

Testimony of Monte Frank
Chair of American Bar Association Standing Committee on Gun Violence
April 8, 2026

HOUSE BILL NO. 7557
HOUSE BILL NO. 7636

Honorable members of the Rhode Island House Committee on Judiciary, my name is Monte Frank. Please accept this testimony in favor of House Bill No. 7557 and House Bill No. 7636.

While I am the chair of the American Bar Association's Standing Committee on Gun Violence, I am here in my individual capacity as only the president of the ABA can speak on its behalf.

I am a resident of the State of Connecticut with connections to Rhode Island. My law firm has an office in this state and I am also a past president of the New England Bar Association.

Since the shooting at the Sandy Hook School, I have been active in working on ways to reduce gun violence. In December 2012, I lived in Sandy Hook and was a town attorney for the Town. I had a front row seat to what mass shootings can do to families and communities. Since then, I have learned how devastating gun violence is for our urban communities. I heard representative Robin Kelly from Chicago describe it as a "slow moving massacre." My efforts have been focused on non-partisan efforts to reduce gun violence. In 2018 I gave up my party registration as a Democrat and ran for Lieutenant Governor with Oz Griebel, a former GOP gubernatorial candidate in Connecticut. In doing so, I was able to speak directly with members of both parties and unaffiliated voters about the gun violence epidemic, and I learned that despite the

political rhetoric, most Americans understand that reasonable regulation of firearms is necessary to reduce gun violence, drive down homicides and suicides, and help identify and prosecute those who use guns illegally.

Since 2015, I have served on the American Bar Association's Standing Committee on Gun Violence. I am the current chair of the Committee. The American Bar Association is the largest voluntary association of lawyers and legal professionals in the world. The ABA's House of Delegates is the policy-making body of the association. The House of Delegates drafts, debates and votes on resolutions that establish Association policy on professional and public issues. It represents not only various groups within the Association, but also the legal profession as a whole, and includes delegates from state, local and specialty bars.

Over the course of the last six decades, the ABA has adopted many nonpartisan and evidence-informed policies aimed at curbing the scourge of gun violence in America while respecting the Second Amendment.

The ABA has strong policies on both of the House Bills about which I submit this testimony and urge passage.

Among ABA policy on reducing gun violence is Resolution 604 adopted on February 9, 2026 and Resolution 106B adopted in 2017.

Resolution 604 provides:

RESOLVED, That the American Bar Association urges Congress to repeal the Protection of Lawful Commerce in Arms Act, codified at 15 U.S.C. §§ 7901–7903 (“PLCAA”), which conveys special legal immunity to the firearms industry; and

FURTHER RESOLVED, That the American Bar Association urges states to enact laws that (1) set standards of responsible conduct for holders of Federal Firearms Licenses (“FFLs”) and other gun companies; and (2) provide paths for civil litigation for knowing failures to comply with such laws.

Resolution 106B provides:

RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to reduce potential harm that individuals may inflict on themselves or others by enacting statutes, rules, or regulations allowing individuals to temporarily prevent themselves from purchasing firearms. Such measures should include, at minimum, the following provisions that:

1. any person may voluntarily and confidentially request that their own name be added to the Index of the National Instant Criminal Background Check System, an equivalent state background system, or to both, to prevent future firearms purchases;
2. the statute, rule, or regulation provide a procedure with appropriate safeguards whereby the person may have their name removed and such record deleted from the System; and
3. the statute, rule, or regulation provide appropriate safeguards to reasonably ensure that persons who request inclusion or removal from the System do not face stigma, discrimination, or any adverse action, and are entitled to confidentiality so that the fact that the person prohibited from purchasing a firearm is only disclosed when a valid background check is done.

These resolutions remain ABA policy today.

The Reports, which accompany the Resolutions, set forth the reasoning for the resolutions. The Resolutions and the Reports are attached to my testimony.

Thank you for consideration of these important matters that will save lives without impacting the rights of law-abiding citizens as protected by the Second Amendment.

AMERICAN BAR ASSOCIATION

**ADOPTED BY THE HOUSE OF DELEGATES
FEBRUARY 9, 2026**

RESOLUTION

RESOLVED, That the American Bar Association urges Congress to repeal the Protection of Lawful Commerce in Arms Act, codified at 15 U.S.C. §§ 7901–7903 (“PLCAA”), which conveys special legal immunity to the firearms industry; and

FURTHER RESOLVED, That the American Bar Association urges states to enact laws that (1) set standards of responsible conduct for holders of Federal Firearms Licenses (“FFLs”) and other gun companies; and (2) provide paths for civil litigation for knowing failures to comply with such laws.

REPORT

Introduction

In June 2025, the Supreme Court issued its first opinion interpreting the Protection of Lawful Commerce in Arms Act (“PLCAA”), a federal law that limits the circumstances under which gun companies can be held civilly liable. See *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 145 S. Ct. 1556 (2025). That case concerned allegations by the Mexican government that the devastating gun violence the country suffered was caused by pervasive misconduct by American gun manufacturers. Mexico had alleged that those manufacturers aided and abetted violations of various laws regulating gun sales by knowingly supplying guns to rogue dealers who violated those laws, and that the guns acquired pursuant to those illegal transactions were trafficked into Mexico, where they fueled cartel-driven gun violence.

The Supreme Court rejected these claims, unanimously holding that the Mexican government’s pleadings were inadequate and it had failed to plausibly allege that the gun industry defendants had knowingly aided and abetted any violations of the law. *Id.*, 145 S. Ct. at 1567.

This decision, while devastating to the survivors of gun violence in Mexico, fell far short of what the defendants sought. The defendants had asked the Court to hold that the criminal involvement of the cartels necessarily severed any liability for gun manufacturers. The Court declined that invitation, applying PLCAA without extending it.

The result is that plaintiffs pursuing cases against gun industry defendants stand at the bottom of a steep hill, where legal barriers from PLCAA are only one of many obstacles that deny justice to gun violence survivors and insulate wrongdoers in the gun industry from accountability for their misconduct.

Less than a week after the Court ruled on PLCAA, the Governor of Connecticut signed into law the tenth state Firearm Industry Responsibility Act, newly developed legislation that provides clear standards for members of the gun industry and establishes paths for civil litigation against companies that violate those standards. These statutes point to a path forward, one that is fully consistent with PLCAA, that will break down the barriers to accountability and providing survivors a path to justice.

This Resolution urges Congress to repeal PLCAA. The Resolution also urges states to adopt legislation that provides clear standards for members of the gun industry and establishes paths for civil litigation against companies that violate those standards, as Connecticut has done.

Background

Approximately 46,000 Americans are killed by a gun every year—approximately 125 people every day.¹ A small number of irresponsible gun companies are disproportionately responsible for the American gun crisis.² These irresponsible companies have insufficient controls and protections to prevent unlawful sales, and in some cases, they knowingly break the law. Whatever the cause, the result is that they supply the illegal market and are responsible for a huge share of crime guns traced by law enforcement.

A major reason why these companies behave this way is that it is too hard to sue them for their misconduct. Insulated from the threat of civil liability, these irresponsible companies don't need to consider the harm they cause, because they are unlikely to ever face a civil complaint that would ask them to pay for it, let alone a courtroom judgment.

