
“Congress did not intend to immunize firearm suppliers who engage in truly unethical and irresponsible marketing practices promoting criminal conduct . . .”

I. INTRODUCTION

It took Adam Lanza less than five minutes to murder twenty-six people, including twenty first-grade children. Just after 9:30 a.m. on December 14, 2012, the twenty-year-old gunman entered Sandy Hook Elementary School in Newtown, Connecticut and carried out what was, at the time, the second-deadliest mass shooting in U.S. history. Lanza carried several weapons—authorities recovered a twelve-gauge semiautomatic shotgun, two semiautomatic pistols, and a .22 rifle from the scene—but committed almost all of the murders with a Bushmaster XM15-E2S semiautomatic rifle.

In the years following the shooting, family members of the victims sought to file a lawsuit against Bushmaster Firearms International (Bushmaster), the manufacturer of the XM15-E2S. But they faced a significant hurdle: Federal law provides firearm manufacturers and sellers with significant legal immunity. The Protection of Lawful Commerce in Arms Act (PLCAA) largely prevents plaintiffs from launching civil actions against the industry.

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5. See Soto, 202 A.3d at 273 & n.3 (recounting origins of lawsuit). The families also filed suit against the distributors and sellers of the weapon. See id. at 273.
In 2019, the Connecticut Supreme Court may have opened an entirely new legal avenue for the families in *Soto v. Bushmaster*. The court held that the families may proceed in their lawsuits under the theory that Bushmaster unethically advertised dangerous products. The court reasoned that while the PLCAA blocks many suits, it contains a “predicate exception” that allows for claims made in response to violations of state law. Specifically, the court held that the PLCAA does not bar Connecticut Unfair Trade Practices Act (CUTPA) violation claims. Most states have enacted unfair trade practice statutes with protections similar to Connecticut’s. In light of this case, gun violence victims around the country can test the court’s reasoning in other states as they seek to hold firearm manufacturers and sellers responsible for their advertising practices.

This Note will examine the wider applicability of the *Soto* plaintiffs’ legal theory that the PLCAA does not bar liability for irresponsible firearm marketing practices. Part II of this Note will discuss the history of the PLCAA and previous efforts to work around its restrictions on civil lawsuits. Part III will argue that the Connecticut Supreme Court correctly interpreted the federal statute, and argue that other courts should follow its reasoning. Finally, Part IV will

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9. See id. (allowing lawsuit to move forward).
10. See id. at 301 (holding Congress intended to create PLCAA exceptions for state consumer protection statutes).
11. See id. at 325 (holding CUTPA qualified predicate statute); see also *CONN. GEN. STAT.* § 42-110b(a) (2019) (banning unfair commercial acts).
14. See infra Part III (analyzing statutory exemptions for liability claims).
15. See infra Part II (recounting history of assault weapons regulation and liability protection).
16. See infra Part III (defending *Soto* court’s analysis).
conclude that plaintiffs and policymakers should use all available legal avenues to hold the firearms industry accountable and mitigate gun violence to the extent feasible.17

II. HISTORY

A. Violent Crime in the United States

In the modern era, the United States has typically experienced higher rates of gun violence than similarly situated first-world nations.18 Studies point to numerous potential causes, including the wider proliferation of firearms, made possible by comparatively lax regulations and a constitutional right to bear arms.19 From the mid-1970s to the mid-1990s in particular, the nation experienced a spike in crime.20 This rising crime included a correspondingly higher level of gun violence across the nation.21

The crime wave of the latter half of the twentieth century led to an increase in policing and stricter legislation at both the state and federal level, eventually contributing to mass incarceration.22 The Federal Assault Weapons Ban, which

17. See infra Part IV (advocating future legal action).


20. See NATHAN JAMES, CONG. RSIH. SERV., R45236, RECENT VIOLENT CRIME TRENDS IN THE UNITED STATES 2 fig.1, 3 fig.2 (2018), https://fas.org/sgp/crs/misc/R45236.pdf [https://perma.cc/K8Z7-U7MC] (portraying large annual increases in crime from 1960s through 1980s). In 1960, the United States experienced a violent crime rate of over 150 incidents per 100,000 people, which then increased dramatically during the next three decades, peaking in 1992 at about 750 incidents per 100,000 people. See id. at 2 fig.1. The Federal Bureau of Investigation’s (FBI) Uniform Crime Reporting Program (UCR) defines “violent crime” to include homicide, rape, robbery, and aggravated assault. See id.; see also FED. BUREAU OF INVESTIGATION, U.S. DEP’T OF JUST., UNIFORM CRIME REPORT: CRIME IN THE UNITED STATES, 2018, at 1 (2019), https://ucr.fbi.gov/crime-in-the-u.s/2018/topic-pages/violent-crime/pdf [https://perma.cc/N59B-E6EN] (defining violent crime).


Congress passed in 1994, was one notable piece of legislation aimed at restricting crime.\textsuperscript{23} Alongside legislative efforts, victims of violent crime also responded to the crime wave through civil suits seeking restitution from the makers and sellers of the guns their assailants carried.\textsuperscript{24}

In the late 1990s, the mayors of several major U.S. cities filed separate lawsuits against the handgun industry, relying on various theories of liability.\textsuperscript{25} For


Speaking in support of the legislation, then-Governor Ronald Reagan referred to guns as a “ridiculous way to solve problems that have to be solved among people of good will.” See Winkler, supra (quoting Governor Reagan). Modern studies continue to find a connection between white Americans’ racial attitudes and their views on gun control. See Kerry O’Brien et al., Racial, Gun Ownership and Gun Control: Biased Attitudes in US Whites May Influence Policy Decisions, 8 PLOS ONE, Oct. 31, 2013, at 8 (noting greater symbolic racism correlated with opposition to gun control), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0077552 [https://perma.cc/76GM-F6DH].


instance, in 1998, the City of Chicago and Cook County filed a $433 million lawsuit against thirty-eight firearm retailers, distributors, and manufacturers, arguing that the industry had created a public nuisance with its products.26 Around the same time, New Orleans filed a lawsuit against gunmakers for damages related to the marketing and sales of “unreasonably dangerous firearms.”27

