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SUING THE NRA FOR DAMAGES

Frank J. Vandall*

INTRODUCTION

A solution is needed for the gun violence epidemic, where approximately 15,000 innocent persons are shot to death each year.¹ Close analysis reveals that meaningful legislative solutions have failed to move forward.² The reason for this failure is the National Rifle Association's (NRA) stranglehold on federal and state legislators.³ This Article explores a nonlegislative solution—a tort suit aimed at obtaining compensation for the shooting victims and returning the NRA to its original purpose.⁴ It will examine actions by the NRA and consider the NRA's foundational defenses: failure to engage in any “imminent lawless action,” the First Amendment, the Second Amendment, and proximate cause. It will also consider the five tort causes of action: (1) aiding and abetting, (2) civil conspiracy, (3) strict liability, (4) the intentional infliction of emotional distress, and (5) negligence.

The Protection of the Lawful Commerce in Arms Act (PLCAA) of 2005 insulates gun manufacturers and sellers from lawsuits.⁵ In almost every gun

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¹ *Past Summary Ledgers*, GUN VIOLENCE ARCHIVE (Jan. 11, 2020), <https://www.gunviolencearchive.org/past-tolls> (gun violence related deaths are listed by year: 2015 (13,555 deaths); 2016 (15,112 deaths); 2017 (15,690 deaths); 2018 (14,801 deaths)).

² State “red flag” laws are the exception. See Tara Sklar, *Elderly Gun Ownership and the Wave of State Red Flag Laws: An Unintended Consequence that Could Help Many*, 27 *ELDER L.J.* 35, 37, 49 (2019).

³ See, e.g., Sam Musa, *The Impact of NRA on the American Policy*, 4 *J. POL. SCI. PUB. AFF.* 1, 2–6 (2016) (arguing that the NRA impacts legislation by spending significant amounts of money on lobbying, including \$3,410,000 in 2013 and \$3,360,000 in 2014).

⁴ Lily Rothman, *The Original Reason the NRA Was Founded*, *TIME* (Nov. 17, 2015), <https://time.com/4106381/nra-1871-history/> (“The N.R.A. was founded in 1871 by a group of former Union Army officers dismayed that so many Northern soldiers, often poorly trained, had been scarcely capable of using their weapons. . . . The group, led initially by General George Wingate, quickly set about addressing the problem of producing better American marksmen, holding their first Wimbledon-esque tournament in 1873.”).

⁵ See, e.g., *Ileto v. Glock*, 565 F.3d 1126, 1138 (9th Cir. 2009); *City of New York v. Beretta*, 524 F.3d 384, 404 (2d Cir. 2008); *Phillips v. Lucky Gunner, F. Supp. 3d 1216, 1222* (D. Colo. 2015); *Adames v. Sheehan*, 909 N.E.2d 742, 759 (Ill. 2009); see also *Gun Industry Immunity*, GIFFORDS L. CTR. (last visited Jan. 11, 2010), <https://lawcenter.giffords.org/gun-laws/policy-areas/other-laws-policies/gun-industry-immunity/> (showing more cases and information about the PLCAA). Since tort suits were targeting gun manufacturers, the PLCAA was passed

violence case, the shooter is dead, impecunious, or both.⁶ Therefore, money and time is wasted suing the shooters, meaning the survivors of those murdered in shootings have no recourse to justice.

Yet we know there will be forty shootings today, forty tomorrow, and forty more the next day.⁷ While mass murders will foreseeably occur every few weeks, Congress and state legislatures will continue to be hamstrung by the NRA's concerted actions to block gun reform legislation.⁸ Thus, the United States appears helpless to halt the continuing deaths of innocent people.

The purpose of this Article is to prove that the NRA is at the root of the gun violence problem. As a result, the NRA should be sued for damages flowing from the constant shootings and deaths of innocent people in the United States. The goal of this Article is to remove the NRA and their influence from the gun control debate and to create an avenue for the survivors to recover damages.

In showing the NRA's motivation in this proposed suit, we must step back from the shooting tragedies and explore the NRA and gun manufacturers' strategic and financial impetus for promoting a culture that encourages gun violence. The number of innocent persons shot and killed each year hovers at around 15,000.⁹ That amounts to 150,000 deaths over the last ten years. Due to the NRA's endeavors, however, no meaningful gun control legislation has emerged from Congress or the states in the last ten years.¹⁰ A goal of this Article is to encourage federal and state legislatures to

to protect them. See John Herzfeld, *Jury in Brooklyn Finds Gun Makers Negligent, Awards \$520,000 in Damages to One Victim*, 27 BNA PROD. SAFETY & LIAB. REP. 170, 171 (1999) (discussing the landmark case and showing potential liability for gun manufacturers). See generally Nancy J. Moore, *Taking Aim at the Gun Industry—Are Guns the Next Tobacco*, 27 BNA PROD. SAFETY & LIAB. REP. 1 (1999) (showing gun manufacturers were increasingly the subject of tort suits in 1999).

⁶ See, e.g., Meghan Keneally & Chris Francescani, *5 Victims, Shooter Dead; 5 Police Officers Injured in Shooting at Workplace in Aurora, Illinois*, ABC NEWS (Feb. 15, 2019, 11:19 PM), <https://abcnews.go.com/US/active-shooter-situation-reported-illinois/story?id=61107650>; *Orlando Gunman Turned Over Share of House to Sister for \$10*, NBC NEWS (June 17, 2016), <https://www.nbcnews.com/nightly-news/video/orlando-gunman-turned-over-share-of-house-to-sister-for-10-707909187870>.

⁷ The final death count for 2018 was 14,801 gun violence deaths, which means on average, 40.55 deaths occurred per day. See *Past Summary Ledgers*, *supra* note 1.

⁸ See Musa, *supra* note 3, at 2–6.

⁹ Determining innocence is difficult, but statistics from the CDC suggest that the total number of deaths of innocent people may be higher: 39,000 in 2017, 38,114 in 2016, and 35,609 in 2015. See *Firearm Mortality by State*, CDC, https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.html (last updated Feb. 19, 2020).

¹⁰ Again, state “red flag” laws are the exception. See Sklar, *supra* note 2, at 37.

function as intended. By blocking gun control reforms, the NRA creates a gun violence climate. It does not pull the trigger nor ask others to do so, but works to continue the status quo.

Donald v. United Klans of America, Inc. is critical precedent in designing a civil suit against the NRA. In leading up to this case, a black man was acquitted in the shooting of a white police officer when the jury became deadlocked.¹¹ At a local meeting of the United Klans, several members then conspired to kill a black man at random to make it clear to the black community that the acquittal was unacceptable.¹² In carrying out this conspiracy, Klan members Henry Hayes and James Knowles cruised the streets of Montgomery, Alabama, where they found a young black man, Michael Donald, and beat him unconscious.¹³ Subsequently, they hung his body from a tree.¹⁴ Donald's mother sued the United Klans in tort.¹⁵ She recovered \$7,000,000 and sold the United Klans' building to partially collect on the judgment.¹⁶ In finding for the plaintiff, the jury in *Donald* found that the United Klans aided and abetted the murder of Michael Donald.

I will argue that the NRA and the United Klans are functionally similar in that the NRA actively works to block gun reforms and that this turns America into a shooting gallery where thousands of innocent victims are killed each year.

Because state and federal legislators are actively throttled by the lobbying and outreach efforts of the NRA, I propose a non-legislative solution: a civil suit in tort against the NRA. This suit will rest on five causes of action: (1) aiding and abetting, (2) civil conspiracy, (3) strict liability, (4) the intentional infliction of emotional distress, and (5) negligence. Additionally, this Article will critique the NRA's four main defenses: (1) failure to engage in any "imminent lawless action," (2) the First Amendment, (3) the Second Amendment, and (4) proximate cause.

¹¹ Composite Complaint at 13, *Donald v. United Klans of Am., Inc.*, (S.D. Ala. Feb. 12, 1987) (No. 84-0725), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/case/beulahvunklancompcomplaint.pdf.

¹² *Id.* at 14–15.

¹³ *Id.* at 16.

¹⁴ *Id.* at 17.

¹⁵ *Id.* at 22–23.

¹⁶ Final Judgment and Order at 1, *Donald v. United Klans of Am., Inc.*, No. 84-0725-AH (S.D. Ala. Feb. 12, 1987); *Landmark Case: Donald v. United Klans of America*, S. POVERTY L. CTR., <https://www.splcenter.org/seeking-justice/case-docket/donald-v-united-klans-america> (last visited Jan. 22, 2020).

I. MANIFESTING THE CAUSE-IN-FACT CONNECTION BETWEEN THE NRA AND GUN VIOLENCE

Readers of this Article will likely wonder what the NRA has to do with gun violence. In the law this is referred to as cause in fact. The most challenging element of a torts suit against the NRA is showing the legal cause in fact between the gun violence epidemic and the NRA. The NRA will argue that it had nothing to do with the murders and did not pull the triggers. The task of this Part is to show that the NRA has sufficient involvement in the shootings to hold them liable. The necessary legal connection is known as “cause in fact.” The two tests used to prove “cause in fact” are the “but for” test and the “substantial factor” test.¹⁷ Quite simply, some murders would not have happened if there were adequate gun control laws such as bans on AK-47s and AR-15s. The task for the plaintiff is to show that the NRA acted in such a manner that it is appropriate to hold the NRA, its CEO, President, and board of directors liable for a portion of the murders.¹⁸ In *Donald*, the Klan issued a proclamation advising members to avenge a jury verdict by killing a black person. With knowledge of gun violence, the NRA acts in numerous ways to block gun control reform and to encourage the sale of more guns. A percentage of these new guns are used to kill innocent persons.¹⁹ Therefore, since the NRA’s efforts to block gun legislation are a “substantial factor” in these deaths, the NRA should be held liable. That is, the NRA by blocking gun reform legislation knowingly enables a percentage of 15,000 deaths per year. Their conduct is worse than the Klan’s actions that knowingly resulted in the death of one person.

A central defense by the NRA will be that its lobbying efforts to block legislation are pure speech and protected by the First Amendment. The line between protected speech and lawless speech is a quagmire that was addressed in 1969 by the Supreme Court in *Brandenburg v. Ohio*. The facts of *Brandenburg* are that a Klan leader violated an Ohio statute that prohibited advocating violence. The Klan violated that statute by stating that the Klan might take revenge “if our President, our Congress, our Supreme Court,

¹⁷ “But for” causation refers to the physical connection between an act and an injury. The plaintiff must establish that the harm suffered would not have occurred “but for” an act or omission of the defendant. *Martini v. Post*, 313 P.3d 473, 479 (Wash. Ct. App. 2013). Cause in fact is applied in Wisconsin using the “substantial factor” test: whether the defendant’s alleged negligence was a “substantial factor” in contributing to the harm from which damages are claimed. *Beul v. ASSE Int’l*, 55 F. Supp. 2d 942, 948 (E.D. Wis. 1999).

¹⁸ The proposed tort suit will seek an injunction against dangerous acts as well as monetary damages. Some deaths would occur without the NRA’s intervention. Because the NRA works to bar the CDC from research in this area, all assumptions should go against the NRA.

¹⁹ See *infra* note 59.

continues to suppress the white, Caucasian race.”²⁰ A leader of the Ku Klux Klan (KKK) was found liable of violating the Ohio statute, but the Court struck down the conviction.²¹ It reasoned that “constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”²²

Three tort cases illustrate when speech will not be protected: *Weirum v. RKO General*, *Rice v. Paladin Enterprises*, and *Donald*. In *Weirum*, a radio station was held liable for encouraging teen drivers to speed to search for a disc jockey who was driving from place to place.²³ In *Rice*, a book publisher was held liable for selling a book that was a manual on precisely how to commit murder.²⁴ In *Donald*, the United Klans was held liable for the conspiracy of several of its members to find and kill a black man as an example to the community.²⁵

The NRA’s incitement of gun violence is not as simple or as clear as any of the above three cases. Instead, it is more like building an airplane from thousands of parts. One part alone will not fly, but the thousands of parts, carefully assembled, produces an airplane that flies. Similarly, the NRA does not pull the trigger in any violent shooting, but its twenty-two separate actions, when fully assembled, help to produce 15,000 deaths per year.²⁶

Holding the NRA liable for its actions is like holding the driver of a getaway car guilty of murder committed during a bank robbery. This is known as the felony-murder rule.²⁷ The getaway car driver is liable for

²⁰ *Brandenburg v. Ohio*, 395 U.S. 445, 446 (1969).

²¹ *Id.* at 447.

²² *Id.* at 447–48.

²³ *Weirum v. RKO Gen.*, 539 P.2d 36, 37, 42 (Cal. 1975).

²⁴ *Rice v. Paladin Enters.*, 128 F.3d 233, 239–43 (4th Cir. 1997).

²⁵ Composite Complaint, *supra* note 11, at 14; Final Judgment and Order, *supra* note 16, at 1.

²⁶ *See Firearm Mortality by State*, *supra* note 9.

²⁷ *See, e.g., People v. Stokes*, 671 N.E.2d 1260, 1262 (N.Y. 1996) (describing theory of vicarious liability underpinning felony murder); *see also Felony Murder*, JUSTIA, <https://www.justia.com/criminal/offenses/homicide/felony-murder/> (last updated Apr. 2018) (“The felony murder rule allows a defendant to be charged with first-degree murder for a killing that occurs during a dangerous felony, even if the defendant is not the killer [The defendant] may be held responsible for the fatal consequence . . . even if someone else caused the actual death [The] prosecution must show only that the defendant participated in a felony where fatalities occurred.”).

murder just like his accomplice who pulled the trigger inside the bank.²⁸ The crime can be murder, even if the actor did not pull the trigger.

The NRA is both a “substantial factor” and a cause in fact of gun violence deaths. It ensures these deaths by artfully manipulating the following twenty-two strategies: (1) asserting that the only cure for gun violence is more guns;²⁹ (2) “grading” United States congressmen and state legislators based on their support for gun lobbying efforts;³⁰ (3) donating to pro-gun politicians;³¹ (4) actively preventing the CDC from conducting research on gun violence;³² (5) preventing the police from disclosing facts related to gun violence such as the brand of gun used;³³ (6) financially supporting gun ranges;³⁴ (7) lobbying against the ban on rapid-fire guns;³⁵ (8) attacking persons who support gun control;³⁶ (9) financially supporting youth and

²⁸ *Stokes*, 671 N.E.2d at 1262.

²⁹ *NRA: ‘Only Way To Stop a Bad Guy With a Gun Is with a Good Guy With a Gun’*, CBS DC (Dec. 21, 2012, 1:18 PM), <https://washington.cbslocal.com/2012/12/21/nra-only-way-to-stop-a-bad-guy-with-a-gun-is-with-a-good-guy-with-a-gun/>.

³⁰ *NRA Grades Archive*, EVERYTOWN FOR GUN SAFETY, <https://everytown.org/nra-grades-archive/> (last visited Jan. 11, 2020).

³¹ *National Rifle Assn.*, CTR. FOR RESPONSIVE POLITICS, <https://www.opensecrets.org/orgs/toprecipis.php?id=D000000082&type=P&sort=A&cycle=2018> (last visited Feb. 5, 2020) (showing NRA donated \$19,454 to Democrats in 2018 and \$696,900 to Republicans in 2018).

³² Samantha Raphelson, *How the NRA Worked to Stifle Gun Violence Research*, NPR (Apr. 5, 2018, 3:01 PM), <https://www.npr.org/2018/04/05/599773911/how-the-nra-worked-to-stifle-gun-violence-research> (“The legislation didn’t explicitly ban gun research, but funding cuts reduced it by 90 percent, according to Dr. Mark Rosenberg, the former director of the CDC’s National Center for Injury Prevention and Control.”).

³³ See Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809, 2859 (2004) (codified as amended at 18 U.S.C. § 923 (2006)).

³⁴ This includes both public and NRA-affiliated privately owned shooting ranges. See *Apply for Grants and Funding for Your Range*, NRA, <https://rangeservices.nra.org/funding-grants/> (last visited Jan. 15, 2020) (noting that for privately owned ranges, grants can be awarded to assist with acquisition, development, and improvement of shooting facilities; that the Range Grant Program for privately owned ranges is limited to \$5,000 per applicant per year; and that grants are awarded to assist qualifying agencies or local governments with projects designed to improve community relations and to address environmental issues related to range operations).

³⁵ See *Assault Weapons: A View from the Front Lines, Hearings on S. 639 and S. 653 Before the S. Committee on the Judiciary*, 103d Cong. 73 (1993) (statement of Susan Lamson, Director of Federal Affairs, NRA) (stating that the NRA rejects a ban on assault weapons because such a ban would violate the Second Amendment); *Fully-Automatic Firearms*, NRA-ILA (July 29, 1999), <https://www.nra.org/articles/19990729/fully-automatic-firearms> (discussing the NRA’s Firearms Civil Rights Legal Defense Fund’s petition asking the United States Supreme Court to review the decision in *Farmer v. Higgins*, 907 F.2d 1041 (11th Cir. 1990), where the Eleventh Circuit held that the Firearms Owners’ Protection Act of 1986 does not protect private possession of machine guns). In this Article, I define “rapid-fire guns” as both semiautomatic and automatic guns.

³⁶ Charlotte Hill, *The Real Reason the NRA’s Money Matters in Elections*, VOX (Mar. 24, 2018, 7:40 AM), <https://www.vox.com/the-big-idea/2018/2/27/17051560/money-nra-guns-contributions-donations-parkland-march> (“In 2014, one of [the NRA’s] ads targeted US Sen. Mary Landrieu (D-LA). Landrieu had supported a bill that expanded federal background checks to include gun purchases made at gun shows and over the Internet. It was a modest policy proposal; background checks are supported by 90 percent of American voters. The NRA

college shooting programs;³⁷ (10) using amicus briefs to challenge gun-safety legislation;³⁸ (11) drafting amicus briefs that attack suits against gun manufacturers and sellers;³⁹ (12) concealing the role of gun manufacturers in setting NRA policies;⁴⁰ (13) donating large amounts of money to presidential campaigns;⁴¹ (14) fraudulently concealing that a home without a gun is three times safer than one with a gun;⁴² (15) lobbying for legislation to carry guns outside the home;⁴³ (16) lobbying for legislation to carry guns on public college campuses;⁴⁴ (17) drafting the PLCAA and lobbying for its passage;⁴⁵ (18) snuffing out the city suits against gun sellers;⁴⁶ (19) lobbying for mentally ill persons to be permitted to carry guns;⁴⁷ (20) funding a TV channel;⁴⁸ (21) publishing misleading articles dealing with mass shootings;⁴⁹ and (22) publishing magazines.⁵⁰

The NRA's numerous actions, added together, constitute a cause in fact of gun violence. The volume of gun sales and the number of shooting deaths would be substantially lower "but for" the speech and actions of the NRA.⁵¹

ad, however, showed a mom putting her daughter to bed while her husband was away from home. An intruder enters, the police don't arrive in time—and suddenly, the house has become a crime scene. 'Mary Landrieu voted to take away your gun rights,' a narrator says in ominous tones. Landrieu lost the election.'")