The result is a perverse incentive, where the least responsible gun companies gain a competitive advantage over their more responsible competitors. No responsible company would sell a gun to a felon or other illegal buyer, or funnel guns to gun traffickers. This opens the door for unscrupulous companies to pump their profits through illegal sales a responsible company would refuse to make, while also cutting corners and saving on expenses any responsible company would incur.

The other principal result is that gun violence survivors are denied their day in court. No amount of money can ever bring back a loved one lost to gun violence, and mere dollars cannot ever fully compensate a shooting survivor for the physical and mental toll they will carry for the rest of their lives. Our civil legal system is designed to provide a measure of justice to those harmed, to validate their grievance against those responsible, and to compensate them in some way to mitigate that harm. But in gun cases, numerous barriers prevent survivors from obtaining that justice.

There are many reasons why it is so difficult to sue the gun industry. Some are structural. Gun violence disproportionately affects disadvantaged communities, and gun violence survivors are often under-resourced and unable to secure counsel to pursue a complicated legal case. There are also information asymmetries. Victims may never know the history of the gun that was used—how the shooter obtained it, from whom, and under what circumstances.

There are also legal barriers. For example, information asymmetries are exacerbated by a federal appropriations rider called the Tiahrt Amendment.³ Law enforcement agencies can determine the retail seller of a crime gun using a tracing process administered by

¹ *Gun Violence Statistics*, GIFFORDS, <https://giffords.org/lawcenter/resources/gun-violence-statistics/>. Approximately 56% of these deaths are by suicide; approximately 40% by homicide; and approximately 1% are unintentional shootings.

² *E.g.*, Nick Penzenstadler, *Gun Shops that Sell the Most Guns Used in Crime Revealed in New List*, USA TODAY (Feb. 15, 2024), <https://www.usatoday.com/story/news/investigations/2024/02/15/shops-selling-most-crime-guns-revealed-atf/72581120007/> (reporting based on gun dealer data obtained via FOIA request “that the vast majority of guns used in crimes are sold by a small fraction of America’s gun shops.”)

³ *See generally Tiahrt Amendments*, GIFFORDS, <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/tiahrt-amendments/>.

ATF,⁴ but a federal appropriations rider originally sponsored by Representative Todd Tiahrt restricts the release and use of that information outside of criminal investigations, and as a result victims may never receive this critical information.

The Protection of Lawful Commerce in Arms Act

The most significant legal barrier that discourages civil litigation against the gun industry is the Protection of Lawful Commerce in Arms Act (“PLCAA”), a federal statute that insulates companies that are federally licensed to manufacture, import, and sell firearms (Federal Firearm Licensees, or “FFLs”) from civil liability in certain cases involving the criminal or unlawful misuse of a firearm by a third party. See 15 U.S.C. §§ 7901–7903.

PLCAA was enacted in response to the substantial volume of litigation brought by survivors, civil rights, and advocacy organizations in response to a decades-long crisis of escalating gun violence.⁵

Beginning in the 1950s, the United States experienced a sustained, decades-long rise in homicides, reaching a peak of 9.8 homicides per 100,000 people in 1991.⁶ These homicides were disproportionately concentrated in large cities.⁷ Numerous factors contributed to this rise in violence, including an increase in ready access to and use of handguns.⁸

With their streets awash in illegal handguns, state and municipal governments, seeking novel solutions to the gun violence crisis, initiated legal action against the manufacturers of those guns. The theories included, among other things, the allegation that manufacturers knowingly oversupplied the firearms markets in jurisdictions with weak gun laws, knowing that the legal market for firearms in those places could not absorb the volume of firearms sold and that a portion of those oversupplied firearms were trafficked into other jurisdictions, especially those with stronger gun laws, causing a public nuisance in the affected jurisdiction.⁹

Faced with this upswell in litigation, as well as earlier cases brought by private litigants, the gun industry lobbied Congress for protection. In 2005, Congress responded by enacting PLCAA, which confers immunity on members of the gun industry from certain

⁴ See generally *Fact Sheet – eTrace: Internet-Based Firearms Tracing and Analysis*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (Apr. 2024), <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-etrace-internet-based-firearms-tracing-and-analysis>.

⁵ 15 USCS § 7901; see also *Smith & Wesson v. Estados Unidos Mexicanos*, 145 S. Ct. 1556, 1562 (2025).

⁶ James Alan Fox & Marianne W. Zawitz, *Homicide Trends in the United States*, BUREAU OF JUSTICE STATISTICS (2007), <https://bjs.ojp.gov/library/publications/homicide-trends-united-states>; Alexia Cooper & Erica L. Smith, *Homicide Trends in the United States, 1980-2008*, BUREAU OF JUSTICE STATISTICS (2011), <https://bjs.ojp.gov/content/pub/pdf/htus8008.pdf>.

⁷ Cooper & Smith, *supra* n. 6, at 29.

⁸ E.g., Alfred Blumstein, *Youth, Guns and Violent Crime*, 12 FUTURE CHILD 38-52 (2002), <https://pubmed.ncbi.nlm.nih.gov/12194611/>.

⁹ Timothy D. Lytton, *SUING THE GUN INDUSTRY: A BATTLE AT THE CROSSROADS OF GUN CONTROL AND MASS TORTS* 12-14 (2005); e.g., *City of Chicago v. Beretta*, 213 Ill. 2d 351 (Ill. 2004); *Hamilton v. Beretta*, 727 N.Y.S. 2d 7 (2001).

categories of civil liability. Specifically, PLCAA strips courts of jurisdiction in cases brought against federally licensed manufacturers, importers, and dealers of firearms and ammunition for harms “resulting from the criminal or unlawful misuse” of their firearms and ammunition.¹⁰ The result is that it frequently precludes civil or administrative proceedings seeking damages or other forms of relief for harm sustained when a gun is fired. As Congress noted in a “Findings” section that precedes PLCAA’s substantive provisions, the legislation was intended to prevent litigants from “imposing liability on an entire industry for harm that is *solely* caused by others” to avoid “an abuse of the legal system.”¹¹ The intent, then, is to insulate licensed gun companies from liability for cases premised on the mere fact that the companies sell guns . PLCAA makes it clear that a “market share” case against the gun industry, where liability is premised and determined solely based on the number of guns a company sold, cannot go forward.

This protection was not, however, meant to extend to specific companies that were culpable for causing the harm, and the statute enumerates six categories of actions that are expressly excluded from its immunity-granting provision. These include:

- (i) Actions brought by persons directly harmed against individuals who have been convicted of knowingly transferring a firearm while aware that it would be used to commit a crime of violence;
- (ii) Negligent entrustment or negligence per se actions against a seller;
- (iii) Actions based on statutory violations committed by a manufacturer or seller who “knowingly violated a state or federal statute applicable to the sale or marketing” of the product where the violation proximately caused the harm;
- (iv) Breach of contract or warranty actions brought in connection with the purchase of the product;
- (v) Product defect actions based on defects in the design or manufacture of the product; and
- (vi) Government enforcement actions commenced by the Attorney General to enforce the two key federal gun laws, the Gun Control Act and the National Firearms Act.¹²

Of these exceptions, the most significant is the third, which applies when the gun industry defendant “knowingly violated a state or federal statute applicable to the sale or

¹⁰ 15 U.S.C. § 7902(a) (“A qualified civil liability action may not be brought in any Federal or State court.”); *see also* 15 U.S.C. § 7903(5)(A) (defining a “qualified civil liability action” as an action brought against an FFL or trade association “for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a *qualified product* by the person or a third party”) (emphasis added) and 15 U.S.C. § 7903(4) (defining a “qualified product” as “a firearm [as defined under the Gun Control Act of 1968] or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce”).

