



Kelly Sampson, Senior Counsel and Director of Racial Justice at Brady
Before the House Committee on Oversight and Reform
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Chairwoman Maloney, Ranking Member Comer, and Distinguished Members of the House Committee on Oversight and Reform,

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. Our organization 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. I'd like to thank you for holding this hearing, because Americans of all walks of life can, and do, agree that gun violence is a real problem.

Gun violence is the leading cause of death for American kids, which is a public health issue, not a private "evil hearts" problem.¹ Indeed, no prevailing philosophy, theology, or world history suggests that "evil" is unique to the United States. What is unique, however, especially in comparison to peer countries, is the rate at which gun violence kills our people. And that isn't because we're more evil, more prone to mental health diagnoses, or more violent. First, a mental health diagnosis makes someone more likely to be a victim of violence rather than a perpetrator; and in any case, research shows that Americans are no more prone to mental health issues than

¹ Rampton, R., & Cowan, R. (2019, August 5). *Trump condemns white supremacy, vague on gun measures after U.S. shootings*. Reuters. Retrieved July 26, 2022, from <https://www.reuters.com/article/us-usa-shooting/trump-condemns-white-supremacy-vague-on-gun-measures-after-u-s-shootings-idUSKCN1UV15C>

people around the world.² Second, America isn't necessarily more violent than our peers, but, because guns are so readily available, we are decidedly deadlier.³ When it comes to gun violence, we're quite literally off the charts. That's why countries like Australia,⁴ Canada,⁵ and Germany⁶ warn their citizens to take "extra precautions" when traveling here. And that's also why hundreds of families will get the dreaded news that their loved one has been shot on this very day. In the face of such horrific violence, it is understandable for people to earnestly believe that answers may lie in the individual, private sphere of "morals" or "hearts" – but we have to be honest. America has a gun violence problem unlike any other industrialized country on earth, and American gun violence is a public problem that requires public policy solutions, including a comprehensive system of regulation related to firearms. Gun violence in America takes many forms, each of which have root causes that cannot and should not be dismissed or ignored; however, the thread that links them – and that which differentiates us from other countries – is unfettered access to firearms.

Gun manufacturers and crime guns are inextricably linked

The firearms industry – manufacturers, dealers, and distributors – play a role in facilitating easy access to firearms by preventing regulations and avoiding transparency, accountability, and oversight.

Those opposed to regulation often claim that individuals who want a gun to commit violence will be able to circumvent any proposed laws by turning to the black market, as though the black market is an inevitable and naturally occurring phenomenon. Rather, it is the unlawful, irresponsible, and negligent gun industry business practices, both at the dealer and manufacturer level, that sustain and feed the black market.

Too often, gun policy discussions have tended to equate "enforcing gun laws" as enforcing only those laws governing gun users as opposed to laws governing gun sellers. For example, Professor Harold Pollack, co-director of the Crime Lab at the University of Chicago, noted:

² *Mental illness and gun violence*. The Educational Fund to Stop Gun Violence. (2020, September 4). Retrieved July 26, 2022, from <https://efsgv.org/learn/learn-more-about-gun-violence/mental-illness-and-gun-violence/>

³ Beauchamp, Z. (2015, August 27). *America doesn't have more crime than other rich countries. It just has more guns*. Vox. Retrieved July 26, 2022, from <https://www.vox.com/2015/8/27/9217163/america-guns-europe-homicide-rates-murder-crime>

⁴ *United States of America*. Smartraveller. (n.d.). Retrieved July 26, 2022, from <https://www.smartraveller.gov.au/destinations/americas/united-states-america>

⁵ Government of Canada. (2022, July 22). *Travel advice and advisories for the United States (USA)*. United States Travel Advice. Retrieved July 26, 2022, from <https://travel.gc.ca/destinations/united-states#security>

⁶ German Federal Foreign Office. (n.d.). *USA / Vereinigte Staaten: Reise- und sicherheitshinweise*. Auswärtiges Amt. Retrieved July 26, 2022, from https://www.auswaertiges-amt.de/de/aussenpolitik/laender/usa-node/usavereinigtestaatensicherheit/201382#content_1

[T]he criminal justice system has traditionally not taken the underground/illegal gun market all that seriously as a distinct issue. The legal risks are pretty low on straw purchasers and on people who sell guns to people that have reasons to know might be felons. It's easy to claim that a gun was lost or stolen if you give it to someone else who then uses it in a crime.⁷

Professor Pollack identifies a key issue: much of the illegal activity associated with gun violence happens long before anyone pulls a trigger.