³⁷ *Collegiate Program*, NRA, <https://competitions.nra.org/competitions/nra-national-matches/collegiate-championships/> (last visited Jan. 11, 2020) (illustrating NRA-sponsored college shooting tournaments); *National Youth Shooting Sports Cooperative Program*, NRA, <https://explore.nra.org/programs/national-youth-shooting-sports-cooperative-program/> (last visited Jan. 11, 2020) (illustrating NRA-sponsored competitive shooting programs for youth organizations).

³⁸ See *infra* note 114.

³⁹ See *infra* note 114.

⁴⁰ See Herz, *infra* note 120.

⁴¹ Robert Maguire, *Audit Shows NRA Spending Surged \$100 Million Amidst Pro-Trump Push in 2016*, CTR. FOR RESPONSIVE POL. (Nov. 15, 2017), <https://www.opensecrets.org/news/2017/11/audit-shows-nra-spending-surged-100-million-amidst-pro-trump-push-in-2016/>.

⁴² See Campbell et al., *infra* note 60. It is a reasonable inference that the NRA worked to ban gun research by the CDC in order to conceal the true danger guns present to the home and society. Cf. Raphelson, *supra* note 32.

⁴³ See Charles, *infra* note 153.

⁴⁴ See *infra* note 170.

⁴⁵ In 1999, then-NRA President Charlton Heston told industry members fearing possible tort liability that "now your fight has become our fight." See Sarah Childress, *Inside the "Other" Gun Lobby*, PBS: FRONTLINE (Feb. 19, 2013), <https://www.pbs.org/wgbh/frontline/article/inside-the-other-gun-lobby/>.

⁴⁶ See Butterfield, *infra* note 202.

⁴⁷ See Chris W. Cox, *NRA: The Mentally Ill Have Gun Rights, Too*, HILL (Feb. 16, 2017, 11:10 AM), <https://thehill.com/blogs/pundits-blog/civil-rights/319859-nra-the-mentally-ill-have-gun-rights-too>.

⁴⁸ See Peters & Benner, *infra* note 215.

⁴⁹ See *Remarks from the NRA Press Conference on Sandy Hook School Shooting*, *infra* note 219; see also Nugent, *infra* note 220.

⁵⁰ See, e.g., *infra* notes 205–206.

⁵¹ As the NRA's actions meet the "but for" test, there would be even less of a question under a substantial factor test, which only requires the actions to be a substantial factor in the resulting harm. See *Beul v. ASSE*

The large number of shooting deaths must be considered when evaluating the “inciting or producing imminent lawless action” requirement of *Brandenburg*.⁵² The NRA argues for more guns, knowing that more guns means more shootings and more deaths. The NRA is aware that it is likely 15,000 people will die each year, and therefore these murders are “foreseeable” to the NRA.⁵³

We will now consider each element of NRA conduct that goes beyond speech in order to meet the *Brandenburg v. Ohio* test and to manifest the “cause in fact” relationship between the NRA and the violence.⁵⁴

A. *Asserting That the Cure for Gun Violence Is More Guns*

After the shooting of twenty children and six teachers at Sandy Hook Elementary School in Connecticut, the NRA argued that this could have been prevented if school personnel had been armed.⁵⁵ This narrative was repeated after the mass murders at Marjorie Stoneman Douglas High School in Florida.⁵⁶ It is reflective of the NRA mantra that “a home with a gun is safer than one without a gun.”⁵⁷

Both new and old studies emphasize that the cure for gun violence is not bringing a gun into the home. A foundational study made clear that a home with a gun is 2.7 times more likely to be associated with a homicide than a home without guns.⁵⁸ Recent studies have shown individuals who buy guns tend to use them for violence.⁵⁹ Another study has shown that women are

Int’l, Inc., 55 F. Supp. 2d 942, 948 (E.D. Wis. 1999) (discussing the “cause in fact” test); *Martini v. Post*, 313 P.3d 473, 479 (Wash. Ct. App. 2013) (discussing the “but for” test).

⁵² *Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969).

⁵³ “Foreseeable” is a term of art and means that the person could anticipate the event because of numerous factors. See *In re Arbitration Between Polemis* [1921] 3 KB 560 (Ct. App.) at 565 (Eng.).

⁵⁴ See 395 U.S. 444, 447 (1969) (“[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”).

⁵⁵ Carol D. Leonnig et al., *Newtown Massacre Divided NRA Leaders, Foreshadowing Split to Come*, WASH. POST (July 4, 2019, 10:00 PM), https://www.washingtonpost.com/politics/newtown-massacre-divided-nra-leaders-foreshadowing-split-to-come/2019/07/03/40c45d82-9757-11e9-916d-9c61607d8190_story.html.

⁵⁶ Mark Berman & David Weigel, *NRA Goes on the Offensive After Parkland Shooting, Assailing Media and Calling for More Armed Security*, WASH. POST (Feb. 22, 2018, 7:20 PM), <https://www.washingtonpost.com/news/post-nation/wp/2018/02/22/after-silence-on-parkland-nra-pushes-back-against-law-enforcement-the-media-and-gun-control-advocates/>.

⁵⁷ *Infra* note 63.

⁵⁸ Arthur L. Kellermann et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 NEW ENG. J. MED. 1084, 1087 (1993).

⁵⁹ Amy B Davis et al., *The Role of Epidemiology in Firearm Violence Prevention: A Policy Brief*, 47 INT’L J. EPIDEMIOLOGY 1015, 1016 (2018) (“Firearm ownership itself is associated with increased morbidity

five times more likely to be killed during an intimate violence situation when a gun is present.⁶⁰ Therefore, more gun sales equals an increase in shootings. As the NRA is a front for the gun manufacturers, gun sales are the NRA's top priority.⁶¹ Dr. Martin Luther King, Jr., taught that, “[h]ate begets hate; and violence begets violence.”⁶² The NRA teaches the opposite, that “[t]he only way to stop a bad guy with a gun is with a good guy with a gun.”⁶³ The cause-in-fact connection to the NRA is that more guns equals more deaths and the NRA argues for and works to ensure more guns.

B. Grading U.S. Congressmen and State Legislators

The NRA issues grades from “A+” for very pro-gun legislators to “F” for those who favor gun control.⁶⁴ The intended impact of grading is to pressure gun control advocates into shifting to a pro-gun agenda or at least abstaining in votes on gun safety legislation.⁶⁵ Few legislators want an “F” or a black mark attached to their name for any reason. The report card is one technique used by the NRA to coerce legislators to support their agenda.⁶⁶ The cause-in-fact connection is that these techniques are very effective in blocking gun reform legislation.

C. Donating to Pro-Gun Politicians

During the 2018 elections the NRA lobbied and donated to campaigns, spending over \$50 million.⁶⁷ Donations were to candidates in amounts

and mortality.”); Lisa M. Hepburn & David Hemenway, *Firearm Availability and Homicide: A Review of the Literature*, 9 AGGRESSION & VIOLENT BEHAV. 417, 436 (2004) (“[I]n states with more guns there is more homicide.”).

⁶⁰ NAT’L P’SHP FOR WOMEN & FAMILIES, GUN VIOLENCE: A THREAT TO WOMEN AND FAMILIES 1 (2018); J.C. Campbell et al., *Risk Factors for Femicide Within Physically Abusive Intimate Relationships: Results from a Multi-Site Case Control Study*, 93 AM. J. PUB. HEALTH 1089–97 (2003).

⁶¹ See *infra* note 292.

⁶² MARTIN LUTHER KING, JR., STRIDE TOWARD FREEDOM: THE MONTGOMERY STORY 74 (1958).

⁶³ NRA, *supra* note 29.

⁶⁴ See Bump, *infra* note 290; see also NRA Grades Archive, *supra* note 30; Ron Elving, *The NRA Wasn’t Always Against Gun Restrictions*, NPR (Oct. 10, 2017, 5:00 AM), <https://www.npr.org/2017/10/10/556578593/the-nra-wasn-t-always-against-gun-restrictions> (“[Congressman Stephen] Scalise, whose NRA report card grade is an A+, said on NBC’s *Meet the Press* on Sunday that the right to guns is, in essence, without limits. ‘Our Founding Fathers believed strongly in gun rights for citizens,’ Scalise said. ‘Don’t try to put new laws in place that don’t fix these problems. They only make it harder for law-abiding citizens to own a gun.’ Asked if he thought gun rights were ‘unlimited,’ Scalise said: ‘It is. It is.’”).

⁶⁵ See Bump, *infra* note 290.

⁶⁶ *Id.* (showing the number of Republican candidates receiving less than an A- has gone from approximately 20% to approximately 5% from 2009 to 2017).

⁶⁷ See Bump, *infra* note 290.

ranging from \$1,000 to the mandatory maximum of \$9,900.⁶⁸ Providing or withholding agency funds is an effective tactic for influencing conduct. For example, agencies are controlled through budget funding⁶⁹ similar to how parents use allowances to manage the conduct of their children.

Thousand-dollar donations by the NRA have a substantial impact on the outcome of gun legislation and political campaigns. “In fact, the NRA spent more than twice as much money (\$34.5 million) in 2016 on negative advertising against Democrats who might demand stronger gun laws than it did on positive advertising for Trump.”⁷⁰ This method, combined with bolstering candidates monetarily, ensures victory.⁷¹ For example:

In 2014, one of these ads targeted US Sen. Mary Landrieu (D-LA). Landrieu had supported a bill that expanded federal background checks to include gun purchases made at gun shows and over the internet. It was a modest proposal; background checks are supported by 90 percent of American voters. The NRA attack ad, however, showed a mom putting her daughter to bed while her husband was away from home. In the ad, an intruder enters, the police don’t arrive in time—and suddenly, the house has become a crime scene. “Mary Landrieu voted to take away your gun rights,” a narrator says in ominous tones. Landrieu lost the election.⁷²

The NRA will likely argue that donations to gun supporters is protected by the First Amendment. If the deaths of innocent persons were not at issue, that would be a fair assertion. I am asking the judge in the proposed suit to consider the loss of 15,000 lives per year as tragic and different from pure speech. These donations help to create (cause) the climate where widespread death from gun violence has become accepted and routine.

⁶⁸ See *National Rifle Ass’n—Profile for 2018 Election Cycle*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/orgs/summary.php?id=d000000082&cycle=2018> (last visited Mar. 27, 2020); see also *National Rifle Ass’n—Money to Congressional Candidates: 2018 Cycle*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/orgs/toprecips.php?id=d000000082&cycle=2018> (last visited Mar. 27, 2020) (showing NRA donated \$19,454 to Democrats and \$696,900 to Republicans in 2018).

⁶⁹ See, e.g., *Additional Requirement—13: Prohibition on Use of CDC Funds for Certain Gun Control Activities*, CDC, https://www.cdc.gov/grants/additional-requirements/ar-13.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fgrants%2Fadditionalrequirements%2Far-13.html (last updated July 13, 2018) (noting that funding provided to the CDC may not be used to “advocate or promote” gun control).

⁷⁰ Heather Timmons, *How the NRA Won the Obedience of the U.S. Government*, QUARTZ (Mar. 2, 2018), <https://qz.com/1214787/how-the-nras-money-forces-republicans-to-fight-gun-control>.

⁷¹ Hill, *supra* note 36 (discussing how the NRA exerts significant financial influence even when not contributing to a candidate directly).

⁷² *Id.*

D. Actively Preventing the CDC From Conducting Research on Gun Violence

The NRA threatened the CDC with the loss of governmental funding if they engaged in gun research.⁷³ The NRA knew the CDC relied on federal funding to maintain research, as this was public knowledge.⁷⁴ This threat resulted in the CDC eliminating gun research and later firing the CDC point person, Dr. Mark Rosenberg.⁷⁵ Although the legislation blocking research on shootings has been muted, the CDC remains chastened, avoids expansive gun research, and abstains from the production of extensive gun violence statistics.⁷⁶ The NRA has never explained why actively blocking research on the impact of the over 392 million⁷⁷ guns in America⁷⁸ was a reasonable policy. It raises the question of why the NRA does not want the more than 15,000 annual gun deaths to be examined. Logic suggests that very dangerous products such as guns may kill and maim in large numbers. The natural inference from the NRA's actions is that the NRA does not want statistics to link guns and killings, for fear that this link will decrease gun sales.

Surely 15,000 annual gun deaths qualifies as an epidemic and calls for CDC analysis.⁷⁹ There were only 349 cases of measles in the U.S. in 2018,

⁷³ Allen Rostron, *The Dickey Amendment on Federal Funding for Research on Gun Violence: A Legal Dissection*, 108 AM. J. PUB. HEALTH 865, 866 (2018) (“The National Rifle Association (NRA) accused the CDC of being biased against guns and began lobbying for the elimination of the injury prevention center. Although the center survived, the NRA persuaded its allies in Congress to take action.”).

⁷⁴ See *Budget: Congressional Justifications*, CDC, <https://www.cdc.gov/budget/congressional-justification.html> (last updated July 13, 2018).

⁷⁵ See Rostron, *supra* note 73, at 866 (“Led by Representative Jay Dickey of Arkansas, Congress added a provision to a 1996 spending bill declaring that “[n]one of the funds made available in this title may be used, in whole or in part, to advocate or promote gun control. Congress also stipulated that \$2.6 million of the CDC’s budget, which was the amount spent on firearm injury research during the previous year, would be specifically earmarked for research on traumatic brain injuries.”); see also Raphaelson, *supra* note 32 (“The legislation didn’t explicitly ban gun research, but funding cuts reduced it by 90 percent, according to Dr. Mark Rosenberg, the former director of the CDC’s National Center for Injury Prevention and Control.”).

⁷⁶ Cf. *Additional Requirement—13*, *supra* note 69 (noting that CDC may not use funds to “advocate or promote gun control”).

⁷⁷ According to Small Arms Survey, there are an estimated 392,273,257 unregistered firearms in the U.S. See *Global Firearms Holdings*, SMALL ARMS SURV., <http://www.smallarmssurvey.org/weapons-and-markets/tools/global-firearms-holdings.html> (last visited Jan. 16, 2020); see also U.S. DEP’T OF JUSTICE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, & EXPLOSIVES, FIREARMS COMMERCE IN THE UNITED STATES ANNUAL STATISTICAL UPDATE 2019 (listing the number of registered firearms).

⁷⁸ Raphaelson, *supra* note 32.

⁷⁹ See Daniel Nass, *Gun Deaths Inched Up in 2019*, TRACE, <https://www.thetrace.org/2020/01/gun-deaths-2019-increase> (last updated Jan. 21, 2020, 5:31 PM) (“The count, which excludes suicides, topped 15,000.”); *Gun Violence*, *supra* note 60, at 1 (“Gun violence in the United States is a public health crisis.”). CDC describes violence as “a [p]ublic [h]ealth [p]roblem.” See *Timeline of Violence as a Public Health Problem*, CDC, <https://www.cdc.gov/violenceprevention/publichealthissue/timeline.html> (last updated Jan. 16, 2020).

and less than a handful of Americans were diagnosed with Ebola from 2014–2018.⁸⁰ Yet, the CDC gave both substantial attention.⁸¹ The CDC deals with health statistics every day and is well-positioned to provide insight into the gun violence tragedy. The NRA is a cause in fact of legislative failure. By preventing the CDC from researching gun violence, legislators may lack reliable facts to support legislation.

E. Preventing the Police From Disclosing Facts Related to Gun Violence, Such as the Brand of Gun Used in the Shooting

If the police keep statistics on what weapons were used in crimes, how many bullets were fired, or the number of deaths in shootings, they are bound to silence by federal legislation.⁸² The NRA realizes that an educated population is dangerous to the expansion of gun sales and therefore fought for this illogical legislation.⁸³

If a Bushmaster or a Glock was used as the gun in a violent crime, or Black Talon ammunition was used in the shooting, the police are gagged.⁸⁴

⁸⁰ Maggie Fox, *Measles Outbreaks Make 2018 a Near-Record for U.S.*, NBC NEWS (Jan. 22, 2019, 12:44 PM), <https://www.nbcnews.com/storyline/measles-outbreak/measles-outbreaks-make-2018-near-record-year-u-s-n961276>.

⁸¹ See *CDC Monitoring Measles Cases in 21 States, Including Illinois*, WGN-TV (Aug. 16, 2018, 6:36 AM), <https://wgntv.com/2018/08/15/cdc-monitoring-measles-outbreak-in-21-states/>; see also *Years of Ebola Virus Disease Outbreaks—Cases and Outbreaks of EVD by Year, 2014 United States*, CDC, <https://www.cdc.gov/vhf/ebola/history/chronology.html> (last visited Jan. 24, 2020) (“During the West African Ebola outbreak, 11 people were treated for EVD in the U.S., two of whom died. The majority were infected with the Ebola virus outside of the U.S. and either medically evacuated into the U.S. for treatment or entered the country as a regular airline passenger. Two nurses who cared for a sick Ebola patient contracted EVD, marking the first known transmission of EVD in the United States. Both recovered. CDC collaborated with U.S. Customs and Border Protection, Department of Homeland Security, and state and local public health departments to screen travelers returning from Ebola-affected countries, provide safe transport for patients being assessed for EVD, and strengthen preparedness and infection control in hospitals.”).

⁸² Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, 117 Stat. 11, 473–74 (“No Funds appropriated under this Act or any other Act with respect to any fiscal year shall be available to take any action based upon any provision of 5 U.S.C. § 552 with respect to records collected or maintained pursuant to 18 U.S.C. 846(b), 923(g)(3) or 923(g)(7), or provided by Federal, State, local, or foreign law enforcement agencies in connection with arson or explosives incidents or the tracing of a firearm, except that such records may continue to be disclosed to the extent and in the manner that records so collected, maintained, or obtained have been disclosed under 5 U.S.C. prior to the date of the enactment of this Act.”). The 2005 iteration additionally prohibited state or federal civil actions from using the FTS database information. See Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809, 2859 (2004) (codified as amended at 18 U.S.C. § 923 (2006)).

⁸³ *The “Tiahrt Amendment” on Firearms Traces: Protecting Gun Owners’ Privacy and Law Enforcement Safety*, NRA-ILA (Jan. 15, 2013), <https://www.nra-ila.org/articles/20130115/the-tiahrt-amendment-on-firearms-traces-protecting-gun-owners-privacy-and-law-enforcement-safety>.

⁸⁴ See Consolidated Appropriations Act, 118 Stat. at 2859; *The “Tiahrt Amendment”*, *supra* note 83; see

There is no good reason for this legislation. The legislation's main purpose seems to be the insulation of gun and ammunition manufacturers from scrutiny.⁸⁵

In *Hamilton v. Accu-tek*,⁸⁶ guns manufactured by several companies were used to kill numerous persons. Because of the police gag, the names of the gun manufacturers were not available, and the case was lost. This makes clear that the cause in fact of the gag is to protect the gun manufacturers from introspection and liability.

F. *Providing Financial Support for Gun Ranges*

In order to promote shooting as a family activity, the NRA provides partial funding for shooting ranges.⁸⁷ Parents take their spouses and children to these ranges.⁸⁸ Mass murderers use ranges to practice their shooting before they kill.⁸⁹ Ranges could be helpful in stemming the tide because the staff may know who hoards guns and who owns rapid-fire guns. Both have been common to mass shooters.

Some ranges even provide customers the opportunity to shoot rapid-fire weapons such as the AR-15.⁹⁰ Sometimes the ugly truth comes out. In 2014,

also infra text accompanying note 85.