¹¹ 15 U.S. Code § 7901(a)(6) (emphasis added).

¹² 15 U.S.C. § 7903(5)(A)(i)–(vi).

604

marketing” of firearms, components, or ammunition. This is commonly called the “predicate exception” because it the plaintiff must establish a “predicate” violation of law.¹³ The centrality of this exception is reflected in the statute’s title: it protects lawful commerce in arms, but is not designed to protect companies that knowingly break the law.

PLCAA thus generally immunizes FFLs for harm caused by the criminal or unlawful misuse of their firearms, components, and ammunition, unless that harm was proximately caused by their knowing violation of a state or federal statute applicable to the sale or marketing of a firearm.

The predicate exception is critically important to implementing that intent because it means that PLCAA did not disrupt an assumption that underlies our federal gun laws: federal law may set a floor, but states are free to establish legal frameworks for the gun industry.

While it is more limited than the gun industry defendants who invoke it would like it to be, PLCAA remains bad policy and should be repealed. It does not insulate those who knowingly break the law, but it does extend a level of legal immunity that is unjustified and detrimental to public safety. The statute was intended to prevent abusive litigation and protect lawful commerce, but its practical effect has been to insulate the firearms industry from a wide swath of civil accountability, including in cases involving alleged negligence, deceptive practices, or failure to adopt reasonable safety measures. In this respect, PLCAA stands as a significant outlier in American tort law: no other consumer product industry benefits from such broad immunity from civil suit, even when harm results from foreseeable and preventable misuse of their goods.

This exceptional legal protection has diminished the incentives that civil liability typically provides for improved product safety, responsible marketing, and prudent distribution practices. In other industries, civil litigation has played a critical role in driving safety innovation, internal compliance reforms, and disclosures of harmful practices. PLCAA has foreclosed similar developments in the firearms context. As a result, courts are often unable to hear claims involving simple and far too pervasive negligence. The absence of judicial oversight leaves potential misconduct unchecked and removes a vital mechanism for public accountability.

Moreover, PLCAA significantly impairs the ability of victims of gun violence to access remedies through the civil justice system. Communities disproportionately affected by gun violence—often those with limited resources—are especially impacted by this barrier to redress. Even when there is evidence that a manufacturer or seller acted unreasonably or in knowing violation of relevant laws, PLCAA’s immunity provisions may still preclude recovery.

In this way, the statute frustrates the twin aims of civil liability, deterrence and compensation, and imposes a categorical restriction on judicial review that is difficult to reconcile with principles of fairness and access to justice. PLCAA is misaligned with the

¹³ *Smith & Wesson Brands, Inc.*, 145 S. Ct. at 1562 (“[T]he predicate violation opens a path to making a gun manufacturer civilly liable for the way a third party has used the weapon it made.”)

broad tort law norms and principles of justice at the heart of the American legal system. Repeal of the statute is therefore warranted to restore accountability, promote responsible industry conduct, and ensure that those harmed by preventable misconduct are not categorically denied a forum for relief.

Firearm Industry Responsibility Acts

States seeking to regulate firearms commerce more effectively have begun enacting statutes that impose affirmative obligations on firearm industry members. These laws are referred to as a Firearm Industry Responsibility Act (FIRA), and are also known as “Gun Industry Accountability” or “Victims’ Access to Justice (“VATJ”) laws. They establish the conditions under which firearms and related products may be manufactured, distributed, and sold within a given jurisdiction. FIRAs are designed to address the structural and legal barriers that stand in the way of meritorious litigation. They establish pathways for legal action against gun companies that knowingly break the law through the structural barriers that would otherwise insulate lawbreakers from accountability.

They accomplish this by clearly stating the terms under which firearm products can be manufactured and sold under state law—a right that states have in the case of any commercial product. (See, e.g., *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023).) Notwithstanding gun industry assertions to the contrary, PLCAA does not prevent or disturb the states’ ability to set those terms.

Because states vary in the structure and scope of their existing firearms laws, the exact contours of a FIRA statute tend to differ across jurisdictions. At their core, these statutes require covered entities to implement and adhere to “reasonable controls and procedures” aimed at preventing unlawful sales and minimizing risks to public safety.¹⁴ In many cases, such laws supplement this general standard with more specific rules of conduct, including standards related to product design, distribution practices, and security measures intended to reduce the likelihood of diversion, misuse, or accidental discharge.¹⁵ Some states have structured these obligations to reflect broader public health and safety norms, drawing on analogous principles from nuisance law or product safety regulation.

These statutes also clarify the legislature’s views and intentions about whether generally applicable laws are meant to specifically apply to the gun industry. FFL defendants invoking PLCAA frequently argue that the predicate exception should be construed narrowly to exclude general-purpose laws not explicitly targeting the firearms industry. As a result, plaintiffs alleging that FFLs have violated consumer protection or deceptive trade practices laws may still face a motion to dismiss claims for violations of statutory law on the grounds that those statutes do not specifically apply to firearms.

FIRA statutes can address this issue by clarifying that certain statutes apply to the sale or marketing of firearms. By incorporating and referencing these generally applicable laws

¹⁴ See, e.g., See Cal. Civ. Code § 3273.51(a); N.J. Stat. Ann. § 2C:58-35(a).

¹⁵ E.g., N.J. Stat. Ann. § 2C:58-35(b)–(c).

604

and making them actionable under the FIRA framework,¹⁶ state legislatures can avoid granting gun companies a unique exception to deceive consumers. By explicitly incorporating these broader statutory provisions into the FIRA regime, legislatures can ensure that firearm industry participants remain subject to the same baseline standards of commercial conduct as other businesses, at least when public safety is at stake.

Coverage of industry actors under FIRA statutes is similarly calibrated to reflect the realities of the modern firearms market. Federal law requires entities “engaged in the business” of selling firearms to obtain a Federal Firearms License (FFL),¹⁷ but many individuals and companies involved in firearms commerce operate without such licenses. Some do so by claiming that their sales are occasional and not part of a regular business enterprise; others assert that the products they sell, such as partially complete receivers or other non-serialized parts, do not fall within the definition of “firearms” under federal law.¹⁸ To close these gaps, FIRA statutes may be drafted to apply not only to current FFL holders, but also to those who would be required to obtain a license under applicable law, and more broadly to any person or entity engaged in the manufacture, distribution, importation, marketing, or sale of covered firearm products.¹⁹ This approach helps ensure that the law applies equitably to both lawful retail operations and illicit trafficking channels.

FIRA statutes typically authorize state attorneys general to bring civil actions against violators.²⁰ Many further permit suits by individuals harmed as a result of industry misconduct, or by certain subdivisions of the state (such as county or municipal governments). While the precise allocation of enforcement authority may vary according to each state’s constitutional and statutory framework, a strong FIRA statute will typically authorize actions by both public enforcement officials and private parties.

Effective enforcement also requires access to meaningful remedies. Structural barriers—particularly the economic vulnerability of gun violence victims and resource constraints on public agencies—can impede the ability of harmed parties to seek redress through litigation. To mitigate these constraints, FIRA statutes may authorize a broad range of remedies, including compensatory, statutory, and punitive damages; injunctive relief; restitution; and recovery of attorneys’ fees and litigation costs. These provisions not only improve access to justice for victims, but also enhance the deterrent effect of the statute as a regulatory tool.