Ultimately, few of the individual or municipality lawsuits proved successful in court.28 One notable exception was Kelley v. R.G. Industries,29 in which the Maryland Court of Appeals held that victims of crimes committed with “Saturday Night Specials”—inexpensive, often poorly-constructed pistols—may hold the manufacturers and sellers of those weapons strictly liable.30 The court reasoned that Saturday Night Specials are typically used for criminal activity, and that manufacturers and sellers should reasonably foresee that the product has no legitimate use.31

For the firearm industry, the real danger was less the possibility of legal defeat and more the cost of defending against each individual lawsuit—a danger which caused some manufacturers to cave under the pressure.32 In 2000, Smith & Wesson made a deal with the Clinton Administration in which it agreed to adhere to new safety and design standards for its weapons.33 In return, the Department of


27. See Morial v. Smith & Wesson Corp., 785 So. 2d 1, 6 (La. 2001) (noting complaint and procedural history).


29. 497 A.2d 1143 (Md. 1985), superseded by statute, MD. CODE ANN., PUB. SAFETY § 5-402(b) (West 2020), as recognized in Halliday v. Sturm, Ruger & Co., 792 A.2d 1145, 1156 (Md. 2002).

30. See Kelley, 497 A.2d at 1159-60 (holding manufacturers and marketers of Saturday Night Specials strictly liable for injuries). The court clarified that manufacturers and dealers would not be held liable for injuries resulting from self-defense or other lawful purposes. See id. (introducing elements of liability).


32. See Kopel, supra note 25 (analyzing plaintiffs’ strategy of filing separate lawsuits to increase defendants’ costs).

Housing and Urban Development and certain state and local governments promised not to sue the company and agreed to dismiss it from pending suits.34

B. Restricting the Firearms Industry’s Civil Liability

1. The Protection of Lawful Commerce in Arms Act

The threat of increased civil liability caused rising alarm among firearm manufacturers and sellers—as well as allied interest groups, such as the National Rifle Association (NRA), and many members of Congress.35 During a 2003 hearing of the House Judiciary Committee’s Subcommittee on Commercial and Administrative Law, Representative Chris Cannon argued that “[s]uch lawsuits threaten to separate tort law from its basis in personal responsibility and to force firearms manufacturers into bankruptcy,” leaving plaintiffs scrambling for “pennies on the dollar.”36 Cannon also worried that manufacturer bankruptcies and a diminishing supply of firearms on the market would weaken the Second Amendment.37 Through increased lobbying pressure, these groups persuaded Congress to pass the PLCAA in October of 2005.38

The main purpose of the law is to prohibit qualified civil liability actions against firearm manufacturers in state and federal court.39 The PLCAA defines a “qualified civil liability action” as a civil or administrative proceeding that

in exchange for safer design); see also Kopel, supra note 25 (noting Smith & Wesson’s decision to settle with federal government).

34. See Smith & Wesson Agreement, supra note 33 (setting forth terms of agreement). In exchange for the federal government agreeing to settle all claims against the company, Smith & Wesson pledged to implement a number of new safety features in its handgun products, including hidden serial numbers, locking devices, and more testing to ensure guns would not fire when dropped. See id. (elucidating terms of safety agreement). The agreement never had a practical impact, however, as it was implemented at the end of the Clinton Administration and the Bush Administration declined to enforce it. See Rosner, supra note 25, at 440 (explaining Bush Administration’s position on safety agreement).


37. See id. at 10. “Under the currently unregulated tort system, personal injury lawyers are seeking to obtain through the courts stringent limits on the sale and distribution of firearms beyond the court’s jurisdictional boundaries,” Representative Cannon said during the hearing. Id. “Such a State lawsuit in a single county could destroy a national industry and deny citizens everywhere the right to keep and bear arms guaranteed by the Constitution.” Id.


39. See 15 U.S.C. § 7901(b) (setting forth law’s purpose); id. § 7902(a) (prohibiting actions in state and federal courts).
results from “criminal or lawful misuse” of firearms. The law effectively preempts shooting victims from seeking remedies from firearm manufacturers, even when a third party criminally or unlawfully used the firearm.

The PLCAA, however, includes several crucial exceptions. For example, the PLCAA does not prevent a person from facing civil liability under 18 U.S.C. § 924(h) if convicted of knowingly transferring a firearm to someone they know will use it to commit violence. In addition, sellers may be liable for negligent entrustment if they know, or reasonably should know, that a buyer will use a gun to injure others. Manufacturers still face liability for design or manufacturing defects that cause injuries.

The PLCAA also includes what has become known as the “predicate exception.” Under this exception, plaintiffs may assert that defendants violated an underlying statute—either state or federal—provided that the statute is applicable to the sale or marketing of firearms. Courts have focused on the word “applicable” to determine the breadth of the exception. The Black’s Law Dictionary definition of the word “applicable” is “capable of being applied; fit and right to be applied.”

The challenge for the courts has been determining whether an

40. Id. § 7903(5)(A) (defining “qualified civil liability action”).
42. See § 7903(5)(A)(i)-(vi) (listing exceptions to law).
43. See id. § 7903(5)(A)(i) (prohibiting illegal transfer of firearms); see also 18 U.S.C. § 924(h) (prohibiting transfer of firearm, knowing someone used it in crime).
45. See id. § 7903(5)(A)(v) (exempting dangerous defects). During the debate on the PLCAA, Senator Craig explained the strictness of this exception:

[T]his bill is not intended to prevent lawsuits against the industry for damages resulting from a defective product. Language was added to this section of the bill to make clear that even if the person who discharged a defective product was technically in violation of some law relating to possession of the product, that alone would not bar the lawsuit. For instance, if a juvenile were target shooting without written permission from his parents—that is a violation of current law, a violation of 18 U.S.C. 922y [sic]—and was injured by defective ammunition, the juvenile would still be able to bring a suit against the ammunition manufacturer.