Almost all guns are produced in licensed manufacturers' factories. Generally, manufacturers sell to distributors, who sell to dealers, who sell to the public. Dealers should screen for signs of gun trafficking, such as straw purchases, and most do so thoroughly. In fact, the majority of gun dealers won't sell a single crime gun in any given year. Rather, it is a small number of dealers whose negligent practices filter guns directly into the criminal market: according to the last available data, 5% of licensed dealers sell about 90% of crime guns.⁸ Litigation, government studies, and industry insiders have revealed that irresponsible dealers feed the black market by turning a blind eye to gun trafficking.

These irresponsible dealers are not far removed from manufacturers. Through trace data from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), manufacturers know which dealers or distributors routinely sell crime guns. Because the majority of gun dealers do not sell any crime guns, a dealer with multiple traces should raise easily recognizable red flags for a manufacturer, triggering them to investigate said dealer and, ideally, compel them to cut business ties. However, this rarely happens; as a result, manufacturers' willingness to put profits over people directly feeds the black market. These manufacturers know that when they decide to act irresponsibly, they will face little to no enforcement or oversight, funneling their weapons into the illegal market where prohibited purchasers can and do secure them.

This method of operating has been confirmed by industry insiders. In an interview with 60 Minutes, Robert Ricker, a former National Rifle Association attorney and top gun industry trade organization official, said that manufacturers:

know full well what goes on at the distributor and the dealer level. They will not look at or address their distribution practices, in such a way to prevent criminals, felons, others,

⁷ Coates, T.-N. (2013, February 14). *The social trends driving American gangs and gun violence*. The Atlantic. Retrieved July 26, 2022, from <https://www.theatlantic.com/national/archive/2013/02/the-social-trends-driving-american-gangs-and-gun-violence/273170/>

⁸ *Combating crime guns: A supply-side approach*. Brady. (n.d.). Retrieved July 26, 2022, from <https://www.bradyunited.org/reports/combating-crime-guns-a-supply-side-approach>

from walking into a gun shop, buying unlimited number of guns, and walking out with no questions asked.⁹

Similarly, the Wall Street Journal reported that Robert Lockett, then-owner of “The Second Amendment” gun shop and one-time National Alliance of Stocking Gun Dealer “Dealer of the Year,” wrote a column chastising gun manufacturers in an industry trade magazine.¹⁰ In particular, Lockett decried manufacturers who “[put] their heads in the sand” and pretend they do not know which distributors and dealers engage in unlawful sales.¹¹

Government agencies, too, have put the industry on notice. In 2001, the U.S. Department of Justice issued a public report finding that “[g]un manufacturers and importers could substantially reduce the illegal supply of guns by taking . . . steps to control the chain of distribution for guns.”¹² Likewise, ATF’s strategic plan from 2000 stated that its “[e]nforcement efforts would benefit if the firearms industry takes affirmative steps to track weapons and encourage proper operation of Federal Firearms Licensees to ensure compliance with all applicable laws.”¹³

In addition to criticism from industry insiders and government reports, manufacturers have faced lawsuits alleging that manufacturers’ failure to regulate firearm distribution chains caused guns to flow into the illegal market.¹⁴ For instance, in 2000, Smith & Wesson settled with the federal government and several U.S. cities after being sued for its role in facilitating gun violence in which it agreed to make a variety of changes to its sales and distribution practices.¹⁵ However, Smith & Wesson faced such immediate and intense backlash from the industry that it almost went out of business,¹⁶ and as a result of the backlash, Smith & Wesson did not ultimately comply with the agreement.¹⁷

In the same vein, in a 2003 domestic public nuisance case against manufacturers and distributors—including Beretta, Century Arms, Colt, Glock, Smith & Wesson, Ruger, and Interstate—the late United States District Court Judge Jack B. Weinstein found as a fact after a

⁹ CBS Interactive. (2003, May 9). *Firing back*. CBS News. Retrieved July 26, 2022, from <https://www.cbsnews.com/news/firing-back/>

¹⁰ Barrett, P. M. (1999, June 22). *Gun dealer blasts manufacturers for lax policing of gun-show sales*. The Wall Street Journal. Retrieved July 26, 2022, from <https://www.wsj.com/articles/SB930005338595039330>

¹¹ *Id.*

¹² DOJ, Gun Violence Reduction: National Integrated Guns Violence Reduction Strategy § IV (2001)

¹³ ATF, 2000-2005 Strategic Plan 11 (2000).