Finally, successful implementation of FIRA statutes often depends on the availability of dedicated resources for enforcement. Especially in light of reductions in federal oversight of firearms commerce in recent years, some states have chosen to create dedicated

¹⁶ See, e.g., N.J. Stat. Ann. § 2C:58-35(a); Cal. Civ. Code § 3273.51(b).

¹⁷ See 18 U.S.C. § 921(a)(21)(C); *id.* § 923(a).

¹⁸ See Annie Karni & Chris Cameron, ‘Ghost Guns’: What They Are and Why There Has Been A Fight Over Them, N.Y. TIMES (Mar. 26, 2025), <https://www.nytimes.com/2025/03/26/us/politics/what-are-ghost-guns.html>; see also ABA Policy 20M107A (Feb. 16, 2020), https://www.americanbar.org/groups/public_interest/gun_violence/policy/20m107a/.

¹⁹ E.g., N.Y. Gen. Bus. Law § 898-A(4); Cal. Civ. Code § 3273.50(b) (defining covered entities as broadly inclusive of those selling firearm products).

²⁰ E.g., Md. Code Ann., Cts. & Jud. Proc. § 3-2503(a); NJ Rev Stat § 2C:58-35(b).

offices or make targeted appropriations to support the administration and enforcement of FIRA laws. These investments can help ensure that industry actors are held to their legal obligations and that the public health and safety goals underlying these statutes are meaningfully realized.

The first FIRA statute was enacted in New York in 2021.²¹ Nine additional states—California, Connecticut, Colorado, Delaware, Hawaii, Illinois, Maryland, New Jersey, and Washington—have followed.²² The New York statute is the first to receive substantive review by an appellate court. In *National Shooting Sports Foundation, Inc. v. James*, No. 22-CV-374, 2025 U.S. App. LEXIS 17075, 2025 WL 1901082 (2d Cir. July 10, 2025), the Second Circuit upheld the statute against industry challenge.

The National Shooting Sports Foundation (“NSSF”), a firearm industry trade association, alleged that the New York law was facially unconstitutional because it was preempted by PLCAA, it violated the Dormant Commerce Clause, and it was vague in violation of the Due Process Clause of the Fourteenth Amendment. The Court rejected each of these challenges, holding that the law is consistent with PLCAA because of the latter’s predicate exception, 2025 U.S. App. LEXIS 17075 at *19–28; it does not impose extraterritorial regulation or otherwise interfere with interstate commerce in violation of the Dormant Commerce Clause, *id.* at *28–38; and that it is not vague because its reasonableness standard “is a well-established legal standard that is employed in a wide range of statutes consistent with the requirements of the Due Process Clause,” *id.* at *38–41.

FIRA laws are a valid exercise of state power to regulate the manufacture, marketing, and sale of guns. They are consistent with PLCAA, as we have discussed. They are consistent with the jurisdictional and police powers of the states. And they articulate clear standards that gun companies know how to follow and are capable of following—indeed, most already do.

Additional states should enact these laws to empower their residents and governments to pursue legal action against the small number of companies disproportionately driving the gun violence crisis in their state and across the country.

Existing ABA Policy

In 1996 the ABA House of Delegates called for a new cause of action to smooth the path for survivors of gun violence to pursue civil litigation:

RESOLVED, That the American Bar Association supports the right of the victims of gun violence to seek private redress, and supports legislation to:

²¹ N.Y. SB 7196 (2021).

²² Cal. AB 1594 (2022); Conn. HB 7042 (2025); Colo. SB 168 (2023); Del. SB 302 (2022); Haw. HB 426 (2023); Ill. HB 218 (2023); Md. HB 947 (2024); N.J. AB 1765 (2022); Wash. SB 5078 (2023).

604

1. Amend the Gun Control Act of 1968 to provide a private right of action, with concurrent state and federal jurisdiction, for those persons sustaining injury or damage as a result of violation of the Act;
2. Adopt and extend state and territorial laws to provide civil claims for relief for those persons sustaining injury or damage as a result of the violation of state, territorial or municipal laws regulating the use, sale, possession, license, ownership, or control of firearms and ammunition.²³

Congress did not, of course, provide any new paths to sue the gun industry but would instead obstructed those paths when it enacted PLCAA. In 2001, while that legislation was being debated on Capitol Hill, the House of Delegates passed a resolution stating the following:

RESOLVED, That the American Bar Association opposes federal, state or territorial legislation to create special legal immunity for the firearms industry from civil tort liability.²⁴

In support of this position, the accompanying report noted that the ABA “has long supported the principle that more accountability—not less—is needed with respect to the legal duties of firearm manufacturers, gun dealers, parents and individuals regarding their respective roles in how firearms are used and misused in our society.” It also noted that the “core premise of the federal immunity legislation is at odds with basic principles of American tort law.”

Each resolution clearly supports the principle that gun companies, like all companies, should be held accountable when their misconduct causes harm to others. Viable avenues for civil litigation are critical to this accountability; new paths should be created and obstructions should be removed.

Conclusion

The Protection of Lawful Commerce in Arms Act is fundamentally flawed public policy. While intended to shield lawful businesses from abusive litigation, it has instead created an immunity regime that deprives victims of gun violence of their ability to seek redress, even in cases where manufacturers or sellers act recklessly. PLCAA prevents courts from hearing claims grounded in foundational tort law, claims that would be legally actionable in virtually every other consumer industry. As a result, it undermines the compensatory and deterrent functions of the civil justice system, distorts market incentives by rewarding irresponsible conduct, and severs the vital connection between corporate accountability and public safety. For these reasons, repeal of PLCAA is warranted to bring firearms law in line with core principles of tort law and justice.

Nevertheless, despite its sweeping scope, PLCAA does not prevent states from establishing and enforcing standards applicable to the gun industry within their borders.

²³ ABA Policy 96M8.

²⁴ ABA Policy 01A10B.

Through the predicate exception and longstanding principles of federalism, states retain the authority to define lawful conduct and commercial duties governing firearms commerce. States should exercise this authority by enacting Firearm Industry Responsibility Acts. These statutes clearly define standards of reasonable care, designate applicable laws, and create viable paths to legal accountability for industry actors whose misconduct contributes to harm. They represent a constitutionally sound and legally viable mechanism for restoring balance, enabling survivors to pursue justice, and ensuring that the firearms industry is held to the same standard of care expected of any commercial actor in the American legal system.

Respectfully submitted,

Monte Frank, Chair
Standing Committee on Gun Violence

February 2026

GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Gun Violence

Submitted By: Monte Frank, Chair

1. Summary of the Resolution(s).

The Resolution calls on Congress to repeal the Protection of Lawful Commerce in Arms Act of 2005. The Resolution also supports the enactment of state laws that set standards of responsible conduct for holders of Federal Firearms Licenses (“FFLs”) and other gun companies and that provide paths for civil litigation for knowing failures to comply.

2. Indicate which of the ABA’s Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

This Resolution addresses Goal IV, advancing the rule of law by encouraging states and Congress to provide access to the courts for victims of tortious conduct by Federal Firearms Licensees, rather than conveying special immunity to those actors that keeps victims of their conduct from seeking justice.

3. Approval by Submitting Entity.

Approved by the Standing Committee on Gun Violence on November 11, 2025.