⁸⁵ See *The "Tiahrt Amendment"*, *supra* note 83. Specifically, NRA lists four reasons: (1) "[r]eleasing the information serves no useful [purpose]"; (2) "[t]raced guns aren't always 'crime guns' [because] firearms may be traced for reasons unrelated to any armed crime"; (3) "[t]race information remains available for law enforcement use"; and (4) "[b]oth BATFE and the Fraternal Order of Police (FOP) oppose release of trace data." *Id.*

⁸⁶ 935 F. Supp. 1307, 1313 (E.D.N.Y. 1996).

⁸⁷ See *NRA Explore: Range Services*, NRA (last visited Feb. 4, 2020), <https://rangeservices.nra.org/funding-grants/>. This includes both public and NRA-affiliated, privately owned shooting ranges. *Id.* Privately owned range grants can be awarded to assist with acquisition, development, and improvement of shooting facilities. *Id.* This Range Grant program is limited to \$5,000 per applicant per year. *Id.* Grants can also be awarded to assist qualifying agencies or local governments with projects designed to improve community relations and to address environmental issues related to range operations. *Id.*

⁸⁸ Brandy Zadrozny, *Where Kids as Young as 5 Learn to Shoot Automatic Weapons*, DAILY BEAST (Apr. 14, 2017, 2:49 PM), <https://www.thedailybeast.com/where-kids-as-young-as-5-learn-to-shoot-automatic-weapons> ("In the most popular response, 21 of the ranges we surveyed reported no age restriction in order to shoot as long as a parent was present. That's not to imply a parent could arm a 2-year-old with an Uzi on these ranges. Often, the age requirement was replaced by an experience requirement. Almost every range told me some version of 'it depends on the child.' As for ranges that did have a specific age requirement, 13 of them reported a condition that shooters must be 8 years old, and eight ranges said shooters had to be 12 years old. Two ranges said that children as young as 5 years old would be able to shoot.")

⁸⁹ Christopher Brennan, *San Bernardino Practiced Killing with Assault Rifle for Hours at Local Gun Range in the Days Before Massacre*, DAILY MAIL (Dec. 7, 2015, 4:51 PM), <https://www.dailymail.co.uk/news/article-3349358/San-Bernardino-gunman-practiced-killing-assault-rifle-hours-local-gun-range-days-massacre.html>.

⁹⁰ See, e.g., Kelli Kennedy & Josh Repogle, *Parkland Kid Draws Fire for Shooting AR-15 at Gun Range*,

a child froze while pulling the trigger on a rapid-fire gun and the gun cartwheeled, sending the bullets into her instructor's head and killing him.⁹¹ A similar incident in 2008 ended with an eight-year-old boy accidentally firing a Micro Uzi into his head, killing him instantly.⁹² Because of gun ranges, shooting is viewed as wholesome. This broadens its appeal and causes more guns to be sold.

G. Lobbying Against the Ban on Rapid-Fire Guns

Former President Bill Clinton signed a bill into law that banned the importation and sale of assault weapons.⁹³ The ban was in place for ten years, but expired on Sept. 13, 2014.⁹⁴ The NRA lobbied to make certain the ban was not renewed.⁹⁵ These semiautomatic and automatic guns are useless for hunting and are only valuable in killing large numbers of people.⁹⁶ The benefactors of the sales of those military-type guns are the gun manufacturers.⁹⁷ From 2007 to after President Obama's reelection, the price of AR-15s almost doubled.⁹⁸ Owners feared Democrats would take their

SEATTLE TIMES (Apr. 24, 2018, 7:32 PM), <https://www.seattletimes.com/nation-world/parkland-kid-draws-fire-for-shooting-ar-15-at-gun-range/>.

⁹¹ See Q13 News Staff, *9-Year-Old Girl Accidentally Shoots, Kills Gun Instructor with Uzi*, Q13 FOX (Aug. 27, 2014, 11:26 PM), <https://q13fox.com/2014/08/27/police-9-year-old-girl-accidentally-shoots-kills-gun-instructor-with-uzi/>.

⁹² *Id.* ("Christopher Bizilj, who was firing the micro Uzi when he accidentally shot himself in the head at a gun show. The boy died instantly. . . . Christopher's father, Charles Bizilj, was present at the time of the shooting and videotaped the entire incident. . . . 'I ran over to him. His eyes were open and I saw no reason for him to be on the ground . . . I tried to talk to him and he didn't respond. I put my hand behind his head to try to pick him up and there was a large portion of his cranium missing.'").

⁹³ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994) (codified at 42 U.S.C. § 136).

⁹⁴ The ban ended by way of an organic sunset provision applying after the ten-year passage of the law taking effect. *See id.*

⁹⁵ See Ann Gerhart & Chris Alcantara, *How the NRA Transformed from Marksmen to Lobbyists*, WASH. POST (May 29, 2018), <https://www.washingtonpost.com/graphics/2018/national/gun-control-1968/>.

⁹⁶ See Justin Peters, *The NRA Claims the AR-15 Is Useful for Hunting and Home Defense. Not Exactly*, SLATE (June 12, 2016, 11:05 AM), <https://slate.com/news-and-politics/2016/06/gun-control-ar-15-rifle-the-nra-claims-the-ar-15-rifle-is-for-hunting-and-home-defense-not-exactly.html> (noting that the AR-15's .223 caliber ammunition and its "spray and pray" shooting style are unfit for hunting large game).

⁹⁷ Elizabeth MacBride, *America's Gun Business Is \$28B. The Gun Violence Business Is Bigger*, FORBES (Nov. 25, 2018, 5:00 AM), <https://www.forbes.com/sites/elizabethmacbride/2018/11/25/americas-gun-business-is-28b-the-gun-violence-business-is-bigger/#5c7ff5c3ae87> (noting that gun manufacturers brought in \$17 billion in revenue in 2018).

⁹⁸ Rich Smith, *AR-15 Rifle Price Drops; Is This Gun a Good Investment?*, MOTLEY FOOL (Oct. 10, 2018, 2:25 PM), <https://www.fool.com/investing/general/2014/11/23/ar-15-rifle-price-drops-is-this-gun-a-good-investm.aspx>. The price of an AR-15 was \$789.85 in March of 2007 but increased to \$1,199 when President Obama was re-elected. *Id.*

guns.⁹⁹ Assault weapons seem to be preferred by mass-murderers because they are able to kill large numbers of people very quickly.¹⁰⁰ Rapid-fire guns are expensive and profitable for manufacturers.¹⁰¹ Keeping them legal continues the flow of contribution from the manufacturers to the NRA.¹⁰²

H. Attacking Persons Who Support Gun Control Legislation

President George H. W. Bush resigned from the NRA after Wayne LaPierre called federal agents “jack-booted thugs.”¹⁰³ In her run for the Presidency in 2016, Hillary Clinton was attacked by the NRA for supporting gun control.¹⁰⁴ Dana Loesch, an NRA spokesperson, argued that journalists who she believed were unfairly covering gun control should be “curb-stomped.”¹⁰⁵ This name-calling likely persuades some legislators to remain silent on gun control fearing NRA public retaliation.

⁹⁹ See German Lopez, *Study: President Obama’s Election Scared Americans Into Buying More Guns*, VOX (Jan. 21, 2016, 8:00 AM), <https://www.vox.com/2016/1/21/10801664/obama-gun-sales> (reporting massive increases in gun purchases throughout Obama’s presidency); Jarrett Murphy, *How the Gun Industry Got Rich Stoking Fear About Obama*, NATION (Aug. 22, 2012), <https://www.thenation.com/article/how-gun-industry-got-rich-stoking-fear-about-obama/> (“The NRA has been sounding the alarm over Barack Obama since at least 2008, when it called the then-presidential candidate a ‘serious threat to Second Amendment liberties’ and later launched a website called GunBanObama.com.”).

¹⁰⁰ PolitiFact Staff, *The Facts on Mass Shootings, Guns in the United States*, POLITIFACT (May 18, 2018, 12:00 PM), <https://www.politifact.com/truth-o-meter/article/2018/may/18/facts-mass-shootings-guns-united-states/> (noting that semi-automatic rifles were used in deadly mass shootings in Aurora, Colorado; Roseburg, Oregon; San Bernardino, California; Newtown, Connecticut; Orlando, Florida; Las Vegas, Nevada; and Sutherland Springs, Texas); see also John J. Phelan IV, Comment, *The Assault Weapons Ban—Politics, The Second Amendment, and the Country’s Continued Willingness to Sacrifice Innocent Lives for “Freedom”*, 77 ALB. L. REV. 579, 583 (2013) (“The killings in Aurora, Colorado, and the other aforementioned mass shootings, as in almost every mass shooting anywhere, can be attributed to the combination of the semiautomatic assault weapon and high capacity magazines.”).

¹⁰¹ The AK-47, for example, is highly profitable. 2014 earnings were \$45 million. See Chris Solomon, *Economics of the AK-47*, GLOBAL RISK INSIGHT (Oct. 26, 2015), <https://globalriskinsights.com/2015/10/economics-of-the-ak-47/>.

¹⁰² See *Gun Industry Financial Support of the NRA*, VIOLENCE POL’Y CTR., <http://vpc.org/investigating-the-gun-lobby/blood-money/> (last visited Mar. 27, 2020) (“[T]he firearms industry has donated between \$19.3 million and \$60.2 million to the NRA since 2005.”).

¹⁰³ *Letter of Resignation Sent by Bush to Rifle Association*, N.Y. TIMES (May 11, 1995), <https://www.nytimes.com/1995/05/11/us/letter-of-resignation-sent-by-bush-to-rifle-association.html>. Bush called LaPierre’s comments, which occurred less than a month after the Oklahoma City bombing that targeted the federal government, “a vicious slander on good people.” *Id.*

¹⁰⁴ See Sarah Wheaton, *New NRA Ad Calls Clinton a Liar*, POLITICO (Oct. 19, 2016, 8:52 PM), <https://www.politico.com/story/2016/10/nra-ad-clinton-liar-230012>.

¹⁰⁵ Loesch also called journalists “the rat bastards of the earth” and “the boil on the backside of American politics,” due to the fact that she did not believe they gave “a fair shake” to gun policy. See Maya Oppenheim, *Maryland Shooting: NRA Spokeswoman Dana Loesch Said Journalists ‘Need to Be Curb-Stomped’*, in *Resurfaced Footage*, INDEPENDENT (June 29, 2018, 6:24 PM), <https://www.independent.co.uk/news/world/americas/maryland-shooting-latest-nra-dana-loesch-journalists-gazette-gun-control-a8422566.html>.

The NRA reserves its worst treatment for candidates who support gun control, however. At the state level, where \$50,000 can swing the election, the NRA gives money to the opponent of the gun control candidate.¹⁰⁶ This is powerful and effective medicine, causing proponents of gun controls to remain silent.

I. *Financing Youth and College Shooting Programs*

In order to make shooting appear to be educational, the NRA provides financial aid for these programs.¹⁰⁷ The cause-in-fact purpose is to provide evidence to support the NRA's charitable tax deduction as an educational organization. The NRA wants to appear to be dedicated to education.¹⁰⁸ This conceals the point that more gun sales equals more profit for the gun manufacturers, who are some of the biggest financial supporters of the NRA. The more profit for the gun manufacturers, the more donations for the NRA.¹⁰⁹ However, the charitable exemption may not last for long. The State of New York is investigating the legitimacy of the NRA's tax-exempt status after accusations that it illegally funneled money from its nonprofit arm.¹¹⁰

J. *Attacking Gun Safety Legislation and Reform Suits*

The Mayor of San Jose, California said that he was proposing an ordinance that gun owners must obtain liability insurance.¹¹¹ Gun rights

¹⁰⁶ See Karl Evers-Hillstrom, *Midterms: Gun Control Groups Outspend NRA and Other Gun Rights Rivals*, CTR. FOR RESPONSIVE POL. (Oct. 26, 2018), <https://www.opensecrets.org/news/2018/10/2018-gun-control-outspends-nra-rights/> (“The NRA’s favorite target is Sen. Joe Donnelly (D. Ind.). The NRA spent more than \$1 million on negative ads against Donnelly, whose grade dropped from ‘A’ in 2012 to ‘D’ in 2018.”).

¹⁰⁷ Collin Binkley & Meghan Hoyer, *AP Finds the NRA Gave \$7 Million to Hundreds of Schools*, AP (Mar. 9, 2018), <https://apnews.com/ce39136dad7c49d6977ba851018f5d92> (“The National Rifle Association has dramatically increased its funding to schools in recent years amid a national debate over guns and school violence.”).

¹⁰⁸ See Alexandra F. O’Neill & Daniel P. O’Neill, *The NRA, a Tax-Exempt Loaded with Private Interest*, COAL. TO STOP GUN VIOLENCE, <https://www.csgv.org/nra-tax-exempt-loaded-private-interest/> (last visited Mar. 27, 2020).

¹⁰⁹ In 1967, the NRA released *Americans and Their Guns*, an “official history of the organization” that claimed that the NRA “is not affiliated with any manufacturer of arms or ammunition.” See VIOLENCE POL’Y CTR., BLOOD MONEY: HOW THE GUN INDUSTRY BANKROLLS THE NRA 4 (2011). In 2011, 74% of the funds from corporate partners of the NRA came from members of the firearm industry. See *id.* at 1.

¹¹⁰ Veronica Stracqualursi & Sonia Moghe, *New York Attorney General Investigating NRA Finances amid Group’s Internal Dispute*, CNN (Apr. 29, 2019, 11:54 AM), <https://www.cnn.com/2019/04/27/politics/nra-new-york-investigation/index.html>.

¹¹¹ Matthew Green & Peter Jon Shuler, *Gun Insurance? San Jose Mayor Proposes First-in-Nation Ordinance Requiring It*, KQED (Aug. 12, 2019), <https://www.kqed.org/news/11767045/gun-insurance-san-jose-mayor-proposes-first-in-nation-ordinance-requiring-it>.

groups planned to file suit to block it.¹¹² The NRA drafted the PLCAA discussed earlier, which blocked all suits pending and future against gun manufacturers.¹¹³ These legal attacks assist in causing reform legislation to fail.

*K. The NRA Drafts Amicus Briefs That Attack Suits Against Gun Manufacturers and Sellers*¹¹⁴

The purpose of amicus briefs is to defeat any suits that might challenge the sale of guns, and to provide another bite at the apple.¹¹⁵ That is, an NRA amicus brief makes it appear that more persons or associations are opposed to the suit than merely the proponent. The NRA has prepared amicus briefs in the following cases: (1) *Peruta v. California*, which asked if the Second Amendment protects the right to carry a firearm for self-defense;¹¹⁶ (2) *Rogers v. Grewal*, which asked if New Jersey could place limits (“justifiable need”) on obtaining a handgun carry permit;¹¹⁷ and (3) *New York State Rifle & Pistol Association v. City of New York*, challenging the New York ban on transporting handguns outside the home.¹¹⁸ Amicus briefs help cause reform lawsuits to fail.

L. Fraudulently Concealing the Influence of Gun Manufacturers on NRA Purposes and Policies

Over about 140 years, the purpose of the NRA has morphed from promoting hunting to promoting gun sales.¹¹⁹ The policy of the NRA today

¹¹² See *id.*

¹¹³ See PLCAA, *infra* note 205.

¹¹⁴ *California: The NRA Files a Brief Urging Supreme Court to Rehear Challenge to Ban on Common Semi-Automatic Firearms and Magazines*, NRA-ILA (Aug. 31, 2015), <https://www.nra-ila.org/articles/20150831/california-the-nra-files-a-brief-urging-supreme-court-to-rehear-challenge-to-ban-on-common-semi-automatic-firearms-and-magazines>; *Washington: NRA Files Amicus Brief in Challenge to Kitsap County Anti-Gun Ordinance*, NRA-ILA (May 22, 2017), <https://www.nra-ila.org/articles/20170522/washington-nra-files-amicus-brief-in-challenge-to-kitsap-county-anti-gun-ordinance>.

¹¹⁵ *California: Second Amendment Litigation*, NRA-ILA (Feb. 14, 2014), <https://www.nra-ila.org/articles/20140214/california-second-amendment-litigation> (“NRA-ILA’s goal in every case is to strategically advance the rights of gun owners.”).

¹¹⁶ Brief of National Rifle Ass’n of America, Inc. as Amicus Curiae Supporting Petitioner, *Peruta v. California*, 137 S. Ct. 1995 (2017) (No. 16-894).

¹¹⁷ Brief of National Rifle Ass’n of America, Inc. as Amicus Curiae Supporting Petitioners, *Rogers v. Grewal*, No. 18-824 (filed Feb. 1, 2019).

¹¹⁸ Brief of National Rifle Ass’n of America, Inc. as Amicus Curiae Supporting Petitioners, *N.Y. State Rifle & Pistol Ass’n v. City of New York*, 139 S. Ct. 1647 (2019) (No. 18-280).

¹¹⁹ Wyatt Holliday, Comment, “*The Answer to Criminal Aggression Is Retaliation*”: *Stand-Your-Ground Laws and the Liberalization of Self-Defense*, 43 U. Tol. L. Rev. 407, 434 (2012) (stating that until 1968, the

is to actively promote the politics that encourages and supports gun manufacturing and sales.¹²⁰ This flows from the fact that the gun industry has representatives on the NRA's board.¹²¹ Indeed, the money to support NRA policy comes mostly from gun manufacturers and related businesses, such as gun ranges and ammunition manufacturers.¹²² All of these industries benefit from a strong shooting climate.¹²³ The real core of the NRA is beginning to be revealed, however. The New York Attorney General's Office is currently investigating whether the NRA can legally be classified as a nonprofit amidst allegations that its advertising arm paid millions of dollars to its top executives.¹²⁴ In this marketing climate, victims of shootings are viewed as collateral damages¹²⁵ to be sacrificed for the greater good as defined by the NRA: selling more guns.¹²⁶ The fraud prevents the people from seeing that federal and state gun policy is set by the gun manufacturers.

M. Donating to the Presidential Campaign

During the 2016 election campaign, the NRA spent \$30,000,000 to support the Trump campaign.¹²⁷ This expenditure has caused in fact excellent results for the gun industry. Following the massacre of students at Marjorie Stoneman Douglas High School and the killing of over fifty persons at the Las Vegas concert, the President supported the gun industry and never called

NRA's chief purpose was "organizing and promoting shooting sports").

¹²⁰ Andrew D. Herz, *Gun Crazy: Constitutional False Consciousness and Dereliction of Dialogic Responsibility*, 75 B.U. L. REV. 57, 90 (1995) ("[G]un manufacturers depend upon the NRA to function 'as a pro forma trade association for the firearms industry,' taking the heat in legislative battles, and 'cloaking all firearms controversies in the bullet-proof vest of constitutionality.'"). Joe McNamara, who served as the Police Chief in San Jose, classified the NRA as a "shill for the gun manufacturers and gun dealers." *Id.* at 90 n.131.

¹²¹ Dave Gilson, *The NRA's Board Members Are—Shockingly—Mostly White Guys*, MOTHER JONES (Mar. 1, 2018), <https://www.motherjones.com/politics/2018/03/nra-board-members-tom-selleck/> ("[N]early one-tenth [of the NRA's board] own, work for, or promote gun companies.").

