NRA issued a statement supporting Trump's call to focus on mental illness to reduce gun violence after the shootings in El Paso and Dayton*. Business Insider. <https://www.businessinsider.com/nra-statement-backing-trump-el-paso-dayton-shootings-mental-illness-2019-8>

¹² Hudson, L. (December 2012). *The NRA solution to gun violence: More guns, fewer videogames*. Wired. <https://www.wired.com/2012/12/nra-video-games/>

¹³ Gluck, A., Nba-Noori, A., et al., (January 2021). *Gun violence in court*. The Journal of Law, Medicine, & Ethics. 48(4). <https://journals.sagepub.com/doi/abs/10.1177/1073110520979406>



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Mark Hillman, Executive Director

Senate Bill 168 – Expansion of Product Liability Lawsuits

TO: Members of the Colorado General Assembly

Colorado Civil Justice League has voted to **OPPOSE** Senate Bill 168, which expands product liability claims.

- The legislature got it right last year in Senate Bill 115 which recognized that it is wrong to hold businesses – like Planned Parenthood or King Soopers, or other property owners – liable for harm committed by those who misuse deadly weapons.
- This year’s Senate Bill 168 does precisely the opposite by *creating* damages that do not exist in tort or common law – all for the purpose of intimidating or harassing lawful businesses. This is akin to holding car manufacturers responsible for drunk drivers or, worse, for a deranged individual who uses a vehicle to run over pedestrians.
- Colorado law correctly creates a distinct category of liability for manufacturers and sellers of firearms because firearms, when used correctly, can apply deadly force for a just cause - defending one’s self, one’s family or one’s property. Therefore, manufacturers and sellers of firearms should not be liable when a third-party misuses their product.
- In our system of government, litigation has a legitimate purpose - to allow persons injured by the wrongful acts of another to be compensated for those injuries after establishing that the defendant truly was at fault.

Litigation should be a last resort – not used for harassment, persecution or intimidation for the purpose of driving businesses or an entire industry out of existence.

We urge you to **VOTE NO** on Senate Bill 168.

Gun Control Research- Dr. Gary Kleck- Gun most effective way to resist robbery and assault- up to 2.5 million defensive gun uses per year by U.S. adults

Dr. Kleck, a professor of criminology at Florida State University is a registered Democrat, a member of the ACLU, does not own guns, and takes no money from anyone on either side in the debate. In 1988, Kleck published an article in the journal, *Social Relations*. This article, the first major research effort that measured defensive gun use, was based on state and national studies.

Dr. Kleck estimated that about 1 million adults per year use a gun for self-defense in the U.S. Kleck's research included studies done for the anti-gun National Alliance Against Violence, and the National Crime Victimization Surveys. Kleck concluded that gun use was the most effective and safest way of resisting a robbery or assault, safer than not resisting, running away, or using another method of resistance.

In 1991, Dr. Kleck published *Point Blank: guns and violence in America*. The book won an award in 1993 from the American Society of Criminology for an "outstanding contribution" to the field.

Not satisfied with the sources for his previous work, Dr. Kleck and his colleague Marc Gertz created a new survey with a sample size of about 5,000 individuals to better measure defensive gun use. With the new survey, Kleck and Gertz estimated between 2.2 to 2.5 million defensive gun uses per year in the U.S. Women were the defenders in about 46% of the cases reported. Less than 25% of the reporting defensive users indicated that they fired a shot during the incident under consideration. There is a less than 1% chance that a defender's gun will be taken from him or her by an assailant, according to Dr. Kleck.

Dr. Marvin Wolfgang was asked to critique the Kleck/Gertz Study. Dr. Wolfgang's review included the following: "I am as strong a gun-control advocate as can be found among... criminologists... they (Kleck and Gertz) have provided an almost clear-cut case of methodologically sound research in support of something I have theoretically opposed for years... the use of a gun in defense against a criminal perpetrator... I do not like their conclusions that having a gun can be useful, but I cannot fault their methodology."

The absolute lowest estimates of about 100,000 defensive gun uses per year in this country come from the Department of Justice, using U.S. Census information. There is no question in the survey that asks about defensive firearms' use. This estimate is probably a serious undercount.

The Clinton Justice Department funded what was supposed to be a counter study debunking the Kleck/Gertz research. In 1996, anti-gun researchers Ludwig and Cook came up with about 3 million defensive gun uses per year. They then decided that it is impossible to measure the true number of persons who use guns in America for self-defense.

The research done by Kleck and Gertz indicates that defensive use of firearms by private citizens is a significant factor in stopping criminal violence. The research also lends itself to the conclusion that in the vast majority of cases where a gun is used to resist robbery or assault, no shots are fired.

Sources:

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- ❑ Kopel, David, Independence Institute, panel discussion on guns and self-defense, Warwick Hotel, Denver, Colorado, July, 2009. <http://vids.myspace.com/index.cfm?fuseaction=vids.individual&VideoID=60107462>
- ❑ "How Often Are Firearms Used in Self-Defense?" http://www.guncite.com/gun_control_gcdguse.html.
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Protecting Law-abiding Firearms Businesses from Abusive Lawsuits

by David Kopel
Research Director

IP-1-2023 • March 2023

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EXECUTIVE SUMMARY

In the late 1990s, a gun prohibition organization adopted a strategy previously used by Jim Crow government officials against the free press: filing abusive lawsuits designed to cripple the businesses through the sheer cost of litigation against meritless claims.

In response, most states, Colorado included, enacted legislation against such misuse of the judicial process. Eventually, the U.S. Congress enacted similar national legislation.

In 2014, the same organization that had cooked up the original suits convinced Sandy and Lonnie Philips to file a meritless lawsuit in Colorado. Although it was clear beyond doubt that the suit had no chance of success, the Philips say that the organization chose not to inform that Philips that if their case inevitably lost, they would be responsible for paying the attorney's fees of the defendants.

When the U.S. District Court did dismiss the plainly unlawful lawsuit and awarded attorney's fees, the gun prohibition organization, whose reported annual revenues are over 40 million dollars, refused to help the Philips.

Similarly the law firm that filed the bogus suit, Arnold & Porter, has refused to reimburse the Philips. The annual revenue of Arnold & Porter is over a billion dollars.

Part I of this Issue Paper describes the Jim Crow system of abusive tort litigation against the First Amendment.

Part II details how gun prohibition advocates copied and amplified the Jim Crow tactics, for use against the Second Amendment. In response, most states, including Colorado, enacted legislation and so did Congress.

Part III describes a new type of bill that has been introduced in Colorado and enacted in several states. The bill creates a new statute to authorize abusive suits. The bill provides no standards for what is lawful and unlawful. The bill is set up to destroy firearms manufacturers through the cost of litigation. The bill:

- Authorizes lawsuits against companies that supposedly do not have “reasonable controls,” but does not specify any “reasonable control.”
- Abolishes proximate cause.
- Authorizes suits against businesses in other states that comply with all the laws of their own state.
- Allows the Colorado Attorney General to designate a gun prohibition group to sue firearms businesses relentlessly on behalf of the Attorney General.
- Ensures that gun prohibition lawyers who win on a playing field heavily tilted in their favor, “shall” be paid by firearms businesses.
- Prevents victims of abusive lawsuits who prevail in court from recovering attorney's fees.
- Prohibits many programs that teach firearms safety to children.

In the late 1990s, a gun prohibition organization adopted a strategy previously used by Jim Crow government officials against the free press: filing abusive lawsuits designed to cripple the businesses through the sheer cost of litigation against meritless claims.

A federal district court in New Jersey has issued a preliminary injunction against a similar law.

Part IV explains why manufacturers of the two physical items specifically protected at the beginning of the Bill of Rights—printing presses and arms—should not be sued for unlawful misuse of their products by third parties.

Finally, Part V described how the gun ban group that had cooked up the junk lawsuits, and the Arnold & Porter law firm, manipulated the Philips family.

I. JIM CROW VERSUS THE FIRST AMENDMENT: ABUSIVE TORT LAWSUITS

During Jim Crow days in the South, photographs of black people rarely appeared in the mainstream press, except in crime stories. The concerns and aspirations of black people got little attention.¹ The gap was filled by the black press, which almost always operated on a shoestring. When the black press exposed or criticized abuses by the white power structure, including illegal violence by law enforcement officers, retribution sometimes came as a libel suit.²

Even when newspaper articles were impeccably accurate, there was a significant risk of enormous verdicts from all-white juries. Jurors were selected from voter rolls, and blacks were often prevented from registering.

Verdicts aside, the simple costs of legal defense threatened the existence of the newspapers. For example, notwithstanding Thurgood Marshall’s legal defense, South Carolina’s *Lighthouse and Informer* was driven out of business in 1954 by a criminal libel prosecution.³ On advice of attorneys, including Thurgood Marshall, the *Sumter Daily Item* paid \$10,000 to settle a non-meritorious libel suit.⁴

A 1954 suit against the *Lexington Advertiser* was eventually decided in the defendant’s “favor, but not before a costly legal battle.”⁵ Another unsuccessful libel case against the *Lexington Advertiser* was brought in 1963. The cumulative effect of the two libel suits, plus the loss of advertising due to violent threats against advertisers, put the editor \$100,000 in debt.⁶

When the *Oklahoma Black Dispatch* asked the national NAACP for help in a libel suit involving a shooting by police, NAACP attorney Robert Carter convinced the paper to settle, due to concerns about “the toll these libel suits were taking on the bank account of the organization.”⁷

As civil rights became a growing national issue, “outsider” national media coverage in the South increased. So did libel suits. *New York Times Co. v. Sullivan* arose from a full-page advertisement in the *Times*, “Heed Their Rising Voices.”⁸ The ad included false information about L.B. Sullivan, who was an elected city commissioner in Montgomery, and in that capacity supervisor of the city police. The ad accused Sullivan

...South Carolina’s *Lighthouse and Informer* was driven out of business in 1954 by a criminal libel prosecution.

of misconduct at a certain event, when in fact Sullivan had not even been present. He sued the *New York Times*, and also four black civil rights leaders, whom the advertiser had listed as endorsers without their knowledge or consent.⁹

At least regarding the advertisement, Sullivan had a legitimate complaint about inaccuracy. Many other Jim Crow libel lawsuits were meritless.

