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Testimony of Tanya Schardt, Senior Counsel and Director of State and Federal Policy  
**Support for SB 0113 [FAV]**  
Before the Maryland Senate Judicial Proceedings Committee  
February 6, 2023

Chair Smith, Vice Chair Waldstreicher, and distinguished members of the Maryland Senate Judicial Proceedings Committee,

Founded in 1974, Brady works across Congress, courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America's gun violence epidemic. Brady today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah's legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence. **In furtherance of our goal to reduce firearm violence across Maryland, the Brady Campaign to Prevent Gun Violence is proud to support the passage of Senate Bill 0113.** SB 0113 creates a path for gun industry members to be held accountable for dangerous, unlawful, negligent and unsafe business practices that impact Marylanders and removes barriers that currently prevent victims and survivors from obtaining justice in the courtroom.

**The Gun Industry has been Afforded Special Protections that Harm Marylanders**

A top priority of the gun industry, the Protection of Lawful Commerce in Arms Act (PLCAA) was signed into law by then-President George W. Bush in 2005.<sup>1</sup> PLCAA provides gun manufacturers, distributors, and gun dealers with special protections from civil liability that no other U.S. industry is currently afforded. Although PLCAA does not provide complete immunity from all civil lawsuits, some courts have interpreted the law to effectively bar victims and survivors of gun violence from holding firearms businesses liable for injuries caused by negligence, defective products, or unreasonably dangerous conduct that would otherwise be actionable under civil justice principles. Enabling the gun industry to evade accountability at the expense of victims of gun violence significantly contributes to the gun violence epidemic by

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<sup>1</sup> 15 U.S.C. § 7901 (2005).

removing key incentives for the gun industry to adopt life-saving business practices.<sup>2</sup> Moreover, PLCAA has had a chilling effect on civil cases against the gun industry and has worked to prevent victims and survivors from recovering damages they are owed after tragic injuries or deaths. SB 0113 would ensure that the gun industry would no longer be shielded from accountability for their dangerous, irresponsible, or illegal practices that endanger the lives of Marylanders.

### **PLCAA Denies Justice to Victims and Survivors**

Victims should have recourse for the gun industry's negligence and dangerous practices, but PLCAA currently protects gun dealers and manufacturers from being held responsible. Gun dealers and manufacturers should be held responsible for negligent and irresponsible sales practices that are the proximate cause of an individual's injuries or death, and for selling to someone who is likely to harm themselves or others. Manufacturers who design firearms without life-saving safety features, such as chamber-loaded indicators and magazine disconnect safeties, or sell to someone who is clearly likely to harm themselves should be held liable for their design failures and malpractice.<sup>3</sup>

### **PLCAA Perpetuates the Flow of Crime Guns into Communities of Color**

The latest available data from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reveals that just 2.7 percent of dealers accounted for over 71 percent of crime gun traces.<sup>4</sup> While this small minority of gun dealers are the sources of crime guns recovered in communities of color, these gun dealers typically sit outside those communities in less diverse and more affluent suburbs.<sup>5</sup> Residents of these communities suffer from the chronic stress of daily interpersonal gun violence and the negative impacts on their community's economic prosperity, without recourse or compensation, while irresponsible gun dealers face no consequences. The implications of this lack of accountability cannot be overstated. While gun violence touches Americans across the country, it disproportionately impacts communities of color. Approximately 80 percent of America's gun deaths occur in urban areas with large minority populations.<sup>6</sup> Black Americans are 11 times more likely than their white peers to be the victim of a firearm homicide, and this problem is exacerbated for Black males, who lose four years in life expectancy on the basis of gun violence alone.<sup>7</sup> Non-Hispanic Black males in Maryland are 27.7 times more likely to be victims of firearm homicide than non-Hispanic white males.<sup>8</sup>

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<sup>2</sup> Brady Campaign & Brady Center, "What is PLCAA?", Brady, available at <https://www.bradyunited.org/fact-sheets/what-is-plcaa>.

<sup>3</sup> Vernick, J., Meisel, Z., Teret, S., Milne, J. and Hargarten, S., 1999. "I Didn't Know the Gun Was Loaded": An Examination of Two Safety Devices That Can Reduce the Risk of Unintentional Firearm Injuries," *Journal of Public Health Policy*, 20(4), pp.427-440, available at <https://www.jstor.org/stable/3343129?seq=1>.

<sup>4</sup> Department of the Treasury, "Commerce in Firearms in the United States," Bureau of ATF (Feb. 2000), available at [http://www.joebrower.com/RKBA/RKBA\\_FILES/GOV\\_DOCS/BATF\\_report\\_020400.pdf](http://www.joebrower.com/RKBA/RKBA_FILES/GOV_DOCS/BATF_report_020400.pdf).