¹²² Walt Hickey, *How the Gun Industry Funnels Tens of Millions of Dollars to the NRA*, BUS. INSIDER (Jan. 16, 2013, 1:25 PM), <https://www.businessinsider.com/gun-industry-funds-nra-2013-1>. Josh Sugarmann, executive director of the Violence Policy Center, describes the NRA as a "virtual subsidiary of the gun industry" due to the amount of money that the gun industry contributes. *Id.*

¹²³ MacBride, *supra* note 97.

¹²⁴ Stracqualursi & Moghe, *supra* note 110.

¹²⁵ Joe Gandleman, *How the NRA Won*, WEEK (Apr. 9, 2013), <https://theweek.com/articles/465822/how-nra-won> ("These kids are now (more) collateral damage in the decades-long political gun-control ballet involving lobbying money and the way America truly functions.").

¹²⁶ See VIOLENCE POL'Y CTR., *supra* note 109, at 4–5. While the NRA claims that it makes decisions based on the interests of gun owners, it fails to disclose its financial interest in protecting gun manufacturers. *Id.* In fact, the NRA has supported legislation that favors gun manufacturers over the rights of gun owners. *Id.* at 5.

¹²⁷ Peter Stone & Greg Gordon, *FBI Investigating Whether Russian Money Went to NRA to Help Trump*, MCCLATCHY DC (Jan. 18, 2018, 5:00 AM), <https://www.mcclatchydc.com/news/nation-world/national/article195231139.html>.

for fewer guns or gun controls.¹²⁸ Rather, he emphasized mental health and prayed for the decedents.¹²⁹ Clearly the NRA campaign donation was well spent.

*N. The NRA Has Fraudulently Concealed the Fact That a Home Is More Than Two Times Safer Without a Gun*¹³⁰

The NRA argues that the solution to all shootings is that the victim should have had a gun to defend himself.¹³¹ “More guns” is always the NRA’s answer to personal security.¹³² However, research has made clear that the presence of a gun makes a home much more dangerous than one without a gun.¹³³ This finding was attacked by the NRA.¹³⁴ They successfully lobbied for an amendment to prevent the CDC from researching shootings and gun safety.¹³⁵ The NRA (and gun manufacturers) could not tolerate the truth that

¹²⁸ See Ali Rogan & Stephanie Ebbs, *President Trump Says ‘We Will Act’ After Parkland Shooting, Continues Call for Armed Teachers*, ABC NEWS (Feb. 23, 2018, 9:41 AM), <https://abcnews.go.com/beta-story-container/Politics/trump-slams-deputy-waited-florida-high-school-shooting/story?id=53303616> (“President Trump . . . continued his call to arm teachers and school staff to deter shooters—a refrain he has repeated this week in the wake of a deadly shooting at a Parkland, Florida[,] high school.”); see also Maya Rhodan, “*Our Unity Cannot Be Shattered by Evil.*” *Read President Trump’s Remarks on Las Vegas Shooting*, TIME (Oct. 2, 2017, 11:38 AM), <https://time.com/4965168/read-donald-trump-las-vegas-shooting-transcript/>.

¹²⁹ Rhodan, *supra* note 128; Rogan & Ebbs, *supra* note 128 (“The president called for increased mental health support and said the shooter was a ‘sick person,’ and continued to call for more security in school.”).

¹³⁰ Kellermann et al., *supra* note 58, at 1087.

¹³¹ See Mark Berman & David Weigel, *NRA Goes on the Offensive After Parkland Shooting, Assailing Media and Calling for More Armed School Security*, WASH. POST (Feb. 22, 2018, 7:20 PM), <https://washingtonpost.com/news/post-nation/wp/2018/02/22/after-silence-on-parkland-nra-pushes-back-against-law-enforcement-the-media-and-gun-control-advocates/>; *NRA’s Wayne LaPierre and Chris Cox Issue Joint Statement*, NRA, <https://home.nra.org/joint-statement> (last visited Mar. 27, 2020) (“[W]e urge Congress to pass National Right-to-Carry reciprocity, which will allow law-abiding Americans to defend themselves and their families from acts of violence.”).

¹³² See Philip Bump, *The NRA’s Solution for School Shootings: Making Schools Battle-Ready*, WASH. POST (Feb. 23, 2018, 3:41 PM), <https://washingtonpost.com/news/politics/wp/2018/02/23/the-nras-solution-for-school-shootings-making-schools-battle-ready/>; see also Patrick J. Charles, *The Second Amendment in the Twenty-First Century: What Hath Heller Wrought?*, 23 WM. & MARY BILL RTS. J. 1143, 1170–71 (2015) (“In what has become routine in the ongoing gun control-gun advocacy debate, the pleas were met with the standard gun advocacy response—‘anti gun’ politicians and gun control are at fault for the deaths of the victims, not firearms or the ability to acquire them.”).

¹³³ Kellermann et al., *supra* note 58, at 1084 (“[K]eeping a gun in the home was strongly and independently associated with an increased risk of homicide Virtually all of this risk involved homicide by a family member or intimate acquaintance.”).

¹³⁴ Michael Hiltzik, *Column: The NRA Has Blocked Gun Violence Research for 20 Years. Let’s End Its Stranglehold on Science.*, L.A. TIMES (June 14, 2016, 9:55 AM), <https://www.latimes.com/business/hiltzik/la-fi-hiltzik-gun-research-funding-20160614-snap-story.html> (noting that the Dickey Amendment, passed by Congress in 1996, forbade the CDC from spending funds “to advocate or promote gun control”).

¹³⁵ Raphelson, *supra* note 32.

the presence of a gun substantially increased the risk to members of the family and to others.¹³⁶

Researchers have examined the risks of gun ownership to the homeowner and the family.¹³⁷ The presence of a gun in the home during a domestic violence incident increases the likelihood of homicide by 500%.¹³⁸ In addition, children in the home are at risk of being killed by accidental shootings.¹³⁹ Suicide from gun violence claims 24,000 persons per year and proves that the gun owner is also at risk of death.¹⁴⁰ In contrast, stopping an armed home invader with a gun is extremely rare.¹⁴¹

Adam Lanza killed twenty children and six teachers at Sandy Hook elementary school.¹⁴² His mother had a cache of firearms locked-up at home.¹⁴³ Before he left on his mission to kill innocent school children, Adam appropriated one of his mother's many guns and shot her to death.¹⁴⁴ Then he drove to the school, killed the school principal and psychologist, and murdered a child every several seconds with his rapid-fire gun.¹⁴⁵ One of the guns he used was his mother's Bushmaster assault rifle that he obtained from

¹³⁶ See *id.*

¹³⁷ See Kellermann et al., *supra* note 58, at 1084; Katie McDonough, "Where There Are More Guns, More Women Die": A Harvard Public Health Expert Breaks Down the Data on Firearms and Women's Safety, SALON (Feb. 24, 2015, 9:06 PM), https://www.salon.com/2015/02/24/%E2%80%9Cwhere_there_are_more_guns_more_women_die%E2%80%9D_a_harvard_public_health_expert_breaks_down_the_data_on_firearms_and_womens_safety/.

¹³⁸ McDonough, *supra* note 137.

¹³⁹ Andrew J. McClurgh, *Armed and Dangerous: Tort Liability for the Negligent Storage of Firearms*, 32 CONN. L. REV. 1189, 1189 (2000). In *Ozols v. Irving*, a gun owner's nephew found a gun left in the gun owner's nightstand, and he accidentally shot and killed a neighbor with it. 491 So. 2d 719, 720 (La. Ct. App. 1986).

¹⁴⁰ German Lopez, *Guns Killed More People than Car Crashes in 2017*, VOX (Dec. 11, 2018), <https://www.vox.com/future-perfect/2018/12/11/18135976/gun-deaths-us-2017-suicide>. Research has indicated that restricting access to guns helps to decrease the number of suicides. *Id.*

¹⁴¹ See Scott Martelle, *Opinion: Gun and Self-Defense Statistics that Might Surprise You—and the NRA*, L.A. TIMES (June 19, 2015, 11:35 AM), <https://www.latimes.com/opinion/opinion-la/la-ol-guns-self-defense-charleston-20150619-story.html> (noting that despite 1.2 million violent crimes occurring in 2012, the Violence Policy Center counted only 259 "justifiable gun-related homicides," or gun killings in self-defense). However, the National Crime Victimization surveys, using a probability sample of some 50,000 housing units in the United States, found that, nationally, victims use guns against offenders approximately 65,000 times per year." See David Hemenway, *Survey Research and Self-Defense Gun Use: An Explanation of Extreme Overestimates*, 87 J. CRIM. L. & CRIMINOLOGY 1430, 1432 (1997).

¹⁴² Connor Simpson et al., *Newtown School Shooting: Live Updates*, ATLANTIC (Dec. 19, 2012), <https://www.theatlantic.com/national/archive/2012/12/newtown-connecticut-school-shooting/320296/>.

¹⁴³ Susan Candiotti & Dana Ford, *Connecticut School Victims Were Shot Multiple Times*, CNN (Dec. 16, 2012, 3:33 AM), <https://edition.cnn.com/2012/12/15/us/connecticut-school-shooting/index.html>.

¹⁴⁴ *Id.*

¹⁴⁵ Gary Stoller, *The Mystery of Adam Lanza, the Sandy Hook Gunman*, USA TODAY (Nov. 26, 2013, 8:28 AM), <https://www.usatoday.com/story/news/nation/2013/11/25/newtown-shooting-investigation/3696425/>.

her home.¹⁴⁶ One of the Columbine shooters obtained his weapon from a fellow student.¹⁴⁷

The elements of deceit are: (1) a false representation; (2) defendants knowledge the statement is false; (3) an intent to induce the plaintiff to rely on the misrepresentation; (4) reliance by the plaintiff; and (5) damage to the plaintiff.¹⁴⁸ The NRA preaches that a gun makes the home safer.¹⁴⁹ That is deceit, and it dramatically increases the risk of death for the home owner, his family, neighbors, and friends.¹⁵⁰ Children obtain the family gun and shoot siblings, parents, and neighbors, for example.¹⁵¹ This deceit has caused homeowners to wrongly conclude that having a gun in the home promotes safety.

O. Lobbying for State Statutes That Permit Carrying Guns Outside the Home

The U.S. Supreme Court held in *District of Columbia v. Heller* that a person had a right to keep a gun in the home based on the Second Amendment.¹⁵² Since then, the NRA has lobbied for the adoption of state statutes that permit carrying concealed guns outside the home.¹⁵³ These acts

¹⁴⁶ *Conn. School Shooter Had 4 Weapons*, CBS NEWS (Dec. 15, 2012, 4:58 PM), <https://www.cbsnews.com/news/conn-school-shooter-had-4-weapons/> (noting that an additional two handguns were registered to his mother).

¹⁴⁷ Julie Cart, *Man Pleads Guilty to Selling Gun to Columbine Killers*, L.A. TIMES (Aug. 19, 1999, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1999-aug-19-mn-1611-story.html>.

¹⁴⁸ See PROSSER, *THE LAW OF TORTS* 685 (1971).

¹⁴⁹ See David Robert Grimes, *Guns Don't Offer Protection—Whatever the National Rifle Association Says*, GUARDIAN (Mar. 25, 2013, 10:17 AM), <https://www.theguardian.com/science/blog/2013/mar/25/guns-protection-national-rifle-association> (“The logic the NRA espouses is perverse and transparently self-serving—the solution to gun crimes is not more guns, and no amount of rhetorical dexterity can surmount this fact.”); see also Charles C. Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 AM. J. PUB. HEALTH 2034, 2037 (2009) (“[I]ndividuals who were in possession of a gun were 4.46 . . . times more likely to be shot in an assault than those not in possession.”).

¹⁵⁰ See Grimes, *supra* note 149 (“[T]he vast majority of rape and murder victims are not harmed by nefarious strangers, but by people they know, and often love—friends, family members, lovers.”). According to the Johns Hopkins Bloomberg School of Public Health, women living in a home with at least one gun were three times more likely to be murdered. *Id.*

¹⁵¹ See Nick Penzenstadler, *Justice Is Haphazard After Kids' Gun Deaths in U.S.*, USA TODAY (May 24, 2017, 3:05 AM), <https://www.usatoday.com/story/news/nation/2017/05/24/justice-haphazard-after-kids-gun-deaths-u-s/340830001/> (“Children under age 12 die from gun accidents in the United States about once a week, on average.”). Some of these deaths never result in prosecutions. *Id.*

¹⁵² 554 U.S. 570, 636 (2008).

¹⁵³ Patrick J. Charles, *The Faces of the Second Amendment Outside the Home, Take Two: How We Got Here and Why It Matters*, 64 CLEV. ST. L. REV. 373, 375 (2016); see, e.g., Bruce Schreiner, *Kentucky Senate Advances NRA-Backed Concealed Carry Bill*, ASSOCIATED PRESS (Feb. 14, 2019) <https://www.apnews.com/11226b25100040b293d012e685095752> (detailing the NRA's efforts to pass a bill allowing concealed carry through the Kentucky Senate, which was passed on the anniversary of the Parkland shooting).

have been widely adopted.¹⁵⁴ In addition, some states, at the prodding of the NRA, permit guns to be carried openly outside the home.¹⁵⁵ They do not have to be concealed.¹⁵⁶ However, none of these acts have been tested before the Supreme Court.¹⁵⁷

The chief danger from guns in the home is to the homeowner and his family. Outside the home, the danger is to everyone else.¹⁵⁸ But carrying a gun outside the home is permitted in many states because of lobbying by the NRA.¹⁵⁹

More guns in the public means more danger to those in the public. There are estimated to be about 400 million guns in the United States.¹⁶⁰ The Trayvon Martin case is an example of more danger. Several years ago, George Zimmerman harassed a black teenager, Trayvon Martin, for merely walking in a Florida community.¹⁶¹ Martin continued to walk, but Zimmerman caught up to him and verbally attacked Martin again. A scuffle ensued and both individuals landed on the ground with Martin on top of Zimmerman, strangling him.¹⁶² Zimmerman, in defending himself, shot and

¹⁵⁴ See *Concealed Carry*, GIFFORDS L. CTR., <https://lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/concealed-carry/> (last visited Jan. 24, 2020). Restrictions on concealed carry were some of the “earliest gun laws adopted in the United States,” but every state in the United States now allows for some form of concealed carry. *Id.* In states with weaker restrictions against concealed carry, violent crimes rates were 13% to 15% higher than predicted. *Id.*

¹⁵⁵ See *Open Carry*, GIFFORDS L. CTR., <https://lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/open-carry/> (last visited Jan. 24, 2020) (noting that only three states, plus the District of Columbia, generally prohibit the open carry of guns in public); see also *Federal Appeals Court Confirms Second Amendment Protects Right to Carry in Public*, NRA-ILA (July 24, 2018), <https://www.nraila.org/articles/20180724/federal-appeals-court-confirms-second-amendment-protects-right-to-carry-in-public>.

¹⁵⁶ See *Open Carry*, *supra* note 155.

¹⁵⁷ Timothy Zick, *Arming Public Protests*, 104 IOWA L. REV. 223, 225 (2018) (“Despite having many opportunities to do so, the Supreme Court has yet to decide whether there is a Second Amendment right to keep and bear arms in public.”).

¹⁵⁸ See *Concealed Carry*, *supra* note 154.

¹⁵⁹ Richard Wolf, *NRA, Guns Rights Groups Using New York City Rules to Seek Expansion of Second Amendment in Supreme Court*, USA TODAY (May 22, 2019, 7:06 AM), [usatoday.com/story/news/politics/2019/05/22/nra-gun-rights-groups-seek-second-amendment-win-conservative-supreme-court/3685651002/](https://www.usatoday.com/story/news/politics/2019/05/22/nra-gun-rights-groups-seek-second-amendment-win-conservative-supreme-court/3685651002/). The NRA’s lobbying has led to forty-five states granting a “broad right to carry weapons outside the home,” including thirty that do not require special licenses or permits. *Id.*

¹⁶⁰ AARON KARP, ESTIMATING GLOBAL CIVILIAN-HELD FIREARMS NUMBERS 4 (2018); Alex Yablon, *Just How Many Guns Do Americans Really Own?*, VICE (June 25, 2018, 9:46 AM), [vice.com/en_us/article/bj3485/how-many-guns-are-there-in-america](https://www.vice.com/en_us/article/bj3485/how-many-guns-are-there-in-america).

¹⁶¹ *Trayvon Martin Shooting Fast Facts*, CNN (Feb. 28, 2019, 2:42 PM), <https://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts/index.html>.

¹⁶² Pierre Thomas & Seni Tienabeso, *George Zimmerman’s Reenactment of Trayvon Martin Shooting*, ABC NEWS (June 21, 2012), <https://abcnews.go.com/US/george-zimmermans-reenactment-trayvon-martin-shooting/story?id=16616864>.

killed Martin.¹⁶³ Arguing self-defense, Zimmerman won the murder trial.¹⁶⁴ If Zimmerman had not had his gun outside his home, perhaps he would not have been emboldened, not have challenged Martin, not have precipitated a fight, and certainly not have shot and killed Martin. The NRA argued for self-defense in this needless shooting.¹⁶⁵ The fact that the armed person, Zimmerman, precipitated the shooting by harassing Martin for no legal reason was not mentioned by the NRA.

In addition, seeing the results of gun violence on television and seeing a gun on the street are frightening.¹⁶⁶ People would rather stay home than risk being shot. Many do not want to eat in a restaurant populated with armed customers, for example.¹⁶⁷ Even open-air festivals with metal detectors to exclude guns are unsafe. In July 2019, three persons were shot to death at a garlic festival in California after the shooter cut through a metal fence to avoid security.¹⁶⁸ Nine bikers were killed in a shoot-out at a bar in Waco, Texas.¹⁶⁹ None would have died if their guns had been left at home. Carrying a gun outside the home causes an unnecessary increased risk to those outside the home.

¹⁶³ *Id.*

¹⁶⁴ Lizette Alvarez, *In Zimmerman Case, Self-Defense Was Hard to Topple*, N.Y. TIMES (July 14, 2013), <https://www.nytimes.com/2013/07/15/us/in-zimmerman-case-self-defense-was-hard-to-topple.html>.

¹⁶⁵ Ed Pilkington, *NRA Ends Silence and Comes Out Fighting for Stand-Your-Ground Laws*, GUARDIAN (May 2, 2012, 5:21 PM), <https://www.theguardian.com/world/2012/may/02/nra-stand-your-ground-law>. In light of the Florida governor appointing a task force to examine whether the stand-your-ground laws should be changed, the NRA labeled these laws as “self-defense laws” and a “natural right” that deter “would-be murderers, rapists, and robbers.” *Id.*

¹⁶⁶ See, e.g., Denise Cartolano, *Check “Mate”: Australia’s Gun Law Reform Presents the United States with the Challenge to Safeguard Their Citizens from Mass Shootings*, 41 NOVA L. REV. 139, 166 (2017); Peter, *What It’s Like to Own Guns in a Country with Strict Gun Control*, TIME (Jan. 13, 2016), <http://www.time.com/4172274/what-its-like-to-own-guns-in-a-country-with-strict-gun-control/> (“I would feel less safe in Texas where [everybody is] walking around with open carry. That would freak me out. It freaks me out enough to see the police all armed at the airport. Would I walk around the street with a pistol loaded on my waist? No way.”).

