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CHALLENGING GUN INDUSTRY IMMUNITY

MATTHEW PLATKIN*

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It's really great to be here, and it's super exciting to be here talking about a way to approach an issue that, I think for too long, we didn't talk about as a realistic possibility. Before I get into that, I just want to emphasize to all the students here that we are in a critical moment, I think, in our nation's history, and I think that faith in government is at its all-time low. And I hope you consider a career that, at least in part, comes into government service. And I say that as somebody who just left government service, which was probably the hardest transition of my life. I loved being in government. I've served in government for the bulk of my career. It's an amazing part of what I hope will be a fulfilling professional

* Matthew Platkin served as the Attorney General of New Jersey from 2022 to 2026. He is currently a Partner at Platkin LLP, a mission-driven, private law firm based in Newark, New Jersey.

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journey in the law, and I just wanted to say that at the outset, because what I'm going to talk about, and what you heard from Senator Myrie,¹ is an example of what you can do if you're in government and you just grab the bull by the horns and take initiative. You can really get a lot of impactful things done, and I think the Senator and his wife² will agree with me: go do state work. This is not a knock on the federal government or the possibility of getting anything done in Congress—though Rob³ was very good at getting things done in Congress on guns for the first time in a generation—but you can just do so much more at the state level right now. It's just a fact. The states are at the forefront of so many issues and if you believe in making change, you can really do it at the state level. Okay, my PSA about state government is over.

So, I want to just ground the conversation a little bit in what problem we are trying to solve. Gun violence today is still the leading cause of death for children in this country. I got into public service because I grew up in the Columbine generation. I wanted to do something about it. I didn't think I'd be raising two kids in a country that continues to say gun violence is the single leading, most likely cause of their death. Regardless of where you fall on the Second Amendment debate, that should offend all of us. There is no country in the world that looks like us that has a gun violence rate remotely close to ours. And, I did learn something in school, probably not as much as I should have, but I learned that you can't explain a variable with a constant. The urge to commit violent acts may, to some degree, be a tragic part of human nature, but our homicide rate is substantially higher than countries that look like us, almost 75 to 80 percent higher than France or the United Kingdom. Substantially higher than Canada. And our gun violence rate dwarfs any country that looks like ours. And again, the single leading cause of death of children in this country, it's not a car, it's not falling into a pool, it's not cancer—it is a firearm.

So, is what we're doing with respect to affirmative firearm civil enforcement efforts with respect to the firearm industry unique, or

1. New York State Senator Zellnor Myrie for New York's 20th Senate District.

2. Former New York State Assemblywoman Diana Richardson for New York's 43rd Assembly District.

3. U.S. Congressman Robert Menendez for New Jersey's 8th District.

is that extraordinary? Actually, I think what's extraordinary is that since 2005, it has been assumed you can't do this work. Remember that PLCAA⁴ is just twenty years old. And the reason why PLCAA came into being was because there were a series of lawsuits seeking to hold bad actors in the firearms industry accountable. So, instead of addressing it through the courts—as we have seen, the courts are quite receptive to Second Amendment challenges—what did they do? The gun industry went to Congress and passed a law that gave the industry, as Professor Gluck⁵ noted, the broadest immunity of any industry in the United States of America. The single most lethal cause of death for children was granted the broadest immunity from liability. But in it, they gave states a very clear set of authorities to bring actions for violations under state law. I think what happened after that is an example of where the political might and the messaging capabilities of an industry actually resulted in a distortion of what the law really did, because the law didn't say states can't bring the same types of legal actions we bring against every other industry.

I served as the Attorney General for the State of New Jersey. Attorneys general, if you look across the country, have widely varying degrees of authority. Some, like my old office, have very broad criminal authority. Some have no criminal authority. Some represent state agencies, some don't. Some are independently elected, some are appointed, some are appointed by the supreme court, like Tennessee, and some are appointed by the state legislature, which would have never happened for me. But every single one of them shares one very common set of basic authorities, which is our consumer protection authorities. Every single state has some variation of what's called the UDAP⁶ statute, a consumer protection law. In New Jersey, it's called the Consumer Fraud Act. Every state, I believe, has a products liability statute. Is it true that not every state has a firearms-specific industry accountability

4. PLCAA stands for the Protection of Lawful Commerce in Arms Act, a U.S. federal law that took effect in 2005. Protection of Lawful Commerce in Arms, 15 U.S.C. §§ 7901-03.

5. Professor Abbe Gluck, Alfred M. Rankin Professor of Law and Faculty Director of the Solomon Center for Health Law and Policy, Yale Law School; and Professor of Internal Medicine, Yale School of Medicine.