For example, in 1960, the *Times* had sent Harrison Salisbury—winner of the Pulitzer Prize—to Birmingham. His facts were accurate. His analysis compared Birmingham to Johannesburg, and local police behavior to that of Nazi police.¹⁰ In retaliation, Salisbury and the *Times* were sued in multiple cases by local officials, with millions sought in damages.¹¹

For the next year, the *Times* kept its reporters out of Alabama, lest a reporter be served with process for the *Sullivan* suit, thereby eliminating the *Times*' argument that its small circulation in Alabama was insufficient for state court jurisdiction.¹² The *Times* killed two stories, one about Mississippi and another about voting in Birmingham; although the stories were accurate, the lawsuit risk was too great.¹³

For coverage of the police-sanctioned mob assault against Freedom Riders on May 14, 1961, and the follow-up, the *Times* relied on CBS Television reports.¹⁴ CBS was sued for that coverage, and for a November 1961 story about how voting registrars in Montgomery County, Alabama, impeded blacks from registering. Although none of the reporting had factual errors, CBS retracted both stories, apologized on air, fired the reporter (the award-winning Howard K. Smith), and settled the Montgomery case for an undisclosed amount.¹⁵

The *Montgomery Advertiser* hoped that “the recent checkmating of the *Times* in Alabama will impose a restraint upon other publications.”¹⁶

Although the *Times* was far wealthier than any Southern black newspaper, “few people realized how financially vulnerable the *Times* was in 1960.”¹⁷ In the early 1960s, the paper “was barely making a profit and likely would not have able to survive” the multi-million-dollar damages.¹⁸ According to the *Times*' Managing Editor, the paper's bank accounts “were coming out ‘cleaned.’ This is an expensive business.”¹⁹

“No strategy for squelching the media's portrayal of conditions in the South . . . carried more potential for success than the creative use of the law of libel,” explained law professor Rodney Smolla, a libel law expert.²⁰ As the *Washington Post*'s executive editor observed, the southern libel suits “enormously increase the liability of the press for its defense against such suits in communities where jurors may be hostile to them....”²¹ “The ability to report would be destroyed “if the costs of defending against bare allegations of error threaten the survival of the newspaper.”²²

The *Sullivan* case had been brought not just against the *Times* for publishing an inaccurate advertisement. Four prominent black Alabama ministers were also sued: Ralph Abernathy, Fred Shuttlesworth,²³ Joseph Lowery, and Solomon Seay.²⁴ As noted above, they explained that the advertiser had wrongly listed their names as endorsers even though they had neither seen nor approved the ad. The jury brought in a verdict

The *Times* killed two stories, one about Mississippi and another about voting in Birmingham; although the stories were accurate, the lawsuit risk was too great.

of half a million dollars against the ministers and the *Times*. “[T]he jury apparently found the four men guilty because of their civil rights work and not because they had defamed L.B. Sullivan.”²⁵

As Supreme Court Justice Hugo Black explained when the *Sullivan* case was before the Supreme Court, more “huge verdicts” were

lurking just around the corner for the *Times* or any other newspaper or broadcaster which might dare to criticize public officials. In fact, briefs before us show that in Alabama there are now pending eleven libel suits by local and state officials against the *Times* seeking \$5,600,000, and five such suits against the Columbia Broadcasting System seeking \$1,700,000. Moreover, this technique for harassing and punishing a free press—now that it has been shown to be possible—is by no means limited to cases with racial overtones; it can be used in other fields where public feelings may make local as well as out-of-state newspapers easy prey for libel verdict seekers.²⁶

According to the Southern Publishers Association, as of 1964 there were 17 pending libel suits against the media in southern courts, seeking total damages of \$238,000,000.²⁷ For example, the *Saturday Evening Post* was being sued for coverage of the riots against integration of the University of Mississippi.²⁸

The Supreme Court ruled in favor of the newspaper in *New York Times v. Sullivan*. To protect the freedom of speech and of the press, the Court set a new rule for libel cases involving public officials: a public official could win a libel suit only if he or she proved that the publisher of the allegedly libelous statement had acted with knowing or reckless disregard for the truth.²⁹

While civil suits aimed at the First Amendment were limited by the Supreme Court in *Sullivan* and its follow-up cases, similar suits aimed at the Second Amendment were limited by the Colorado General Assembly, other state legislatures, and the U.S. Congress, which passed the Protection of Lawful Commerce in Arms Act (“PLCAA”). The circumstances that led to *Sullivan* are like those that led to PLCAA and the state reforms: decades of abusive suits, including litigation designed to coerce submission by driving up defendants’ legal expenses.

Frustrated by legislative rejection of handgun bans, gun control advocates in the 1980s brought product liability suits against handgun manufacturers and retailers.

II. BEFORE LEGISLATIVE REFORMS, TORT LAW WAS OFTEN MISUSED AGAINST THE SECOND AMENDMENT

PRODUCT LIABILITY SUITS IN THE 1980S

American legislatures have always been able to enact gun control laws, provided that such laws comply with the federal and state constitutions. Frustrated by legislative rejection of handgun bans, gun control advocates in the 1980s brought product liability suits against handgun manufacturers and retailers.³⁰ The cases invented many novel theories. For example, guns that were well-suited for self-defense were said to be “defective,” since such guns were also used by criminals. The mere manufacture of a

handgun was alleged to be “ultrahazardous activity”—akin to blasting with dynamite. As one district court judge observed, “the plaintiff’s attorneys simply want to eliminate handguns.”³¹

From the many cases, there was only one verdict for plaintiffs.³² But all cases necessarily created attorney’s fees for the defendants.

NEW AND COORDINATED TORT SUITS IN THE 1990S AND THEREAFTER

Starting in the mid-1990s, suits against firearms businesses were based on even more inventive grounds: negligent marketing (distribution),³³ public nuisance,³⁴ recovery of government medical expenses for crime victims, unfair trade practices, deceptive advertising, and so on. Starting in 1998, a coordinated series of lawsuits were filed by three dozen local governments, and by New York State Attorney General Elliot Spitzer. Further, Secretary of Housing and Urban Development Andrew Cuomo organized federally funded housing authorities to bring additional suits.³⁵

Whatever the merits of suits against arms manufacturers, the suits against the industry associations assailed the freedom of speech. The suits retaliated against trade associations for their often-successful public advocacy.

Bridgeport, Connecticut, mayor Joseph Ganim described his lawsuit as “creating law with litigation.”³⁶ “The Bridgeport suit named 12 American firearms manufacturers, three handgun trade associations, and a dozen southwestern Connecticut gun dealers, and asked for damages in excess of \$100 million.”³⁷

1. Suits against the free speech of trade associations

Bridgeport’s lawsuit was typical in that it sued the firearms trade associations. These trade associations did not manufacture or sell firearms. Instead, the National Shooting Sports Foundation and similar groups were typical trade associations: advocating for their industry, promoting best practices within the industry, and promoting hunting and recreational shooting sports activities.

Whatever the merits of suits against arms manufacturers, the suits against the industry associations assailed the freedom of speech. The suits retaliated against trade associations for their often-successful public advocacy.

2. Structuring and coordination of suits in order to destroy defendants via litigation costs

While coordinated libel multi-suits did not begin until the Alabama cases in the 1960s, the anti-gun lawsuits of the latter 1990s were coordinated from the start. Brought in as many jurisdictions as possible and well-designed to resist consolidation, they were organized to destroy, even if they could never win a verdict. “If twenty cities do bring suits, defending against them, according to some estimates, could cost the gun manufacturers as much as a million dollars a day,” explained a *New Yorker* article.³⁸

Plaintiffs’ attorney John Coale aimed for “critical mass . . . where the costs alone of defending these suits are going to eat up the gun companies” said the *New York Times*.³⁹ As he put it, “the legal fees alone are enough to bankrupt the industry.”⁴⁰ Secretary Cuomo threatened manufacturers with “death by a thousand cuts.”⁴¹

As intended, some manufacturers did go bankrupt, including Sundance Industries, Lorcin Engineering, and Davis Industries.⁴² Davis Industries was “one of the 10 largest makers of handguns.”⁴³

The most venerable manufacturers were driven to the brink. Colt’s Manufacturing Company stopped producing handguns for the public. Facing “28 lawsuits from cities and counties hoping to punish gun makers . . . the company could no longer get loans to finance manufacturing because the lawsuits ‘could be worth zero, or a trillion dollars.’”⁴⁴

Owned by a British conglomerate, Smith & Wesson (“S&W”) was ordered to accept the Cuomo demands, in exchange for immunity from some of the litigation.⁴⁵ “Smith & Wesson made it clear . . . that the company was driven to the agreement by the lawsuits. The settlement would ensure ‘the viability of Smith & Wesson as an ongoing business entity in the face of the crippling cost of litigation,’ the company said in a statement.”⁴⁶

“[T]he litigants vowed to press on until all the manufacturers joined.” Indeed, “to get more aggressive.”⁴⁷ Alex Panelas, mayor of Miami-Dade County, Florida, warned that the S&W deal would be “a floor, not a ceiling’ for any other gun maker that wants to sign on.”⁴⁸

Under the terms accepted by S&W, the company’s practices would be perpetually controlled by a five-member Oversight Commission.⁴⁹ The cities, counties, and states that joined the litigation would select three members, while those that had declined to sue were excluded. The ATF would select one member, leaving gun manufacturers with only one member of their own.⁵⁰ In effect, corporate control would be removed from the stockholders and given to the new gun control committee.

No other company signed the agreement. Glock came closest. As the company was wavering, New York Attorney General Elliot Spitzer warned a Glock executive: “if you do not sign, your bankruptcy lawyers will be knocking at your door.”⁵¹ Spitzer and Connecticut Attorney General Blumenthal announced they would sue other manufacturers for shunning S&W, such as no longer sharing joint legal defense with S&W.⁵² This would have been “the first antitrust action in history aimed at punishing smaller companies for not cooperating with the largest company in the market in an agreement restraining trade.”⁵³ Blumenthal admitted he did not have evidence of illegal behavior; “the point was sheer intimidation,” one observer noted.⁵⁴

Ultimately, the S&W consent decree never went into force. And many lawsuits against the companies continued. Although the cases tended to be dismissed eventually, litigation costs mounted ever higher.⁵⁵

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TO PROTECT FIRST AND SECOND AMENDMENT RIGHTS, COLORADO, OTHER STATES, AND CONGRESS PASSED REMEDIAL LEGISLATION.

Rep. Cliff Stearns (R-Fla.) decried “the government lawyers and private lawyers conspiring, conspiring to coerce private industry into adopting public policy changes through the threat of abusive litigation. The option? Adopt our proposals or you will go bankrupt.”⁵⁶

According to Protection of Lawful Commerce in Arms Act cosponsor Sen. Max Baucus (D-Mont.), the bill was “intended to protect law-abiding members of the firearms industry” from suits “that are only intended to regulate the industry or harass the industry or put it out of business.”⁵⁷ Sen. Thomas Coburn (R-Okla.) called PLCAA necessary “to put a stop to the unmeritorious litigation that threatens to bankrupt a vital industry in this country.”⁵⁸ The suits were designed “to constrict the right to bear arms and attack the Bill of Rights and attack the Constitution.”⁵⁹

As in the 1960s, plaintiffs in a single state could destroy a constitutional right nationally. By the time PLCAA was enacted in 2005, “33 State legislatures have acted to block similar lawsuits However, it only takes one lawsuit in one State to bankrupt the entire industry, making all those State laws inconsequential. That is why it is essential that we pass Federal legislation,” said Senator Sessions (R-Ala.).⁶⁰

Among the bipartisan legislators who supported PLCAA were cosponsors Colorado Democratic Senator Ken Salazar⁶¹ and Colorado U.S. Democratic Representative John Salazar.⁶²

The attempt to bankrupt the gun industry via litigation had—and still has—national security implications. The Department of Defense “strongly support[ed]” PLCAA, to “safeguard our national security by limiting unnecessary lawsuits against an industry that plays a critical role in meeting the procurement needs of our men and women in uniform.”⁶³

Enacted by a bipartisan majority large enough to overcome an attempted filibuster, PLCAA found that imposing liability for third-party crimes violated the Second Amendment, violated “the rights, privileges, and immunities guaranteed” by the Fourteenth Amendment, and violated the rights of law-abiding firearms companies to engage in business.⁶⁴

PLCAA also expressly protected the legislative branch: “The liability actions . . . attempt to use the judicial branch to circumvent the Legislative branch of government . . . thereby threatening the Separation of Powers doctrine.”⁶⁵

As PLCAA explained, the abusive suits were based on “theories without foundation in hundreds of years of the common law and jurisprudence of the United States.” The suits attacked interstate comity, such as by suing in one state against commerce in another state that had been fully compliant with the laws of where the commerce actually took place.⁶⁶

The attempt to bankrupt the gun industry via litigation had—and still has—national security implications.