¹⁶⁷ See Julia A. Wolfson et al., *US Public Opinion on Carrying Firearms in Public Places*, 107 AM. J. PUB. HEALTH 929, 929 (2017). In a survey of 3,949 adults, “most Americans, including most gun owners, support restricting public places legal gun owners can carry firearms.” *Id.* Despite this opposition, many states have passed laws allowing guns to be carried in public places like bars and college campuses. *Id.*

¹⁶⁸ Richard Winton & Laura Newberry, *Gilroy Garlic Festival Gunman Cut Through Back Fence to Avoid Security, Police Say*, L.A. TIMES (July 29, 2019, 3:00 AM), <https://www.latimes.com/california/story/2019-07-28/gilroy-garlic-festival-shoot-gunman-cut-through-fence-to-avoid-security-police-say>.

¹⁶⁹ Manny Fernandez, *9 Are Killed in Biker Gang Shootout in Waco*, N.Y. TIMES (May 17, 2015), <https://www.nytimes.com/2015/05/18/us/motorcycle-gang-shootout-in-waco-texas.html>.

*P. Lobbying for Statutes That Permit Carrying Guns on Public College Campuses*¹⁷⁰

This law has been adopted in several states, including Texas¹⁷¹ and Georgia.¹⁷² Allowing guns on campus is asking for trouble and is a bad idea. College students are often impulsive and emotionally immature.¹⁷³ Some are just being introduced to alcohol, and some are mentally unstable.¹⁷⁴ Throwing guns into this mix can be disastrous.¹⁷⁵ The adverse impact on teaching and classroom dynamics is obvious.¹⁷⁶ There is no educational benefit to having guns on campus and in the classroom.¹⁷⁷

The NRA apparently envisions a shoot-out with the shooter, but there is substantial doubt that armed college students would engage the armed attacker. In the motorcycle gang shoot-out in Texas, armed men ran and hid.¹⁷⁸ At the Las Vegas shooting, concert-goers with guns did not shoot at the attacker because he was too far away from the concert for concertgoers

¹⁷⁰ *NRA-Backed Gun Laws Have Found Success in State Legislatures Across the U.S.*, NPR (Oct. 5, 2017, 1:36 PM), <https://www.npr.org/2017/10/05/555859571/nra-backed-gun-laws-have-found-success-in-state-legislatures-across-the-u-s>. The NRA's push for guns in public places such as college campuses is reflective of its disdain for "sacred spaces" or gun-free zones, as it tries to sell the message that a public place without guns is less safe than a public place with guns. *Id.*

¹⁷¹ Trymaine Lee, *New Texas Law Allows College Students to Carry Guns on Campus*, NBC NEWS (Aug. 1, 2016), <https://www.nbcnews.com/news/us-news/new-texas-law-allows-college-students-carry-guns-campus-n620911>.

¹⁷² Eric Stirgus & Maya T. Prabhu, *Georgia's Year-Old Campus Carry Law Still Stirs Confusion, Debate*, AJC (July 2, 2018), <https://www.ajc.com/news/local-education/georgia-year-old-campus-carry-law-still-stirs-confusion-debate/XFyVtliRoxa87GMEafanQJ/#>.

¹⁷³ Eileen P. Ryan, *What Psychiatry, Developmental Psychology, and Neuroscience Can Teach Us About At-Risk Students*, 17 WASH. & LEE J. CIV. RTS. & SOC. JUST. 59, 63 (2010).

¹⁷⁴ Brian J. Siebel, *The Case Against Guns on Campus*, 18 GEO. MASON CIV. RTS. L.J. 319, 324–28 (2008). Approximately 1,100 college students commit suicide per year. *Id.* at 327. The use of a gun in a suicide attempt dramatically increases the likelihood of death. *Id.*

¹⁷⁵ See Emily Friedman, *Va. Tech Shooter Seung-Hui Cho's Mental Health Record Released*, ABC NEWS (Aug. 19, 2009), <https://abcnews.go.com/US/seung-hui-cho-mental-health-records-released/story?id=8278195>. After the Virginia Tech shooting, the Governor of Virginia signed an executive order prohibiting people who had been court-ordered to receive mental treatment from buying guns. *Id.*

¹⁷⁶ See Christopher M. Wolcott, *The Chilling Effect of Campus Carry: How the Kansas Campus Carry Statute Impermissibly Infringes upon the Academic Freedom of Individual Professors and Faculty Members*, 65 U. KAN. L. REV. 875, 908–09. A good professor who challenges the students may also enrage them and therefore be put at mortal risk from an armed student, creating an impulse to tone down the discussion. *Id.* Wolcott claims that allowing guns in campus "dissuades professors from lecturing on important but controversial topics." *Id.* at 908.

¹⁷⁷ See Siebel, *supra* note 174 at 321–23.

¹⁷⁸ Ann O'Neill et al., *Knives, Guns, Blood and Fear: Inside the Texas Biker Shootout*, CNN (Oct. 31, 2015, 12:36 PM), <https://www.cnn.com/2015/10/29/us/texas-biker-shootout-new-details/index.html>; *Waco Video Shows Bikers Running Away as Shooting Starts*, GUARDIAN (May 21, 2015, 2:46 PM), <https://www.theguardian.com/world/2015/may/21/waco-video-shows-bikers-running-away-as-shooting-starts>.

to effectively respond.¹⁷⁹ College students might also think of the risk and choose to run or hide instead of returning fire. Adding guns to college campuses cause an increased risk to students and teachers.

Q. Lobbying for the Protection of the Lawful Commerce in Arms Act (PLCAA)

Two important legal currents led to the adoption of the PLCAA in 2005. First, numerous cities joined to sue the gun manufacturers for the costs they had endured because of gun violence.¹⁸⁰ Second, there was the *Ileto v. Glock* case. On August 10, 1999, Buford Furrow approached a Jewish Community Center in California while carrying firearms. Furrow entered into the lobby and murdered several children and a teacher.¹⁸¹ Then he shot and killed a postman.¹⁸² A suit was brought against the gun manufacturer Glock based on negligent marketing.¹⁸³ The shooter was not worth suing because he lacked assets.¹⁸⁴ However, in the lower California courts, the gun manufacturer Glock was held liable for negligent marketing.¹⁸⁵ The impact of this case would have been to examine the marketing of guns and to inquire whether a safer gun could have been designed.¹⁸⁶

Ileto and the suits against gun manufacturers by cities caught the attention of the NRA. The NRA therefore lobbied Congress and asked them

¹⁷⁹ Alex Yablon, *No Pistol Could Have Stopped This*, SLATE (Oct. 2, 2017), <https://slate.com/news-and-politics/2017/10/las-vegas-should-put-an-end-to-the-nra-good-guy-with-a-gun-line.html>. Pete Blair, executive director of the Advanced Law Enforcement Rapid Response Training Center at Texas State University, stated that a concertgoer carrying a gun wouldn't have been able to defend themselves at such long range. *Id.*

¹⁸⁰ Following New Orleans' first city suit against the gun industry in 1998, thirty-one additional cities and counties and one state have filed suit against gun manufacturers, dealers, and trade associations. See Brian J. Siebel, *Viewpoint Gun Lawsuits. The Case Against the Gun Industry*, 115 PUB. HEALTH REP. 410, 410 (2000).

¹⁸¹ *Ileto v. Glock Inc.*, 349 F.3d 1191, 1195 (9th Cir. 2003) ("Furrow entered the JCC with this arsenal and proceeded to shoot and injure three young children, one teenager, and one adult with his Glock gun.").

¹⁸² *Id.* ("Furrow then fled the JCC with the firearms, and came upon Ileto, a United States Postal Service worker, who was delivering mail in Chatsworth, California. Furrow shot and killed Ileto with his Norinco gun.").

¹⁸³ *Id.* at 1204 ("Plaintiffs allege that Glock's marketing and distribution strategy includes the purposeful oversupply of guns to police departments and the provision of unnecessary upgrades and free exchange of guns with police departments to create a supply of post-police guns that can be sold through unlicensed dealers without background checks to illegal buyers at a profit.").

¹⁸⁴ See Heath Foster, *The Hate-Filled Descent of Buford Furrow: White Supremacist's Shooting Rampage Puts State's Justice and Mental Health Systems Under Scrutiny*, SEATTLE POST-INTELLIGENCER, Sept. 17, 1999, at A15 ("[A]ssetless Furrow felt a full-time job would destabilize his condition . . ."). In a criminal trial, even if the defendant originally had assets, very few criminals have assets after trial because criminal defense attorneys are very expensive.

¹⁸⁵ *Ileto*, 349 F.3d at 1194. The Court of Appeals reversed the district court's orders granting dismissal of the negligence actions against gun manufacturers, admitting that the plaintiffs had a cognizable claim under California tort law for negligence. See *id.*

¹⁸⁶ See *id.* at 1206 ("We conclude that the social value of this practice to the defendants is outweighed by the health and safety interests of potential victims of gun violence at the hands of prohibited purchasers.").

to pass comprehensive legislation that would ban all suits against gun manufacturers.¹⁸⁷ Congress was pleased to respond to their NRA financial benefactor and passed the PLCAA in about eight months from the time of Senate consideration to the time of becoming public law.¹⁸⁸ The point of the Act is to immunize gun manufacturers and sellers from all suits, with a few small exceptions.¹⁸⁹ Under the Act, if a criminal pulled the trigger, the gun seller and the manufacturer cannot be sued.¹⁹⁰ This Act completely shields gun manufacturers from scrutiny and insulates them from the costs of gun violence.¹⁹¹ In contrast, the manufacturers of all other defective products, such as cars, television sets, and coffee makers, are liable for personal injuries if the product is defective.¹⁹² The PLCAA was a great victory for the gun manufacturers and the NRA but a huge loss for the victims. For example, the victims of the D.C. snipers were barred from suit by the PLCAA even though the gun seller was clearly negligent.¹⁹³ Importantly, school shooting

¹⁸⁷ Sheryl Gay Stolberg, *Congress Passes New Legal Shield for Gun Industry*, N.Y. TIMES (Oct. 21, 2005), <https://www.nytimes.com/2005/10/21/politics/congress-passes-new-legal-shield-for-gun-industry.html> (“The gun liability bill has for years been the No. 1 legislative priority of the National Rifle Association, which has lobbied lawmakers intensely for it.”).

¹⁸⁸ Protection of Lawful Commerce in Arms Act (PLCAA), 109 Bill Tracking S. 397 (2005). The timeline for the bill was as follows:

02/16/2005 Introduced in the Senate
07/27/2005 Considered in the Senate
07/29/2005 Passed in the Senate, as amended
10/20/2005 Considered in the House
10/20/2005 Passed in the House
10/20/2005 Passed both chambers (cleared for the President)
10/25/2005 Presented to the President
10/26/2005 Became Public Law.

Id.; see also Frank J. Vandall, *A Preliminary Consideration of Issues Raised in the Firearms Sellers Immunity Bill*, 38 AKRON L. REV. 113 (2005).

¹⁸⁹ 15 U.S.C. § 7903(5)(a)(i)–(vi) (2012); 17 A.L.R. FED. 2D § 14, Westlaw (2007) (“The Protection of Lawful Commerce in Arms Act (PLCAA) . . . is an act that shields firearms manufacturers and dealers from civil liability actions in federal or state court for injuries caused by third parties using nondefective firearms.”). For example, gun industries can still be held liable for damages resulting from defective products or negligent entrustment when they have reason to know a gun is intended for use in a crime.

¹⁹⁰ 15 U.S.C. § 7901 (“Businesses . . . should not . . . be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.”).

¹⁹¹ See 17 A.L.R. FED. 2D § 14, Westlaw (2007) (“Protection of Lawful Commerce in Arms Act (PLCAA) expressly preempts state common law by requiring that state courts immediately dismiss qualified civil liability actions.”).

¹⁹² See RESTATEMENT (SECOND) OF TORTS § 402A (AM. LAW INST. 1965) (“One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property.”).

¹⁹³ The Superior Court entered judgment for defendant and dismissed the action, even though the gun seller was negligent in securing the guns that were stolen by the D.C. snipers. See *Estate of Charlot v. Bushmaster Firearms, Inc.*, 628 F. Supp. 2d 174, 177 (D.D.C. 2009); Tom Jackman, *Gunmaker, Store Agree to Payout in Sniper Case*, WASH. POST, Sept. 10, 2004, at A01 (“[A] search of federal records found that the shop had lost

victims have no access to justice because of the PLCAA. Following passage of the PLCAA, the U.S. District Court for the Central District of California dismissed *Ileto v. Glock*.¹⁹⁴ Early cases were lost because of the PLCAA, but recent cases have found beachheads.¹⁹⁵

R. *Snuffing Out the Cities' Suits Against the Gun Manufacturers*

Large cities lose hundreds of millions of dollars each year because of gun violence.¹⁹⁶ These expenses flow from emergency assistance, police, and cleanup costs.¹⁹⁷ As was true with cancer caused by smoking,¹⁹⁸ the NRA, like the tobacco manufacturers, has been wildly successful in transferring the costs of gun violence onto the cities. Numerous cities joined to sue the gun manufacturers in the seven years before 2005 to recoup the expenses caused by gun violence.¹⁹⁹ The NRA filed amicus briefs that argued to dismiss the suits.²⁰⁰ The NRA won and all the city suits were dismissed.²⁰¹ Passing the

track of 238 guns in the previous three years and that more than 50 guns from the store were traced to criminal acts from 1997 to 2001.”)

¹⁹⁴ *Ileto v. Glock, Inc.*, 421 F. Supp. 2d 1274, 1304 (C.D. Cal. 2006).

¹⁹⁵ *See NY v. Baretta, USA Corp.*, 524 F.3d 1126 (9th Cir. 2008); *Ileto v. Glock, Inc.* 565 F3d. 1126 (9th Cir. 2009).

¹⁹⁶ *See U.S. SENATOR MARTIN HEINRICH, U.S. CONG. JOINT ECON. COMM. DEMOCRATS, AMERICA CAN'T AFFORD GUN VIOLENCE 1* (“Researchers have estimated that after accounting for direct and indirect costs, gun violence in America is costing \$229 billion annually.”).

¹⁹⁷ *Id.* (“Gunshot wounds cost \$2.8 billion per year in hospital bills, while long-term prison costs for people who commit crimes using guns total \$5.2 billion per year.”).

¹⁹⁸ *See Frank J. Vandall, The Legal Theory and the Visionaries that Led to the Proposed \$368.5 Billion Tobacco Settlement*, 27 SW. U. L. REV. 473, 480–81 (1998).

¹⁹⁹ Amanda B. Hill, *Ready, Aim, Sue: The Impact of Recent Texas Legislation on Gun Manufacturer Liability*, 31 TEX. TECH L. REV. 1387, 1388 (2000) (“In the past year, over thirty cities and counties have filed lawsuits against gun manufacturers.”); *see, e.g.*, Paul M. Barrett, *Other Cities May Join New Orleans in Suits Against Makers of Firearms*, WALL ST. J. (Nov. 2, 1998), <https://www.wsj.com/articles/SB909960895560825500> (“New Orleans . . . became the first city to file suit against major gun makers, seeking reimbursement for millions of dollars spent on police, medical and other city services in connection with unintentional shootings, teen suicides and criminal activity.”).

²⁰⁰ *See Courts Reject Lawsuits Against Gun Makers*, NRA-ILA (Oct. 16, 2003), <https://www.nraila.org/articles/20031016/courts-reject-lawsuits-against-gun-make> (“Since the first suit was introduced, 33 states have enacted NRA-backed legislation [that prohibits localities from filing these suits] (Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming).”).

²⁰¹ *See, e.g., id.* (“On April 3, 2001, the Louisiana Supreme Court voted 5-2 to dismiss the City of New Orleans suit, the first of its kind to be filed, upholding the state law which forbids municipalities in Louisiana from bringing these types of suits.”); *see also* VIVIAN S. CHU, CONG. RESEARCH SERV., R42871, THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT: AN OVERVIEW OF LIMITING TORT LIABILITY OF GUN MANUFACTURERS (2012) (“[M]ost lawsuits brought after the enactment of [PLCAA] have been dismissed notwithstanding the exceptions that would permit a civil suit to proceed against a federal firearms licensee.”).

costs of gun violence onto the taxpayer is an effective way for the manufacturers to keep gun prices low.²⁰² It clearly benefits the gun manufacturers. In contrast, placing the costs on the NRA and the gun manufacturers would raise the price of guns and allow the market to work.²⁰³ When the cigarette manufacturers were forced to absorb the costs of treating cancer (rather than the public), the price of cigarettes went up many fold, and consequently, the sales of cigarettes dropped.²⁰⁴

The passage of the PLCAA²⁰⁵ coupled with the end of the *Ileto* line of cases²⁰⁶ means there is no legal basis left to sue gun sellers or manufacturers. The impact of snuffing out city suits, coupled with the PLCAA, is to cause the gun violence costs to rest on the taxpayers.

S. *Lobbying for Mentally Ill Persons to Be Permitted to Carry Guns*

The NRA has pushed to permit guns to be carried outside the home by those who had been hospitalized as mentally ill.²⁰⁷ This flies in the face of logic. These persons often lack maturity and judgment.²⁰⁸ For example,

²⁰² See Fox Butterfield, *Lawsuits Lead Gun Maker to File for Bankruptcy*, N.Y. TIMES (June 24, 1999), <https://www.nytimes.com/1999/06/24/us/lawsuits-lead-gun-maker-to-file-for-bankruptcy.html> (“‘If New York comes into this, and there are more suits, at some point soon a critical mass will be reached where the costs alone of defending these suits are going to eat up the gun companies,’ said John Coale, a lawyer in Washington who is representing New Orleans and several other cities that have sued.”).

²⁰³ See Siebel, *supra* note 180, at 417. Siebel expects that lawsuits against the gun industry could bring about significant reforms by pressing for recovery of at least some of the costs, which in turn would force the industry to incorporate feasible safety devices in all guns, stop duping the public into believing that guns increase home security, and tighten controls over its lax distribution network, thereby blocking the major gun pipeline for criminals, juveniles, and other inappropriate gun use. *Id.*

²⁰⁴ See generally Vandall, *supra* note 198, at 481, 483. For the free market to work the costs must be placed on the actor, not the victim and not society at large. See Brian J. Siebel, *supra* note 180, at 410 (“Litigation forced tobacco companies to the bargaining table, where they finally acknowledged responsibility for the harm they had caused and agreed to pay unprecedented damages to state and city governments.”). See also Bloomberg News, *Company News; Philip Morris Raises Prices of Cigarettes 14 Cents a Pack*, N.Y. TIMES, Apr. 26, 2001, at C4.

²⁰⁵ 15 U.S.C. § 7901 (2012). The Protection of Lawful Commerce in Arms Act (PLCAA) is an act that shields firearms manufacturers and dealers from civil liability actions in federal or state court for injuries.

²⁰⁶ *E.g.*, *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 388–89 (2d Cir. 2008) (rejecting New York City’s arguments against the PLCAA’s constitutionality and finding that the PLCAA required dismissal of the suit where the city was seeking injunctive relief to inhibit the diversion of firearms into illegal markets); *Ileto v. Glock, Inc.*, 421 F. Supp. 2d 1274, 1304 (C.D. Cal. 2006).