46. See 15 U.S.C. § 7903(5)(A)(iii) (exempting violations of state and federal statutes); see also Citt, supra note 24, at 4-5 (explaining predicate exception). A “predicate statute” is simply an underlying statute that, if violated, triggers this section. See Citt, supra note 24, at 4-5 (explaining statutory language).
47. See § 7903(5)(A)(iii) (excluding both federal and state statutes); Citt, supra note 24, at 4-5 (noting applicability to sale or marketing of firearms requirement).
49. Applicable, Black’s Law Dictionary (11th ed. 2019). When interpreting statutes, courts will refer to the plain meaning of the words before exploring other evidence. See, e.g., Barnhart v. Sigmon Coal Co., 534
applicable statute encompasses all laws that could potentially apply to the sale or marketing of firearms—including general criminal or nuisance statutes—or simply those laws that specifically regulate the industry. 50

2. Modern Mass Shooting Trends

Overall violent crime levels in the United States peaked in the early 1990s and have declined consistently since. 51 Concurrently, the trend in federal legislation, as well as in many states, has diverged from the stricter gun control laws of the past. 52 Congress allowed the assault weapons ban to expire in 2004 and never replaced it with a similar law. 53 An increasing number of states have adopted “constitutional carry” laws, making it legal to carry a handgun openly or concealed without a permit. 54

Although overall violent crime levels have declined, the number of mass shootings have increased. 55 Though there is some debate over the meaning of the term, the Congressional Research Service defines a “public mass shooting” as an event in which a gunman kills four or more people. 56 Between 1966 and


50. See Chu, supra note 24, at 5-7 (noting differing approaches to applicability).
51. See James, supra note 20, at 1 (noting declining violent crime rates since early 1990s).
53. See Elving, supra note 23 (noting expiration of assault weapons ban).
1999, such shootings occurred in the United States every 180 days on average.\(^5^7\) Between 1999 and 2015, that rate increased to once every eighty-four days.\(^5^8\) The Sandy Hook shooting was just one high-profile, high-casualty event among many.\(^5^9\)

C. Understanding Adam Lanza and the AR-15

1. Lanza’s Mental State

Efforts to understand why Lanza committed such a crime have painted a portrait of a deeply troubled individual.\(^6^0\) A report by the Connecticut Office of the Child Advocate concluded that Lanza suffered “significant developmental challenges” for much of his life, and had a “preoccupation with violence” from an early age.\(^6^1\) Though his needs appeared significant, Lanza received limited mental health treatment, and his records are marked by recommendations that ultimately received little to no follow-up.\(^6^2\)

The report’s authors were careful to note that mental illness—and the failure to adequately address it—does not inevitably lead one to mass murder.\(^6^3\) What does increase the likelihood of a shooting, the authors concluded, is access to firearms.\(^6^4\) Guns were a regular presence in the Lanza household, and as a young

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fit “public mass shooting” definition). According to the report, public mass shootings tend to occur in public settings such as “schools, workplaces, restaurants, parking lots, public transit, even private parties that include at least some guests who are not family members of the shooter.” Id. The four-person threshold is based on the FBI’s definition. See id.  
57. See Berkowitz et al., supra note 55 (noting mass shooting trends prior to Columbine High School massacre).  
58. See id. (noting increasing rate of mass shootings).  
61. See id. at 6 (reviewing Lanza’s early life).  
62. See id. at 6, 8 (noting relative lack of treatment). In 2005, Lanza was diagnosed with Asperger’s Syndrome, an Autism Spectrum Disorder, but reportedly disagreed with the diagnosis and resisted treatment. See id. at 38, 83.  
63. See id. at 106 (finding no connection between autism spectrum disorder and increased likelihood of violence). Some research has identified a link between antisocial personality disorder and violent outcomes. See RongQin Yu et al., Personality Disorders, Violence, and Antisocial Behavior: A Systematic Review and Meta-Regression Analysis, 26 J. PERSONALITY DISORDERS 775, 786 (2012) (concluding higher risks of violence for those with personality disorders).  
64. See Eagan et al., supra note 60, at 79 (discussing connection between firearm access and violence); see also Siegel et al., supra note 19, at 2103 (finding relationship between gun ownership and homicide rates).
adult Adam Lanza would often join his family for target-shooting practice.\textsuperscript{65} There is no evidence that Lanza’s parents made any serious effort to limit his access to firearms as his mental health deteriorated.\textsuperscript{66}

2. The AR-15

Lanza’s Bushmaster XM15-E2S was an AR-15-style rifle, a category of weapon modeled after the ArmaLite AR-15.\textsuperscript{67} Developed in the late 1950s as a new, modern weapon, the ArmaLite AR-15 was lighter than previous designs and had a higher rate of fire.\textsuperscript{68} It also shot smaller, lighter ammunition that could travel faster and cause more serious injuries upon impact.\textsuperscript{69} The U.S. military adopted the M-16 rifle, a version of ArmaLite’s design, in the 1960s as combat operations escalated in Vietnam.\textsuperscript{70}

Unlike many military models, the AR-15-style rifles manufactured for civilian use are semiautomatic weapons, firing one shot with each pull of the trigger.\textsuperscript{71} Still, these weapons are highly lethal, propelling bullets at almost three times the

\textsuperscript{65} See Eagan et al., supra note 60, at 78-79 (describing Lanza family’s history with guns). Lanza’s family first took him shooting at five years old. Id. at 79.


\textsuperscript{67} See Sides, supra note 4, at 1 (summarizing events of shooting and specifying weapons used); see also Candiotti et al., supra note 2 (identifying weapons used); Soto v. Bushmaster Firearms Int’l, LLC, 202 A.3d 262, 275 (Conn. 2019) (identifying XM15-E2S Remington’s version of AR-15 rifle), cert. denied sub nom. Remington Arms Co. v. Soto, 140 S. Ct. 513 (2019).


\textsuperscript{69} See C.J. Chivers, THE GUN 277 (2010) (describing capabilities of rifle model). The initial AR-15 could shoot a .223 round more than 3,200 feet per second. Id. (highlighting initial AR-15’s abilities). To sell the new rifle, ArmaLite representatives traveled across the country to conduct live-fire demonstrations, shooting through durable objects—such as cars—from seventy-five yards away. Id. at 278 (recalling ArmaLite sales tactics). Describing a demonstration, one summary noted that “[t]he penetrating effects of the .233 round are devastating from a practical standpoint.” Id. (characterizing ArmaLite demonstrations).

