



Protection of Lawful Commerce in Arms Act 101

On October 26, 2005, Congress enacted the Protection of Lawful Commerce in Arms Act (“PLCAA”), with a long title that made its purpose crystal clear:

An Act [t]o prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

The bill was adopted on a bi-partisan basis by a 65-31 margin in the Senate and a 283-144 vote in the House. Signed into law by President George W. Bush, the Act specified that it would have two effects:

- (i) mandating that courts order the dismissal of all pending “qualified civil liability actions,” and
- (ii) prohibiting the commencement in any Federal or State court, of any new such actions. See 15 U.S.C. § 7902.

In a lengthy provision, Congress defined what it meant by a “qualified civil liability action”ⁱ followed by definitions of eight court or administrative actions not included.ⁱⁱ A “qualified civil liability action” is: a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a [firearm], injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a [firearm] by the person or a third party.ⁱⁱⁱ

“[B]ut,” § 7903(5)(A) “shall not include” any of the eight actions or proceedings described in subsections (i) - (vi). Of these subsections, only one is directly involved in this case, known as the “predicate exception,” which reads as follows:

- (iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—
 - (I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or
 - (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18....^{iv}

In most of the history of our nation, civil liability for damages caused by the “criminal misuse” of firearms was generally governed by common law tort rules of individual fault and proximate causation.^v Although ordinary firearm tort liability is judged by the “highest degree” of care, it was not subject to strict liability,^{vi} which was applicable only to those things and activities that met the common law definition of “abnormally dangerous.”^{vii} However, in the years leading up to the opening decade of the 21st century, Congress became concerned that the time-honored principle of individual responsibility was being eroded to the point where legitimate firearm manufacturers, distributors, and dealers were increasingly pressured to assume the financial burden of the misuse of firearms under ever-expanding notions of enterprise liability threatening their liberties.^{viii} Thus, § 7901(a)(7) declared:

The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States.^{ix}

Foremost among the liberties threatened was the Second Amendment right to keep and bear arms.^x Hence, one of the purposes of PLCAA is to “preserve a citizen’s access to a supply of firearms and ammunition for all lawful purposes, including ... self-defense.”^{xi} Remarkably, Congress made these findings in October 2005. It was not until June 26, 2008 — 32 months later — that this Court caught up with Congress, affirming that the Second Amendment is, indeed, an individual right.^{xii} And it took an additional two years for this Court to rule that one’s Second Amendment rights were secured by the Fourteenth Amendment from abridgement by the States.^{xiii}

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- i 15 U.S.C. § 7903(5)(A)
- ii 15 U.S.C. § 7903(5)(A)(i)-(vi)
- iii 15 U.S.C. § 7903(5)(A).
- iv 15 U.S.C. § 7903(5)(A)(iii).
- v See A. McClurg, “The Second Amendment Right to be Negligent,” 68 FLA. L. REV. 1, 3-5 (2016).
- vi *id.* at 21-25
- vii See W. Prosser, Law of Torts at 505-16 (West, 4th ed.: 1971).
- viii See *id.* at 494.
- ix 15 U.S.C. § 7901(a)(7).
- x See 15 U.S.C. § 7901(a)(1) and (2).
- xi 15 U.S.C. § 7901(b)(2).
- xii See District of Columbia v. Heller, 554 U.S. 570 (2008).
- xiii McDonald v. City of Chicago, 561 U.S. 742 (2010).