²⁰⁷ See, e.g., *Mental Health and Firearms*, NRA-ILA (Jan. 24, 2013), <https://www.nra.org/articles/20130124/mental-health-and-firearms> (“A person cannot be federally disqualified from owning a gun based simply on a psychiatrist’s diagnosis, a doctor’s referral, or the opinion of a law enforcement officer, let alone based on getting a drug prescription or seeking mental health treatment. Doing so would . . . discourage troubled people from getting the help they need.”).

²⁰⁸ See, e.g., *In re Joseph S.*, 791 N.E.2d 80, 87, 89 (Ill. Ct. App. 2003). The appellate court ruled that the

persons in a domestic dispute who threaten their spouse are forbidden by federal law from possessing guns.²⁰⁹ They are merely angry, not mentally ill.²¹⁰ The legal determination that a patient is no longer mentally ill is far from a decision that the person is completely fit to own the most dangerous product on the planet.²¹¹

This NRA proposal is a manifestation of its mantra that everyone needs a gun.²¹² It causes more guns to be sold.²¹³

T. *Owning a TV Station*

In order to spread their pro-gun message, the NRA owned a TV station.²¹⁴ Much of the coverage focused on gun policy, the newest developments in firearms technology, and recent shootings.²¹⁵ Although the NRA dropped its TV station in the spring of 2019,²¹⁶ NRATV is another example of a concrete

mentally ill person was a danger to himself and others and ordered the mentally ill person to be hospitalized because his suspicious, nervous, and agitated behavior would make him unable to interact with society or obtain money as a means of sustenance if he is released from care. *Id.*

²⁰⁹ 18 U.S.C. § 922 (g)(9) (2012). The statute prohibits possession of firearms and ammunition by persons convicted of “a misdemeanor crime of domestic violence.” *Id.*

²¹⁰ 18 U.S.C. § 921 (a)(33)(A) (2012). The statute provides the term “misdemeanor crime of domestic violence” means: (1) a misdemeanor under federal, state, or tribal law; (2) which involves the use or attempted use of physical force, or the threatened use of a deadly weapon; and (3) which is committed by certain specifically described persons having a specified domestic relationship with the victim. *Id.*

²¹¹ See Benjamin Mueller, *Limiting Access to Guns for Mentally Ill Is Complicated*, N.Y. TIMES (Feb. 15, 2018), <https://www.nytimes.com/2018/02/15/us/gun-access-mentally-ill.html> (“In an analysis of some 350 mass killers going back a century, about 22 percent were found to likely have had psychosis; the rate in the general population is closer to 1 percent.”); see also German Lopez, *supra* note 140.

²¹² Amanda Marcotte, *NRA Commentator: Kids Should Be Required to Learn How to Shoot a Gun in School*, SLATE (July 23, 2014, 2:44 PM), <https://slate.com/human-interest/2014/07/everyone-gets-a-gun-nra-news-commentator-billy-johnson-wants-gun-required-zones.html>.

²¹³ Nicholas Kristof, *It's Time to Talk About the N.R.A.*, N.Y. TIMES (Oct. 29, 2018), <https://www.nytimes.com/interactive/2018/10/29/opinion/nra-mass-shootings-pittsburgh.html>.

²¹⁴ Charlotte Alter, *At the NRA's TV Network, Guns Are a Weapon in the Culture Wars*, TIME (Nov. 16, 2017), <https://time.com/5027071/nras-tv-network-guns-are-weapon-in-culture-wars> (“Launched in late 2016, the online television platform of the powerful gun-rights lobby comprises two live news channels and 34 taped shows, all sponsored by gunmakers.”).

²¹⁵ Jeremy W. Peters & Katie Benner, *Where the N.R.A. Speaks First and Loudest*, N.Y. TIMES (Feb. 21, 2018), <https://www.nytimes.com/2018/02/21/us/politics/nratv-nra-news-media-operation.html> (“NRATV, the organization’s online video channel, has become a little-noticed but vital forum for the dissemination of some of the most strident pro-gun messaging in politics . . . [i]ts series cover a range of topics and interests intended to appeal to gun owners of all kinds, like ‘Armed and Fabulous,’ which profiles rifle-slitting women; ‘Frontlines,’ a newsmagazine hosted by Oliver North; and ‘Under Wild Skies,’ which follows hunters in pursuit of big-game trophies.”).

²¹⁶ Danny Hakim, *N.R.A. Shuts Down Production of NRATV, and Its No. 2 Official Resigns*, N.Y. TIMES (June 25, 2019), <https://www.nytimes.com/2019/06/25/us/nra-nratv-ackerman-mcqueen.html> (“[T]he National Rifle Association . . . shut down live production at its online media arm, NRATV.”).

action by the NRA that went beyond mere speech. It caused more pro-gun messages to be broadcast.²¹⁷

U. Publishing Inaccurate Statements Dealing With Mass Shootings

After the Charleston mass shooting, an NRA board member argued the shooting could have been avoided by more guns.²¹⁸ For example, following the murder of twenty children and six teachers at Sandy Hook Elementary School, the NRA argued that it could have been avoided if teachers were armed.²¹⁹ After the shooting of thirty-two persons at Virginia Tech, the NRA argued that the lack of guns in classroom was a cause of the shootings.²²⁰ Following the mass shooting of high school students at Marjory Stoneman Douglas High School, the NRA argued that the murders could have been prevented by arming teachers.²²¹ After the Washington Navy Yard shooting, the NRA declared that the cause was mental illness on the part of the shooter.²²²

In each case a gun was used to kill innocent persons. The misstatements by the NRA were intended to divert attention away from the preeminent role of guns in the murders. Again, the work of the NRA went beyond mere

²¹⁷ Peters & Benner, *supra* note 215.

²¹⁸ Anna Merod, *How the NRA Has Responded to Mass Shootings over the Years*, NBC NEWS (June 15, 2016), <https://www.nbcnews.com/storyline/orlando-nightclub-massacre/how-nra-has-responded-mass-shootings-over-years-n592551>. For example, as a response to the Emanuel African Methodist Episcopal Church shooting in Charleston, one NRA board member wrote: “Eight of [George C. Pinckney’s] church members who might be alive if he had expressly allowed members to carry handguns in church are dead.” *Id.*

²¹⁹ See *Remarks from the NRA Press Conference on Sandy Hook School Shooting, Delivered on Dec. 21, 2012 (Transcript)*, WASH. POST (Dec. 21, 2012), https://www.washingtonpost.com/politics/remarks-from-the-nra-press-conference-on-sandy-hook-school-shooting-delivered-on-dec-21-2012-transcript/2012/12/21/bd1841fe-4b88-11e2-a6a6-aabac85e8036_story.html?noredirect=on. In a press conference on the Sandy Hook school shooting, NRA chief executive, Wayne LaPierre, said that “the only thing that stops a bad guy with a gun is a good guy with a gun,” and urged schools to place armed, trained, and qualified school security personnel right away. *Id.*

²²⁰ Ted Nugent, *Nugent: Gun-Free Zones Are Recipe for Disaster*, CNN (Apr. 20, 2007), <http://www.cnn.com/2007/US/04/19/commentary.nugent/index.html>. NRA board member Ted Nugent, commenting on CNN, called for an end to gun-free zones and contrasted the Virginia Tech shooting with other incidents in which mass shootings have been ended by law-abiding gun owners. *Id.*

²²¹ Berman & Weigel, *supra* note 56 (“LaPierre . . . restated his belief that more armed security would stop school shootings.”).

²²² See Adam Edelman, *NRA Chief Wayne LaPierre Wants ‘Broken’ Mental Health System Fixed but Rejects Calls for More Gun Control Legislation*, N.Y. DAILY NEWS (Sept. 22, 2013), <https://www.nydailynews.com/news/politics/nra-chief-wayne-la-pierre-broken-mental-health-system-fixed-rejects-calls-gun-control-legislation-article-1.1463887>. As a response to the Washington Navy Yard shooting, Wayne LaPierre argued that mentally ill people are the root cause of violence and that more access to guns is needed to curb gun violence. *Id.*

speech and crossed into fabrication: Guns are not the problem.²²³ For example, the *American Rifleman* is flawed to the extent it portrays shooting in a positive light and fails to present a warning that a gun is the most dangerous product in the home. It can kill spouses, children and neighbors in an instant. An accurate statement by the NRA would have been that one or more guns was used in each mass shooting²²⁴ and that the country had a gun problem that needs to be addressed. Therefore, believing the false statements by the NRA has likely caused schools and churches to buy guns for self-protection.

V. *NRA Publications*

The NRA publishes several magazines, including *American Rifleman* and *Traditions: Magazine*. Their purpose is to present the NRA core beliefs, discuss technical changes in guns, stoke fear, and sell more guns.²²⁵ For example, a recent article was titled *Top 5 Reasons to Shop for ARs Right Now*.²²⁶

The NRA will argue that some of the above acts, such as owning a TV station and producing magazines, are protected speech. They will argue that some of their donations are protected by the holding in *Citizens United*,²²⁷ but the context of continuing gun violence has to be remembered. The suit being proposed is aimed at reducing a portion of 15,000 annual deaths of innocent persons. Blocking gun reform needs to end, but if the question were merely political contributions, it could be easily argued that *Citizens United* embraces the NRA's actions.²²⁸ But when the financial contributions, fraud, and the grading of legislators are aimed at selling more guns, a portion of

²²³ Elizabeth Bruenig, *The NRA Wants Us to Talk About Mental Health over Guns. Here's Why It's Wrong*, WASH. POST (Nov. 8, 2018), https://www.washingtonpost.com/opinions/the-nra-wants-us-to-talk-about-mental-health-over-guns-heres-why-its-wrong/2018/11/08/a857b42e-e39a-11e8-b759-3d88a5ce9e19_story.html.

²²⁴ See Mark Follman et al., *US Mass Shootings, 1982–2019: Data from Mother Jones' Investigation*, MOTHER JONES (Dec. 11, 2019, 9:15 AM), <https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/3>. From 1982 to 2019, all the major mass shooting incidents involved one or more guns used as weapons. *Id.*

²²⁵ See, e.g., *Media and Publications: American Rifleman*, NRA EXPLORE, <https://explore.nra.org/interests/media-and-publications> (last visited Mar. 27, 2020). *American Rifleman* covers everything from “newest products off the manufacturing line to historical firearms, and keeps its audience updated on political events regarding the Second Amendment.” *Id.*

²²⁶ B. Gil Horman, *Top 5 Reasons to Shop for ARs Right Now*, AM. RIFLEMAN (June 12, 2019), <https://www.americanrifleman.org/articles/2019/6/12/top-5-reasons-to-shop-for-ars-right-now>.

²²⁷ 558 U.S. 310 (2010).

²²⁸ *Id.*

which are used to kill innocent persons, change is needed. The goal of the suit is to save innocent lives by reducing gun violence. NRA magazines have caused the NRA message to be spread far and wide.²²⁹

The NRA's likely rebuttal to the above twenty-two arguments is that everyone should have guns and they should be carried everywhere: schools, churches, and bars. The 15,000 annual shootings plus 24,000 annual suicides is merely the cost of self-preservation.

II. THREE NRA DEFENSES

The NRA will argue three critical defenses to the civil suit proposal: the Second Amendment, the First Amendment, and proximate cause.

A. *The Second Amendment*

The NRA will urge that the Second Amendment protects the twenty-two imminently dangerous acts discussed above. The Second Amendment to the Constitution provides:

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.²³⁰

In 2008, the U.S. Supreme Court held in *District of Columbia v. Heller* that the Second Amendment meant a person has a right to own and keep a gun in the home for self-defense.²³¹ The Court further held that the District of Columbia ordinance that prohibited a person from having a gun in the home for self-defense was in violation of the Second Amendment.²³² This holding was held applicable to the states in *McDonald v. City of Chicago*.²³³ Open

²²⁹ Peters & Benner, *supra* note 215.

²³⁰ U.S. CONST. amend. II.

²³¹ 554 U.S. 570, 573 (2008) (“The inherent right of self-defense has been central to the Second Amendment right . . . Under any of the standards of scrutiny that the United States Supreme Court has applied to enumerated constitutional rights, banning from the home the most preferred firearm in the nation to ‘keep’ and use for protection of one’s home and family would fail constitutional muster.”).

²³² *Id.* at 635 (“[W]e hold that the District’s ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.”).

²³³ 561 U.S. 742, 742 (2010) (concluding that the holding in *Heller* is applicable to the states because the Fourteenth Amendment incorporates the Second Amendment right, recognized in *Heller*, to keep and bear arms for the purpose of self-defense).

carry,²³⁴ concealed carry,²³⁵ and carry on campus,²³⁶ however, have not been approved by the Supreme Court and might yet be struck down as unconstitutional.²³⁷

Nevertheless, the NRA will argue that a suit against it is an attack on the right to bear arms. This argument is patently false because homeowners will continue to remain free to own guns under *Heller*.²³⁸ A challenge to the NRA is not an attack on the Second Amendment; rather, it is simply a challenge to the scope of the NRA's imminently dangerous actions which stoke tomorrow's gun violence.²³⁹

If confronted with a suit, the NRA will argue that suing it infringes upon the Second Amendment because it advocates for the right to own guns, which is protected by the Second Amendment. This is a flawed argument

²³⁴ Allen Rostron, *The Continuing Battle over the Second Amendment*, 78 ALB. L. REV. 819, 821 (2015) (“To date, [gun rights advocates’] effort to promote the right to keep and bear arms] have been unsuccessful, as the Supreme Court has denied certiorari petitions in a string of cases concerning the right to keep and bear arms.”); see, e.g., Drake v. Jerejian, 134 S. Ct. 2134, 2135 (2014); Nat’l Rifle Ass’n of Am., Inc. v. McCraw, 134 S. Ct. 1365, 1365 (2014); Schrader v. Holder, 134 S. Ct. 512, 512 (2013); Woollard v. Gallagher, 134 S. Ct. 422, 422 (2013); Kachalsky v. Cacace, 133 S. Ct. 1806, 1806 (2013).

²³⁵ See *Protecting Strong Gun Laws: The Supreme Court Leaves Lower Court Victories Untouched*, GIFFORDS L. CTR., <https://lawcenter.giffords.org/protecting-strong-gun-laws-the-supreme-court-leaves-lower-court-victories-untouched> (last updated May 31, 2019) (“[From 2009 to 2019], the U.S. Supreme Court has declined to grant review in over 150 Second Amendment cases, including numerous cases where lower courts upheld critical gun safety laws. Among the many cases in which the Court has denied review are a number of gun lobby-backed lawsuits advocating for a dangerously unlimited interpretation of the Second Amendment—one that ignores the careful safeguards expressed in the Supreme Court’s landmark Second Amendment case, *District of Columbia v. Heller*. By repeatedly declining to review lower court decisions that upheld federal, state, and local gun laws, the Supreme Court has reconfirmed that the Amendment is not an obstacle to the laws that keep our communities safe from gun violence.”). But see *N.Y. State Rifle & Pistol Ass’n, Inc. v. City of New York*, 139 S. Ct. 939 (2019). The Supreme Court granted certiorari on January 22, 2019 to review a Second Amendment case for the first time in a decade. *Id.* In this case, the NRA and individual plaintiffs filed suit to challenge a unique New York City gun possession licensing law that restricts the ability of gun owners who do not have concealed carry permits to transport handguns outside of their homes. *Id.* The case was argued before the Court in December 2019. *Id.*

²³⁶ Cf. *Protecting Strong Gun Laws*, *supra* note 235 (noting the Supreme Court has refused to hear cases challenging restrictions of firearms in publicly owned places).

²³⁷ See Andrew Chung, *U.S. Supreme Court Declines to Shield Gun Maker from Sandy Hook Lawsuit*, REUTERS (Nov. 12, 2019), <https://www.reuters.com/article/us-usa-court-sandy-hook/u-s-supreme-court-declines-to-shield-gun-maker-from-sandy-hook-lawsuit-idUSKBN1XM1W8>; David G. Savage, *Supreme Court May Put Off a Ruling that Could Have Expanded the 2nd Amendment*, L.A. TIMES (Dec. 2, 2019), <https://www.latimes.com/politics/story/2019-12-02/supreme-court-arguments-about-new-york-gun-rights-case> (“[T]he justices have said nothing about the scope of the 2nd Amendment.”).

²³⁸ *Heller*, 554 U.S. at 628–29, 635.

²³⁹ Susan Agrillo, *Soundoff*, 46 ARIZ. ATT’Y 8, 8–9 (2009) (“However, the NRA opposes every reasonable proposal to keep guns away from dangerous people It is not a benign educational group . . . but rather an extremist organization that is renowned for advocating controversial policy positions.”).

because, even after the proposed civil suit, the NRA will still be permitted to speak in support of gun ownership.²⁴⁰ For example, *Donald v. United Klans of America* did not end the United Klans.²⁴¹ It merely required the Klan to pay damages.²⁴² The change to the NRA after this proposed suit will be that the NRA will no longer be permitted to engage in acts that constitute an “imminent call to harm,” as forbidden by *Brandenburg v. Ohio*.²⁴³ Additionally, most tort cases are settled.²⁴⁴ As part of a settlement negotiation, the defendant may be asked to do many things in order to avoid trial. For example, in the Dalkon Shield suit, Johnson & Johnson agreed to run full-page newspaper ads explaining the risk of the IUD and to pay doctors to remove the defective IUDs. In the case of the NRA, as part of the settlement it will no longer be permitted to lobby Congress or state legislatures to prevent gun control legislation nor to give money to legislators. Grading elected officials based on their hostility to gun control proposals will also be forbidden. Finally, the NRA, like the Klan, will be required to pay damages to victims of gun violence. In short, the NRA will return to its original purpose of speaking for the use of guns for hunting. Notably, no guns will be confiscated because of the proposed suit.

²⁴⁰ See David B. Kopel, *The First Amendment Guide to the Second Amendment*, 81 TENN. L. REV. 417, 440 (2014) (“In the First Amendment context, the government must supply actual, reliable evidence to justify restricting protected expression based on secondary public-safety effects.”).

²⁴¹ See ANTI-DEFAMATION LEAGUE, TATTERED ROBES: THE STATE OF THE KU KLUX KLAN IN THE UNITED STATES 1 (2016) (“Despite their diminishing numbers, there are still approximately 3000 Klan members nationwide, as well as an additional but unknown number of associates and supporters.”); Erin Blackmore, *The 1981 Lynching that Bankrupted an Alabama KKK*, HISTORY, <https://www.history.com/news/kkk-lynching-mother-justice> (last updated Feb. 5, 2019) (noting only the United Klans of America ended).

²⁴² Final Judgment and Order at 1, *Donald v. United Klans of Am., Inc.*, No. 84-0725-AH (S.D. Ala. Feb. 12, 1987).

²⁴³ 395 U.S. 444, 444 (1969) (“Freedoms of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”).

²⁴⁴ Gregg D. Polsky & Dan Markel, *Taxing Punitive Damages*, 96 VA. L. REV. 1295, 1335 (2010) (“An extremely large percentage of tort cases already settle under current law . . .”).