\textsuperscript{70} See Fallows, supra note 68 (describing process of adopting M-16 rifle). The M-16 gradually replaced the older M-14, which was heavy and difficult to aim during rapid fire. See id. (describing transition to new rifle). By comparison, ArmaLite’s new model used lighter ammunition and therefore weighed less than the M-14. See id. (contrasting rifles).

speed of sound. At such velocities, bullets do not merely pass through flesh; the force from the impact rips open a cavity in the body, destroying tissue, blood vessels, and vital organs. Lanza’s Bushmaster rifle was semiautomatic, yet he was still able to fire more than 150 shots in less than five minutes.

Though AR-15 style rifles are civilian firearms, Bushmaster advertised its weapons not only for target shooting and home defense, but also for offensive use. These advertisements contained aggressive messages implying violent conduct, such as a 2010 catalogue entry that referred to one rifle as “the ultimate combat weapons system” and declared, “[f]orces of opposition, bow down. You are single-handedly outnumbered.” AR-15-style rifles remain some of the most popular guns in the United States, with an estimated 3.3-3.5 million manufactured between 1986 and 2012.

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72. See CHIVERS, supra note 69, at 277 (providing speed of AR-15 bullet).
73. See Fallows, supra note 68 (explaining comparative effects of lighter bullets). While it may seem that a heavier bullet would do more tissue damage because of its greater mass, heavy rounds actually retain more stability as they pass through their targets. See id. (explaining ballistic differences). Lighter bullets become unstable quickly upon impact and as a result leave more serious exit wounds, despite weighing less. See id. (noting increased deadliness of ammunition).
77. See Erica Goode, Rifle Used in Killings, America’s Most Popular, Highlights Regulation Debate, N.Y. TIMES (Dec. 16, 2012), https://www.nytimes.com/2012/12/17/us/lanza-used-a-popular-ar-15-style-rifle-in-newtown.html [https://perma.cc/9PND-SK32] (estimating number of AR-15s in circulation). This figure does not include rifles that were exported to other countries during that period. Id. The AR-15’s popularity can be explained, in part, by its modularity, which allows users to customize the rifle to suit their preferences. See Jon Stokes, The AR-15 Is More Than a Gun. It’s a Gadget, WIRED (Feb. 25, 2013, 6:30 AM),
The shooting at Sandy Hook Elementary School led to a fierce public debate over the legality of AR-15-style rifles. New York banned the Bushmaster XM-15 in 2013. That same year, Connecticut added the rifle series to its list of banned assault rifles. Gun control opponents defeated a federal effort to ban such weapons in the Senate.

D. The Sandy Hook Families’ Lawsuit

1. Connecticut Unfair Trade Practices Act

CUTPA is similar to the consumer protection laws that exist in most states. The law prohibits unfair competition, as well as “unfair or deceptive acts or practices.”

https://www.wired.com/2013/02/ar-15/ [https://perma.cc/Y63H-7VFJ] (describing nature of rifle). With little expertise required, users can exchange barrels, rail systems, and grip styles, and can easily add laser sights and flashlights. See id. (reviewing potential customization options).

78. See Goode, supra note 77 (explaining both sides of debate over assault rifle regulation). While proponents of increased firearm regulation argued that Congress should ban military-style weapons, opponents of regulation claimed that activists were unfairly singling out the rifles. See id.


82. See Daniel P. Scholfield, “That’s Not Fair!” How Soto v. Bushmaster Changed the Interpretation of the Connecticut Unfair Trade Practices Act to Permit Claims by Parties Whom the Defendant Never Met,
practices in the conduct of any trade of commerce.”

Such practices include unethical marketing methods. CUTPA incorporates the FTC’s “cigarette rule,” which prohibits “immoral, unethical, oppressive and unscrupulous” advertising.

The estate administrators of nine Sandy Hook shooting victims filed a lawsuit in 2015 seeking damages and injunctive relief against Bushmaster (the manufacturer), Camfour (the distributor), and Riverview Sales (the retailer that sold the AR-15 to Lanza’s mother). The administrators asserted that Bushmaster negligently entrusted a military-style rifle to a civilian, and wrongfully marketed the rifle in violation of CUTPA. Bushmaster argued that the PLCAA barred these claims.

PULLMAN & COMLEY (Nov. 22, 2019), https://www.pullcom.com/newsroom-publications-1070 [https://perma.cc/5FWB-3F2G] (noting many states passed similar trade laws simultaneously); see also CARTER, supra note 12, at 7-10 (listing state consumer protection laws). Compare CONN. GEN. STAT. § 42-110b (2019) (prohibiting unfair and deceptive trade practices), with MASS. GEN. LAWS ch. 93A, § 2 (2019), and Vt. STAT. ANN. tit. 9, § 2453 (2021). Commonly referred to as Unfair and Deceptive Acts and Practices (UDAP) statutes, states largely enacted these laws in the 1970s and 1980s to give themselves and consumers the power to counter the fraud and abuse the Federal Trade Commission Act (FTC Act) had already prohibited at the federal level. See CARTER, supra note 12, at 5-6 (outlining UDAP history). Today, UDAP statutes continue to share the “basic premise . . . that unfair and deceptive tactics in the marketplace are inappropriate.” Id. at 5. For instance, Massachusetts has a UDAP statute that is similar in strength to that of Connecticut’s in terms of scope and remedies, with both prohibiting general practices rather than specific marketing tactics, making the statutes more flexible as circumstances require. See id. at 7-11, 24, 26 (comparing strength of state consumer protection laws). Massachusetts broadly prohibits deception and unfairness in trade practices and grants the attorney general the power to define these acts. See ch. 93A, § 2 (setting forth consumer protections); see also CARTER, supra note 12, at 26 (summarizing Massachusetts law).

83. § 42-110b(a).

84. See id. § 42-110b(b) (relying on Federal Trade Commission’s (FTC) interpretations of unfair trade practices); id. § 42-110a(4) (defining trade to include advertising).