6. UDAP stands for unfair, deceptive, or abusive business practices, and these laws allow consumers harmed by violations to sue for relief.

statute or a public nuisance law, like the Senator passed in New York? Yes, that's true. But the other two areas of law that I just mentioned form the core of most of the complaints we filed. Many of them have public nuisance claims in them, but are not exclusively public nuisance claims.

Autonomous vehicles are a big topic right now. If a company was out there telling the public that their autonomous vehicles were safe to drive, that there's no chance of you getting hurt, but their research showed that actually they were quite likely to cause you to get hurt, and they put it out to the market, guess what? It's a consumer fraud violation. We've talked a lot about opioids. Companies were marketing a product they told the public was safe and not addictive when their own research told them the opposite. As Professor Gluck noted, that was the core theory that actually drove most of those settlements. In the tobacco cases of the nineties, companies marketed products to children that they told the public were safe when they knew that were not—and those cases transformed the industry. So, there have been big, big cases brought under these theories. There are also run-of-the-mill cases. Has anybody tried to play the basketball games at the Jersey Shore? Did you make one? Nobody's answering. You probably didn't, because I busted those companies for telling the public that their basketballs were inflated to the amount that they're supposed to be, and they weren't. They were overinflated, so when it hit the rim, it actually was rigged. And we got them. So, I say that because we use those tools every single day. I busted the Whole Foods scale in my town, in Montclair, because they were telling you that the amount of turkey you were buying was actually less than what it was. This is not controversial stuff, and that's what kind of made the job fun. You can see things that affect people's lives, and the consumer work that we did is actually, to me, some of the most fun things you get to do. It's the cases that are the biggest, and it's the cases that really affect people's lives on a day-to-day basis. It's also the same tools we're using right now in another area of law where there is an immunity, not as broad as PLCAA, with respect to social media companies. Now in those cases, we were the lead state. I know it's not the topic of conversation here, but it's relevant. We led suits on Meta, TikTok, and I was the first state to sue Discord. We were the

first. We've led those suits. Fifty states are on some of those suits. And the theory there is, again, nothing different. Company has a product. They market it to the public as being safe. They know it's not safe. It's a consumer fraud violation. Now, they have § 230⁷ and they assert those defenses, but it's very different. Even the social media companies, who I have strong disagreements with about the scope of their immunity, don't assert the type of immunity that the firearms industry has asserted. They just simply don't. And they, frankly, don't misread § 230 so you can't go into court at all, which is what the firearms industry has done with respect to these cases. So, there's really nothing exceptional about the types of cases that we're bringing, and I will get into the types of cases we're bringing. What is exceptional is how these cases have been treated and the fact that they haven't been brought universally, particularly given the backdrop of the crisis that we are facing. That is what is extraordinary.

We were a little bit after New York, but I spent, along with Governor Murphy and the legislature and many folks in this room, several years advocating for New Jersey's own firearms industry accountability statute. And we got it passed, took about 3 years. And what happened? The trade group, NSSF,⁸ came in. They facially challenged the law. They would not disclose who they were challenging on behalf of. They wouldn't say which companies, theoretically, were exposed to unlawful enforcement actions. They just said as an organization we have standing to say you cannot enforce this law on its face. We went up to the Third Circuit. Before a quite conservative panel on the Third Circuit, we were successful in dismissing that case on standing grounds.⁹ That took about a year. So, doing the math, we have had the law, without an injunction, in place for about two and a half years. In that time period, we have brought more cases than any other state has in its entirety against bad actors in the firearms industry. That's not me saying everybody in the firearms industry is bad. It's not. There are a whole bunch of retailers who are following the law. And I think one thing that gets misunderstood about how you protect people

7. § 47 U.S.C. 230.

8. The National Shooting Sports Foundation.

9. See *Nat'l Shooting Sports Found. v. Att'y Gen. of N.J.*, 80 F.4th 215 (3rd Cir. 2023).

from harm in this industry is that New Jersey is a state of nine million people. It is not the case that nine million people are committing violent acts. It's like a thousand people. It is similarly not the case that there are thousands and thousands of retailers that are being careless with respect to their sales. It's a relative few. It's no different than, frankly, most other industries. Some places follow the rules, rules that have been universally upheld by our state and federal courts, and some places, a relative few, don't. And when you don't follow the rules, the attorney general is empowered to go in and protect the people who call our state home. By the way, just to go back to the NSSF case, I do think their theory was extraordinary. They went to federal court and said that this law cannot be enforced against anybody. Anybody. Because it would violate everyone's rights, and they wouldn't even say whose rights were supposedly violated. So, I'm glad that case did not have success, because I think that would have opened up a whole bunch of really crazy results in this area, and frankly, other areas, if you could do that from a standing perspective.