PLCAS repudiated making firearms businesses liable “for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.”⁶⁷

The key section of PLCAA forbids lawsuits against firearms businesses or business associations that comply with gun control laws:

A qualified civil liability action may not be brought in Federal or State Court. 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 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.⁶⁸

Colorado in 1986 adopted legislation against the abusive product liability suits. After the next round of suits, based on different but still abusive tort theories, the General Assembly enacted additional legislation against the new suits.⁶⁹

III. NEW STATUTES TO PROMOTE ABUSIVE LAWSUITS

After PLCAA became law, the promoters of abusive lawsuits began arguing that PLCAA could be evaded if a statute authorized such suits. The District of Columbia Court of Appeals rejected this argument.⁷⁰ So did the Ninth Circuit.⁷¹

Nevertheless, former New York City Mayor Bloomberg in 2021 convinced the New York legislature to enact a state statute authorizing lawsuits against firearms businesses for conduct even outside of New York. The new statute provided no notice of what lawful conduct would subject a firearms business to a suit.

Later, similar laws were enacted in a New Jersey, Delaware, and California. A Bloomberg bill has been introduced in Colorado, Senate Bill 23-168.

Part III of this Issue Paper describes Colorado Senate Bill 23-168 in detail, as an exemplar of similar bills in other states.

PREEMPTED BY FEDERAL LAW?

Opponents of the Bloomberg bills say that the bills are preempted by the federal PLCAA statute. That was exactly what a federal district court in New Jersey recently held:

Further, reading A1765 as being applicable to the sale or marketing of the product would directly conflict with the intention of Congress. “In the

Colorado in 1986 adopted legislation against the abusive product liability suits.

construction of statutes, it is the duty of the court to ascertain the clear intention of the legislature.” *U.S. v. Fisk.*, 70 U.S. 445, 447 (1865). Congress’s intent here is clear. The PLCAA’s purpose is 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.” 15 U.S.C. § 7901 (b)(1). A1765 does just the opposite. To read A1765 as fitting within the predicate exception would run afoul of the goals of the PLCAA and would, in fact, “gut the PLCAA” as NSSF suggests.

A1765 would subject manufacturers, distributors, dealers, and importers of firearms or ammunition products and their trade associations to civil liability for the harm solely caused by the criminal or unlawful misuse of firearm or ammunition products by others. This is in direct conflict with the PLCAA’s purpose.⁷²

Further, said the court, a preliminary injunction was appropriate because the statute was directly aimed at thwarting the exercise of constitutional rights:

The new Bloomberg laws, including Colorado’s Senate Bill 23-168, are plainly designed to eliminate American firearms businesses through litigation costs.

In addition, the Third Circuit has recognized that “[i]n the absence of legitimate countervailing concerns, the public interest clearly favors the protection of constitutional rights[.]” *Council for Alt. Pol. Parties v. Hooks*, 121 F.3d 876, 883-84 (3d Cir. 1997). Here, Defendant asserts only broad public safety concerns. The Court is mindful that firearms are inherently dangerous and even more so in the wrong hands, but it is also mindful that the PLCAA embodies Congress’s earnest effort to balance those dangers against the national interest in protecting access to firearms. Under the circumstances, the Court is therefore compelled to find that Defendant fails to show legitimate countervailing concerns and that the public interest favors granting Plaintiff’s motion for a preliminary injunction.⁷³

In contrast, a New York federal court dismissed a challenge to a similar New York State statute.⁷⁴ The case is presently on appeal to the Second Circuit.

In terms of whether these laws are preempted by PLCAA, the best evidence comes from the man who signed the first such law in the nation, in 2021. New York Governor Andrew Cuomo said at the signing ceremony that the new bill would “right the wrong done 16 years” earlier, when Congress enacted PLCAA.⁷⁵

The new Bloomberg laws, including Colorado’s Senate Bill 23-168, are plainly designed to eliminate American firearms businesses through litigation costs.

Mr. Bloomberg, after all, is wealthier than the entire American firearms industry combined. His net worth is over 76 billion dollars.⁷⁶ Before PLCAA was enacted, the combined costs of defending against a few dozen abusive lawsuits were already driving firearms manufacturers out of business. Mr. Bloomberg can easily afford to file lawsuits by the hundreds or thousands. Even if most or all of those lawsuits fail, the litigation costs alone will eliminate the firearms industry. This is particularly so if the victims of

the abusive suits are prevented from recovering attorney’s fees when plaintiffs abuse the system.

VAGUENESS

Legitimate gun control statutes provide businesses with fair notice of what is lawful and what is not. In Colorado, as elsewhere, there are many laws prescribing the paperwork and procedures for sales, for inventory controls, what kinds of buyers are prohibited, what sorts of arms may be sold under what procedures, and so on.

Violating specific gun control statutes renders a firearms business vulnerable to a civil suit for any resulting harm. PLCAA did not change the situation.

Firearms are controlled by thousands of statutes, ordinances, and regulations. Firearms are among most regulated common consumer products in the United States. Legislators who believe that there should be more “reasonable controls” can enact legislation to create specific new controls.

Instead of enacting specific reasonable controls, SB23-168 authorizes suits for not having unspecified “reasonable controls.”

The bill lists various objectives of “reasonable controls,” such as: preventing straw purchases, possession by prohibited persons, possession by people who might harm themselves or others, and firearms theft.⁷⁷

All these are laudable objectives; the thousands of gun control laws attempt to advance those objectives. A firearms business that complies with all the laws has no way of knowing what the gun control/gun prevention lobbies in future lawsuits will deem to be “reasonable controls.”

SB23-168 is not a mechanism for creating “reasonable controls.” Rather, SB23-168 would turn Colorado courts into a national vehicle for the destruction of the firearm industry—the “death by a thousand cuts” lawsuit abuse program touted by the lawsuit architects.

The bill even authorizes suits against businesses in other states that do not have whatever a plaintiff claims to be “reasonable controls.”⁷⁸ A law-abiding business in Pennsylvania would have to guess about what the Colorado Attorney General or other Colorado plaintiff might one day deem to be not “reasonable.”

The *New York Times*’s petition for certiorari in the *Sullivan* case had explained that civil libel suits were in some ways worse than the Sedition Act of 1798, because liability could be based on vague and amorphous standards.⁷⁹ The anti-gun suits of the turn of the century demonstrated a similar problem. The lawsuits did not claim that the defendants had violated any gun control laws; violation of such laws was and is valid grounds for tort liability. Instead, the gun ban plaintiffs claimed that gun businesses should be held liable for not making and selling firearms in whatever ways the gun control/prevention lobbies disapproved.

SB23-168 is not a mechanism for creating “reasonable controls.” Rather, SB23-168 would turn Colorado courts into a national vehicle for the destruction of the firearm industry—the “death by a thousand cuts” lawsuit abuse program touted by the lawsuit architects.

ELIMINATION OF PROXIMATE CAUSE

Normally, a tort plaintiff may only win damages from an alleged tortfeasor if there is “proximate cause” between the defendant’s alleged act and the harm suffered by the plaintiff. As defined by the Colorado Supreme Court, proximate cause “means a cause which in natural and probable sequence produced the claimed injury. It is a cause without which the claimed injury would not have been sustained.”⁸⁰ “Unlawful conduct that is broken by an independent intervening cause cannot be the proximate cause of injury to another.”⁸¹

SB23-168 repudiates the rule of proximate cause. Instead, a special, inescapable theory of liability is invented. It applies solely to firearms businesses. There is a “presumption” of “proximate cause” “notwithstanding any intervening act by a third party.”⁸²

SB23-168 erases proximate cause. The bill creates a “presumption” that every firearms business is liable. No matter how remote the circumstances.

Suppose a Massachusetts gun manufacturer sells a handgun to a Tennessee wholesaler who sells it to a California retailer. A California consumer buys the handgun, in compliance with all of the state’s very strict laws. Ten years later, the gun is stolen during a burglary, even though the consumer complied with California storage laws. The stolen gun is transacted from one gang to another, and eventually ends up in Colorado. There, it is used in a liquor store robbery.

Normally, the liquor store owner could not sue the Massachusetts manufacturer. The manufacturer complied with all laws. The burglary, the illegal gang-to-gang resales, and the robbery are all “independent intervening causes.” Because there is no proximate cause, the Massachusetts manufacturer is not required to pay for what the robber stole from the cash register.

SB23-168 erases proximate cause. The bill creates a “presumption” that every firearms business is liable. No matter how remote the circumstances.

According to the U.S. Supreme Court, the Second Amendment is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.”⁸³

It would not be constitutional to eradicate the common law of proximate cause just so that people could sue newspapers into bankruptcy. Doing the same to firearms businesses is an equally direct attack on the Constitution.

LETTING ANTI-GUN GROUPS SUE IN THE NAME OF THE STATE OF COLORADO

Suppose that in the example described above, the liquor store owner does not want to sue the Massachusetts handgun manufacturer, Smith & Wesson.

Under SB23-168, the decision of the actual victim does not matter. No matter what the victim wants, “The Attorney General, or the Attorney General’s designee” can bring a suit.⁸⁴

There are no limits on the Attorney General’s “designee.” The “designee” can be a gun prevention organization.

Every time a gun is used in a crime in Colorado, “the Attorney General’s designee” can sue every firearms business remotely related. Even though the businesses rigorously followed all gun control laws.

The “Attorney General’s designee” can sue relentlessly. Even if the “designee” rarely wins, litigation costs will eradicate one business after another.

NO MATTER WHAT, THE FIREARMS BUSINESS MUST PAY

Normally, each side in a legal case pays its own attorney’s fees. Like other states, Colorado law tries to protect people from abusive or frivolous lawsuits. When someone deliberately misuses the courts, the misuser must pay the legal costs of the victim of the misuse.

For example, if a lawyer signs a pleading or motion “for any improper purpose, such as to harass,” the court “shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney’s fee.” Colorado Rule of Civil Procedure 11.

Colorado’s 2000 abuse prevention statute applied that principle to firearms lawsuits. Legitimate suits, such as about a firearm that malfunctioned, would go on as usual. Harassment suits were specifically defined. Plaintiffs who brought harassment cases would have to pay for the injuries inflicted on the victims.

SB23-168 repeals the 2000 protection against harassment suits.

Instead, the bill provides that anyone who sues firearms businesses and win “shall” be awarded “attorney’s fees.” In other words, the firearms business must pay for both sides of the case: its own attorneys who defended the business, and for the other side’s attorney who attacked the business.

What if the firearms business defeats the case brought by lawsuit mill of the Attorney General and his “designee” gun prevention organizations? There will no compensation for the lawsuit abuse victims.

The rule of SB23-168 is: the firearms business always loses.

PROHIBITING YOUNG PEOPLE FROM LEARNING FIREARMS SAFETY

The prohibitionist intent of SB23-168 is also effectuated its ban on all design, sales, or marketing “targeted at minors.” “A firearms industry member shall not manufacture, distribute, import, or offer for wholesale or retail sale a firearm industry product that is: . . . (b) Designed, sold or market in a manner that is targeted at minors.”⁸⁵

As the gun prohibition lobbies well understand, preventing young people from being introduced to the shooting sports will make future generations less interested in protecting Second Amendment rights.

The “Attorney General’s designee” can sue relentlessly. Even if the “designee” rarely wins, litigation costs will eradicate one business after another.