¹⁴ *Gun industry immunity*. Giffords. (2021, August 23). Retrieved July 26, 2022, from <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/gun-industry-immunity/>

¹⁵ *Smith & Wesson Settlement*. Brady. (2000, March 17). Retrieved July 26, 2022, from <https://www.bradyunited.org/legal-case/smith-wesson-settlement>

¹⁶ Selk, A. (2018, February 27). *A gunmaker once tried to reform itself. the NRA nearly destroyed it*. The Washington Post. Retrieved July 26, 2022, from <https://www.washingtonpost.com/news/retropolis/wp/2018/02/27/a-gunmaker-once-tried-to-reform-itself-the-nra-nearly-destroyed-it>

¹⁷ *Id.*

trial that “each manufacturer should implement readily available reforms,” including “imposing liability insurance standards; limiting sales at gun shows; limiting multiple sales; limiting how the consumer gun transaction can be conducted to insure security; education and training of dealers; and monitoring dealers through visitation and other regular interaction.”¹⁸

Rather than heeding the warnings from industry insiders, the government, and victims, the gun industry has instead washed its hands of any responsibility. Ricker put it best in his 60 Minutes interview when he shared that, instead of changing the way it conducted business, the industry chose to “put a different spin on the problem... [a]nd basically deny that anyone in the industry is doing anything wrong, and it's a criminal problem.”¹⁹ Worse yet, in 2005, the gun industry bought itself a Congressional shield from civil liability and accountability in the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-7903 (“PLCAA”).

PLCAA helps manufacturers, but the public shoulders the cost

Contrary to popular belief, PLCAA is not a complete immunity law, but it does make it much harder for those harmed by industry conduct to get their day in court. In most cases, it has effectively closed the courthouse doors to thousands of people, thereby giving the industry cover to continue engaging in irresponsible and dangerous conduct and to put profits over people. PLCAA has become a license for the gun industry to engage in what the law calls negligence – that is, a license to act unreasonably and cause harm to communities and families across America. And to profit from that unreasonable, deadly conduct.

PLCAA prohibits “qualified civil liability actions”²⁰ against the gun industry. A qualified civil liability action is a tort claim for harm resulting from a third party’s criminal or unlawful misuse of a firearm.²¹ Still, PLCAA explicitly allows six types of claims, including actions against sellers and manufacturers who knowingly violated applicable federal or state laws, negligent entrustment, negligence per se, and products liability claims.²² In other words, PLCAA does not protect the gun industry from a narrow group of lawsuits based on its *own* negligence or criminal conduct. Accordingly, Brady has brought numerous successful cases in which courts have correctly found that PLCAA does not bar liability for a dealer’s own negligent conduct. However, most courts have misread PLCAA as providing sweeping protection to gun dealers and manufacturers.²³

¹⁸ NAACP v. AcuSport, Inc., 271 F. Supp. 2d 435, 523 (E.D.N.Y. 2003).

¹⁹ CBS Interactive. (2003, May 9). *Firing back*. CBS News. Retrieved July 26, 2022, from <https://www.cbsnews.com/news/firing-back/>

²⁰ 15 U.S.C. § 7902

²¹ *Id.*

²² 15 U.S.C. § 7903

²³ Kelly, C. (22 February, 2013). *Alaska Supreme Court sends wrongful death suit back to Juneau Superior Court*. KTOO. Retrieved July 26, 2022, from <https://www.ktoo.org/2013/02/22/alaska-supreme-court-sends-wrongful-death-suit-back-to-juneau-superior-court/?e>

This illusion of PLCAA “immunity” not only leads to overly broad interpretations, but it also makes cases more difficult, expensive, and complex than necessary. For that reason, many would-be litigants do not bring their claims at all. The net effect makes the gun industry less subject to justice and less inclined to adopt responsible, life-saving business practices.

If courts construed PLCAA as its text — and its supporters said it should be — it would bar lawsuits that seek to hold the gun industry liable for the mere act of responsibly selling firearms that criminals happen to use, but it would allow lawsuits against irresponsible sellers whose negligent actions foreseeably arm criminals. PLCAA’s author, chief sponsor, and floor leader, then-Senator Larry Craig, couldn’t have been more clear:

PLCAA does not protect firearms or ammunition manufacturers, sellers, or trade associations from any other lawsuits based on their own negligence or criminal conduct . . . As we have stressed repeatedly, this legislation will not bar the courthouse doors to victims who have been harmed by the negligence or misdeeds of anyone in the gun industry . . . If manufacturers or dealers break the law or commit negligence, they are still liable . . . The only lawsuits this legislation seeks to prevent are novel causes of action that have no history or grounding in legal principle.²⁴

Unfortunately, because of paltry oversight and enforcement, a lack of transparency, and a broad interpretation of PLCAA, the gun industry can sow carnage and reap profit by flooding the market with guns, and can then deflect blame by exalting a “good guy with a gun.”