4. Has this or a similar resolution been submitted to the House or Board previously?

N/A.

5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

In 1996, the House of Delegates passed Resolution 96M8, which called on jurisdictions to “Adopt and extend state and territorial laws to provide civil claims for relief for those persons sustaining injury or damage as a result of the violation of state, territorial or municipal laws regulating the use, sale, possession, license, ownership, or control of firearms and ammunition.” Adoption of this Resolution would call on those jurisdictions to create standards for tortious conduct for Federal Firearms Licensees specifically. Additionally, in 2001, the House of Delegates passed resolution 01A10B, which opposed any federal law which created special immunity from liability for the firearms industry. In 2005, Congress passed the Protection of Lawful Commerce at Arms Act (PLCAA), which created such special immunity; this resolution calls for PLCAA’s repeal.

6. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A.

7. Status of Legislation. (If applicable)

In the 119th Congress, H.R. 3740, the Equal Access to Justice for Victims of Gun Violence Act of 2025, calls for the repeal of PLCAA. It has been referred to the House Committee on the Judiciary.

8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

If implemented, the Association will be able to lobby Congress to repeal PLCAA and to advise states on implementation of so-called Firearm Industry Responsibility Act (FIRA) laws that seek to set standards of responsible conduct for firearms industry actors and create civil causes of action for the violations of those standards.

9. Cost to the Association. (Both direct and indirect costs)
None.

10. Disclosure of Interest. (If applicable)
None.

11. Referrals. (List proper names of ABA entities as reflected [here](#).)

Section of Criminal Justice

Section of Civil Rights and Social Justice (co-sponsor)

Section of State and Local Government Law

Young Lawyers Division

Senior Lawyers Division

Tort, Trial, and Insurance Practice Division

Litigation Section

Solo, Small Firm and General Practice Division

Commission on Domestic and Sexual Violence

12. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*)

Monte E. Frank

203-512-1317

mfrank@pullcom.com

13. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

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203-512-1317

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EXECUTIVE SUMMARY

1. Summary of the Resolution.

The Resolution calls on Congress to repeal the Protection of Lawful Commerce in Arms Act of 2005. The Resolution also supports the enactment of state laws that set standards of responsible conduct for holders of Federal Firearms Licenses (“FFLs”) and other gun companies and that provide paths for litigation for knowing failures to comply.

2. Summary of the issue that the resolution addresses.

The Resolution addresses access to justice issues that victims of tortious conduct by firearms industry actors face as a result of federal laws which uniquely limit the liability of those actors and state laws which do not adequately set standards for tortious conduct by those actors.

3. Please explain how the proposed policy position will address the issue.

The Resolution calls on Congress to repeal the Protection of Lawful Commerce in Arms Act because the law conveys special legal immunity to the firearms industry that restricts litigation against FFLs for simple negligence and other basic tort principles. Further, it calls on states to pass laws that set standards of responsible conduct for holders of Federal Firearms Licenses (“FFLs”) and other gun companies and that provide paths for litigation for knowing failures to comply.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

The firearms industry supports PLCAA and opposes exposure to additional liability, arguing that such special immunity is necessary to prevent them from being exposed to frivolous litigation for every instance in which their product, which is designed to deliver munitions that can cause serious bodily harm or death, in fact does so.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON GUN VIOLENCE
COMMISSION ON DISABILITY RIGHTS
CIVIL RIGHTS AND SOCIAL JUSTICE SECTION
CRIMINAL JUSTICE SECTION
COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE
COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges federal, state, local, territorial, and
2 tribal governments to reduce potential harm that individuals may inflict on themselves or
3 others by enacting statutes, rules, or regulations allowing individuals to temporarily
4 prevent themselves from purchasing firearms. Such measures should include, at
5 minimum, the following provisions that:

- 6 1. any person may voluntarily and confidentially request that their own name be
7 added to the Index of the National Instant Criminal Background Check System, an
8 equivalent state background system, or to both, to prevent future firearms
9 purchases;
- 10 2. the statute, rule, or regulation provide a procedure with appropriate safeguards
11 whereby the person may have their name removed and such record deleted from
12 the System; and
- 13 3. the statute, rule, or regulation provide appropriate safeguards to reasonably
14 ensure that persons who request inclusion or removal from the System do not
15 face stigma, discrimination, or any adverse action, and are entitled to
16 confidentiality so that the fact that the person prohibited from purchasing a
17 firearm is only disclosed when a valid background check is done.
18
19

REPORT

I. Introduction

Suicide is a public health crisis. It is a leading cause of death in the United States.¹ In 2016, nearly 45,000 lives were lost to suicide.² That year, suicide was the second leading cause of death among individuals aged 10 to 34, and the fourth leading cause among those aged 35 to 54.³ From 1999 to 2016, suicide rates rose in almost every state, up more than 30 percent in half the states and highest in the western states.⁴

Although mental health conditions are often perceived as the cause of suicide, in 2016, 54 percent of people who died by suicide did not have a known mental health condition.⁵ In fact, 84 percent of men and 16 percent women with no known mental health conditions committed suicide,⁶ compared to 69 percent of men and 31 percent of women with known mental health conditions.⁷ Among both individuals with and without known mental health conditions, many factors contribute to suicide. These include relationship problems (42%), crises in the past or upcoming two weeks (29%), problematic substance use (28%), physical health problems (22%), job/financial problems (16%), criminal legal problems (9%), and loss of housing (4%).⁸

Suicides comprise nearly two-thirds of all firearm deaths in the United States, with firearm suicides outnumbering firearm homicides two to one.⁹ In 2016, 51 percent of all suicides (2,348 of 4,575 deaths) for males aged 15 to 24 involved firearms. For males aged 25 and over, the percentage of suicides involving firearms increased with age, from 48 percent among those aged 25 to 44 (5,362 of 11,181 deaths), to 55 percent among those aged 45 to 64 (6,579 of 11,943 deaths), to 74 percent among those aged 65 to 74 (2,574 of 3,463 deaths), and to 81 percent among those aged 75 and over (2,656 of 3,291 deaths).¹⁰

Nearly three-quarters of all suicides among females aged 15 to 24 involved either suffocation (509 of 1,148 deaths or 44%) or firearms (335 deaths or 29%). Among females aged 25 to 44, 32 percent (1,035 of 3,215 deaths) involved firearms, 31 percent suffocation (1,004 deaths), and 28 percent poisoning (887 deaths). Firearms were the second most frequent means of suicide—poisoning first—among females aged 45 and

¹ Suicide rising across the US, CDC VITAL SIGNS, June 2018, <https://www.cdc.gov/vitalsigns/suicide/index.html>.

² *Id.*

³ Centers for Disease Control and Prevention, WISQARS, “Ten leading causes of death,” United States, <http://webappa.cdc.gov/sasweb/ncipc/leadcause.html>, Atlanta, GA 2017.

⁴ CDC VITAL SIGNS, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ BRADY CENTER TO PREVENT GUN VIOLENCE, THE TRUTH ABOUT SUICIDE & GUNS 2 (2016), <http://www.bradycampaign.org/sites/default/files/Brady-Guns-Suicide-Report-2016.pdf>.

¹⁰ Holly Hedegaard, Sally C. Curtin & Margaret Warner, *Suicide Rates in the United States Continue to Increase*, NCHS DATA BRIEF, No. 309, June 2018, at 5 (National Center for Health Statistics, Hyattsville, MD), <https://www.cdc.gov/nchs/data/databriefs/db309.pdf>.