In Colorado, minors are and have always been allowed to lawfully own long guns. In Colorado, a “youth small game hunting license” is available to persons under 18 who pass a hunter safety class. Youth “big game licenses” are available to persons 12 to 17.⁸⁶

Yet SB23-168 the bill would outlaw, for example, selling low-powered .22 caliber rifles to programs that teach firearms safety, hunter safety, and target shooting to young people. These include programs such as those run by the Boy Scouts, 4-H, gun clubs, and by hunting mentors certified by the Colorado Department of Parks and Wildlife.⁸⁷

Some of the above organizations, as well as some manufacturers, such as Winchester, publish booklets teaching children the rules of firearms safety. These booklets help children safely participate in the shooting sports, such as target practice. This “marketing” to children would become illegal under SB23-168.

Some manufacturers make low power (.22 caliber) rifles specifically intended to teach firearms safety to children. For example, the .22 caliber “Chipmunk” has an ammunition capacity of one round; there is no magazine. The stock length and frame are smaller than for standard adult rifles, making the Chipmunk an excellent gun to introduce a supervised child to safe firearms handling.

Banning the safe instruction of young people in firearms safety is a gun prohibition program. It is the opposite of fostering gun safety.

IV. LIKE PRINTING PRESS MANUFACTURERS, ARMS MANUFACTURERS MAY NOT BE CIVILLY LIABLE FOR THIRD-PARTY MISUSE OF THEIR PRODUCTS.

Aggrieved by an advertisement in a newspaper, Montgomery, Alabama, Commissioner L.B. Sullivan did not sue the manufacturer of the printing presses that the *Times* negligently misused to publish an advertiser’s false statements. Allowing lawsuits against press manufacturers for third-party misuse would seriously curtail “the freedom . . . of the press.”⁸⁸

Similar constitutional principles apply to arms manufacturers. As law professor Edward Lee writes, to “the Framing generation, the connection” between presses and arms was “commonsensical. The right to bear arms and the freedom of the press presented the exact same type of question for the Framers: can there ever be a natural right to a man-made device? In the case of arms and presses, the Framers believed so.”⁸⁹

Before the American Revolution, owners of presses and of arms had both been harassed by English governments.⁹⁰ “It is not hard to imagine why the Framers singled out only these two technologies for constitutional protection,” writes Lee. “Madison and his contemporaries spoke about the two rights in the same breath, and often in similar ways describing them separately as private rights, the ‘palladium of liberty,’ and necessary or essential to a ‘free state.’”⁹¹ This is one reason why the First and Second

As the gun prohibition lobbies well understand, preventing young people from being introduced to the shooting sports will make future generations less interested in protecting Second Amendment rights.

Amendments were placed next to each other. Both safeguard natural rights—at least according to the Founders. And also according to the Colorado Constitution.⁹²

Imposing tort liability for third-party misuse would eliminate press manufacturers and arms manufacturers. It has always been known that presses and arms are sometimes misused. In the words of the U.S. Supreme Court, “As Madison said, ‘Some degree of abuse is inseparable from the proper use of every thing.’”⁹³

According to the U.S. Supreme Court, similar principles apply to the First and Second Amendments.⁹⁴ Both the First and Second Amendments secure fundamental rights. Reform statutes against abusive lawsuits protect both Amendments.

V. HOW THE BRADY LOBBY AND THE ARNOLD & PORTER LAW FIRM DECEIVED THE PHILIPS

In 2012, a criminal attacked patrons at an Aurora, Colorado, movie theater. Among the murder victims was Jessica Ghawi, daughter of Sandy and Lonnie Phillips.

The Aurora perpetrator had no prior criminal record. All of his firearms and ammunition purchases complied with the law. The crime might have been prevented if persons who knew about his danger had alerted law enforcement, but they did not.

The perpetrator’s homicidal desires were known to his psychiatrist at the University of Colorado. While psychiatrists must ordinarily maintain patient confidentiality, there is an exception, the Tarasoff Rule, when the patient threatens violence. Pursuant to that rule, the psychiatrist had broken confidentiality and alerted the Threat Assessment Team at CU. However, the danger of the incipient Aurora killer was shared only within the University of Colorado system. After he dropped out of the university, CU lost interest in him, and did not inform law enforcement about the danger.⁹⁵ The perpetrator could have been involuntarily committed for a 72 hour mental observation if a petition had been filed in court.⁹⁶

The abusive lawsuits against firearms businesses, described in Part II of this Issue Paper, were created by a D.C. organization called Handgun Control, Inc. Previously, the organization had supported a Massachusetts ballot initiative to confiscate all handguns.⁹⁷ The group’s head had described to the *New Yorker* a three-step plan to eliminate handguns: first, reduce handgun production and sales; second, get them all registered; third, make possession “totally illegal.”⁹⁸

Since 2001, the group has used a variety of permutations of “Brady,” such as “Brady Center.”

With the help of the Denver office of the international corporate law firm Arnold & Porter, the Brady group convinced the Philips to file an obviously meritless lawsuit against firearms businesses.

This is one reason why the First and Second Amendments were placed next to each other. Both safeguard natural rights—at least according to the Founders. And also according to the Colorado Constitution.

The widely-respected U.S. District Senior Judge Richard P. Matsch granted the defendants' motion to dismiss. His [order](#) described the case as an "all conceivable claims attack on these internet sellers, attempting to destroy their legitimate businesses and invalidate the federal and state statutes protecting them."⁹⁹

Judge Matsch noted the absurdity of what the lawsuit was asking for:

The injunctive relief requested is to stop all the defendants' commercial activities until their business practices have been changed and approved by the court. There is nothing in the record to indicate that the plaintiffs or the Brady Center, the apparent sponsor of this case, made any attempt to persuade the defendants to make any alterations of those practices before bringing this highly publicized lawsuit. It would be highly unlikely that the defendants would seek to emasculate their businesses to conform to an undefined standard of care that would have prevented a purchaser of their products from using them in a barbaric assault on innocent people in an entertainment venue.

The case never had a good-faith hope of legal success. It was just a publicity stunt, Judge Matsch wrote:

It is apparent that this case was filed to pursue the political purposes of the Brady Center and, given the failure to present any cognizable legal claim, bringing these defendants into the Colorado court where the prosecution of James Holmes was proceeding appears to be more of an opportunity to propagandize the public and stigmatize the defendants than to obtain a court order.

To discourage vexatious abuse of the courts, Colorado had enacted a reform statute in 2000 providing for attorney's fees to defendants targeted by lawsuit abuse. Judge Matsch followed the law and made a fee award.

As reported in the *Colorado Sun*, "the Phillipeses say they didn't fully understand the risks when two years after their daughter, Jessica Ghawi, was killed in the 2012 Aurora theater shooting, they sued four businesses patronized by the gunman."¹⁰⁰ The Brady group insists that it fully informed the Philips of the legal risks.¹⁰¹

The law firm that handled the case was the Denver branch of the D.C. megafirm Arnold & Porter. Neither the Philips nor the Brady group have suggested that Arnold & Porter clearly informed the Philips that their suit was almost certain to result in an award of attorney's fees. If Arnold & Porter failed to inform, the failure would be an extreme dereliction of legal duty to clients.

When awarding the attorney's fees, Judge Matsch wrote: "It may be presumed that whatever hardship is imposed on the individual plaintiffs by these awards against them may be ameliorated by the sponsors of this action in their name."

Judge Matsch was wrong. The entities that had abused the legal system did not reimburse the Philips the harms caused by the entities' misconduct. The Brady group

With the help of the Denver office of the international corporate law firm Arnold & Porter, the Brady group convinced the Philips to file an obviously meritless lawsuit against firearms businesses.

said it did not have enough money to help the Philips. The attorney's fees award was \$213,001.86.¹⁰² Brady's most recent report indicates annual revenues of over \$41 million.¹⁰³ According to the group, "Over the past 30 years Brady has won over \$60 million for victims of gun violence."¹⁰⁴

Arnold & Porter's annual revenues are over one billion dollars. Profits per partner are over 1.5 million per partner.¹⁰⁵ If Arnold & Porter had reduced per-partner profits by several hundred dollars for one year, the firm could have paid the attorney's fees award caused by the firm's reckless and irresponsible publicity stunt.

For decades the Brady lobby has been abusing the legal process with meritless suits, trying to use ruinous litigation costs to impose an extremist agenda that has been repeatedly rejected by legislatures.

To stop lawsuit abuses, including the long-running abuses by Brady in particular, the Colorado legislature enacted reform statutes in 1986 and 2000. In a fair system, the perpetrators—and not the victims—of meritless, vexatious lawsuits should pay for the unnecessary costs imposed by the perpetrators.

The strongest evidence against SB23-168 is the Brady website. That website lists the many Brady lawsuits against firearms businesses. As the website shows, some of these cases led to substantial verdicts or settlements in favor of the plaintiffs, including successes achieved after PLCAA was enacted. Thus, PLCAA and similar state laws do not prevent meritorious suits against gun businesses. The reform statutes only prevent the junk lawsuits.

Conspicuously absent from the Brady website's list of cases is the Philips case.¹⁰⁶ A search of the Brady website for "Philips" returns no results. The organization's treatment of the Philips has been poor.

The Philips case was the only Colorado tort case involving guns where attorney's fees were awarded pursuant to the state's reform statute.

Meanwhile, legitimate tort cases continue. For example, currently pending in U.S. District Court in Colorado is a case against Kahr Arms; the plaintiff alleges that a Kahr handgun discharged when the gun was dropped.¹⁰⁷ Lawsuits against manufacturers of firearms that actually are defective have always been proper and lawful, in Colorado and nationally.

There is a word for Brady claiming that it is the victim of harm it inflicted on the Philips, and many other innocent persons, through abuse of the legal process. The word is *chutzpah*.

In a fair system, the perpetrators—and not the victims—of meritless, vexatious lawsuits should pay for the unnecessary costs imposed by the perpetrators.

ENDNOTES

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- 3 Edmondson, at 40–51.
- 4 *Id.* at 57–61.
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- 6 *Id.* at 95–101.
- 7 Edmondson, at 128.
- 8 376 U.S. 254, 256 (1964).
- 9 Kermit L. Hall & Melvin I. Urofsky, NEW YORK TIMES V. SULLIVAN 61–64 (2011).
- 10 Harrison Salisbury, *Fear and Terror Grip Birmingham*, N.Y. TIMES, Apr. 8, 1960.
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- 13 *Id.* at 186–87.
- 14 Edmondson, at 121.
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- 23 See *Shuttlesworth v. City of Birmingham*, 382 U.S. 87 (1965) (overturning conviction for loitering).
- 24 *New York Times Co. v. Sullivan*, 273 Ala. 656, 665 (1962); Hall, at 61–64.
- 25 Hall, at 69. Besides intimidating ministers, suing the four prevented removal of the state court case to federal court on diversity jurisdiction grounds. Lewis, at 13–14.
- 26 *Sullivan*, 376 U.S. at 294–95 (Black, J., concurring).
- 27 Wallace, at 174–75.
- 28 *Curtis Pub. Co. v. Birdsong*, 360 F.2d 344 (5th Cir. 1966) (reversing verdict for plaintiffs); Edmondson, at 146–53.
- 29 Even after *Sullivan* was decided, Supreme Court action was still necessary against libel abuse. See e.g., *Henry v. Collins*, 380 U.S. 356 (1965) (reversing libel verdicts for criticism of law enforcement misconduct); *Associated Press v. Walker*, 388 U.S. 130 (1967) (extending actual malice rule to public figures); Edmondson, at 136–46, 153–62 (discussing *Henry* and the many suits by Mississippi segregationist leader Edwin Walker).
- 30 See David Kopel & Richard Gardiner, *The Sullivan Principles: Protecting the Second Amendment from Civil Abuse*, 19 SETON HALL LEGISL. J. 737, 750 n.43 (1995) (listing 26 cases decided 1983–90, plus one from 1973).
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- 32 *Kelley v. R.G. Indus., Inc.*, 304 Md. 124 (1985). The new legal theory was later overturned by statute. 1988 Md. Laws, ch. 533.
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- 37 *Id.* (quotations omitted).
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- 44 Mike Allen, *Colt’s to Curtail Sale of Handguns*, N.Y. TIMES, Oct. 11, 1999.