I mentioned the political influence. Look, the firearms industry lobby has been very effective at shaping the narrative about what PLCAA does and doesn't do. I think that's changed, and is changing for the reasons I'll get into, but I think the biggest thing that people were convinced of is that it entirely foreclosed access to the courts. It simply didn't. There is the state exception for violations of predicate state laws. These laws, whether it's a firearms-specific law or the consumer fraud law, are not new. The consumer statutes, by the way, have been on the books in some cases for over a century. Products liability common law doctrine, I believe, dates back to the twelfth century, and certainly in statutory ways well predates PLCAA and modern Second Amendment jurisprudence. These aren't new concepts that somehow emerge; they're actually fairly old concepts that we're just using in a way that is entirely consistent with the law, given the changing circumstances on the ground.

I created the SAFE¹⁰ Office, which was the first office of its kind in the country. This wasn't some massive army of people. It was four lawyers and two civil investigators, former law enforcement officers,

10. SAFE stands for Statewide Affirmative Firearms Enforcement.

who did the work, in partnership with a whole bunch of folks. And so, let's talk about the types of cases we brought, because I think it's important. You can get pulled into a Second Amendment debate. These are not Second Amendment cases. They're just not. I understand there is a Second Amendment right; nobody has disputed that. But the issues we're talking about are actually quite consistent with every other form of regulatory enforcement effort that we do.

One of the first ones we did was JSD Supply. A ghost gun is like a Lego kit to assemble a firearm. Even the Supreme Court says we can regulate them. In 2019, New Jersey became the first state in the country to regulate ghost guns.¹¹ We did it because of a challenge in enforcing our criminal statute with respect to ghost guns. I worked with our then-Attorney General's Office when I was in the Governor's Office, and we drafted a ghost gun criminal statute and have been enforcing that statute ever since. There were no Second Amendment issues there on the criminal side. There were no PLCAA issues with enforcing the ghost gun statute. What did we start seeing? We started seeing a whole bunch of cases where a single gun show across the river—New Jersey's the densest state in the country—was the source of many of our crime guns. Over 80 percent of the guns that are used in the commission of crime in New Jersey originate outside our state. A single gun show and provider in Pennsylvania was marketing the sale of ghost guns; again, guns that were clearly illegal in the state of New Jersey. Two New Jersey residents were selling them, and we were prosecuting those cases. There were no PLCAA issues and no Second Amendment issues with those criminal prosecutions. But the seller of them was just walking away and making money off these sales. And so, it was brought to us by law enforcement. What we did was bring a lawsuit against the gun show and the distributor on the basis that they were violating the predicate state laws, the ghost gun statutes, and our public nuisance statute.¹² That case is still being litigated. Now, again, I don't think that's wildly controversial. I can prosecute the

11. See N.J. STAT. ANN § 2C:39-3 (West 2019).

12. See Complaint, *Platkin v. Patriot Enters. Worldwide LLC*, No. C-93-23 (N.J. Super. Ct. Ch. Div. Mercer Cnty. Dec. 12, 2023), https://www.nj.gov/oag/newsreleases23/2023-1212_JSD-Complaint.pdf [<https://perma.cc/NMG8-2UHF>].

person who is possessing that gun. Nobody, even the Supreme Court, is saying we can't do that. But somehow you have a right to sell that gun, which is criminal to possess in the state, into the state and be immune from civil liability. That's the argument in that case.

FSS Armory. This is a single retailer in Morris County, which is in Northern Jersey. We have regulations for when you sell guns. You have to keep them secure. I'm not in the business of selling guns, but if I were, I would probably want to secure the products that I'm selling so they don't get stolen. Just from a sheer business perspective—put aside the public safety risk—I don't think it's good for you to have products in your store that people walk out with. What did this retailer do? They didn't secure their firearms. They left twenty in their window, a glass window. The firearms were so obviously not secured that when you went on Google Street View, you could see the guns. And they linked to it on their website. What do you think happened? Smash and grab. Somebody breaks the window, steals the twenty guns, and several of them turn up in crimes shortly after. The evidence is quite clear that a single gun used in a crime can be used in as many as twelve or more crimes. It's very common for a crime gun to be used over and over again. If you think about that, twenty guns could have produced hundreds of shootings. So, we sued FSS Armory, the retailer, for failing, again, to adhere to laws that nobody is challenging.¹³ Nobody is saying you can't have regulations in our state about securing firearms if you're a gun retailer. We sued them for breaking that law, and we were successful. We survived a motion to dismiss and settled that case. They settled with us, and now retailers in New Jersey are securing their firearms. Again, I don't see how that implicates, or burdens excessively, the right to purchase a firearm. It's just saying that if you're going to sell them, you have to keep them secure in your store. Pretty common sense.