<sup>5</sup> Brady Campaign and Brady Center, "Crime Guns in Impacted Communities," Brady, available at <https://www.bradyunited.org/reports/crime-guns-in-impacted-communities>.

<sup>6</sup> *Id.*

<sup>7</sup> CDC, "Injury Prevention & Control," available at <https://www.cdc.gov/injury/wisqars/fatal.html>; Kalesan, B., Vyliparambil, M., Zuo, Y., Siracuse, J., Fagan, J., Branas, C. and Galea, S., 2018. "Cross-sectional study of loss of life expectancy at different ages related to firearm deaths among black and white Americans," *BMJ Evidence-Based Medicine*, 24(2), pp.55-58, available at <https://ebm.bmj.com/content/24/2/55>.

<sup>8</sup> CDC, "Injury Prevention & Control," available at <https://www.cdc.gov/injury/wisqars/fatal.html>.

## **PLCAA Disincentivizes Responsible Business Practices**

The mere threat of civil liability motivates companies to adopt safe business practices that prevent future injuries and death.<sup>9</sup> For example, car manufacturers made numerous safety improvements that have cut automobile-related deaths by 50 percent since the 1960s, primarily because of technological advancements spurred by fear of liability.<sup>10</sup> PLCAA effectively removed this motivation for the gun industry, disincentivizing gun dealers from adopting safe sales practices and gun manufacturers from incorporating affordable life-saving safety devices into their products and monitoring their distribution practices.<sup>11</sup> While the gun industry claims that mental health and violent video games are to blame for gun violence, it's actually common industry practices that create the conditions that enable most gun violence to occur.<sup>12</sup> The limitations on the ability to hold the industry accountable prevent public awareness and deter regulatory changes, as well as disincentivize independent action by the industry to avoid liability, all of which would reduce gun violence and save lives.

## **Conclusion**

SB 0113 will function as an exception to PLCAA, ensuring that valid civil claims can be brought against the gun industry for their dangerous, negligent, and even unlawful actions. The possibility of civil liability will not only provide civil justice to victims and survivors but also encourage the gun industry to act responsibly to help stem the tide of crime guns that harm Marylanders, particularly in urban areas where communities of color are disproportionately harmed. Having operated with special protections for years, the industry has had no financial incentive to curb irresponsible conduct and instead puts profits over people. The prospect of civil liability can lead to safer products and better conduct that the industry has resisted for years.

SB 0113 must be enacted because no industry should be above the law, especially not one that makes and sells lethal weapons. SB 0113 will make sure that bad actors in the gun industry are held accountable and victims of gun violence are able to get justice through the law. ***For the reasons described above, Brady urges the committee to support the passage of Senate Bill 0113.***

Sincerely,  
Tanya Schardt

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<sup>9</sup> Vernick, J. et al., 2003. "Role of Litigation in Preventing Product-related Injuries," *Epidemiologic Reviews*, 25(1), pp.90-98, available at <https://academic.oup.com/epirev/article/25/1/90/718671>.

<sup>10</sup> LaFrance, Adrienne, "Why Haven't Gunmakers Improved Safety Technology the Way Automakers Did?", *The Atlantic* (Jan. 21, 2016), available at <https://www.theatlantic.com/technology/archive/2016/01/guns-cars/424878/>.

<sup>11</sup> Sampson, Kelly, "Tobacco Kills People. Opioids Kill People. But Guns Don't?", *Brady* (Sept. 4, 2019), available at <https://bradyunited.medium.com/tobacco-kills-people-opioids-kill-people-but-guns-dont-7852c288d496>.

<sup>12</sup> Zeballos-Roig, Joseph, "The NRA Issued a Statement Supporting Trump's Call to Focus on Mental Illness to Reduce Gun Violence after the Shootings in El Paso and Dayton," *Insider* (Aug. 5, 2019), available at <https://www.businessinsider.com/nra-statement-backing-trump-el-paso-dayton-shootings-mental-illness-2019-8>; Hudson, Laura, "The NRA Solution to Gun Violence: More Guns, Fewer Video Games," *Wired* (Dec. 21, 2012), available at <https://www.wired.com/2012/12/nra-video-games/>; Gluck, A., Nabavi-Noori, A. and Wang, S., 2021. Gun Violence in Court. *The Journal of Law, Medicine & Ethics*, 48(S4), pp.90-97, available at <https://journals.sagepub.com/doi/abs/10.1177/1073110520979406>.