45 *Agreement Between Smith & Wesson and the Departments of the Treasury and Housing and Urban Development, Local Governments and States*, U.S. DEPARTMENT OF HOUSING AND DEVELOPMENT (summary), <https://archives.hud.gov/news/2000/gunagree.html>. See also David Kopel, *Smith and Wesson's Faustian Bargain*, NAT'L REV. ONLINE, Mar. 20 & 21, 2000, <https://www.davekopel.com/NRO/2000/Smith-and-Wesson's-Faustian-Bargain.htm>.

46 Jonathan Wesiman, *Gun maker, U.S. reach agreement*, BALT. SUN, Mar. 18, 2000. It turned out to be a bad bargain for Smith & Wesson. Not even one of the lawsuits against the company was dismissed. Instead, the company was sued in more cases filed the next year.

47 *Id.*

48 *Id.*

49 *Agreement* (paragraph titled "Oversight Commission").

50 Walter Olson, THE RULE OF LAWYERS 125–26 (2003).

51 146 CONG. REC. H2017 (Apr. 11, 2000) (Rep. Stearns).

52 Olson, at 127.

53 *Id.*

54 *Id.* Ironically, Attorney General Blumenthal overlooked an actual illegal antitrust conspiracy that was taking place. Andrew Cuomo and Elliot Spitzer conspired with city governments for the cities to only buy guns for municipal law enforcement agencies from manufacturers that had acquiesced to the "code of conduct" giving city appointees control over the manufacturers. The conspiracy was terminated after an antitrust lawsuit was filed. *National Shooting Sports Foundation et al. v. Cuomo et al.*, No. 00-CV-1063 (N.D. Ga. Sept. 5, 2000). The antitrust violations having ceased, the plaintiffs voluntarily dismissed their case without prejudice.

55 One such case, brought by the government of Gary, Indiana, is still going on a quarter of a century later.

56 146 CONG. REC. H2017 (Apr. 11, 2000).

57 151 CONG. REC. S9087 (July 27, 2005).

58 *Id.* at S9059.

59 *Id.*

60 151 CONG. REC. S9063 (July 27, 2005) (Sen. Sessions, R-Ala.).

61 <https://www.govtrack.us/congress/votes/109-2005/s219> (vote); <https://www.govtrack.us/congress/bills/109/s397/cosponsors> (cosponsors)

62 <https://clerk.house.gov/evs/2005/roll534.xml> (vote); <https://www.congress.gov/bill/109th-congress/house-bill/800/cosponsors> (cosponsor of similar House bill).

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70 *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163 (D.C. 2008). The court is the highest court for home rule District. It is not the same as the U.S. Court of Appeals for the District of Columbia Circuit.

71 *Ileto v. Glock, Inc.*, 349 F.3d 1191 (9th Cir. 2003).

72 *National Shooting Sports Foundation v. Platkin*, No. 22-6646 (ZNQ)(TJB), 2023 WL 1380388 *7 (D.N.J. Jan. 13, 2023).

73 *Id.* at *9.

74 *National Shooting Sports Foundation, Inc. v. James*, 604 F.Supp.3d 48 (N.D.N.Y. 2022).

75 Gov. Andrew M. Cuomo, *Governor Cuomo Signs First-in-the-Nation Gun Violence Disaster Emergency to Build a Safer New York* at 35:00-38:15, YouTube (July 6, 2021), <https://bit.ly/3UyZoSx>.

76 Forbes magazine estimate, as of Feb. 27, 2023, <https://www.forbes.com/profile/michael-bloomberg/?sh=54deec951417>

77 SB23-168, to create C.R.S. § 6-27-104(4).

78 A lawsuit can be brought if any "firearms industry product" was used in Colorado, "and it was reasonably foreseeable that the product would be used or possessed in the state." SB23-168, to create C.R.S. § 6-27-104(1)(c). Since it is legal for consumers in one state to sell a firearm to someone in another state (by routing the sale through licensed dealers in both states), it is "reasonably foreseeable" that a firearm sold in one state could eventually end up in any other state. It is likewise foreseeable that a firearm sold in one state might one day be stolen from the lawful owner, enter the national black market, and end up in any other state.

79 Hall, at 122–26. PLCAA is not the only federal statute preempting tort suits involving speech. See Health Care Quality Improvement Care Act, 42 U.S.C. §11111–12 (peer review); Labor Management Relations Act, 29 U.S.C. §185 (speech that would require interpretation of the collective bargaining

agreement); Railway Labor Act, 45 U.S.C. §151a (same); Federal Election Commission Act, 52 U.S.C. §30107(c) (“disclosing information at the request of the Commission”). The Fair Credit Reporting Act creates an extensive regulatory scheme and shields compliant businesses from civil liability. 15 U.S.C. §1681. PLCAA does the same for businesses that comply with the vast panoply of gun control laws and regulations.

80 *People v. Stewart*, 55 P.3d 107, 116 (Colo. 2002).

81 *Id.* at 121.

82 SB23-168, to create C.R.S. § 6-27-105(4)(b).

83 *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010).

84 23-168, to create C.R.S. § 6-27-105(2).

85 SB23-168, to create C.R.S. § 6-27-104(3).

86 Colo. Rev. Stat. § 33-4-117.

87 The state government program is described here: <https://cpw.state.co.us/learn/Pages/OutreachHuntsmaster.aspx>.

88 U.S. Const., amend. I.

89 Edward Lee, *Guns and Speech Technologies: How the Right to Bear Arms Affects Copyright Regulations of Speech Technologies*, 17 WM. & MARY BILL OF RIGHTS J. 1037, 1049–50 (2009).

90 *Id.* at 1058–64.

91 *Id.* at 1070.

92 “All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.” Colo. Const., art. II, § 3.

93 *Sullivan*, 376 U.S. at 271 (citing 4 ELLIOT’S DEBATES ON THE FEDERAL CONSTITUTION 571 (1876)).

94 See, e.g., *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950) (describing the First, Second, Fourth, Fifth, and Sixth Amendments as the “civil-rights Amendments.”); *Konigsberg v. State Bar of California*, 366 U.S. 36, 51 n.10 (1961) (comparing “the commands of the First Amendment” to “the equally unqualified command of the Second Amendment.”); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990) (“the people’ protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments” are likely the same persons); *United States v. Cruikshank*, 92 U.S. 542, 551–52 (1875) (rights protected by the First and Second Amendments predate the Constitution); *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (the Second Amendment is not “subject to an entirely different body of rules than the other Bill of Rights guarantees that we have held to be incorporated into the Due Process Clause.”).

95 David B. Kopel & Clayton Cramer, *Reforming Mental Health Law to Protect Public Safety and Help the Severely Mentally Ill*, 58 HOWARD LAW JOURNAL 715, 765–69 (2015).

96 Colo. Rev. Stat. § 27-65-106 (2010).

97 Letter from Nelson T. Shields, III, Exec. Dir., Nat’l Council to Control Handguns (1976) (fundraising letter for campaign to support the initiative) (on file with author). Before adopting the name “Handgun Control, Inc.” the group had called itself the National Council to Control Handguns.

98

The first problem is to slow down the increasing number of handguns being produced and sold in this country. The second problem is to get handguns registered. And the final problem is to make the possession of all handguns and all handgun ammunition—except for the military, policemen, licensed security guards, licensed sporting clubs, and licensed gun collectors—totally illegal.

Richard Harris, *A Reporter at Large: Handguns*, NEW YORKER, July 26, 1976, at 58.

99 *Philips v. LuckyGunner*, No. 14-cv-02822-RPM (June 17, 2015).

100 Jesse Paul, *Colorado law makes it very difficult and financially perilous to sue the gun industry. That’s likely to change*, COLO. SUN, Feb. 21, 2023.

101 Stephen Gutowski, *Aurora Victim’s Family Says Gun-Control Group Misled Them on Risks of ‘Meritless’ Lawsuit That Drove Them into Bankruptcy*, THE RELOAD, Feb. 22, 2023, <https://thereload.com/aurora-victims-family-says-gun-control-group-misled-them-on-risks-of-meritless-lawsuit-that-drove-them-into-bankruptcy/>

102 For the three defendants, the amounts were, respectively, \$111,971.10; \$59,060.87; and \$31,969.89. Total was \$213,001.86.

103 “Total revenue \$41,322,000.” Of that, “contributed services” were said to be \$30,000,000. Brady United Against Gun Violence, Annual Report Fiscal Year 2021, at 18, <https://s3.amazonaws.com/brady-static/AR-FY21-v11.pdf> .

104 Brady spokesperson Mike Stankiewicz, quoted in Gutowski, *Aurora Victim’s Family Says Gun-Control Group Misled Them*.

- 105 Law.com, <https://www.law.com/law-firm-profile/?id=162319&name=Arnold-%26-Porter&slreturn=20230127183913>. The firm's full name is Arnold & Porter Kaye Scholer, reflecting the firm's 2016 merger with a New York firm.
- 106 Brady Leading in the Courtroom, <https://www.bradyunited.org/legal-cases>.
- 107 *Heikkila v. Kahr Firearms Group*, No. 1:2020cv02705 (D. Colo., filed Sept. 4, 2020). Docket page: <https://dockets.justia.com/docket/colorado/codce/1:2020cv02705/200610>.

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JON CALDARA is President of the Independence Institute.

DAVID KOPEL is Research Director of the Independence Institute. Some of this Issue Paper is based on Kopel's 2019 Supreme Court amicus brief in *Remington v. Soto*, and other writing.

ADDITIONAL RESOURCES on this subject can be found at: <https://davekopel.org/2dAmendment.htm#Lawsuits>.

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Rational Perspectives on Firearms

Ten Questions and Answers Based on
Facts, Data, Evidence, History, Common
Sense and Logic, not Feelings

By Dr Michael Gaeta
Boulder, Colorado

v.1 February 8, 2023

1

Question #1:

Does changing a state to
Constitutional Carry (no permit
needed to carry) increase or
decrease murder rates per capita?