The suit against the NRA will rest on five torts: (1) civil conspiracy;²⁴⁵ (2) civil aiding and abetting;²⁴⁶ (3) strict liability;²⁴⁷ (4) the intentional infliction of emotional distress;²⁴⁸ and (5) negligence. It will not be an attack on a government agency based on the Constitution or a statute.²⁴⁹ Instead, it will be a civil suit against an organization that knowingly engages in conduct that is foreseeably likely to cause a large number of deaths. The NRA's words and actions are like the Klan encouraging its members to commit murder in *Donald*.²⁵⁰ The NRA can reasonably foresee the shootings and deaths of thousands of innocent persons because of its actions urging its members and others to buy guns. As a result of these proposed suits, legislators will be free to draft and vote to adopt reasonable gun control measures without harassment, threats, and report cards from the gun manufacturers acting under the cloak of the NRA. Thousands of lives will be saved each year as the NRA pulls back and allows gun safety reforms to move forward.²⁵¹

²⁴⁵ The classic case of civil conspiracy in tort is when one party agrees with a second party to injure a third party and they cooperate to do so. RESTATEMENT (SECOND) OF TORTS § 889 cmt. c (AM. LAW INST. 1979) (“Although one is engaged in a criminal activity with another person, he is nevertheless entitled to recover for harm intentionally inflicted by his fellow conspirator, and this is true even though the harm arises out of and because of the crime that is being committed.”).

²⁴⁶ See *Neilson v. Union Bank of Cal.*, 290 F. Supp. 2d 1101, 1133 (C.D. Cal. 2003). Common to both conspiracies is “concerted wrongful action”: An agreement with another to perpetrate a wrong is not the same as actively facilitating to act, and thus proof of mere agreement does not give rise to aiding and abetting liability. *Id.*

²⁴⁷ See *infra* text accompanying note 375.

²⁴⁸ The tort of intentional infliction of emotional distress (IIED) occurs when the defendant: (1) engages in extreme and outrageous conduct, (2) which intentionally, (3) causes, (4) severe emotional distress to another. RESTATEMENT (SECOND) OF TORTS § 46; see *McCullough v. Noblesville Sch.*, 63 N.E.3d 334, 341–42 (Ind. Ct. App. 2016).

²⁴⁹ The NRA is not a government agency but “the nation’s largest, oldest, and most politically powerful interest group that opposes gun laws and favors gun rights.” 2 GUNS IN AMERICAN SOCIETY: AN ENCYCLOPEDIA OF HISTORY, POLITICS, CULTURE, AND THE LAW 618 (Gregg Lee Carter ed., 2d ed. 2012). The NRA also includes a 501(c) nonprofit corporation, the NRA Foundation. *Id.*

²⁵⁰ Composite Complaint, *supra* note 11, at 13, 17. United Klans defendants presented voiced approval of the plan to kill a black person and approved the killing once again by complimenting defendant Knowles with the comment “good job, Tiger” after his hanging Michael Donald from the tree. *Id.*; cf. Scott Medlock, *NRA = No Rational Argument? How the National Rifle Association Exploits Public Irrationality*, 11 TEX. J. C.L. & C.R. 39, 47 (2005) (“Each issue of all NRA magazines contains a page of “Armed Citizen” stories—tales of gun owners protecting themselves from crime with their weapons. These stories emphasize that ‘armed citizens’ are taking control of their own destiny.”).

²⁵¹ The theory of the suit is that without NRA interference, state and federal legislators will begin to pass gun control reforms. Plus, the price of guns will rise as damages are paid, and less guns will be sold. For example, cigarette prices rose as a result of the 1996 settlement. Vandall, *supra* note 198, at 484–85.

B. *The First Amendment*

The NRA will also defend this suit on the basis of the First Amendment. The First Amendment to the U.S. Constitution provides:

Congress shall make no law . . . abridging the freedom of speech, or of the press²⁵²

This is the foundation of American democracy.²⁵³ It has been interpreted to mean that articles, magazines, newspapers, and other media have almost limitless freedom to print injurious cartoons,²⁵⁴ sell recordings that advise listeners to take their lives,²⁵⁵ air TV programs that present rape images free from suit when imitators commit rape,²⁵⁶ and print demeaning, hurtful statements about politicians.²⁵⁷ Under the protective umbrella of the First Amendment, companies can sell alcohol on Sundays,²⁵⁸ promote new drugs such as Viagra and Rogaine,²⁵⁹ and advertise a cure for toe fungus on television during the dinner hour.²⁶⁰

²⁵² U.S. CONST. amend. I.

²⁵³ See *Asociacion de Trabajadores Agricolas de P.R. v. Green Giant Co.*, 518 F.2d 130, 135 (3d Cir. 1975) (“First and Fourteenth Amendment freedoms of speech and communication constitute important rights, fundamental to our notions of ordered liberty, and access to information enabling conscious choice is vital to our democratic way of life.”).

²⁵⁴ See, e.g., *King v. Globe Newspaper Co.*, 400 N.E.2d 241, 244–46 (Mass. 1987) (holding cartoons depicting a former governor in negative way were expressions of the cartoonist’s view, and were constitutionally protected expressions of opinion and could not form the basis of a libel claim).

²⁵⁵ OZZY OSBOURNE, *Suicide Solution*, on BLIZZARD OF OZZ (CBS Records 1980). A California court dismissed a lawsuit filed by the parents of a depressed teenager who committed suicide allegedly after listening to this song, ruling that the boy’s suicide was not a foreseeable result of Osbourne’s song. *McCollum v. CBS*, 249 Cal. Rptr. 187, 188–89, 194, 196 (Ct. App. 1988).

²⁵⁶ *Olivia N. v. Nat’l Broad. Co.*, 178 Cal. Rptr. 888, 890–93 (Ct. App. 1981). A young girl who was raped on a beach by a soda bottle sued NBC, claiming that the rapist had imitated a rape scene on a recent television program aired by NBC, but the California Court of Appeals held that NBC was not liable for the actions of the persons who committed the crime. *Id.*

²⁵⁷ *Hustler Magazine v. Falwell*, 485 U.S. 46, 56 (1988) (holding a public figure was required to show statements published in the advertisement parody were made with actual malice or reckless disregard of the truth to hold the magazine liable under the First Amendment test).

²⁵⁸ Lesley Lawrence-Hammer, *Red, White, but Mostly Blue: The Validity of Modern Sunday Closing Laws Under the Establishment Clause*, 60 VAND. L. REV. 1273, 1274 (2007) (“[B]lue laws frequently have been challenged as unconstitutional establishments of religion in violation of the First Amendment.”).

²⁵⁹ See *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 761–62 (1976) (holding a communication motivated primarily by economic and profit considerations is not denied First Amendment protection); see also Joshua E. Pery et al., *Direct-to-Consumer Drug Advertisements and the Informed Patient: A Legal, Ethical, and Content Analysis*, 50 AM. BUS. L.J. 729, 734 (2013) (“[Direct-to-consumer drug advertisements] appear to be securely protected by First Amendment commercial speech doctrine”).

²⁶⁰ See *Carey v. Population Servs. Int’l*, 431 U.S. 678, 701 (1977) (“[T]he fact that protected speech may be offensive to some does not justify its suppression.”).

Based on free speech, the NRA will defend itself by arguing that grading legislators, donating to campaigns, promoting rapid fire weapons, and attacking gun reform legislation falls within the protection of the First Amendment.²⁶¹ However, when the actor goes beyond speech and embraces “imminent harmful action,” the test developed in *Brandenburg v. Ohio*, the protection of the First Amendment falls away.²⁶² This is especially true when violence and death are foreseeable.²⁶³ The following civil cases manifest the outer limits of the First Amendment and hold the speaker liable for damages to the victims. In *Rice v. Paladin Enterprises, Inc.*, Paladin published a manual that included details of how to commit murder.²⁶⁴ It discussed what gun to use to commit murder, how to dispose of the gun, and the best distance at which to shoot to kill the victim.²⁶⁵ The Fourth Circuit Court of Appeals held that the manual had no social utility and rejected the free speech argument.²⁶⁶ The U.S. Supreme Court refused to grant certiorari, and, thus, the publisher of the death manual was held liable for the resulting foreseeable murder of two persons.²⁶⁷

In *Weirum v. RKO General, Inc.*, a California DJ speaking over the radio offered a prize to the first person who could find him.²⁶⁸ He offered hints regarding his location as he drove from one location to another.²⁶⁹ In negligently rushing to find the peripatetic DJ, a young driver crashed into the plaintiff’s car and killed the driver.²⁷⁰ In defending the negligence suit against them, the radio station argued free speech.²⁷¹ The Supreme Court of California rejected the First Amendment argument and held the radio station

²⁶¹ See Nat’l Rifle Ass’n of Am. v. Cuomo, 350 F. Supp. 3d 94, 111 (N.D.N.Y. 2018) (“[The NRA] asserts that Defendants took these actions ‘with the intent obstruct, chill, deter, and retaliate against the NRA’s core political speech.’”); *First Amendment Defends the Second*, NRA-ILA (Dec. 16, 2019), <https://nraila.org/articles/20191216/first-amendment-defends-the-second> (“Judge Wilson made clear in his ruling that the ordinance [weakening support for the Second Amendment] was an attempt to silence NRA . . .”).

²⁶² 395 U.S. 444, 447 (1969) (“[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”).

²⁶³ *Id.* at 447–48.

²⁶⁴ 128 F.3d 233, 236 (4th Cir. 1997) (“[T]he professional hit man fills a need in society and is, at times, the only alternative for ‘personal’ justice. Moreover, if my advice and the proven methods in this book are followed, certainly no one will ever know.”).

²⁶⁵ *Id.* at 237.

²⁶⁶ *Id.* at 243 (holding that the First Amendment does not pose a bar to a finding that Paladin is civilly liable as an aider and abettor of Perry’s triple contract murder).

²⁶⁷ *Paladin Enters., Inc. v. Rice*, 523 U.S. 1074 (1998).

²⁶⁸ 539 P.2d 36, 37 (Cal. 1975).

²⁶⁹ *Id.* at 38.

²⁷⁰ *Id.* at 37.

²⁷¹ *Id.* at 40.

liable for the foreseeable negligence of the third-party teenage driver.²⁷² The issue in *Weirum* was civil accountability for the foreseeable results of a broadcast that created an undue risk of harm to the decedent automobile driver.²⁷³ The court reasoned that the First Amendment does not sanction the infliction of physical injury merely because it flowed from speech. Clearly, the First Amendment is not an absolute defense, and, in some cases, damages may be recovered when speech is involved.

In *Donald*,²⁷⁴ the leaders of the Alabama United Klans called for the death of a black man to avenge a jury verdict in favor of a black man.²⁷⁵ The purpose of the request was to show the black population of Alabama that finding a black man not guilty in a trial was unacceptable to the Klan.²⁷⁶ The jury had deadlocked in the trial of a black man accused of shooting a white police officer.²⁷⁷ After learning of the jury deadlock, two members of the Klan—Henry Hayes and James Knowles—who had heard the call to kill, drove around and found young Michael Donald.²⁷⁸ They beat him and then hung his body from a tree.²⁷⁹ Ms. Donald brought a suit in tort against the Klan for conspiracy and for aiding and abetting the murder.²⁸⁰ The jury found against the United Klans and awarded \$7 million in damages.²⁸¹ The murderers were bankrupt, and as a result the United Klans of America headquarters was sold to pay the judgment.²⁸²

²⁷² *Id.* at 40–41.

²⁷³ *Id.* at 40 (“The issue here is civil accountability for the foreseeable results of a broadcast which created an undue risk of harm to decedent.”).

²⁷⁴ Final Judgment and Order at 1, *Donald v. United Klans of Am., Inc.*, No. 84-0725-AH (S.D. Ala. Feb. 12, 1987).

²⁷⁵ Composite Complaint, *supra* note 11, at 13 (“[Defendants] discussed the killing of a black man if the jury trying Josephus Anderson failed to convict him for shooting the white Birmingham police officer.”).

²⁷⁶ *Id.* at 14 (“The purpose of this conspiracy was . . . to intimidate present and future jurors in Mobile County and Alabama from ruling in favor of black defendants charged with crimes against whites, thereby denying black citizens the right to a fair and impartial trial . . .”).

²⁷⁷ *Id.* at 16 (“[T]he defendants . . . learned that the interracial jury trying Josephus Anderson had deadlocked. Upon learning this information, or shortly thereafter, defendants Henry Hays and James Knowles left the other defendants gathered at 111 Herndon Avenue.”).

²⁷⁸ *Id.* (“[D]efendants . . . randomly picked Michael Donald, a black man, from a Mobile street, forced him into their automobile using the gun obtained from United Klans member Mac Jones, choked Michael Donald with the rope noose, and cut him on his throat with a knife, rendering him wounded and unconscious.”); see *Landmark Case*, *supra* note 16 (describing facts of the murder of Donald and motivation behind them).

²⁷⁹ Composite Complaint, *supra* note 11, at 16–17.

²⁸⁰ *Id.* at 21.

²⁸¹ Final Judgment and Order at 1, *Donald v. United Klans of Am., Inc.*, No. 84-0725-AH (S.D. Ala. Feb. 12, 1987).

²⁸² The Associated Press, *U.S. Jurors Award \$7 Million Damages in Slaying By Klan*, N.Y. TIMES, Feb. 13, 1987, at A1; United Press Int'l, *Black Becomes Owner of Klan Headquarters*, L.A. TIMES, May 20, 1987, at 2 (explaining that “[t]he mother of a black teenager murdered by two Ku Klux Klansmen is being given the deed

The NRA will argue in defense an important free speech case, *Brandenburg v. Ohio*.²⁸³ Ohio had a statute prohibiting advocating for violence.²⁸⁴ A Ku Klux Klan official was sued for saying that the KKK might take revenge against the President, Congress, and the Supreme Court if they continue to suppress the white race.²⁸⁵ The KKK was found liable of violating the Ohio statute, but the U.S. Supreme Court struck down the KKK's conviction.²⁸⁶ It established the *Brandenburg* test for drawing the line between speech and violence: The First Amendment protects speech that advocates the use of force—as long as it is not “directed to inciting or producing imminent lawless action and is [not] likely to incite or produce such action.”²⁸⁷ The acts of the NRA are “imminent” because they are continuous over a daily, weekly, and monthly basis and forty persons die each day from gun violence.²⁸⁸ The deaths of a portion of these 15,000 unknown persons each year are a direct result of the NRA's dangerous acts and its extensive lobbying against gun reform legislation. Legislation requiring locked storage and banning automatic weapons, for example, could be passed that would reduce this tremendous loss of life.²⁸⁹

to the United Klans of America headquarters in Tuscaloosa to settle a \$7-million verdict against the group . . . [the] only Klan asset”).

²⁸³ See Staughton Lynd, Comment, *Brandenburg v. Ohio: A Speech Test for All Seasons?*, 43 U. CHI. L. REV. 151, 153–64 (1975). In 1969, “the Court used *Brandenburg* to promulgate a new speech test . . . which protects all advocacy other than ‘incitement to imminent lawless action.’” *Id.* at 153. Previous tests relied on more nebulous concepts like “clear and present danger,” which may have been easier to apply to an organization's advocacy. *Id.* at 153, 159. The standard put forward in *Brandenburg* is more specific, allows a broader range of advocacy, and is better suited to an organization's potential free speech defense. See *id.* at 157–60.

²⁸⁴ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). The Ohio statute “punishes persons who ‘advocate or teach the duty, necessity, or propriety’ of violence ‘as a means of accomplishing industrial or political reform’; or who publish or circulate or display any book or paper containing such advocacy; or who ‘justify’ the commission of violent acts ‘with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism’; or who ‘voluntarily assemble’ with a group formed ‘to teach or advocate the doctrines of criminal syndicalism.’” *Id.* at 448 (quoting OHIO REV. CODE ANN. § 2923.13).

²⁸⁵ *Id.* at 445–46. Appellant, the leader of a Ku Klux Klan group, phoned a staff member of a Cincinnati television station and invited him to come to a Klan rally. *Id.* at 445. The reporter attended with a cameraman and filmed portions of the events for broadcast. *Id.* Though no one was present other than the participants, twelve hooded figures, some of whom carried firearms, burned a cross and made speeches. *Id.* During one speech, appellant explained, “[t]his is an organizers meeting . . . [w]e’re not a revengent organization, but if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it’s possible that there might have to be some revengeance taken.” *Id.* at 446.

²⁸⁶ *Id.* at 449 (explaining that “we are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Such a statute . . . cannot be supported”).

²⁸⁷ *Id.* at 447.

²⁸⁸ See *Past Summary Ledgers*, *supra* note 1.

²⁸⁹ See, e.g. Charles DiMaggio et al., *Changes in US Mass Shooting Deaths Associated with 1994–2004 Federal Assault Weapons Ban: Analysis of Open-Source Data*, 86 J. TRAUMA ACUTE CARE SURG. 11, 15–16

The NRA will argue that their acts are pure speech, but that is superficial analysis. The acts by the NRA that cause a portion of 15,000 predictable deaths per year include grading legislators in order to force them to speak against and vote down gun reform legislation and making large donations to presidential campaigns, as well as state and federal legislative campaigns.²⁹⁰ This drives legislators to ignore logic (more guns equals more deaths) and vote against gun reforms.²⁹¹ Giving money to high school and college programs continues the fraud on children that guns are wholesome and safe. Lobbying against the ban on rapid-fire weapons as well as against all gun reforms helps to guarantee a portion of the deaths of 15,000 innocent persons per year.²⁹² Precise statistics on gun deaths and violence are unavailable, first because of the NRA's ban on CDC gun violence research and the keeping of related statistics, and second because of the police gag.²⁹³

(2018) (assault weapons ban); Michael C. Monuteaux et al., *Association of Increased Safe Household Firearm Storage with Firearm Suicide and Unintentional Death Among US Youths*, 173 JAMA PEDIATRICS 657, 662 (2019) (locked storage requirement).

²⁹⁰ See Philip Bump, *A Leading Gun-Control Group Just Released Nine Years of NRA Grades for Politicians*, WASH. POST (Feb. 14, 2017, 8:00 AM), <https://www.washingtonpost.com/news/politics/wp/2018/06/20/a-leading-gun-control-group-just-released-nine-years-of-nra-grades-for-politicians/> (explaining that “[t]he National Rifle Association uses a number of tools to ensure that lawmakers support its priorities”). First, the NRA uses money: In the 2016 election cycle, the NRA spent over \$50 million. *Id.* Second, the NRA assigns letter grades to candidates for offices which indicate how good or bad the candidate is on gun issues. *Id.* An “A+” grade means the lawmaker is unlikely to support gun restrictions. *Id.* A candidate who supports more restrictive gun laws would earn an “F”. *Id.*

²⁹¹ *See id.*

²⁹² See Aaron Kessler, *Why the NRA Is So Powerful on Capitol Hill, by the Numbers*, CNN (Feb. 23, 2018, 2:12 PM), <https://www.cnn.com/2018/02/23/politics/nra-political-money-clout/index.html> (explaining that “[w]hen the National Rifle Association talks, large swaths of Capitol Hill listen . . . [a]nd when the NRA has aimed to block any new gun legislation in the wake of mass shootings, it’s so far succeeded in thwarting such efforts”). Examining the causes for the NRA’s success in influencing gun legislation, the article points out that 8 lawmakers have received \$1 million or more in campaign contributions from the NRA, 39 have received \$100,000 or more, 128 have received \$25,000 or more, and 202 have received \$10,000 or more. *Id.* Kessler additionally notes that so far in the 2018 election cycle, gun rights groups including the NRA have outspent gun control groups more than 40-to-1. *Id.*

²⁹³ John Bohannon, *Bold Plan, Uncertain Future for Gun Violence Research*, 340 SCIENCE 1273, 1273 (2013). Published by the American Association for the Advancement of Science, this journal article notes that, with the highest rate of gun deaths and injuries among industrialized nations, firearm violence in the United States “has all the features of a big public health problem,” which should put the topic “squarely in the domain of the Centers for Disease Control and Prevention (CDC).” *Id.* Despite this, the CDC has “long been relegated to the sidelines” because, “under pressure from the National Rifle Association (NRA) Congress effectively gutted CDC research on the public health impact of guns but cutting precisely the same amount of funding allocated to the program—\$2.6 million—and passing legislation that prohibited the agency from conducting research that might ‘advocate or promote gun control.’” *Id.* Due to a lack of data, there are major gaps in statistics, such as the number of guns in private hands across the county and the circumstances of firearms-related casualties. *Id.* Meanwhile, Congress gags police disclosures. *See Consolidated Appropriations Act, 2005*, Pub. L. No. 108-447, 118 Stat. 2809, 2859 (2004); *The “Tiahrt Amendment”*, *supra* note 83.