Ultimately, though, the American people end up paying the price of these claims’ effects. The most recent study calculates the annual total cost of firearm-related death and injury in the United States to be \$557 billion, or nearly \$35 million each day. This number includes direct costs of health care and emergency services and indirect costs, such as lost income from victims and caregivers.²⁵ Gun violence, rampant as a result of aforementioned industry practices, not only takes an emotional toll, but ravages communities’ economic standings. All Americans feel this burden, but it is most heavily shouldered by Black and Brown communities.

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Alaska courts held that PLCAA barred a gun dealer from negligence liability for allowing a criminal to walk out of the store with a gun without a background check, after leaving the purchase price of the gun on the counter — one of over 200 “missing” guns from the store. Other courts have held that PLCAA exempts gun companies from liability for their negligence, or from causing a public nuisance.

²⁴ Protection of Lawful Commerce in Arms Act, S.397, 109th Cong. (2005)

<https://www.congress.gov/congressional-record/volume-151/issue-104/senate-section/article/S9087-1>

²⁵ *The economic cost of gun violence*. Everytown Research & Policy. (2022, July 19). Retrieved July 26, 2022, from <https://everytownresearch.org/report/the-economic-cost-of-gun-violence/>

Manufacturers’ record-breaking profits come at the expense of Black and Brown communities

The United States is a global outlier when it comes to gun violence. According to a study published in the *American Annals of Medicine*, the United States’ “firearm homicide rate is more than 25 times that of comparable countries, and the firearm suicide rate is 8 times higher.”²⁶ But, when it comes to gun violence *within* the United States, Americans of color, especially Black people, are outliers within the outlier. According to a study of 2016 homicide data published by the Violence Policy Center, Black people were only 13% of the American population, but accounted for 51% of the total homicide victims – the vast majority of which was caused by a gun.²⁷

Behind these deaths is a gun market fed, in part, by manufacturers’ irresponsible business practices. As Brady found, guns very often flow from manufacturers, distributors, and dealers in white communities into Black communities. Data Brady obtained from the ATF revealed that the vast majority of people responsible for selling guns in California, Illinois, Michigan, New Jersey, and Wisconsin pursuant to a Federal Firearms license are white. The data refutes the popular notion that urban gun violence is chiefly a problem that starts and stops with Black people living in city limits. Chicago, for example, is a favorite target for those who would paint gun violence as a “black problem,” but there is not a single gun store in the city.²⁸

Cook County, Illinois, however – a mostly white suburb of Chicago²⁹ – plays an outsized role in supplying crime guns to Chicago. In 2017, the city of Chicago analyzed available gun trace data from 2013 to 2016 and found that “federally licensed Illinois dealers primarily located in suburban Cook County were the original point of purchase for approximately **two out of every five** crime guns recovered in Chicago: This proportion is nearly identical to what was observed

²⁶ *Id.*

²⁷ *Black homicide victimization in the United States - Violence policy center.* Violence Policy Center. (2019, May). Retrieved July 26, 2022, from <https://vpc.org/studies/blackhomicide19.pdf>

²⁸ *In Pursuit of Peace: Building Police-Community Trust to Break the Cycle of Violence.* Giffords. (2021, September 29). Retrieved July 26, 2022, from <https://giffords.org/lawcenter/report/in-pursuit-of-peace-building-police-community-trust-to-break-the-cycle-of-violence/> “[A] majority of shootings in our nation’s most impacted cities are perpetrated by a small subset of group members, and that less than 0.6% of the average city’s population is involved with groups. It’s hard to credibly claim that a dominant culture of violence exists in communities where the population expresses at least as much opposition to violence as other communities and where well over 99% of residents are not involved in groups and do not perpetrate violence. Even so, this “culture of violence” narrative persists, and is often racialized. Because community violence is disproportionately concentrated within segregated communities of color, a number of public figures have claimed that essential cultural or racial differences are to blame.”

²⁹ *U.S. Census Bureau quickfacts: Cook County, Illinois.* United States Census Bureau. (n.d.). Retrieved July 26, 2022, from <https://www.census.gov/quickfacts/fact/table/cookcountyillinois/PST120221>

in previous trace data from 2009-2013 ” (emphasis added).³⁰ In other words, any characterization of gun violence in Chicago that does not consider the suburbs is woefully incomplete.