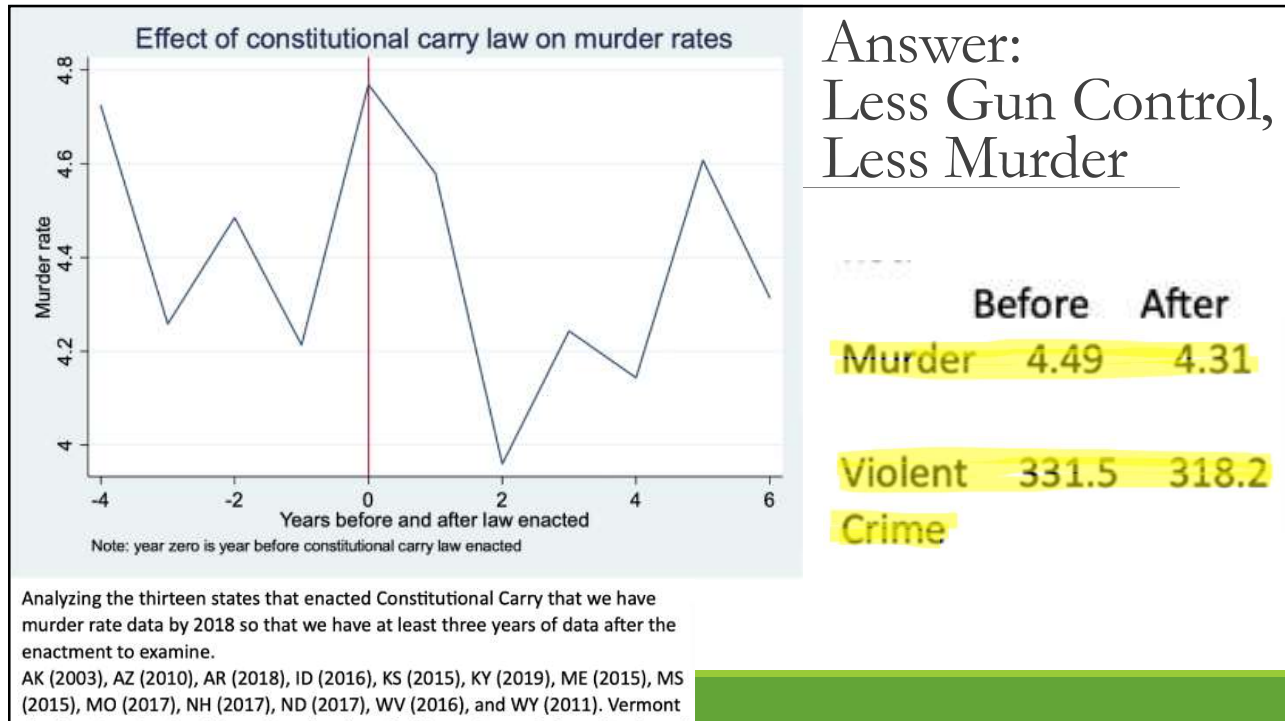
2

The screenshot shows the CDC WONDER website. At the top left is the CDC logo and the text "Centers for Disease Control and Prevention CDC 24/7: Saving Lives. Protecting People™". To the right is a search bar with the word "Search" and a close button. Below this is a blue navigation bar with "CDC WONDER" on the left and "FAQs", "Help", "Contact Us", and "WONDER Search" on the right. Social media icons for Facebook, Twitter, LinkedIn, and Email are on the right side. The main content area has a "WONDER Search" box on the left and a "CDC WONDER" heading on the right. Below the heading is a paragraph: "WONDER online databases utilize a rich ad-hoc query system for the analysis of public health data. Reports and other query systems are also available." The main article title is "CDC Data Shows Constitutional Carry States Have Fewer Total and Gun-Related Homicides" by Konstadinos Moros, dated October 4, 2022, with 78 comments. The article text states: "The average overall homicide rate among the sixteen constitutional carry states in 2020 was 6.9 per 100,000, beating the national average of 7.5 per 100,000. Perhaps more surprisingly, constitutional carry states also saw a lower gun-related homicide rate: 5.3 per 100,000, compared to the national figure of 5.9 per 100,000."

3

The slide features the "Crime Prevention Research Center" logo on the left, which includes the text "Dedicated to conducting academic quality research on the relationship between laws regulating the ownership or use of guns, crime, and public safety". The main title is "Changes in Crime and Killings of Police After Constitutional Carry Adopted", dated "Jan 23, 2022 | Constitutional Carry, Original Research". Below the title is the text "Information provided by Professor Carl Moody, College of William & Mary and Research Director for the Crime Prevention Research Center, cemood@wm.edu". A paragraph describes Dr. Carlisle E. Moody (1943-) as an American economist, criminologist, and professor of economics at the College of William & Mary. A small portrait photo of Dr. Moody is shown. His education is listed as "B.A. Economics, Colby College" and "M.A. (1966) and Ph.D. (1970), Economics, University of Connecticut". The slide concludes with the text "Data from this study are presented on the following slides".

4

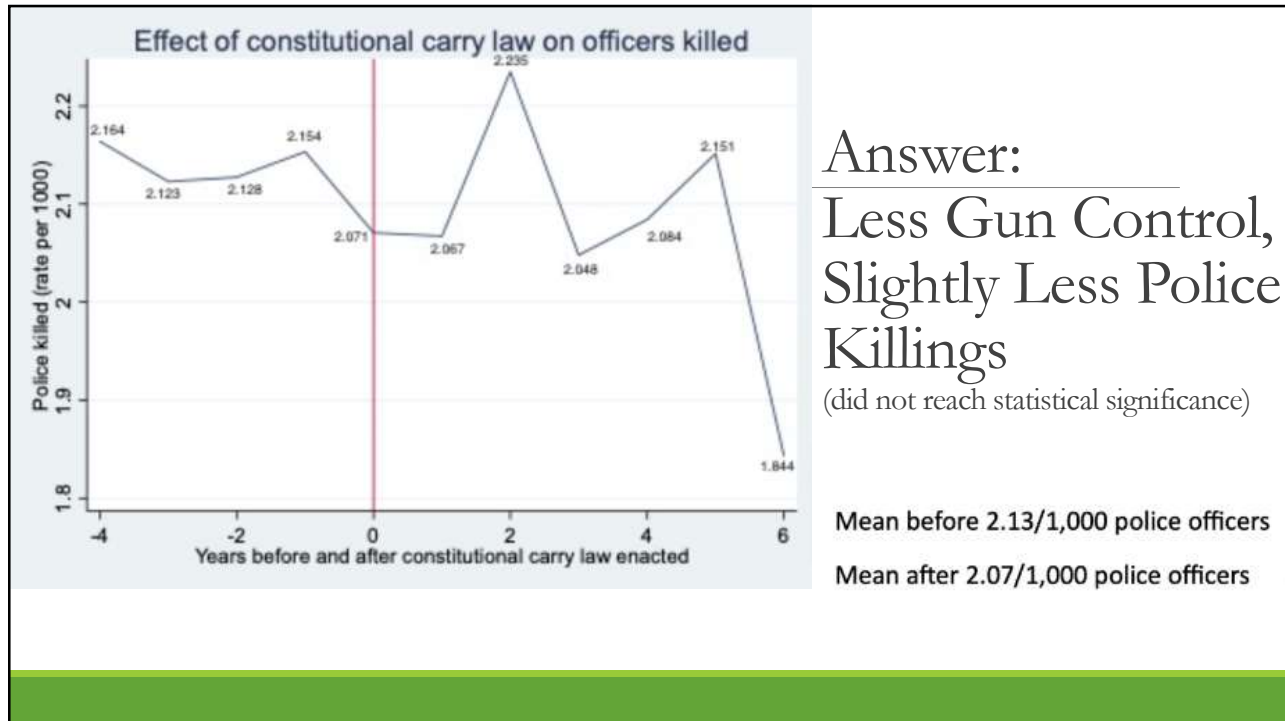


5

Question #2:

Does changing a state to Constitutional Carry increase or decrease the number of police officers killed per capita?

6

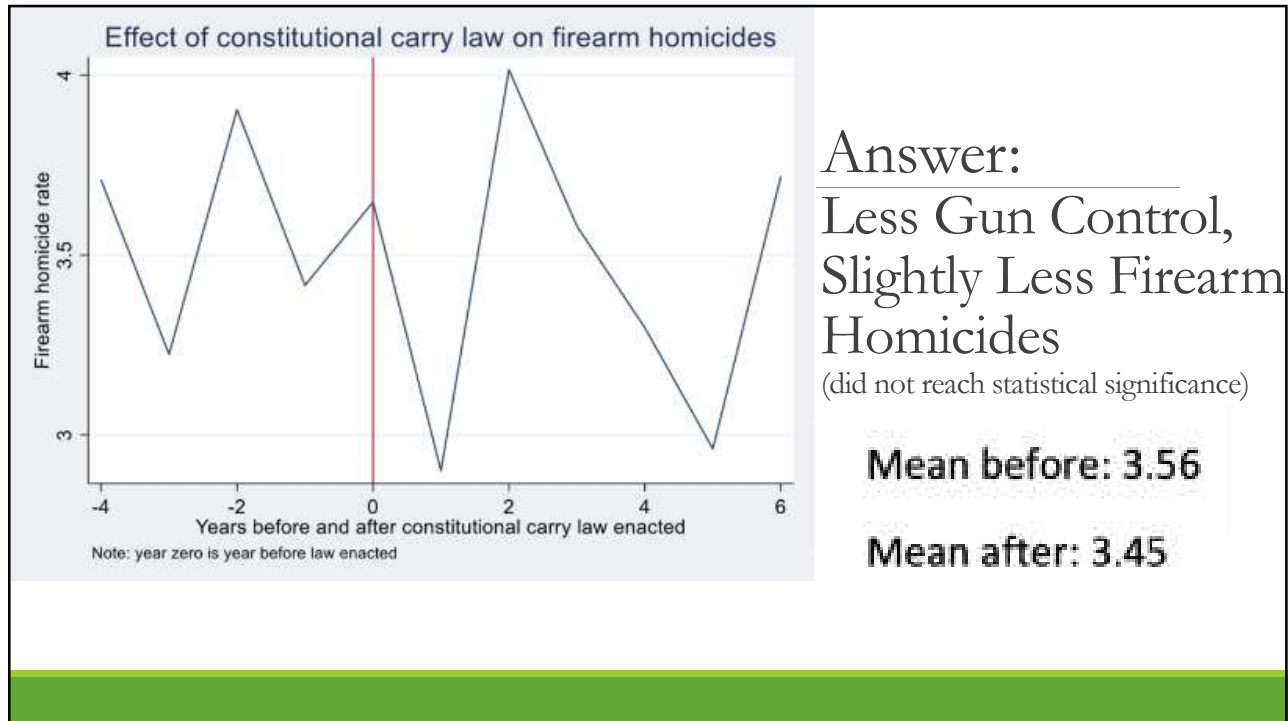


7

Question #3:

Does changing a state to Constitutional Carry increase or decrease the number of firearm homicides per capita?

8



9

Question #4:

Do gun-free zones prevent mass shootings?

Fact: twice as many deaths per year per capita from lightning strikes than mass shootings

10



11

Relevant Statistics:

- # of US school (gun-free zones) shootings since 1970: 2,032, half (948) since 2013
- # of mass shootings at police stations: 0
- # of mass shootings at gun shows: 0
- # of mass shootings at shooting ranges: 0
- # of shootings at gun stores: 1 (not a mass shooting: only 1 employee killed)

Theme: Good guys with guns deter or prevent gun violence

12

Why are school shootings a relatively recent thing?

Why were there no school shootings in the 1950s?

That's an interesting thing, since where guns in the 1950s were much more readily available, even in the schools. There were school rifle clubs. People brought guns to school. - Larry Correia, CPA, Author

So the issue, as always, has nothing to do with access to guns of any type. The issue is more difficult and complex, which has to do with a decline in moral character, especially in younger people, and mental illness, including a massive increase in psychotropic prescription drugs.