85. See Soto v. Bushmaster Firearms Int’l, LLC, 202 A.3d 262, 304-05 (Conn. 2019) (naming CUTPA state analogue of FTC Act), cert. denied sub nom. Remington Arms Co. v. Soto, 140 S. Ct. 513 (2019). As the name suggests, the cigarette rule originated from the FTC’s efforts to regulate cigarette marketing in the 1960s. See id. at 305 n.46 (noting rise of standard through FTC policy statement); see also FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244 n.5 (1972) (describing FTC’s factors for unfair practices). More recently, the FTC has moved away from the cigarette rule and toward the “substantial unjustified injury test,” which deems actions unfair if they cause substantial injury, are not outweighed by consumer benefits, and cannot reasonably be avoided. See 15 U.S.C. § 45(n) (defining unfair acts or practices). Soto, 202 A.3d at 305 n.46 (noting evolution away from cigarette rule). The Connecticut Supreme Court decided not to update CUTPA’s incorporation of the cigarette rule to reflect this change. See Soto, 202 A.3d at 305 n.46 (declining to reexamine rule application issue not before court). The court merely noted that even if it had adopted the new federal standard, the outcome of the case would not have changed. See id. (noting Soto’s claims also satisfied new standard).


88. See id. at 272 (summarizing Bushmaster’s argument).
The trial court agreed with Bushmaster that the administrators’ negligent entrustment claims were not legally sufficient under either Connecticut common law or the narrower statutory definition under the PLCAA. The court did not find it reasonably foreseeable that a person willing to do harm would come into possession of the AR-15 in question. Furthermore, the trial court struck the administrators’ predicate exception claim. The court found that an alleged violation of CUTPA could qualify as an exception to the PLCAA because courts have applied the law to the sale and marketing of firearms in the past. Nevertheless, the trial court determined that the CUTPA allegation was legally insufficient in this case because the plaintiff families lacked a consumer or commercial relationship with Bushmaster.

The Connecticut Supreme Court partially reversed the lower court. The court upheld striking the negligent entrustment claim, holding that the nexus between Bushmaster and Lanza himself was far too attenuated to imply liability. The court held, however, that Soto could pursue a claim under CUTPA. The state supreme court adopted a broad reading of the PLCAA’s predicate exception, noting that CUTPA prohibits any unfair trade practices and could therefore apply to the sale and marketing of firearms.

90. See id. at *38-39 (rejecting administrators’ reasoning).
91. See id. at *67 (finding no business relationship between administrators and Bushmaster).
93. See id. at *67 (finding predicate exemption claims insufficient).
94. See Soto, 202 A.3d at 273 (striking negligent entrustment claim but upholding CUTPA claim). The Connecticut Supreme Court transferred the case from the appeals court sua sponte. See id. at 274 n.15 (stating appeal transferred pursuant to Connecticut law).
95. See id. at 283 (rejecting administrators’ theory of negligent entrustment). The court acknowledged the possibility that a seller may be negligent for selling a firearm while reasonably believing that the buyer would entrust it to a specific third party who intended to misuse it. See id. at 282; see also RESTATEMENT (SECOND) OF TORTS § 308 (AM. L. INST. 1965) (defining negligent entrustment). Though young men as a class are more likely to commit mass shootings, the court declined to expand negligent entrustment to include weapon sales to anyone who may share their guns with young men. See Soto, 202 A.3d at 283 (declining to extend negligent entrustment theory).
96. See Soto, 202 A.3d at 284-85 (reversing trial court’s striking of CUTPA allegations). The administrators had proposed two theories of liability under CUTPA: first, that Bushmaster sold weapons on the civilian market that had “no legitimate civilian use,” and second, that Bushmaster advertised weapons in an “unethical, oppressive, immoral, and unscrupulous manner.” See id. at 284. The court barred the first theory under the three-year CUTPA statute of limitations, noting that the clock started with the sale, but accepted the second theory because the wrongful marketing claims involved ongoing activities. See id. at 285 (concluding wrongful advertising theory not barred by statute of limitations); see also CONN. GEN. STAT. § 42-110g(f) (2019) (establishing three-year limitation).
97. See Soto, 202 A.3d at 302 (adopting dictionary definition of “applicable”). The Connecticut Supreme Court also cited the reasoning of the Court of Appeals of Indiana in a similar case involving an alleged violation of state law by a gun manufacturer. See id. (noting broad interpretation of predicate exception). The Indiana Court of Appeals held that the predicate exception applies to any state law that can be applied to the sale and marketing of firearms. See Smith & Wesson Corp. v. City of Gary, 875 N.E.2d 422, 431, 434 (Ind. Ct. App. 2007).
Justice Palmer noted that Connecticut does not permit advertisements that encourage violent behavior and held that “Congress did not intend to immunize firearms suppliers who engage in truly unethical and irresponsible marketing practices promoting criminal conduct.”

2. Circuit Court Interpretations

The Second Circuit Court of Appeals’ interpretation of the predicate exception guided the Connecticut Supreme Court. In *City of New York v. Beretta U.S.A. Corp.*, the Second Circuit ultimately barred a claim against firearm manufacturer Beretta but reasoned that the predicate exception may apply to statutes that do not expressly regulate firearms if courts have applied them to the sale and marketing of firearms in the past, or if the statutes “clearly can be said to implicate the purchase and sale of firearms.” The Ninth Circuit Court of Appeals had a slightly different interpretation that emphasized congressional intent. In *Ileto v. Glock, Inc.*, the Ninth Circuit reasoned that Congress passed the PLCAA with the intent to preempt tort law claims and only sought to exempt statutes that explicitly regulated the firearm industry. The dissenting opinion in *Soto* relied

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99. *See id.* at 305 (citing persuasive circuit court precedent); *see also* CCT Comme’ns, Inc. v. Zone Telecom, Inc., 172 A.3d 1228, 1244-45 (Conn. 2017) (describing well-established practice of state courts deferring to circuit authority in interpreting federal statutes).

100. *See City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 404 (2d Cir. 2008) (developing rule to allow claims under predicate exception). New York City claimed that Beretta marketed firearms to legal buyers with the knowledge that the guns would find their way to “illegal buyers.” *See id.* at 389 (describing City’s allegations). The City sought relief for an alleged “public nuisance” caused by the proliferation of these firearms. *See id.* (accusing suppliers of failing to inhibit flow of illegal firearms). Under New York law, a person commits a nuisance by knowingly or recklessly maintaining “a condition which endangers the safety or health of a considerable number of persons.” *N.Y. PENAL LAW § 240.45* (McKinney 2021). The City attributed thousands of firearms used in crimes to Beretta’s alleged actions. *See Beretta*, 524 F.3d at 391 (estimating crimes based on number of guns recovered).