Even so, some authorities insist on ignoring the role that suburban gun stores play. Former President Trump has repeatedly blamed Chicago’s leadership for failing to control gun violence with its strong gun laws, ignoring the fact that Chicago exists within a broader regional gun market:

You know what's wrong with Chicago? Weak ineffective politicians. Democrats that don't want to force restrictions and don't t— and by the way, Chicago, for those of you that are going to say "guns, guns" — Chicago has the toughest gun laws in the United States, okay? Just in case you were thinking about — you know, they immediately say, "Oh, you've got to take away." Well, Chicago has the toughest gun laws in the United States.³¹

It is important to consider the makeup of Chicago’s regional gun market. In Cook County, there are 137 people responsible for selling guns under a federal firearms license; 97% of them are white. In fact, only *one* of the 137 people responsible for selling firearms in Cook County, Illinois, is Black. This discrepancy does not align with Cook County’s demographics, which is only 65.2% white³² The three counties surrounding Chicago: DuPage, Lake, and Will, show the same picture: of the 338 people responsible for operating federal firearms licenses across those three counties, 318 or 94.1% are white, while less than one percent (two) are Black.

Other metropolitan areas show the same trend as Chicago. There are 208 people responsible for operating federal firearms licenses in Wayne County, Michigan, home to Detroit, and 92.3% of them are white. Yet, according to the 2010 Census, Wayne County is only 54% white.³³ Likewise, there are 62 people responsible for operating a federal firearms license in Alameda County, California, home to Oakland, and 85% of them are white. According to the 2010 U.S. Census, Alameda County is only 49% white.³⁴ To put it plainly, it is fair to say that white Americans are supplying, and profiting from, much of the gun violence hurting Black communities.

³⁰ City of Chicago, Office of the Mayor. (n.d.). Gun Trace | Report 2017. Retrieved July 26, 2022, from <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/October/GTR2017.pdf>

³¹ Trump, D.J. (2017, December 08). Remarks at a "Make America Great Again" Rally in Pensacola, Florida. The American President Project. <https://www.presidency.ucsb.edu/documents/remarks-make-america-great-again-rally-pensacola-florida>

³² U.S. Census Bureau *quickfacts*: Cook County, Illinois. United States Census Bureau. (n.d.). Retrieved July 26, 2022, from <https://www.census.gov/quickfacts/fact/table/cookcountyillinois/PST120221>

³³ U.S. Census Bureau *quickfacts*: Wayne County, Michigan. United States Census Bureau. (n.d.). Retrieved July 26, 2022, from <https://www.census.gov/quickfacts/waynecountymichigan>

³⁴ U.S. Census Bureau *quickfacts*: Alameda County, California. United States Census Bureau. (n.d.). Retrieved July 26, 2022, from <https://www.census.gov/quickfacts/alamedacountycalifornia>

Racist tropes mask the industry’s role in gun violence and become dangerous marketing fodder

Those who wish to sequester the issue of gun violence within already marginalized communities are inclined to point to racial disparities in gun homicide as a result of “inherent violence” or “deficient cultural values,” or to dismiss it altogether as “Black-on-Black crime.”

However, these stereotypes are not only steeped in racism, but are patently incorrect. As the Vera Institute for Justice observed, intraracial violence between white Americans far outpaces that of other groups: “[a] report from the Bureau of Justice Statistics found that most violence occurs between victims and offenders of the same race, regardless of race: 57 percent of the nearly 3.7 million reported violent crimes committed against white victims were perpetrated by white offenders; while of the 850,720 reported violent crimes committed against black victims, 63% were committed by black people.”³⁵

Furthermore, economic and social conditions – including those created by systemic racism – have made Black and Latino people more likely to be exposed to gun homicide. The U.S. Department of Housing and Urban Development, for instance, analyzed violent crime and found that higher rates of violent crime in predominantly Black communities “are linked to structural disparities,” namely that segregated neighborhoods have less access to resources, institutions and advantages.³⁶ Put differently, “higher rates of poverty and the cumulative effects of structural racism mean Black people are exposed to the structural risk factors that make crime more likely at greater rates than their white counterparts.”³⁷

Indeed, violence more clearly correlates to unemployment than it does to race. A study analyzing data from a National Longitudinal Survey of Youth between 1976 and 1989 found that young Black males engaged in more violent crime than young White males. But when the researchers compared only employed young males of both races, the differences in rates of violent behavior vanished. Or, as the Urban Institute stated in a more recent report on long-term unemployment,

³⁵ Elizabeth, H., & Henderson, L. S. (n.d.). *For the record: Unjust burden racial disparities*. Vera Institute. Retrieved July 26, 2022, from <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>