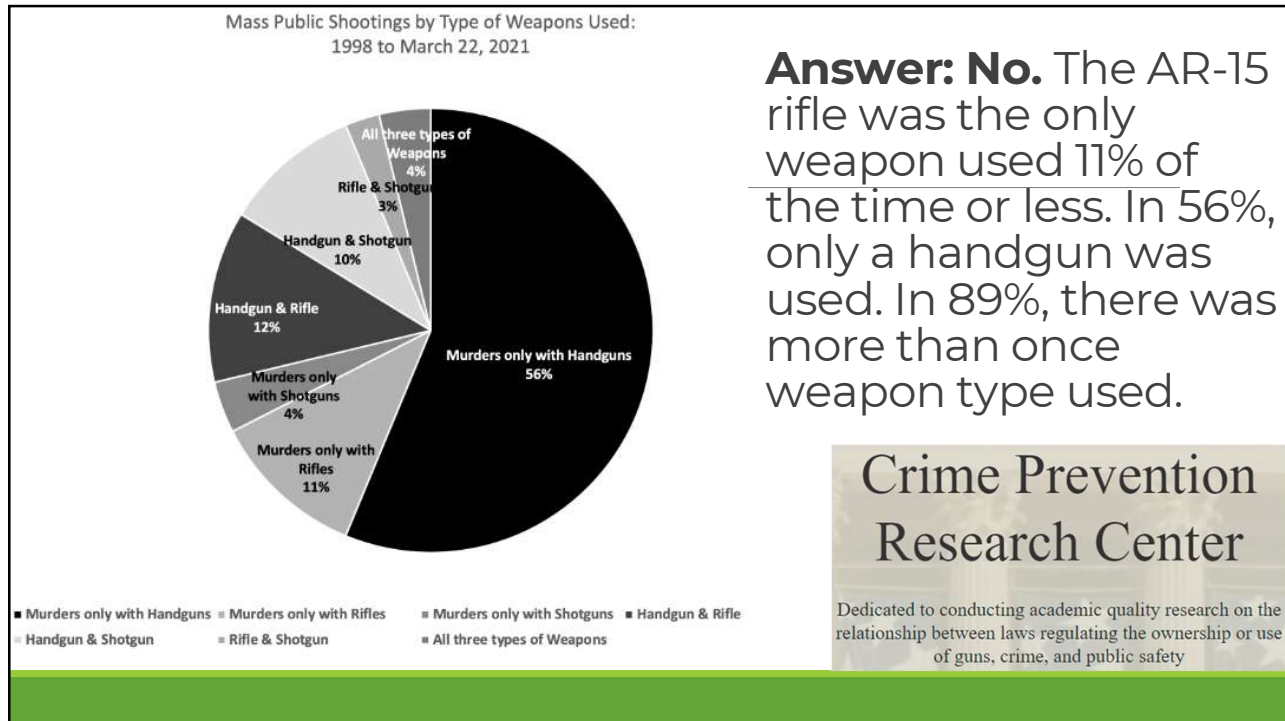
13

Question #5:

Is the AR-15 the weapon of choice for mass public shooters?

As of 2020, there were about 20 million AR-15-style weapons in the country, according to the National Shooting Sports Foundation, a trade association.

14



15

Question #6:

Was President Biden lying again when he stated, on May 24, 2022, “When we passed the assault weapons ban, mass shootings went down. When the law expired, mass shootings tripled.”

16

Answer:

Yes, another complete fabrication /
disinformation.

Fact: There was no drop in the number of attacks with assault weapons during the 1994 to 2004 ban, perhaps because criminals are not affected by gun control measures.

Fact: If Biden's claim is correct, we should see a drop in the percent of attacks with assault weapons during the federal ban period and then an increase in the post-ban period, but the exact opposite is true.

Fact: eliminating the assault weapon ban had no effect on the number of attacks with assault weapons, but increased attacks that used other types of weapons.

Details at crimeresearch.org/2022/05/biden-on-assault-weapons

17

Question #7:

Would an “assault
weapons” ban reduce
gun homicide?

18

Answer: No.



RESEARCH REPORT

Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994

Jeffrey A. Roth, Christopher S. Koper, William Adams, John E. Marcotte, Doug Wissoker

March 13, 1997

1997 study commissioned and funded by the US Department of Justice

“At best, the assault weapons ban can have only a limited effect on total gun murders, because the banned weapons and magazines were never involved in more than a modest fraction of all gun murders.”

19

Q. What About the Follow-Up 2004 DOJ Study?

A. Same conclusion: “AWs [assault weapons] and LCMs [large capacity magazines] were used in only a minority of gun crimes prior to the 1994 federal ban,” “relatively few attacks involve more than 10 shots fired,” and “the ban’s effects on gun violence are likely to be small at best and perhaps too small for reliable measurement.”

Fact: Presented with overwhelming evidence of the 1994 ban’s inefficacy, Congress chose not to renew the gun-control measure.

20

Question #8:

Do gun control measures keep guns out of the hands of criminals who use guns to commit crime and murder?

21

Answer: No.

Gun control measures only disarm law-abiding citizens that use guns not to shoot people, but to defend themselves, their families, homes and businesses from violent attack where someone's life is in danger.

Criminals, by definition, do not care if they obtain firearms legally, and are unaffected by gun control measures.

22

Hard Truths About Human Nature

Throwing millions of people in jail for illegal drugs did nothing to decrease these drugs – they just went underground. If people want drugs, they will find a way to get them, regardless of anti-drug laws.

If people want to commit violence on others, they will find a way to do it, with a gun, bomb or knife, regardless of anti-weapon laws. We have seen this all over the world, at all times and in all nations.

23

Another measure as nonsensical as banning the AR-15, the most popular firearm in the USA

Fact: 43,000 people were killed in traffic fatalities in 2021, according to the National Highway Traffic Safety Administration, a 10% increase from 2020.

Most common type of car: Toyota

Solution: ban all Toyota vehicles

24

Question #9:

Do gun control measures
reduce crime?

25

Answer: No, they increase crime, a lot.

Legally-armed, law-abiding citizens **prevent** thousands of crimes per day, usually without a shot being fired.

The right to obtain a firearm legally is more important than the firearm itself, because guns effectively act as a **deterrent**.

Worst-case scenario: more gun control, so that only the bad guys have guns, and citizens can't defend themselves.

26

	Original language	English (US)
	Pages (from-to)	1-8
	Number of pages	8
	Journal	Journal of the American College of Surgeons
	Volume	228
	Issue number	1
State	Published - Jan 2019	

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State Level Firearm Concealed-Carry Legislation and Rates of Homicide and Other Violent Crime

Mark E. Hamill, Matthew C. Hernandez, Kent R. Bailey, Martin D. Zielinski, Miguel A. Matos, Henry J. Schiller

Quantitative Health Sciences, Trauma, Critical Care and General Surgery

Research output: Contribution to journal > Article > peer-review

27

Abstract

Background: Over the last 30 years, public opinion and state level legislation regarding the concealed-carry of firearms have shifted dramatically. Previous studies of potential effects have yielded mixed results, making policy recommendations difficult. We investigated whether liberalization of state level concealed-carry legislation was associated with a change in the rates of homicide or other violent crime. Study Design: Data on violent crime and homicide rates were collected from the US Department of Justice Uniform Crime Reporting Program (UCR) and the Centers for Disease Control and Prevention (CDC) over 30 years, from 1986 to 2015. State level concealed-carry legislation was evaluated each study year on a scale including “no carry,” “may issue,” “shall issue,” and “unrestricted carry.” Data were analyzed using general multiple linear regression models with the log event rate as the dependent variable, and an autoregressive correlation structure was assumed with generalized estimating equation (GEE) estimates for standard errors. Results: During the study period, all states moved to adopt some form of concealed-carry legislation, with a trend toward less restrictive legislation. After adjusting for state and year, there was no significant association between shifts from restrictive to nonrestrictive carry legislation on violent crime and public health indicators. Adjusting further for poverty and unemployment did not significantly influence the results. Conclusions: This study demonstrated no statistically significant association between the liberalization of state level firearm carry legislation over the last 30 years and the rates of homicides or other violent crime. Policy efforts aimed at injury prevention and the reduction of firearm-related violence should likely investigate other targets for potential intervention.

28

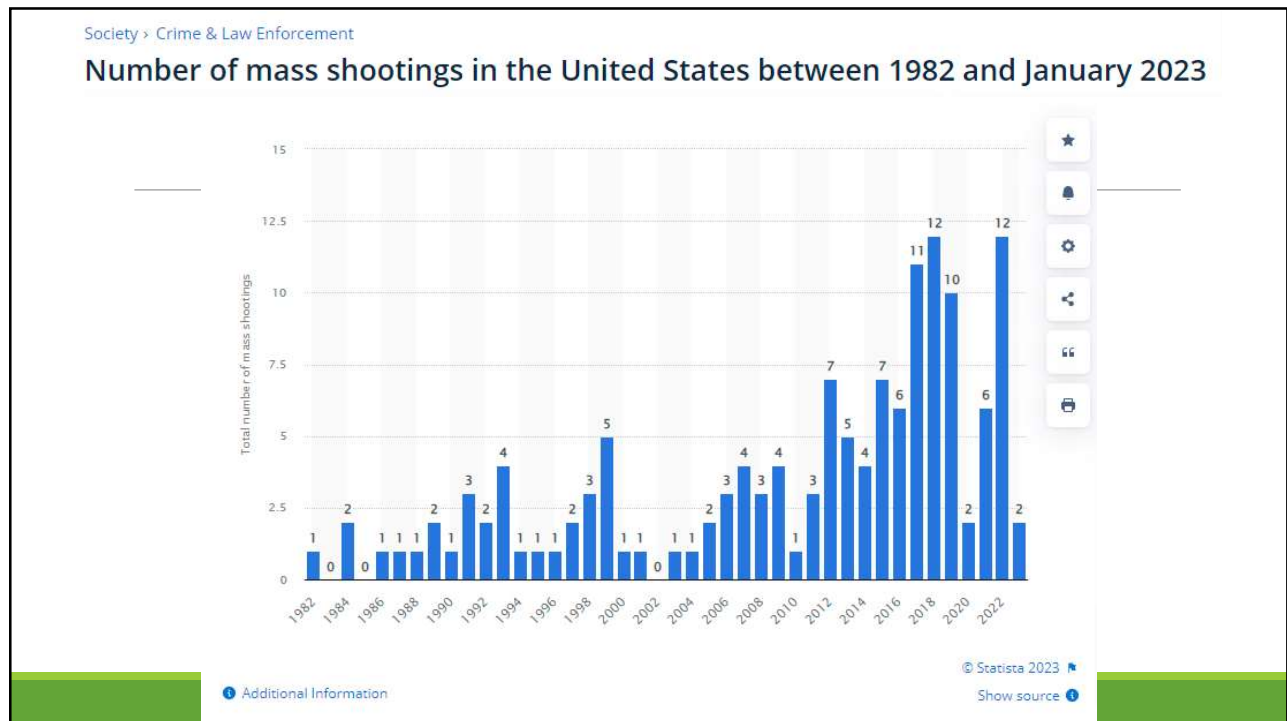
Guns are not perfect, but they help a lot, in the hands of law-abiding, responsible citizens.

Guns are not perfect. They aren't going to stop these events from happening. A fire extinguisher doesn't stop fires from happening, either; it just helps you deal with the damage faster than waiting for the fire department.

It's the same thing with applying CPR or doing first aid. It's not as good as a trauma surgeon. It's not going to cure the problem, but it can save lives.