106B

over, accounting for 32 percent of suicides among those aged 45 to 64 (1,361 of 4,253 deaths), 38 percent among those aged 65 to 74 (358 of 940 deaths), and 33 percent among those aged 75 and over (168 of 510 deaths).¹¹

Firearms are a particularly lethal means of attempting suicide, with 85 to 90 percent of firearm suicide attempts ending in death,¹² compared to less than 10 percent across all attempts not involving a firearm.¹³ Thus, a persuasive argument can be made that because individuals who attempt suicide with a gun rarely get a chance to reconsider their decisions, when guns are less available, fewer suicide attempts will result in fatality, more people will have the chance to reconsider their decisions, and suicide rates will decline.¹⁴

II. Need for Resolution

Giving individuals who believe they might be at risk for firearm suicide—whether they are struggling with life events, have a mental illness, or experience suicidal ideation—the opportunity to voluntarily put themselves on a no-gun registry may save lives.¹⁵ This conclusion is based on three well-established clinical and epidemiologic observations. First, many suicides are impulsive. Seventy percent of people who made near-lethal suicide attempts took less than one hour between the decision to kill themselves and the actual attempt.¹⁶ Second, suicidal crises are often precipitated by an immediate stressor (e.g., breakup of a romantic relationship, loss or job), so that as the acute phase of the crisis passes often so does the urge to attempt suicide.¹⁷ Third, the great majority of individuals who survive a suicide attempt do not go on to later die by suicide.¹⁸

Similarly, giving individuals who believe they might be at risk for harming others the opportunity to voluntarily put themselves on a no-gun registry—may save lives as well. One recent study found that firearm waiting periods reduce homicide as well as suicide.¹⁹

This resolution urges “federal, state, local, territorial, and tribal governments to reduce potential harm that individuals may inflict on themselves or others by enacting statutes,

¹¹ *Id.* at 4.

¹² Matthew Miller, Deborah Azrael & Catherine Barber, *Suicide Mortality in the United States: The Importance of Attending to Method in Understanding Population-Level Disparities in the Burden of Suicide*, 33 ANN. REV. OF PUBLIC HEALTH. 393-408 (2012).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Fredrick E. Vars, *Self-Defense Against Gun Suicide*, 56 Boston College Law Review 1465 (2015).

¹⁶ Thomas R. Simon et al., Characteristics of Impulsive Suicide Attempts and Attempters, 32:1 SUICIDE & LIFE THREATENING BEHAVIOR 49-59 (2011), <https://onlinelibrary.wiley.com/doi/pdf/10.1521/suli.32.1.5.49.24212>.

¹⁷ Miller et al., *supra* note 12.

¹⁸ *Id.*

¹⁹ Michael Luca, Deepak Malhotra, & Christopher Poliquin, *Handgun Waiting Periods Reduce Gun Deaths*, PNAS, <http://www.pnas.org/content/pnas/early/2017/10/11/1619896114.full.pdf>. See also Griffin Edwards et al., *Looking Down the Barrel of a Loaded Gun: The Effect of Mandatory Handgun Purchase Delays on Homicide and Suicide*, ECON. J. (2017), <https://doi.org/10.1111/econj.12567>.

rules, or regulations allowing individuals to temporarily prevent themselves from purchasing firearms.” Any person would be able to voluntarily and confidentially request that their own name be added to the Index of the National Instant Criminal Background Check System (NICS), an equivalent state background system, or to both, to prevent future firearms purchases. The idea behind the no-gun registry is to allow these individuals to prepare for potential crises before they occur.

This option would appeal to individuals who have suicidal ideations, whether due to relationship, substance abuse, physical or mental health, job or financial, criminal legal, or anger management problems, among other reasons. Among 200 people surveyed who were seeking inpatient and outpatient psychiatric care at an academic medical center, nearly half (46%) said they would sign up for the proposal.²⁰ Further, in an on-line survey with 262 respondents, 29 percent said they would sign up for the proposal with a seven-day delay removal option.²¹ Some of these individuals may be at high risk for suicide (for all the reasons outlined above or for other reasons), but others may not be.

III. Do-Not-Sell List

The essential attributes of a do-not-sell list are a voluntary and confidential way to suspend one’s ability to purchase firearms. The second element is a mechanism, with adequate safeguards, for changing one’s mind and regaining the ability to purchase firearms.

The list could work as follows. An individual 18 years of age or older would request that their name be added to NICS, an equivalent (also secure) state background system, or to both, to prevent future firearms purchases from a licensed dealer. The signup process—whether by mail or email—would be voluntary and confidential and require identity verification. Implementation could vary, but examples of identity verification include notarization or electronic notarization. The interface would explain in plain language that the registrant may be temporarily waiving Second Amendment rights. The registrant could later request that their name be removed from the index and/or system. Three weeks after the request for removal, their name would be removed and all records of the transaction deleted. The 21-day delay period is to allow for adequate deliberation.

Note that *only* an individual can put himself or herself on a list. A person who has legal authority to make decisions for the individual, whether through a guardianship, durable power of attorney, or other means, cannot put the individual on the list.

At the time of registration, registrants would have the option of communicating their waiver of gun rights to others by providing their email addresses. The registry would

²⁰ Fredrick E. Vars et al., *Willingness of Mentally Ill Individuals to Sign Up for a Novel Proposal To Prevent Firearm Suicide*, 47 SUICIDE & LIFE-THREATENING BEHAV. 483 (2016), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/sltb.12302>.

²¹ Ian Ayres & Fredrick E. Vars (Feb. 2016), *Amazon Mechanical Turk/Qualtrics survey data*. [Data on file with authors]. Fifteen percent of the sample reported being “diagnosed with a mental disorder.”

106B

then alert addressees that the registrant has waived their Second Amendment rights, as well as if the registrant later rescinds their waiver.

Registration prevents purchase only. Registrants who are later found to be in possession of a firearm would not be subject to criminal prosecution. The Do-Not-Sell List is designed to prevent impulsive gun suicide and violence toward others, not to be a broader gun control measure. The List is prophylactic, not punitive. If an individual signed up but later obtained a firearm without a background check, that individual would not be criminally liable. Limiting easy access to firearms is the goal, not punishing individuals who, perhaps in a suicidal crisis, manage to get their hands on guns from other sources.

IV. Support for the Voluntary Do-Not-Sell List

Washington became the first state in the nation to enact legislation that creates a registry allowing individuals to voluntarily waive their right to purchase firearms.²² Washington citizens can add their names to a do-not-sell list, suspending their ability to buy guns from licensed dealers. Registrants may provide an alternate person to be contacted if they revoke the voluntary waiver. Registrants who do so need only make the request and wait seven days. The law requires in-person registration and withdrawal. Participants have the option of designating a third-party contact to be notified “if a voluntary waiver of firearm rights is revoked.” The law has confidentiality protections, including a prohibition on discrimination based on one’s participation in the program.

Legislators in Alabama, California, Massachusetts, Tennessee, and Wisconsin have introduced similar bills. The Alabama bill²³ would allow individuals to voluntarily be added to the Voluntary Alabama Firearms Do Not Sell List via a secure Internet-based platform. Upon registering, receipt of a firearm by that person is unlawful. The registering individual’s information is reflected in the NICS Index Denied Persons File for Alabama. A registrant can submit email addresses of personal contacts to notify and advise that the registrant has added their name to the list or seeks to rescind their registration.