Butch's Gun World and Point Blank. Our firearms accountability statute does have a reasonable controls requirement that says you have to place reasonable controls over the sale of your firearms. We sued two other retailers for selling thousands of rounds of

13. See Complaint, *Platkin v. FSS Armory, Inc.*, No C-102-23 (N.J. Super. Ct. Ch. Div. Morris Cnty. Dec. 12, 2023), https://www.nj.gov/oag/newsreleases23/2023-1212_FSS-Armory-Complaint.pdf [<https://perma.cc/X9AZ-MF5D>].

ammunition, based on undercover buys, without checking ID and taking payment in cash. Both of those cases have resolved in our favor.¹⁴ This was AR-15 ammunition, the type of ammunition very commonly used in mass shootings in this country, and we've seen, tragically, too many instances in which failing to detect thousands and thousands of rounds of ammunition being purchased can result in a tragedy.

Then we sued a couple of the largest manufacturers. I'm giving you a scope—not all of these cases are against massive industry participants. They're against individual businesses that are breaking the law. If I have one message, it would be that this is pretty common stuff when it comes to the type of work that AGs offices do. In fact, I think if it weren't for the fact that they involve firearms, we probably wouldn't be talking about these cases as extraordinary at all. We sue all kinds of stores all the time, under the same exact theories, though they almost never make the press.

We sued Glock and Sig Sauer, and I'll talk about both of those, because I think it's important. Glock sells a firearm in the United States that can be switched, meaning it can be converted to a firearm that's capable of firing at a rate of 800 or 900 rounds a minute. As we allege in our complaint, this was known to the company for years.¹⁵ Actually, based on the allegations of the complaint, it was known to them as far back as the eighties when Gaston Glock, who was the founder of Glock, went to Venezuela and demonstrated a version of the Glock switch before the military junta in his hotel room. It's like a Hollywood story. If you go and look up music videos, there are countless references to switched Glocks. They do not sell a switchable Glock in Germany, though Glock is an Austrian company and the owner of Glock lives in Austria. They do not sell a version of that gun that can be switched in the

14. See Press Release, AG Plakin Announces Victory in Gun Store Case, Office of the Att'y Gen. (July 24, 2025), <https://www.njoag.gov/ag-platkin-announces-victory-in-gun-store-case/> [<https://perma.cc/5UXJ-99FH>]; Press Release, AG Plakin Announces Consent Order Resolving Suit Against Gun Store for Unlawful Sales to Unverified Buyers, Office of the Att'y Gen. (Mar. 18, 2024), <https://www.njoag.gov/ag-platkin-announces-consent-order-resolving-suit-against-gun-store-for-unlawful-sales-to-unverified-buyers/> [<https://perma.cc/T9AJ-G8BC>].

15. See Complaint, *Platkin v. Glock, Inc.*, No C-286-24 (N.J. Super. Ct. Ch. Div. Essex Cnty. Dec. 12, 2024), <https://nj.gov/oag/newsreleases24/Glock-complaint.pdf> [<https://perma.cc/WWU3-VKFT>].

neighboring country to where they're from, as we allege in the complaint, yet they sell it here. These Glocks have been used to kill people. Machine guns, nobody disputes, are illegal in the United States. Even the Supreme Court adheres to that. There are debates about what counts as a machine gun, but machine guns are illegal and have been for over a century. But switched Glocks have been used in mass shootings across the country. They have killed law enforcement officers, they've killed people in the state of New Jersey, they fire indiscriminately, and people use them quite unsafely. So, we sued Glock along with Minnesota. That case in Minnesota, our case, and a similar case in Chicago have all survived motions to dismiss. We are through the initial round of dispositive motions and discovery in that case, and we'll see how it plays out, but I believe that is a very significant case, and I believe it's, again, consistent with our other theories that we have brought.