Concealed carry is no different. It's all about how long it takes for us to get a response there. And if that response comes from us, we're better off. If that response comes from outside (law enforcement), we have to wait for it. It's really simple. It's just simple math. - Larry Correia, CPA, Author

29



30

Question #10:

Since gun control measures have never actually helped, why are they so popular with a loud minority of Americans?

31

Answers:

1. Gun control is a simplistic solution to a complex problem. Gun violence has increased over recent decades, while legal access to firearms has decreased in high-crime areas. So the problem is not and never was guns. It's people, and people are complex. Banning guns is simple, though ineffective.

2. It feels good, even though it doesn't actually DO any good. We see tragic mass shootings, and want to "do something." And rather than do the hard work of addressing root causes - mental illness, moral education, making sure children have fathers in their lives, etc., - it's much easier to blame an implement, an inanimate object, and reduce access to it, so you can feel good.

32

Practical Solutions

33

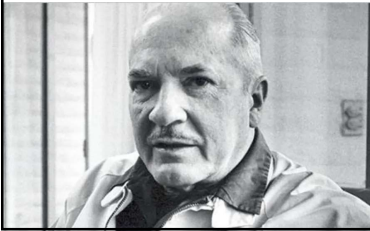
Solutions That Would Actually Help (unlike more gun control or bans)

1. Actually prosecute criminals – tough on crime policies
2. Education about safe gun handling, carrying, storage
3. Expand mental health and suicide (61% of all gun deaths) prevention programs
4. Help fathers be part of their son's lives in inner cities
5. Constitutional carry in all 50 states (currently 25); end gun-free zones
6. Arm school staff (or pretend that you did with a sign)
7. Publicly funded firearms training for citizens

34

“An armed society is a polite society. Manners are good
when one may have to back up his acts with his life.”

— Robert A. Heinlein, *Beyond This Horizon*



March 7 2023

To Committee Chair Coleman, Vice-Chair Sullivan, and Committee Members Baisley, Gonzales, and Liston:

My name is Hannah Gay Keao, and I am a City Councilwoman in Edgewater. I am writing to you today in support of SB23-168, Gun Violence Victims' Access to the Judicial System.

Last year, due to the authority given by SB21-256, we in Edgewater discussed gun violence prevention legislative action at the local level. In doing so, our little city attracted a lot of firearm industry attention. The majority of blanket opposition I heard was from outside our community, often from retail and other industry players over whom we had zero legislative authority.

One retailer located in nearby Wheat Ridge who reached out had, and still has, a Twitter profile avatar that says "Do Not Comply." You can see for yourself [here](#).

Learning that gave me a lot of pause.

I have heard the words "I will not comply" occasionally from individual gun owners speaking toward legislation they believe infringes on 2A or creates unnecessary burdens in compliance, but to have those words posted publicly by a retailer is extra concerning. When at least two bills are being voted on in the state legislature this year that could affect sellers, I have to wonder how much immunity from civil liability is influencing industry entities' decisions, even in ways as subtle as a profile picture.

And when I see guns targeted in their design by marketing teams toward young people or women or other marginalized communities, or Smith & Wesson's recently promotion of an apparel company's T-shirt with branding wildly similar to that of the Proud Boys ([a post they later took down](#)), I wonder why any of us are letting gun industry profiteering and marketing run unchecked in ways we simply don't allow elsewhere.

I know at least one of you has horrific lived experience with gun violence; and I'm sure each of you now knows the havoc and trauma gun violence implants on our families and communities, even if we aren't aligned on its causes. I hope each of you heard the young people of Denver last Friday begging for action in Luis Garcia's name; I was there with them, and did.

We all must demand better, and while I believe legislative action on firearms is only one small part of dismantling harmful systems and the corresponding plague of gun violence, industry shareholder accountability is an essential next step. This bill

isn't a 2A conversation, it's not about individual liberty, it's a conversation about corporate and private sector complicity in perpetuating such harmful systems, without consequence, in the name of profit and power. And leaving our communities and families and victims and survivors who are harmed behind.

You can help change this with SB23-168.

I will again ask wholeheartedly for a yes vote.

With gratitude,

A handwritten signature in black ink, appearing to read "Hannah Gay Keao". The signature is fluid and cursive, with the first name being the most prominent.

Hannah

Councilwoman Hannah Gay Keao (she/her)

Edgewater, Colorado | 970-515-3842

hannahforedgewater.com

Tara L Hunnicutt

March 8, 2023

Colorado Senate: State, Veterans, & Military Affairs Committee

Testimony Against SB23-168: Gun Violence Victims' Access To Judicial System

I am unable to testify, so I ask that this be submitted for the record of the above bill.

My name is Tara Hunnicutt, and I have lived in Colorado since 2000. I am a wife and mother of a teenager. I am passionate about the safety of myself and my family and my rights as a human being. The right of individuals to protect themselves is paramount to our livelihood. Therefore, I educate my child and others about firearms and general safety against violent criminals.

I oppose SB-168, which, in my opinion, would set a dangerous precedent against the firearms industry. This exacerbates the thought that our society can file lawsuits against and hold manufacturers liable for anything. The firearms industry is already regulated and is held to high standards. As in any violent crime, the criminal should be held accountable for their actions. Not the instrument that they use to commit the crime.

Please OPPOSE SB23-168.

Thank you for your time.

Respectfully submitted,

Tara L Hunnicutt

2174 S Parfet Court

Lakewood, CO 80227

303-667-3310

Testimony in opposition to: SB23-168, Gun Violence Victims Access to Judicial System

(Handouts attached)

Thank you, Chair and Committee

My name is Robert Edmiston. I am with the Firearms Coalition of Colorado an NRA-affiliated, all-volunteer, grassroots organization dedicated to the protection of individual rights and public safety.

I am a former U.S. Army Officer and Vocational Rehabilitation Counselor. I have a Master's Degree in Psychology, Counseling and Guidance.

I am writing in opposition to the measure under consideration.

We believe this bill simply defies common sense. We, as a society, do not hold car makers accountable for drunk or careless drivers. We have all seen ads for "souped up" cars that might encourage a driver to do something reckless. We hold the drivers accountable for their personal actions.

We do not sue knife makers for stabbings or the makers of baseball bats for the misuse of their products. So let it be with firearms.

This bill attempts to make everyone remotely involved in the lawful commerce of arms responsible for the actions of an end user, when in fact, the persons in the process can have no reasonable knowledge about the future actions of a person they may have never met. We believe that we are not treading, but galloping into *Minority Report* territory here, where ordinary people in the course of their lawful business are expected to predict the future behavior of strangers, or at best someone that they have briefly met.

This proposal also contravenes the federal Protection of Lawful Commerce in Arms Act. Involving gun makers in litigation outside the legitimate realm of liability based on harm caused by the failure of their products only promises to occupy a large number of attorneys to no purpose, when the courts strike down the suits.

This law seems to be directed in great part at mass shootings, which are but a tiny fraction of all violence involving firearms. Contrary to some anti-Second Amendment advocates contentions, mass shootings are not unique to this country.

(See Handout Number One regarding mass murders and spree killings.)

In fact, there is compelling evidence that firearms are used much more often for self-defense than for aggression.

(See Handout Number Two regarding defensive gun uses.)

The Firearms Coalition of Colorado, PO Box 1454, Englewood, CO 80150-1454

We urge a “No” vote on this bill.

Thank you for your consideration.

Robert Edmiston
Volunteer Lobbyist
The Firearms Coalition of Colorado.

Dear Committee Chairman and Committee Members

My name is Edward Schoenheit, I am retired combat veteran and former law enforcement officer.

I am testifying against both of these proposed bills (SB23-168 & SB23-169) in their current form as they fail to address to core issues that they are trying to solve. They are both critically flawed in their approach and even more so in their true hidden political agenda.

SB23-168 title and purpose are misleading and disingenuous. Suing law abiding gun store owners and firearm manufactures is just another step in a political agenda that fails to properly place the blame where it deserved. The ATF already has an enforcement mechanism for gun dealers and manufacturers.

It is unfortunate that the Denver Assembly fails to correctly and justly place the responsibility on those that should bear it if they truly seek to make a meaningful and lasting change.

The responsibility for youth gun violence that these two bills aim to try and address is the responsibility of the parents. It is not the responsibility of lawful firearm owners exercising their constitutional rights that the Denver Assembly seeks to marginalize and strip.

Parents should be held criminally liable and responsible for the criminal and heinous insane actions of their children. From the current case playing out in Michigan Oxford school shooting where the parents bought their mentally ill son a gun and now are trying to absolve themselves of responsibility. (the first parents charged in America in a school mass shooting).

This gets at the core of the issues in our society and why these school shooting are occurring. Parents need to go to prison with their child. Parents need to be held accounting to teach their children and enforce a level of discipline that ensure a respect for human life. Until that happens all the knee-jerk, feel-good guns laws in the nation are meaningless.

If the Assembly truly wants to effect change then deny these two bills and draft a new bills that puts parents at the forefront of ensuring their children don't become a menace to society and hold them accountable if they fail.

V/R

Edward B Schoenheit

LTC, USA Ret.

Testimony of Peggy A. Houchin, March 8, 2023,

Testimony in opposition to SB23-170, SB23-169, SB23-168, SB23-1219

My name is Peggy Houchin and I live in Loveland, Colorado (Larimer County). I am actively involved with training and educating women regarding firearms usage and safety. I am a Facilitator for "A Girl & A Gun" which is a national organization that promotes and encourages women to get firearms training in a safe and nonjudgmental environment. I am passionate about the 2nd amendment and the right for US citizens to own and use firearms.

I am testifying in opposition to SB23-170, SB23-169, SB23-168, SB23-1219. Approximately 3 years ago, I was taking my dog to the groomers in downtown Loveland. I pulled into their small parking lot and got out of my car to drop off my dog Mitzi. On the way back to my car, a man in a car next to me, began to yell very vulgar obscenities at me. I had absolutely no idea why and before I got to my car, he got out of his car and started towards me with pepper spray. I yelled at him and told him I was going to call 911 and he said "go ahead bitch" call them. I took a photo of his license plates and got back into my car and drove away. I was absolutely terrified and didn't stop shaking until I got home. I contacted the local police who said that it was "assault" and that they would arrest him if I pressed charges. After some discussions with an attorney and the fear of repercussions, I decided to drop it. However, it impacted me in a very negative way, and based on that incident, I've become more passionate about my own safety by carrying a firearm and training other women to protect themselves.

During this incident, several bystanders saw what was happening (including the grooming shop owner) and NO ONE offered to help me. We truly are our own first responders!

I have a chapter of A Girl & A Gun in N. Colorado of nearly 70 women ranging in ages from 18-87. In addition, I have taught many, many women in my Women's Handgun and Self Defense class and the stories that they share regarding stalkers, angry ex-husbands and boyfriends that have threatened them and their children is mind boggling and tragic! These incidents prompt these women to want to protect themselves with a handgun either as concealed carry or home defense.

Both of these over-reaching bills: limiting the age to purchase a firearm to 21 and a 3 day waiting period **absolutely** put these women and their children in danger! There are many single moms in Colorado who are under the age of 21 and their constitutional right to protect themselves would be stolen. Responsible gun ownership and gun safety should be the focus of this Legislature instead of taking away rights of law abiding citizens of Colorado.

I STRONGLY urge you to oppose these bills.

Respectfully submitted,

Peggy A. Houchin

NRA & USCCA Certified Instructor

Facilitator – N. Colorado A Girl & A Gun