101. *See Ileto v. Glock, Inc.*, 565 F.3d 1126, 1138 (9th Cir. 2009) (concluding Ileto’s general tort claims merit dismissal). The victims of a 1999 shooting and their surviving family members filed suit against the firearm manufacturers and sellers, accusing them of producing more guns than the legitimate market demanded to take advantage of illegal resales. *See id.* at 1130 (describing victims’ claims). The families brought their claims under California common-law tort statutes. *See id.* (noting basis for claims). They did not allege that the firearm manufacturers and sellers violated any state statute that prohibited aiding another person to sell firearms to illegal buyers. *See id.* (distinguishing *Ileto* from cases involving specific statutory violations).

102. *See id.* at 1136 (interpreting legislative history). The *Ileto* court based its reasoning, in part, on congressional findings listed in the PLCAA, such as the unfairness of imposing tort liability on an entire industry for the actions of others. *See id.* at 1135 (explaining reasoning); *see also* 15 U.S.C. § 7901(a)(4) (listing legislative findings). The findings note that the “manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws.” *§ 7901(a)(4).* The court concluded that Congress purposefully referenced these specific areas when considering the types of statutes the PLCAA exempted. *See Ileto*, 565 F.3d at 1136 (noting congressional intent).
on the Ninth Circuit’s reasoning when it argued that the court should have struck the families’ CUPTA claim.103

3. Future Legal Action

Following the decision of the Connecticut Supreme Court, Remington, owner of the Bushmaster firearm brand, appealed to the United States Supreme Court.104 The Court denied certiorari on November 12, 2019.105 As of this writing, Connecticut’s highest court will allow the Sandy Hook families to proceed with their lawsuit.106

In the wake of the Supreme Court’s denial of certiorari, similar cases have begun to move forward.107 One week after the Supreme Court’s denial, the Indiana Supreme Court declined to revisit an Indiana Court of Appeals decision reviving Gary, Indiana’s long-dormant lawsuit against Smith & Wesson, effectively allowing it to proceed.108 The twenty-year-old case, held in limbo in Indiana state courts due to the PLCAA, involved the City of Gary’s claim that gun manufacturers engaged in unlawful sales and marketing practices which caused the city’s crime rate to spike in the 1990s.109 Despite a 2015 state law meant to

103. See Soto, 202 A.3d at 333 (Robinson, J., dissenting) (arguing Congress intended narrow predicate exception).
108. See Smith & Wesson Corp. II, 138 N.E.3d at 953 (declining to hear case).
109. See City of Gary v. Smith & Wesson Corp. (Smith & Wesson Corp. I), 126 N.E.3d 813, 820 (Ind. Ct. App. 2019) (describing City’s amended complaint), transfer denied, 138 N.E.3d 953 (Ind. 2019). The City alleged that firearm manufacturers know that a small number of gun dealers are responsible for a large number of illegal sales and have failed to take reasonable steps to prevent these sales from occurring. See id. at 819-20 (summarizing City’s complaint). The City also alleged that Smith & Wesson Corp. engaged in negligent design—which contributed to the victims’ injuries—and deceptively marketed their products as improving home safety. See id. at 820. Contrary to Smith & Wesson’s marketing, studies show that the mere presence of firearms in a home increases the risk of homicide and suicide in the household. See generally Andrew Anglenyer et al., The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Househoold Members, 160 ANNALS INTERNAL MED. 101 (2014) (reviewing academic literature examining link between firearm ownership, homicide, and suicide).
immunize the firearms industry, the Indiana Court of Appeals held that neither the state statute nor the PLCAA barred victims from holding manufacturers liable, relying on the same logic as the Connecticut Supreme Court.110

Meanwhile, Kansas City, Missouri pursued a much younger claim against Nevada-based manufacturer Jimenez Arms.111 In January 2020, Kansas City targeted a gun-trafficking scheme which it claims flooded the municipal borders with inexpensive firearms preferred by criminals.112 In addition to holding the ringleaders of the scheme responsible for the cost of rising violent crime in Kansas City, the lawsuit alleged that Jimenez Arms “knew, or consciously avoided knowing” that it was participating in an illegal trafficking scheme with each sale.113 The lawsuit further claimed that this alleged act of negligent entrustment proximately caused harm to the city.114

III. ANALYSIS

A. Statutory Interpretation

The Connecticut Supreme Court correctly relied on the Second Circuit Court of Appeals’ interpretation of the statute’s predicate exception, and the three instances where a state or federal statute might fall under it.115 Judicial deference to the plain meaning of legislative statutes is a critical tenet of statutory interpretation.116 In this case, the most logical plain meaning of the word “applicable” is the dictionary definition.117

110. See Smith & Wesson I, 126 N.E.3d at 834 (reversing trial court ruling barring City’s claims). The court referenced the Connecticut Supreme Court’s conclusion that Congress did not intend for a predicate statute to be exclusively applicable to firearms. See id. at 833 (summarizing case holding). Furthermore, even if the PLCAA explicitly featured this requirement, the court held that the City alleged violations of statutes that are directly applicable to firearm sales and marketing. See id. (holding statute applicable to City’s complaint).

111. See Barton, supra note 107 (naming recent Kansas City lawsuit); see also Petition for Damages and Injunctive Relief, supra note 107, at 1.

112. See Petition for Damages and Injunctive Relief, supra note 107, at 1-2 (summarizing gun trafficking scheme through Kansas City). The complaint claimed most homicides in the city involved firearms, and that Jimenez Arms distributed a disproportionate number of those guns. See id. at 2 (arguing Jimenez Arms’ liability).

113. See id. at 3 (quoting complaint). The City alleged that Jimenez Arms worked with “straw purchasers” to disguise the fact that the defendant allegedly sold firearms to those who could not legally buy them. See id. at 2 (explaining purchase scheme).