Registrants can request that their name be removed from the list at any time, and removal would take place automatically 21 days after the request. Upon removal, all records of the registration, associated transactions, and the request for removal are destroyed. The bill makes it unlawful for any person to inquire as to whether an individual is on the list or has requested to be added to or removed from the list for purposes of employment, education, housing, insurance, governmental benefits, or contracting. It is also unlawful to take any adverse action associated with those purposes or health care purposes based on an individual’s registration with the list. Violations give rise to a private civil action.

²² WA SB 5553 (Jan. 24, 2018).

²³ AL SB376 (introduced Mar. 8, 2018).

The California bill²⁴ directs the state' department of justice to “study options for allowing a person to register himself or herself on a list or database that prohibits the person from being able to purchase a firearm. The department shall recommend an approach to allow a person to prohibit himself or herself from purchasing a firearm.”

The Tennessee bill²⁵ would require the Tennessee Bureau of Investigation (TBI) to develop and launch a secure internet-based platform that allows any person in the United States to register to add their own name to the Tennessee Do Not Sell List. This information is reflected in the NICS Index and conveyed to any other state that adopts an analogous “Do Not Sell List.” A person can subsequently request that their name be removed from the registry and wait 21 days for removal. Following removal from the registry, TBI must notify any other participating state registries to and purge all records related to the registration process. Whether a person is on the list or has requested removal is confidential with respect to matters involving employment, education, housing, insurance, government benefits, and contracting, and registrants can bring a private civil action for breaches of confidentiality.

The Massachusetts and Wisconsin bills would also allow voluntary suspension of gun purchase ability. However, those two bills differ from the Do Not Sell List model in several significant respects, including more onerous removal provisions.

V. ABA Policy

The American Bar Association (ABA) has a longstanding tradition of being at the forefront of policymaking to curb gun deaths. For instance, in 2017 the ABA passed policy urging “state, local, territorial, and tribal governments to enact statutes, rules, or regulations authorizing courts to issue gun violence restraining orders, including ex parte orders,” that include a provision that “a petitioner with documented evidence that a respondent poses a serious threat to himself or herself or others may petition a court for an order temporarily suspending the respondent’s possession of a firearm or ammunition.”²⁶ California, Connecticut, Indiana, and Washington have enacted laws whereby a law enforcement officer or a family member may seek a court order for the temporary removal of guns from a potentially dangerous persons pending a full hearing.²⁷ In fact, a 2016 study of the Connecticut Gun Violence Restraining Order statute estimates that it has prevented up to 100 suicides.²⁸

Also, in 2012 the ABA adopted policy opposing “governmental actions and policies that limit the rights of physicians and other health care providers to inquire of their patients

²⁴ CA AB No. 1927 (introduced Jan. 24, 2018).

²⁵ Tenn. SB 671.

²⁶ ABA Resolution 17A118B, https://www.americanbar.org/content/dam/aba/images/gun_violence/118B.pdf.

²⁷ Cal. Penal Code §18150 et seq.; Conn. Gen. Stat. § 29-38c; Ind. Code § 35-47-14-5 – 35-47-14-9; Rev. Code Wash. (ARCW) § 7.94 (Added by 2016 Initiative Measure No. 1491).

²⁸ Dan Friedman, “Laws That Allow for Temporarily Removing Guns from High-Risk People Linked to a Reduction in Suicides,” *The Trace*, Sept. 8, 2016, <https://www.thetrace.org/2016/09/gun-violence-restraining-order-suicide-reduction-connecticut/>.

106B

whether they possess guns and how they are secured in the home or to counsel their patients about the dangers of guns in the home and safe practices to avoid those dangers.”²⁹ Health care practitioners play a key role in counseling patients about the risks of injuries and best practices to minimize those risks as part of the practice of preventive care.³⁰ The Centers for Disease Control and Prevention (CDC) highlight the important role health care systems can play in providing high-quality, ongoing care focused on patient safety and suicide prevention.³¹ There is widespread agreement that good medical care includes conversations about the safe storage of firearms, as responsible storage can prevent suicide by children and teens. A majority of adults in the United States, including gun owners, believe it is appropriate for physicians to talk to their patients about firearms.³² Gun owners who receive counseling are more likely to store their guns responsibly.³³

Further, in 2011 the ABA enacted policy urging “applicable governmental entities to take all appropriate measures to ensure that the National Criminal Instant Background Check System (NICS) is as complete and accurate as possible, so that all persons properly categorized as prohibited persons under 18 U.S.C. § 922(g), are included in the NICS system.”³⁴ In states that go beyond federal law and require background checks on all handgun sales, including guns sold by unlicensed sellers, there are 47 percent fewer gun suicides.³⁵ For example, Connecticut’s background check law led to an estimated 15 percent reduction in the state’s gun suicide rate.³⁶

This proposed resolution builds on the current policies, seeking to curb firearm suicide deaths by allowing individuals to voluntarily restrict their own access to firearms.

VI. Low-Cost Implementation

The cost-per-life-saved of this proposal would be very low. The federal background check system (NICS) has been granted its requested appropriation and is operational. All licensed gun dealers are already required to check the confidential federal database before selling a firearm. All that is needed to implement the proposal at the federal level is a mechanism for securely adding and subtracting names. After an initial start-up investment, the process could be more or less automated.

²⁹ ABA Resolution 11A10a,

https://www.americanbar.org/content/dam/aba/directories/policy/2011_am_10a_authcheckdam.pdf.

³⁰ *Id.*

³¹ CDC, *supra* note 1.

³² Betz, Public opinion regarding whether speaking with patients about firearms is appropriate, *Ann IM*. 2016; 165:543-550.

³³ Albright TL, Burge SK, Improving firearm storage habits: impact of brief office counseling by family physicians, *J Am Board Fam Pract*. 2003; 16(1); 40-46.

³⁴ ABA Resolution 11A10a, at

https://www.americanbar.org/content/dam/aba/directories/policy/2011_am_10a_authcheckdam.pdf

³⁵ Background Checks Reduce Gun Violence and Save Lives (EverytownResearch.org. 2017), <http://every.tw/2wUF5E2>.

³⁶ CK Crifasi et al., *Effects of changes in permit-to-purchase handgun laws in Connecticut and Missouri on suicide rates*, 79 *PREVENTIVE MED*. 43-49 (October 2015).

Implementation at the state level would also be cost-effective. The federal background check system allows states to add to the federal database the names of individuals who are barred from purchasing a firearm by state law but not federal law. Each state could implement the proposal by creating its own sign-up mechanism for its own residents, then sending those names to the federal system.³⁷ Each state has control over its own state disqualifier database in NICS, so states could implement the proposal without relying on FBI processes or formal NICS appeal procedures.

Of course, people must know about the program in order to take advantage of it. For example, the bill introduced and passed out of committee in Alabama provides for “publicity and advertising campaign . . . that at a minimum provides the public with information about the list, how an individual may register to be added to the list, and contacts for additional information regarding the list.”