³⁶ Office of Policy Development and Research. *Neighborhoods and Violent Crime* (2016). Retrieved July 26, 2022, from <https://www.huduser.gov/portal/periodicals/em/summer16/highlight2.html>

³⁷ Elizabeth, H., & Henderson, L. S. (n.d.). *For the record: Unjust burden racial disparities*. Vera Institute. Retrieved July 26, 2022, from <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>

“Communities with a higher share of long-term unemployed workers also tend to have higher rates of crime and violence.”³⁸

The United Nations, too, has reached this conclusion. In 2014, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) placed the blame for disproportionate gun homicide squarely at the U.S. Government’s feet, holding “that this disproportionate loss of life and injury in the African-American population to gun violence, as well as the US Congress's behavior through both its inactions and actions, place the State Party's government in violation of obligations contained in Articles 2, 5 and 6 of the ICERD treaty.”³⁹ With precision, ICERD linked structural racism and poor policy making to gun violence saying:

With firearms readily available for purchase in the United States through both legal and illegal channels, the causes of such statistics in the African-American population are linked either directly or indirectly to the effects of racial discrimination and bias: a) overt expressions of racial hatred (paragraph 22); b) implicit (subconscious) expressions of racial bias in shootings (paragraph 23), as also expressed in the judicial system regarding jury verdicts where Stand Your Ground laws have been used as a legal defense (paragraph 24); and, c) predominately Black economically depressed urban areas (created and maintained by racial discrimination through multiple factors identified in the US periodic update) where African-Americans become both victims and perpetrators of violent crime (paragraph 25) as evidenced by law enforcement statistics and news media analysis from two major US cities, New York City (paragraph 26) and Chicago (paragraph 27).⁴⁰

Lax gun laws, racist economic and social policies, and political indifference combine to make gun homicide a particular threat to Black and Brown people in America. The gun industry manipulates that very threat, and the perceptions it produces, to induce more people to buy firearms. Consider, for example, the many advertisements in which gun manufacturers claim that their firearms will keep the purchaser safe.

Manufacturers falsely claim that guns will make people safer

³⁸ Kendi, I.X. (2019). *How to be an Antiracist*, p. 79 (emphasis added); e.g., “Another study found that the 2.5 percent decrease in unemployment between 1992 and 1997 resulted in a decrease of 4.3 percent for robbery, 2.5 percent for auto theft, 5 percent for burglary, and 3.7 percent for larceny. Sociologist Karen F. Parker strongly linked the growth of Black-owned businesses to a reduction in Black youth violence between 1990 and 2000. In recent years, the University of Chicago Crime Lab worked with the One Summer Chicago Plus jobs program and found a 43 percent reduction in violent-crime arrests for Black youths who worked eight-week-long part-time summer jobs, compared with a control group of teens who did not. In other words, researchers have found a much stronger and clearer correlation between violent-crime levels and unemployment levels than between violent crime and race.”

³⁹ Kamm, A. R. (2014, June 30). *African-American Gun Violence Victimization in the United States: Response to the Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination*. Violence Policy Center. Retrieved July 26, 2022, from

https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17654_E.pdf

⁴⁰ *Id.*

Like any other business, firearm manufacturers market their wares, but their advertisements are often militaristic, misleading, and dangerous. Owning a gun does not correlate to increased safety, and reports of defensive gun use are vastly overstated.⁴¹ Yet, manufacturer advertisements falsely suggest otherwise.⁴² In a petition to the Federal Trade Commission, Brady, Giffords, and March for Our Lives referenced multiple manufacturers' ads that suggested buying a firearm would make the purchaser safer.⁴³ Smith & Wesson advertised a pistol by calling it "homeowner's insurance" and a "self-defense" weapon.⁴⁴ Likewise, the petition featured advertisement from Glock with the hashtag "#protectthefamily."⁴⁵

Manufacturers falsely assert relationships with the military, appealing in particular to young men and those who would oppose the government

Moreover, some manufacturers rely on militaristic tropes to market firearms, suggesting that assault style rifles are necessary to protect "freedom." But "freedom" in the context of firearms has a very particular meaning. As Representative Raskin pointed out in a House Judiciary Committee Markup in July 2022, this insurrectionist view of the Second Amendment is "absolutely absurd and false."⁴⁶ This framing, though, is particularly seductive to extremists who see themselves as building an arsenal to contest the government. This mindset was a threat to this very House on January 6 and it is still at play today. For more information please refer to the report "Origin of an Insurrection" attached.