114. See id. at 28-30 (describing alleged negligent entrustment).


117. See Soto, 202 A.3d at 302 (examining dictionaries in print at time of PLCAA enactment); see also Applicable, supra note 49 (defining term).
In keeping with the plain meaning, the Second Circuit concluded that statutes that do not expressly regulate the firearm industry may still fall under the predicate exception, leaving the door open to more broadly applicable laws—within reason.\(^{118}\) The court ultimately held that the New York criminal nuisance statute in question was too broad, and it suggested that applicable statutes should cover regulated aspects of the firearms industry, such as design, marketing, and sale.\(^{119}\) The CUTPA—while not categorically limited to the firearms industry—governs trade practices and can be more easily applied to firearm industry marketing activities without encompassing all possible violations and broadening the PLCAA beyond its intended meaning.\(^{120}\)

The Ninth Circuit’s narrow reading of the word “applicable” is too strict an interpretation of congressional intent.\(^{121}\) If Congress had intended to narrow the predicate exemption to only include state and federal statutes specifically aimed at the firearm industry, it could have done so with more precise language.\(^{122}\) The PLCAA’s drafters included no language specifying that a predicate statute must explicitly refer to firearms and, as the Connecticut Supreme Court noted, virtually no federal or state statutes of the kind existed at the time of the law’s passage.\(^{123}\)

The statutory text of the PLCAA mentions two possible examples that would qualify for the predicate exception.\(^{124}\) The first is any instance in which a manufacturer or seller fails to keep, or falsifies, any record regarding a firearm that is required by federal or state law.\(^{125}\) The second is any case where a manufacturer or seller sold a firearm to a buyer whom they knew, or reasonably should have known, was prohibited from possessing it.\(^{126}\) The Ninth Circuit cited these examples as evidence that Congress did not intend for the predicate exception to

\(^{118}\) See Beretta, 524 F.3d at 401 (declining to limit scope of predicate exception).
\(^{119}\) See id. at 402-03 (arguing predicate exception did not encompass statute). Section 240.45 of the New York Penal Law classifies criminal nuisance in the second degree as a class B misdemeanor. N.Y. PENAL LAW § 240.45 (McKinney 2021). The statute applies to any person who endangers health and safety of others through knowing or reckless conduct. Id.
\(^{120}\) See CONN. GEN. STAT. § 42-110b (2019) (prohibiting unfair trade practices); Soto, 202 A.3d at 307 (noting statutes like CUTPA have previously regulated firearm marketing).
\(^{121}\) See Ileto v. Glock, Inc., 565 F.3d 1126, 1136 (9th Cir. 2009) (narrowing definition of “applicable”).
\(^{123}\) See id. at 304 (noting lack of laws to which narrow predicate exception applied). The court mentioned that some states have laws that specifically address firearm marketing, but none of these “comprehensively regulate the advertising of firearms.” See id. (quoting Connecticut Supreme Court decision).
\(^{125}\) See id. (explaining first example).
\(^{126}\) See id. (describing second example).
be “all-encompassing.” But nothing in the PLCAA text states that these specific examples are exhaustive.

B. Congressional Intent

Congress clearly did not want the firearm industry to face liability every time a firearm is misused; society cannot expect manufacturers or sellers to police their customers to this degree. Still, the Congress did not design the PLCAA to deliver total liability protection. Whenever the industry’s actions led to an alleged harm, Congress left open the possibility for plaintiffs to seek relief.

The congressional debate over the PCLAA and the statute’s statement of findings and purposes further support the notion that the plain meaning of the predicate exception reflects Congress’s true intention. If the plain meaning of statutory language contains ambiguity, courts may consider legislative intent to bolster their interpretation. For example, statements from these debates show that legislators were concerned that firearms manufacturers would face liability for injuries that were solely the fault of others. “Soley” is the operative word

127. See Ileto v. Glock, Inc., 565 F.3d 1126, 1134-35 (9th Cir. 2009) (discussing examples of predicate statutes). The court added that if any statute could qualify, “there would be no need to list examples at all.” See id. at 1134.

128. See § 7903(5)(A)(iii) (providing examples of exceptions); Soto v. Bushmaster Firearms Int’l, LLC, 202 A.3d 262, 316 (Conn. 2019) (considering examples additions to statute, not limitations), cert. denied sub nom. Remington Arms Co. v. Soto, 140 S. Ct. 513 (2019). The Connecticut Supreme Court concluded that the two examples should not limit the predicate exception because this would be contrary to the legislative history of the statute. See Soto, 202 A.3d at 314-15. Neither of these examples were present in earlier proposed versions of the bill; the court suggested that drafters added them in response to public backlash following the 2002 sniper attacks in Washington, D.C. and subsequent lawsuit against the rifle’s manufacturer and seller. See id. at 315 (explaining drafting changes in bill text); 151 CONG. REC. 23,273-74 (2005) (statement of Rep. Jim Sensenbrenner) (commenting on what predicate exception would allow under PLCAA); see also Cook, supra note 24 (describing settlement following D.C. sniper attack victim’s lawsuit). The court concluded that Congress intended the examples to negate arguments that the PLCAA would bar similar lawsuits, rather than narrow the predicate exception to only those specific circumstances. See Soto, 202 A.3d at 316 (discussing purpose of listed example).

129. See Soto, 202 A.3d at 319 (examining purpose of statute).

130. See id. at 320 (holding Congress only intended to foreclose novel theories of liability). As Senator Craig stated:

You will hear arguments on the floor about certain gun dealers and that we are now holding them harmless, even though on the surface of the argument it appears they violated the law. Let me again say, as I said, if in any way they violate State or Federal law . . . they are in violation of law. This bill does not shield them, as some would argue. Quite the contrary.


131. See Soto, 202 A.3d at 325 (concluding PLCAA did not bar families’ claim).

132. See 15 U.S.C. § 7901 (listing findings and purposes); see also Soto, 202 A.3d at 304 (concluding predicate exception may encompass statutes not expressly regulating firearms); 151 CONG. REC. 23,265 (2005) (statement of Rep. Rick Boucher) (arguing law would not protect illegal activity).