VII. The Proposal Would Not Violate the Second Amendment

The Second Amendment case closest on the facts to the proposal is *Silvester v. Harris*.³⁸ Plaintiffs in *Silvester* argued that California’s 10-day waiting period to purchase a firearm violated the Second Amendment. The Ninth Circuit rejected that argument, ruling that the waiting period imposed a burden on Second Amendment rights, but not so great a burden as to justify more than intermediate scrutiny.³⁹ The court held that the waiting period passed intermediate scrutiny because it provided a cooling-off period to deter violence and suicide.⁴⁰

Based on *Silvester*, one can persuasively argue that restricting an individual’s own ability to purchase a firearm with an automatic, but delayed revocation option is functionally equivalent to a self-imposed waiting period. If a mandatory waiting period does not violate the Second Amendment, as *Silvester* squarely holds, then neither does a less restrictive, optional waiting period.

The next closest line of cases involves firearm restrictions based on dangerousness. Restrictions of this kind have been upheld time and time again.⁴¹ An optional and

³⁷ Registrants of an enacting state would be precluded from purchasing a weapon from a gun dealer anywhere in the country. However, because one state’s law only applies to its residents, each state would need its own registry system. That would be more expensive than a single federal system.

³⁸ 843 F.3d 816, 821 (9th Cir. 2016).

³⁹ *Id.* at 827.

⁴⁰ *Id.* at 827-29.

⁴¹ See, e.g., *Baer v. Lynch*, 636 Fed. Appx. 695, 698 (7th Cir. 2016) (“As to violent felons, the statute does survive intermediate scrutiny, we have concluded, because the prohibition on gun possession is substantially related to the government’s interest in keeping those most likely to misuse firearms from obtaining them.”) (citations omitted); *United States v. Chovan*, 735 F.3d 1127, 1139-41 (9th Cir. 2013) (persons convicted of domestic violence misdemeanors); *United States v. Stegmeier*, 701 F.3d 574 (8th Cir. 2012) (fugitive felon); *United States v. Carter*, 669 F.3d 411 (4th Cir. 2012) (unlawful user of a controlled substance); *Hope v. State*, 163 Conn. App. 36, 43 (2016) (the challenged statute “does not implicate the Second Amendment, as it does not restrict the right of law-abiding, responsible citizens to use arms in defense of their homes. It restricts for up to one year the rights of only those whom a court has adjudged to pose a risk of imminent physical harm to themselves or others after affording due process protection to challenge the seizure of the firearms.”).

106B

temporary measure is less restrictive than a mandatory restriction premised on someone else's judgment that the restricted party is "dangerous." In other words, the proposal's constitutionality follows *a fortiori* from the constitutionality of waiting periods and dangerousness restrictions.

A third argument in favor of constitutionality rests on the proposition that "the Second Amendment's guarantee of an individual right to keep or bear arms in self-defense should include the freedom not to keep or bear them at all."⁴² Firearm self-restriction would provide a tool to strengthen this right not to bear arms—by binding oneself against impulsively buying arms in the future. The animating principle of the Second Amendment is self-defense.⁴³ One ought to be able to defend oneself against suicide.⁴⁴

Finally, an individual who restricts their own ability to purchase firearms generally waives their Second Amendment rights. Waivers of constitutional rights "not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."⁴⁵ Sign-up systems should include clear and prominent explanations that the individual is waiving such rights.

VIII. Conclusion

This resolution will further existing ABA policy aimed at curbing firearm deaths by focusing on suicide, which comprises nearly two-thirds of all firearm deaths in the United States. Giving individuals who are at risk of suicide the opportunity to voluntarily prohibit themselves from buying a firearm is a modest and inexpensive approach that could save lives. The ABA should advocate strongly for this legal step to combat this public health crisis.

Respectfully submitted,

Joshu Harris
Chair, Standing Committee on Gun Violence
January 2019

⁴² Joseph Blocher, *The Right Not to Keep or Bear Arms*, 64 *Stanford Law Review* 1, 4 (2012).

⁴³ See *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (explaining that "individual self-defense is 'the central component' of the Second Amendment right").

⁴⁴ *Vars*, *supra* note 1.

⁴⁵ *Brady v. United States*, 397 U.S. 742, 748 (1970).

GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Gun Violence

Submitted By: Joshu Harris, Chair

1. Summary of Resolution(s). To reduce the risk of suicides and other deadly incidents, this resolution urges that individuals be allowed to: 1) voluntarily submit their names into databases used for gun background checks, and 2) remove themselves from those systems.
2. Approval by Submitting Entity. Approved by Committee at its November 13, 2018 business conference call.
3. Has this or a similar resolution been submitted to the House or Board previously? The Resolution was submitted to the House for the 2018 Annual meeting, but was subsequently withdrawn to address concerns raised by the Commission on Disability Rights. Those concerns have been addressed and the Commission is now a co-sponsor.
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? Numerous policies relate to categories of persons who should mandatorily be included in background check systems for firearm purchases, such as felons, fugitives, persons under indictment, persons adjudicated mentally incompetent, and minors (1965 and reaffirmed since), as well as felons and persons convicted of violent misdemeanors, spousal or child abuse, and persons subject to a protective order. 94A10E. Additionally, the ABA supports full implementation of the National Criminal Instant Background Check System so that it is accurate and complete. 11A10A. Most recently, the ABA endorsed gun violence restraining orders, whereby someone may petition a court to have a person deemed dangerous to oneself or others temporarily be barred from possessing a firearm and having the restraining order entered into federal and state background check systems. 17A118B. The proposed policy does not conflict with, but complements, these existing policies. Indeed, it is unique because of its voluntary nature.
5. If this is a late report, what urgency exists which requires action at this meeting of the House? NA
6. Status of Legislation. (If applicable) None pending on the federal level. Washington State recently enacted such a law. California has a bill to study the idea that passed its Assembly (AB-1927), but was subsequently vetoed. The governor explained that

106B

the idea could be studied without new statutory authorization.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. Implementation will be done through training, sharing of this and related information with civil society groups that address gun violence, and advocacy through the Government Affairs Office where opportunities (e.g. related proposed legislation introduced) arise.

8. Cost to the Association. (Both direct and indirect costs) None

9. Disclosure of Interest. (If applicable) NA

10. Referrals.

Commission on Disability Rights: co-sponsored
Commission on Domestic & Sexual Violence: co-sponsored
Commission on Law and Aging
Commission on Sexual Orientation and Gender Identity: co-sponsored
Commission on Youth at Risk: supported
Criminal Justice Section: co-sponsored
Government & Public-Sector Lawyers Division
Health Law Section
Judicial Division
Section of Civil Rights and Social Justice: co-sponsored
Section of Family Law
Section of Litigation
Section of State and Local Government Law
Senior Lawyers Division
Solo, Small Firm and General Practice Division
Tort Trial & Insurance Practice Section
Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Joshu Harris, Chair
1239 Crease St
Philadelphia, PA 19125-3901
(646) 621-4164

12. Contact Name and Address Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*)

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106B

EXECUTIVE SUMMARY

1. Summary of the Resolution

To reduce the risk of suicides and other deadly incidents, this resolution urges that individuals be allowed to: 1) voluntarily submit their names into databases used for gun background checks, and 2) remove themselves from those systems.

2. Summary of the Issue that the Resolution Addresses

Roughly two thirds of gun related deaths are suicides. Most suicides are impulsive acts and most successful suicides involve a firearm. This resolution allows persons who self-identify as being at risk of harming themselves (or in many cases others) to take proactive steps to lessen this likelihood.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution sets general standards, and provides wide latitude to states to enact laws to help a portion of an at-risk population insulate themselves against further harm.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None identified.