For an infamous example of how militaristic tropes connect with mass violence, Remington advertised the firearms chosen by the shooter at Sandy Hook Elementary with claims that it is the "ultimate military combat weapons system" that would "reissue" the purchaser's man card, and make "forces of opposition, bow down."⁴⁷ The shooter later used that firearm to slaughter 26 children and educators. Daniel Defense, maker of the weapon chosen by the shooter at Robb Elementary in Uvalde, Texas, uses similar militaristic language in its advertisements. For

⁴¹ *Do guns make us safer? Science suggests no.* Harvard T.H. Chan School of Public Health News. (2018, July 16). Retrieved July 26, 2022, from

<https://www.hsph.harvard.edu/news/hsph-in-the-news/do-guns-make-us-safer-science-suggests-no/>

⁴² Moyer, M. W. (2022, May 25). *Will a gun keep your family safe? Here's what the evidence says.* The Trace. Retrieved July 26, 2022, from <https://www.thetrace.org/2020/04/gun-safety-research-coronavirus-gun-sales/>

⁴³ Everytown Law and Brady: United Against Gun Violence. (2021, August 17). Letter in Support. Retrieved July 26, 2022, from <https://everytownlaw.org/wp-content/uploads/sites/5/2021/08/2021.08.17-SW-FTC-Submission.pdf>

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ House Judiciary Committee. (2022, July 20). *H.R. 2814, the equal access to justice for victims of Gun Violence Act; H.R. 1808, the Assault Weapons Ban of 2021.* H.R. 2814, the Equal Access to Justice for Victims of Gun Violence Act; H.R. 1808, the Assault Weapons Ban of 2021 | U.S. House of Representatives Judiciary Committee. 2:56:00-2:56:22. Retrieved July 26, 2022, from <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=4990>

⁴⁷ Giffords Law Center to Prevent Gun Violence, Brady: United Against Gun Violence, and March for Our Lives. (2022, April 7). *The Gun Industry's Advertising: Effective, Deadly, and Actionable.* Retrieved July 26, 2022, from <https://firearmsaccountability.org/FTCPetition.pdf>

instance, Daniel Defense frequently features military imagery in its advertisements with the phrase “use what they use” —presumably referring to the military.⁴⁸ A Mossberg advertisement for an assault rifle “engineered to the specs of freedom and independence” is yet another example.⁴⁹ Indeed, there are numerous examples of manufacturers’ relying on such militaristic themes.

This militaristic language is disproportionately attractive to the very types of young men who disproportionately commit public mass shootings. To wit, Brady and Everytown filed a complaint against Smith & Wesson, arguing that adrenaline-based advertisements specifically attract young men.⁵⁰ The complaint, filed in 2020, noted that young male shooters between the ages of 19-26 have committed the most deadly shootings in U.S. History.⁵¹ This remains true in 2022.⁵² The Complaint argues that there is a direct link between manufacturer marketing and radicalized young men relying on assault rifles to commit mass shootings.⁵³ Specifically, Smith & Wesson told would-be consumers that they would “[Experience More Adrenaline” and encourage consumers to “Kick Brass.” These advertisements also associate Smith & Wesson’s rifles with both the U.S. military and law enforcement to take advantage of the propensity of adolescent and young adult men to be drawn to the risk-taking associated with militaristic weapons or combat missions.⁵⁴

In a 2021 Letter in Support of their Complaint to the FTC, Brady and Everytown note that “[a]dolescent and young adult men are both highly susceptible to product advertising and, in particular, receptive to advertisements that depict impulsive, thrill-seeking behavior. In part, this is because this group is less able to comprehend the nature of the risks involved in such behavior.”⁵⁵

Most efforts to prevent gun violence focus on the perpetrators, and certainly, these demand-side efforts – whether via public policy, criminal justice reform, or social service programs – are necessary to save lives. But they alone are not sufficient to end America’s epidemic of gun

⁴⁸ *Id.*

⁴⁹ JudiciaryDems. (2022, July 20). Twitter. Retrieved July 26, 2022, from

<https://twitter.com/JudiciaryDems/status/1549783291582185475?ext=HHwWhoC82ans94ErAAAA>

⁵⁰ Everytown Law & Brady: United Against Gun Violence. (2020, May 31). *Complaint and Request for Investigation of Smith & Wesson Brands, Inc.* Retrieved July 26, 2022, from <https://everytownlaw.org/documents/2020/05/ftc-letter.pdf/>