134. See 151 CONG. REC. 18,085 (2005) (statement of Sen. Larry Craig). Speaking before the Senate, Senator Craig listed some of the implications of unlimited liability:
because Congress worried that plaintiffs would attempt to hold the entire industry responsible for the negative effects of firearms that were otherwise properly designed and sold.\(^{135}\)

Providing absolute industry immunity was neither the intent of the law nor would such immunity have been necessary to achieve its purpose.\(^{136}\) The nature of the lawsuits the firearms industry faced at the time of the law’s drafting offers important context.\(^{137}\) Proponents of the PLCAA described these suits as underhanded efforts by aggressive tort lawyers who were less interested in winning in court than in bankrupting targeted companies through legal fees.\(^{138}\) A broad reading of the predicate exception encompasses the bad actors Congress sought to stop, without preempting claims under existing state and federal law and preventing victims from seeking recompense for legitimate wrongdoing.\(^{139}\)

\textbf{C. Policy Rationale}

Both the plain meaning of the PLCAA and Congress’s stated intent strongly suggest that a trade practices statute such as CUPTA may qualify under the predicate exception.\(^{140}\) Furthermore, federal courts should adopt this reading of the predicate exception because it will allow victims to hold the firearm industry liable for irresponsible trade activities that proximately cause the victims’ injuries.\(^{141}\) In doing so, courts can prompt an important change in firearm marketing.\(^{142}\)

Due to its many similarities with the M-16 rifle, the AR-15 is a highly lethal weapon.\(^{143}\) Marketing campaigns emphasize the rifle’s adaptability and military

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If a gun manufacturer is held liable for the harm done by a criminal who misuses a gun, then there is nothing to stop the manufacturers of any product used in crimes from having to bear the costs resulting from the actions of those criminals. . . . Automobile manufacturers will have to take the blame for the death of a bystander who gets in the way of the drunk driver. The local hardware store will have to be held responsible for a kitchen knife it sold, if later that knife is used in the commission of a rape. The baseball team whose bat was used to bludgeon a victim will have to pay the cost of the crime.
\end{flushright}

\textit{Id.}

\(^{135}\) See § 7901(b) (listing risk of entire industry held liable for harm caused by others).

\(^{136}\) See Kopel, supra note 25 (rejecting absolute immunity framing).


\(^{138}\) See id. (alleging ulterior motives).

\(^{139}\) See 151 cong. rec. 18,096 (2005) (statement of Sen. Larry Craig). Craig added that the legislation sought not to bar causes of action for wrongdoing, but only “novel” lawsuits “that have no history or grounding in legal principle.” Id.


\(^{141}\) See id. at 325 (concluding Congress did not intend to shield manufacturers encouraging weapon misuse).

\(^{142}\) See Stern, supra note 7 (discussing implications of case).

\(^{143}\) See Chivers, supra note 69, at 278 (describing penetrative power of AR-15 round); supra notes 68-70 (comparing AR-15 and M-16).
performance, despite the fact that it is ostensibly a civilian weapon.\textsuperscript{144} As a result, the AR-15 is one of the most popular civilian rifle models in the United States.\textsuperscript{145} A strong correlation exists between the wide availability of firearms and the rate of gun violence, including mass shootings.\textsuperscript{146} The type of firearm used in each incident often determines the number of casualties and the severity of the wounds they inflict.\textsuperscript{147}

Advertisers spend billions of dollars on advertising each year because they see a return on their investment in the form of increased sales.\textsuperscript{148} If the firearm industry focuses on marketing a particular weapon, then it will see results.\textsuperscript{149} Furthermore, the law recognizes that advertisements can promote unsafe or illegal use of dangerous consumer products by encouraging consumer misuse.\textsuperscript{150} States have a strong interest in ensuring that legal manufacturers and sellers of firearms market and sell their most lethal products responsibly.\textsuperscript{151}

IV. CONCLUSION

In 2015, English newspaper columnist Dan Hodges tweeted, “In retrospect, Sandy Hook marked the end of the U.S. gun control debate. Once America decided killing children was bearable, it was over.”\textsuperscript{152}

Is that true? If a nation is willing to tolerate the murder of first-graders without meaningful reform, can anything truly be done about gun violence? The statistics are bleak. In the time between the Sandy Hook shooting and July 21, 2020, there have been 2,654 mass shootings in the United States.\textsuperscript{153} At least 2,908 people have been killed, and 11,088 have been wounded.\textsuperscript{154} Countless more incidents of ordinary gun violence have impacted cities and towns across the nation.

As long as the Second Amendment guarantees Americans the right “to keep and bear arms,” it is unlikely that any single policy change can prevent most shooting incidents from occurring. But too often, policymakers confuse difficult

\textsuperscript{144} See Editorial, supra note 76 (reviewing AR-15 advertisements).

\textsuperscript{145} See Goode, supra note 77 (noting popularity of AR-15).

\textsuperscript{146} See Siegel et al., supra note 19, at 2103 (showing correlation between firearm ownership and homicide rates). See generally Anglemyer et al., supra note 109 (explaining link between firearm ownership and violence at home).

\textsuperscript{147} See Fagone, supra note 74 (illustrating effects of bullets on shooting victims); Fallows, supra note 68 (explaining science of “wound ballistics”); Barron, supra note 74 (describing wounds suffered at Sandy Hook).

\textsuperscript{148} See Handley, supra note 13 (predicting further increase in global advertising spending to more than $600 billion).

\textsuperscript{149} See id. (supporting likelihood of return on investment).


\textsuperscript{151} See id. at 325 (concluding plaintiffs may seek redress for injuries).

\textsuperscript{152} Hodges, supra note 81 (expressing dismay regarding lack of government action regulating firearms).

\textsuperscript{153} See Lopez & Sukumar, supra note 59 (tracking mass shootings across United States since 2013).

\textsuperscript{154} See id. (tabulating deaths and injuries resulting from mass shootings).
problems for insurmountable obstacles. Gun violence cannot be solved over-
night, but it can be mitigated, by reducing the number of firearms available, or
even by controlling which types are easily accessible.

While lawmakers and the courts cannot stop individuals from bearing arms,
they have some say over the types of arms shooters bear. No industry has carte
blanche to market its most dangerous products to the widest possible audience.
Allowing shooting victims to hold the firearm industry accountable for its adver-
tising decisions will not destroy the industry, but it will force sellers to seriously
consider the consequences of their actions.

Just one gun can mean the difference between a typical day and a tragedy.
One fewer armed shooter can mean one fewer parent wondering if their child
will make it safely home from school.

Bret Matthew