The last one that I highlight is the Sig Sauer case, which is the most recent case that I filed against a manufacturer.¹⁶ New Jersey's the first, but I predict we won't be the last state to sue Sig Sauer. This case is about Sig Sauer's P320 firearm, which we allege accidentally discharges, which is a nice way of saying it shoots when you don't want it to. The United States Army stopped purchasing the P320 because of its dangers. If you think of a product defect that a gun shouldn't have, it shouldn't shoot unless you pull the trigger. That, I think, is a pretty important feature of a firearm. But there's quite a bit of evidence that the P320 accidentally discharges. We had law enforcement officers, including one officer, Officer Imbert, who was a range master, an expert tactician with his firearm. He was killed while cleaning his P320. We've had officers shot in the leg while it was holstered, and then a whole bunch of other cases. So, we sued Sig Sauer under several theories, involving both consumer protection and products liability claims.

These cases, in a nutshell, have been successful. We survived dispositive motions in Glock and FSS Armory, we got summary judgment in Butch's Gun World, and we've had settlements in FSS Armory and Point Blank. We haven't had a single case dismissed;

16. Complaint, *Platkin v. Sig Sauer, Inc.*, No C-217-25 (N.J. Super. Ct. Ch. Div. Essex Cnty. Oct. 16, 2025), https://www.nj.gov/oag/newsreleases25/2025-1016_01-Complaint.pdf [<https://perma.cc/N2FB-TCEJ>].

we haven't lost a single case at summary judgment or at trial. There's a pretty clear body of law in New Jersey now that agrees with me, which is that what we're doing is entirely consistent with what the Attorney General does on a regular basis in terms of protecting consumers from harm. And, as I noted, we defeated a preliminary injunction attempt in federal court.

So now we're here, and what makes me really excited to be here is that not too long ago there was such a perception that the types of cases I just told you that I believe are quite ordinary, that are consistent with what our offices do, that have been successful, and that have produced results, couldn't be litigated. It wasn't worth the time thinking about litigation strategies, it wasn't worth the time engaging in academic discussion and thought—because it was fairly commonly accepted that you simply can't do it. That PLCAA forecloses these lawsuits. That notion, I think, should be dispelled. I believe that with the evidence we've developed and the cases they've produced, there can be, and should be, a healthy academic debate about what types of cases should be brought. I am not suggesting that every actor in the industry is bad or is subject to liability. I'm not. I wouldn't say that about any industry, except maybe if you're, like, a Boston sports fan.

But I do think there are some key areas for academic research. I think discussions like this one are hugely important. The work done in this volume is very important. My team and I have talked a lot about areas where we could use some more robust debate, whether that's in how damages are assessed in these cases or how theories of corporate liability apply to industries in the firearms supply chain. I think there are still a lot of questions about First Amendment and marketing theories of liability here, which is not unique to guns, by the way. That's true in a lot of areas, and I think these topics are really important. But I do believe that one thing that can come from this type of academic work, from these convenings, is healthy and important substantive and robust debate. I also think we can continue to change the perception that this is an area of law that's not worth pursuing.

There are a lot of great things about being the Attorney General. There are some tough things about being the Attorney General, and the toughest thing, without question, is being called in when

somebody has been shot and killed—especially when it’s a law enforcement officer. Last year, we had a really horrific shooting in Newark. Two officers were shot by a 14-year-old with a ghost gun. Again, ghost guns are illegal in New Jersey. One of the officers, a twenty-six-year-old from Newark named Joseph Azcona, was killed. I was in University Hospital in Newark with his family at eleven o’clock at night. I leave his mom, who was obviously, as you would imagine, grief-stricken. I walk out, and there’s a twenty-five-year captain of the Newark Police Department who works on ballistics. And he says to me—and I think it’s fair to say everybody in that hospital was in a state of shock, so I don’t think he was talking to me as Attorney General, he probably didn’t even realize he was talking to me—and he said, “you know, the kid who shot him, we got him. But the guy who sold him that gun is going to walk away with the money.” That stuck with me, because in that moment, you had somebody who was putting his life on the line in our largest city in our state every single day to tackle gun violence, and the first thing he was thinking about when one of his brothers was killed was, how do we make sure you can’t do this with impunity?

It was obvious to him, and I think it was obvious to me. I think the success we’ve had in these cases have meaningfully contributed to the fact that last year in New Jersey, 559 people were shot. In the ten years before I took office, the average was 1,300, and we had never been below 1,000.

These cases can have a huge impact. They can protect the public, which is, for state attorneys general, and I think for private litigants, the role that these litigations play. They can redress harms, they can ensure that we don’t see as much carnage, and hopefully we can be here five or ten years from now, talking about how gun violence is no longer the leading cause of death for children. Just like we’ve seen tobacco no longer be prominently used by minors, just like we’ve seen harms in a whole host of industries, opioids, you name it, be addressed through proactive consumer protection litigation brought by state and private actors. I’m happy to take any questions you have, and I thank you for the honor of speaking before you today.