⁵¹ *Id.*

⁵² Follman, M., Aronsen, G., & Pan, D. (2012, December 29). *US mass shootings, 1982–2022: Data from Mother Jones' investigation.* Mother Jones. Retrieved July 26, 2022, from <https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/>

⁵³ Everytown Law & Brady: United Against Gun Violence. (2020, May 31). *Complaint and Request for Investigation of Smith & Wesson Brands, Inc.* Retrieved July 26, 2022, from <https://everytownlaw.org/documents/2020/05/ftc-letter.pdf/>

⁵⁴ *Id.*

⁵⁵ Everytown Law and Brady: United Against Gun Violence. (2021, August 17). *Letter in Support.* Retrieved July 26, 2022, from <https://everytownlaw.org/wp-content/uploads/sites/5/2021/08/2021.08.17-SW-FTC-Submission.pdf>

violence, and the burden of ending gun violence should not rest solely on the communities most impacted; rather, the onus must rest as well on manufacturers and other supply-side groups to tackle this problem

Marketing practices threaten already-marginalized communities

The implication within these advertisements is that the purchaser is the proverbial “good guy with a gun.” Racial biases within society mean that a “good guy with a gun” is usually code for white. In 2016, police shot and killed Philando Castile, a Black, licensed firearm owner who was merely sitting in his car;⁵⁶ In 2015, police escorted a white man who shot and killed 9 Black people during Bible study to a Burger King.⁵⁷

As such, the gun industry’s marketing of “self defense tools,” and their assertions that that everyone needs to be ready to “defend” themselves against “dangerous” “criminals,” are anything but neutral. Such marketing rests on a foundation of longstanding biases Black and Brown people. When sociologist Angela Stroud asked white gun owners why they choose to arm themselves, “they frequently replied with answers that highlighted a ‘criminal class’ of people of color to justify gun ownership.”⁵⁸ Further research bears this out. Professor Alexandra Filindra, for example, conducted a study that found a link between racial resentment, implicit bias, and opposition to gun violence prevention.⁵⁹ It is crucial to surface the racial biases hidden behind the gun industry’s marketing choices.

Conclusion

America’s gun violence epidemic stems from a variety of root causes, but for too long, we have downplayed one of the most significant: the gun industry’s business practices. Manufacturers, distributors, and dealers each play a significant role in keeping guns out of the hands of those who would misuse them. However, manufacturers – as the designers, marketers, and point of origin for almost all firearms – have a particular obligation to act responsibly. Yet, there is ample evidence that manufacturers turn a blind eye to their role in facilitating the illegal secondary gun market. Further, manufacturers overstate firearms’ safety benefits, while stoking fear to sell even more firearms. Worse yet, manufacturers use their power to further insulate themselves from the

⁵⁶ Lopez, G. (2016, July 7). *Philando Castile Minnesota police shooting: Officer cleared of manslaughter charge*. Vox. Retrieved July 26, 2022, from

<https://www.vox.com/2016/7/7/12116288/minnesota-police-shooting-philando-castile-falcon-heights-video>

⁵⁷ *Cops bought Burger King for Dylann roof following his arrest*. ABC7 Los Angeles. (2015, June 23). Retrieved July 26, 2022, from

<https://abc7.com/dylann-roof-south-carolina-church-shooting-emanuel-african-methodist-episcopal/801013/>

⁵⁸ Metzl, J. M. (2019, April 2). What guns mean: The symbolic lives of firearms. *Nature News*. Retrieved July 26, 2022, from <https://www.nature.com/articles/s41599-019-0240-y/>

⁵⁹ Lopez, G. (2016, April 13). A researcher explains how racial resentment drives opposition to gun control. Vox. Retrieved July 26, 2022, from <https://www.vox.com/2016/4/13/11408528/guns-race-white-identity>

consequences of their actions by lobbying Congress to pass PLCAA and undermining the ATF's enforcement power.

As a result of irresponsible business practices, alarmist marketing, and lax enforcement, manufacturers have flooded communities and homes with firearms, thereby playing a role in gun violence. Nothing in the Second Amendment suggests that manufacturers have the right to prioritize profits over people by acting negligently; holding gun manufacturers accountable for their actions is completely consistent with the Second Amendment. Every day, Americans are dying from preventable gun violence, and it is past time to take action. That is why we urge Congress to pass legislation implementing a system of regulations with the end goal of eliminating gun violence, which includes – among many other things – regulating gun manufacturers via H.R. 2814 (the Equal Access to Justice for Victims of Gun Violence Act), banning of weapons of war via H.R. 1808 (the Assault Weapons Ban), and investing in long-neglected communities via H.R. 4118 (the Break the Cycle of Violence Act).