The *Brandenburg* case discussed above developed the test for drawing the line between protected and forbidden speech: Advocacy of violence is protected as long as the advocacy does not incite people to “imminent lawless action.”²⁹⁴ A helpful way to discern how the Supreme Court might rule in regard to NRA “speech” is to examine three key tortious speech cases since *Brandenburg* was decided in 1969. First, in *Donald v. United Klans of America, Inc.*, the decedent’s mother was able to collect \$7 million against the Klan.²⁹⁵ The speech was about going out and killing a black man.²⁹⁶ Second, in *Rice v. Paladin Enterprises, Inc.*, the speech was publishing a murder manual.²⁹⁷ The Supreme Court denied certiorari and therefore upheld the Fourth Circuit’s decision that the suit by the victims’ survivors could go to trial.²⁹⁸ The reasoning of the Fourth Circuit is the book had no social value whatsoever.²⁹⁹ Third, in *Weirum v. RKO General, Inc.*, the speech was a radio station that cajoled listeners to drive recklessly in order to win a small financial reward.³⁰⁰

The survivors of the ensuing car crash in *Weirum* won their suit against the radio station.³⁰¹ The reasoning of the Supreme Court of California was that “[t]he First Amendment does not sanction the infliction of physical injury merely because achieved by word, rather than act.”³⁰² This review manifests that the free speech portion of this Article presents a novel concept. NRA speech is not as clear and simple as the speech in *Brandenburg*: “that there might have to be some [vengeance] taken [against the President, Congress, and Supreme Court].”³⁰³ The NRA does not violate the *Brandenburg* test by only one brief statement. Instead, the NRA transgresses *Brandenburg* by means of a skillfully designed composite of twenty-two different acts. The goal of the acts is to block all remedial gun legislation. In evaluating whether the composite of the twenty-two acts produce an “imminent” danger the context must be weighted: Numerous people die from gun violence each year and nothing has been able to prevent it until now. In

²⁹⁴ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (following a series of speech cases that failed to sufficiently embrace free speech; its reasoning is to encourage speech and to carve out a very large swath of protected speech).

²⁹⁵ Final Judgment at 1, *Donald v. United Klans of Am., Inc.*, No. 84-0725-AH (S.D. Ala. Feb. 12, 1987).

²⁹⁶ Composite Complaint, *supra* note 11, at 13.

²⁹⁷ 128 F.3d 233, 239 (4th Cir. 1997).

²⁹⁸ *Id.* at 243.

²⁹⁹ *Id.* at 249.

³⁰⁰ 539 P.2d 36, 38–39 (Cal. 1975).

³⁰¹ *Id.* at 40–42.

³⁰² *Id.* at 40.

³⁰³ *Brandenburg v. Ohio*, 395 U.S. 444, 446 (1969).

truth, the speech by the NRA does not merely present an imminent danger; rather, it is causing a real, present, ongoing series of murders. Because of the NRA's control of the legislatures, numerous people will be shot both today and tomorrow. These total 15,000 deaths each year and are a direct result of the NRA blocking all gun control legislation.³⁰⁴

C. *The Third Defense: Proximate Cause*

The next defense the NRA will likely argue is proximate cause.³⁰⁵ This is a matter of social policy.³⁰⁶ It is often raised by corporations as a defense in tort cases and is oversimplified to mean that the injury was not direct³⁰⁷ or foreseen.³⁰⁸ As a proximate cause defense, the NRA will argue that specific shooting deaths were not foreseen by the NRA and that there was no direct connection between their acts and gun deaths. Here, the NRA will lose because 15,000 deaths per year are foreseen. There is a direct link from the NRA to the gun manufacturing process to some portion of 15,000 innocent deaths per year, because of a lack of meaningful gun regulations, the donations to legislators, the grading of legislators, the sale of guns, no gun research permitted, and the gutting of data. These deaths are foreseeable each year. Another example is *Green v. Denney*.³⁰⁹ In *Green*, the passenger in a Pinto was killed when the car hit a horse and it went through the front of the

³⁰⁴ See DiMaggio et al., *supra* note 289, at 15–16; Monuteaux et al., *supra* note 289, at 662; Bump, *supra* note 290.

³⁰⁵ See FRANK J. VANDALL, A HISTORY OF CIVIL LITIGATION: POLITICAL AND ECONOMIC PERSPECTIVES 218–19 (2011) (collecting tort cases involving entities that did not directly commit the act in question often turn on the examination of proximate cause). Defendants who rely on proximate cause may argue the link between the defendant's conduct and the ultimate injury is too attenuated to fairly hold the defendant liable. *Id.* Proximate cause can be a successful defense when a tortious result is truly not a foreseeable outcome or rests on bad policy. *Id.* Dean Leon Green argues that there is no rule for proximate cause and that it is a balance of several factors. *Id.* at 81, 87; see also *infra* notes 333, 335 *infra*. Text at note 360, *infra*.

³⁰⁶ Charles O. Gregory, *Proximate Cause in Negligence: A Retreat from "Rationalization"*, 6 U. CHI. L. REV. 36, 36–37 (1938). In tort cases, it is possible for plaintiffs to lose even when there is a clear showing that a defendant's conduct contributed to the harm suffered, or that "but for" the defendant's conduct, the plaintiff would not have suffered harm. *Id.* This may occur when the harm complained of, "although certainly a causal consequence of the defendant's conduct, is too attenuated, too far removed from the conduct of the defendant" to impose liability. *Id.* at 36. This belief that not all causal consequences should be actionable, but only those consequences which were fairly or directly immediate, is called proximate cause, as courts "will look at only the 'proximate' and not 'remote' consequences of the defendant's conduct." *Id.* at 37. This standard is broad and allows for a great deal of judicial discretion in how far to extend liability to perpetrators of conduct remote to the harm suffered. *Id.* Ultimately, matters of social policy influence judges' decisions on where to draw the line in any given case. *Id.* at 36–37.

³⁰⁷ See VANDALL, *supra* note 305, at 218.

³⁰⁸ *Id.* at 219.

³⁰⁹ 742 P.2d 639, 641–42 (Or. Ct. App. 1987).

defective roof.³¹⁰ The plaintiff won because the roof was very weak, and it was held to be foreseeable to the manufacturers that something would intrude through the defective roof.³¹¹

The NRA will argue in response that there is no direct connection between it and the shooting deaths. The NRA's point is that it did not pull the trigger, the shooter did. The NRA did not order the shooting of anyone. Tort law, however, is not so narrow and is responsive to the needs of the problem. There are many cases where a distant third party has been held liable. For example, a New England prep school, Hotchkiss, was held liable for failing to warn its traveling students of the risk of being bitten by ticks on their trip to China.³¹² Of course the ticks were located over 7,000 miles from Connecticut, but the risk was substantial as compared to the cost to prevent it: a mere warning.³¹³

Again, in *Sanchez v. Hillerich & Bradsby Co.*, a baseball pitcher was hit by a returned ball.³¹⁴ The manufacturer, Louisville Slugger, had intended to produce a super bat.³¹⁵ It was too good, however, because it returned the ball at a speed too fast to permit the pitcher to duck.³¹⁶ The NRA would mistakenly argue that the ball was the direct cause, but the court held the proximate cause was the manufacturer of the dangerous bat.³¹⁷ The reasonable conclusion is that the NRA is a direct cause and that by blocking gun reforms it foresees and accepts that people will die. The proposed suit does not suggest that the NRA intended twenty children to die in the Sandy Hook Elementary School shooting. It argues that the NRA has developed the climate where shootings are foreseeable.

Weirum v. RKO General, Inc. is another example. The radio DJ in *Weirum* encouraged teenage drivers to find him and receive a financial prize.³¹⁸ A young driver was negligently speeding looking for the DJ when he hit and killed an innocent driver, the plaintiff.³¹⁹ The radio station was held liable.³²⁰ The NRA will likely argue that the relationship between the

³¹⁰ *Id.* at 640.

³¹¹ *Id.* at 641–42.

³¹² *Munn v. Hotchkiss Sch.*, 105 A.3d 1167, 1173 (Conn. 2017).

³¹³ *Id.* at 1181.

³¹⁴ 128 Cal. Rptr. 2d 529, 531 (Ct. App. 2002).

³¹⁵ *Id.* at 532–34.

³¹⁶ *Id.* at 533.

³¹⁷ *Id.* at 538–41.

³¹⁸ 539 P.2d 36, 37 (Cal. 1975).

³¹⁹ *Id.*

³²⁰ *Id.* at 40–42.

radio station and the youthful driver was not direct. The court found liability, however.³²¹

Hymowitz v. Eli Lilly & Co., also involved an indirect result.³²² Eli Lilly and many others manufactured Diethylstilbestrol (DES) in pill form. It was produced and marketed to prevent miscarriages, but instead produced vaginal cancer in the daughters of the mothers who took the drug.³²³ It was not possible to identify who manufactured the pill the mother took.³²⁴ The identity of the specific manufacturer held liable to the decedents' wife and children was never known because many DES pills looked the same.³²⁵ The New York State Court of Appeals solved the problem by holding each manufacturer liable for its market share of the damages.³²⁶ The plaintiff recovered only a portion of her damages, however.³²⁷

By analogy, the NRA will argue that they do not know who will buy guns and become murderers and they cannot identify who will be killed. The *Hymowitz* court resolved this issue by placing the loss on the manufacturers of DES rather than the innocent daughters who contracted cancer.³²⁸ In my proposed suit, a portion of the damages should rest on the NRA because they stoke the fires by blocking all meaningful gun safety legislation. Not only was the manufacturer unknown in *Hymowitz*, it may be liable for the disease caused by a pill it did not manufacture.³²⁹ The DES manufacturers were in a position similar to that of the NRA. The question boils down to who should bear the loss and the NRA is in the best position to prevent the shootings.

A more transparent and effective treatment of the scope of tort liability was presented by Dean Leon Green about seventy years ago.³³⁰ In answering whether the NRA's duty of care would extend to the gunshot victims, Dean Green suggested a weighing of six factors: (1) economics; (2) who can best obtain insurance; (3) the impact on society of placing a duty of care on the

³²¹ *Id.*

³²² 539 N.E.2d 1069 (N.Y. 1989).

³²³ *Hymowitz*, 539 N.E.2d at 1072.

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.* at 1078.

³²⁷ *Id.* at 1072.

³²⁸ *Id.*

³²⁹ *Id.* at 1078.

³³⁰ See Leon Green, *Proximate Cause in Texas Negligence Law IV*, 28 TEX. L. REV. 755, 773-74 (1950) (arguing that the imposition of liability in a case should turn on whether "the defendant's conduct, even though it contributed to the result, [was] such that he ought to pay the plaintiff for his hurt").

NRA; (4) precedent; (5) prevention; and (6) justice.³³¹ Examining each factor will be helpful to manifest that the NRA has a duty of care to the shooting victims.

Economics. Under the proposal to hold the NRA liable for damages, the economic argument would be to shift the gun victims' losses to the NRA.³³² The loss should rest on the person best able to engage in the cost benefit analysis, not on society as a whole.³³³ As with cigarettes,³³⁴ the price of guns would rise. Guns would not be banned from the market, however.³³⁵ Allowing the free market to work is a positive result.³³⁶

The damages obtained from the proposed suit will be placed in a fund designated by the court. The judge will then appoint an administrator, as in the 9/11 and BP oil spill funds, to determine the amount of damage for each person.³³⁷ A check will then be sent by the fund's administrator to the shooting victim or the survivors.

Insurance. No person expects that she will be shot and therefore will not be motivated to purchase insurance. However, the NRA is in the best position

³³¹ FRANK VANDALL ET AL., *TORTS: CASES AND PROBLEMS* 372 (4th ed. 2018); see Leon Green, *The Duty Problem in Negligence Cases I*, 28 COLUM. L. REV. 1014, 1033–35 (1928) [hereinafter Green, *Duty Problem I*]; Leon Green, *The Duty Problem in Negligence Cases II*, 29 COLUM. L. REV. 255, 255–57 (1929) [hereinafter Green, *Duty Problem II*].

³³² See VANDALL, *supra* note 331 (“Loss shifting asks whether this loss should be placed on the actor rather than the victim.”); see also GUIDO CALABRESI, *THE COSTS OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS* 68–73, 88–94 (1970) (arguing that (1) placement of the entire loss associated with a tort on one individual is not efficient and (2) the imposition of liability on the parties most able to engage in the cost benefit analysis between accident costs and avoidance costs will force those parties to adjust their conduct); Guido Calabresi & Jon T. Hirschoff, *Toward a Test for Strict Liability in Torts*, 81 YALE L.J. 1055, 1060 (1972) (arguing that the party “in the best position to make the cost-benefit analysis between accident costs and accident avoidance costs” should bear the loss.).

³³³ See Calabresi & Hirschoff, *supra* note 332.

³³⁴ See Richard C. Ausness, *Paying for the Health Costs of Smoking: Loss Shifting and Loss Bearers*, 27 SW. U.L. REV. 537, 548–50 (1998). Shifting the loss of dangerous products onto those responsible for promulgating them “forc[es] firms to internalize the costs of [those] products.” *Id.* at 548. If they “are forced to compensate injured parties, firms will spend more money” on making the product safer so “long as the marginal cost of safety measures is less than the marginal reduction of expected liability costs.” *Id.* Where a product is so inherently dangerous it cannot meaningfully be made safer, the price of the product will rise to reflect its true cost to society. *Id.* at 548–49.

³³⁵ *Cf. id.* at 548–50.

³³⁶ *Id.* at 548 (“Furthermore, even if a product cannot be made safer, liability rules that force the producer to internalize accident costs, can still serve a resource allocation function by increasing the cost of the product. This is desirable because the prices of goods ought to reflect the true costs of production in order to enable the market to allocate resources efficiently.”).

³³⁷ The administrator of the BP \$20 billion restitution fund defended his work. Richard Fauset, *LA Times*, Apr. 19, 2011.

to insure because it can predict approximately how many persons will be shot next year and can efficiently purchase insurance to cover the loss.³³⁸ As with tobacco, if the states are forced to pay for treating gunshot victims, they should also be able to recover their losses from the NRA and the NRA should insure against this.³³⁹ The price of guns should reflect the cost of insurance.³⁴⁰

The Impact on Society of Holding the NRA Liable. Removing the NRA from lobbying, funding, and grading legislators will have a substantial benefit. The foundational democratic principles and institutions will again function as intended.³⁴¹ The U.S. Constitution does not mention the NRA as an overarching and controlling body for the Congress, but the NRA has garnered that position.³⁴² The state and federal legislatures will likely adopt reasonable gun reforms without the impediment of the NRA.³⁴³

However, the NRA may argue that holding them liable for gun violence is a legislative question.³⁴⁴ They have the state and federal legislatures under their thumb,³⁴⁵ and, of course, would want to have this question resolved

³³⁸ See Bohannon, *supra* note 293 (noting that “[e]stimates of U.S. firearms-related causalities top 30,000 deaths per year and twice as many nonfatal injuries”); see also Calabresi & Hirschoff, *supra* note 332 (arguing that the party “in the best position to make the cost-benefit analysis between accident costs and accident avoidance costs” should bear the loss). As mentioned, the NRA has lobbied the legislature to ensure the CDC is unable to gather and disseminate information about gun violence, including exact statistics regarding the number of victims. See *supra* notes 73–81 and accompanying text. I assume the NRA has done this because they are aware of the shockingly high number of gun violence victims. Thus, because the NRA understands the statistics, and has prevented anyone else from accessing that information, it is in the best position to purchase appropriate insurance to cover the harms associated with gun violence, which is consistent with Calabresi’s theory. See Calabresi & Hirschoff, *supra* note 332.

³³⁹ See Vandall, *supra* note 198, at 478–84 (discussing the lawsuits in which states sued cigarette manufacturers and recovered for their costs associated with the treatment of tobacco-related injuries).

³⁴⁰ Cf. Ausness, *supra* note 334 at 547–51 (discussing the ways in which the costs associated with smoking were shifted from individual smokers and others affected to cigarette manufacturers and their customers).

³⁴¹ The NRA spends tens of millions of dollars every year on advertisements and lobbying efforts. See Musa, *supra* note 3, at 1–2. Moreover, “The NRA has . . . strong access to policy makers . . . and has influenced the outcome of local, state, and national elections.” *Id.* at 1. Perhaps if politicians were not reliant on the NRA for financial and political support, they would take a more active interest in the concerns of the constituents, many of whom live in communities regularly rocked by gun violence.

³⁴² The U.S. Constitution does not mention the NRA or any such association.

³⁴³ See Bloomberg, *Most Gun Owners Support Stricter Laws—Even NRA Members*, TIME (Mar. 13, 2018), <https://time.com/5197807/stricter-gun-laws-nra/> (noting the discrepancy between support for some gun reforms with federal inaction on the subject).

³⁴⁴ Cf. *Hammontree v. Jenner*, 97 Cal. Rptr. 739, 742 (Ct. App. 1971) (concluding that “[o]nly the legislature . . . can avoid such difficulties by enacting a comprehensive plan for the compensation of automobile accident victims in place of or in addition to the law of the negligence”).

³⁴⁵ See Bump, *supra* note 290 (discussing the public pressure placed on federal and state legislative officials through the NRA’s rating system); Kessler, *supra* note 292 (discussing how the NRA uses financial

there. The appropriate response is that damage suits have always been the province of the courts.³⁴⁶

Precedent. The precedent for holding the NRA liable for its harmful actions is *Soldano v. O’Daniels*,³⁴⁷ *Donald v. United Klans of America, Inc.*,³⁴⁸ and *Grimshaw v. Ford Motor Co.*³⁴⁹ In *Soldano*, the bar was held liable for blocking a good Samaritan from rendering aid, just as the NRA is blocking legislators from passing gun safety measures.³⁵⁰ The persons needing to be rescued are potential shooting victims. By corraling legislators by means of payments and report cards, the NRA aggressively blocks all legislation that might save future victims. This is a deadly game masterminded by the NRA. In *Soldano*, the bartender who blocked the rescue was held liable for the resulting death; so too should the NRA be liable for artfully blocking gun reform legislation. In *Donald*, the United Klans was held liable for asking Klan members to kill an unidentified black man.³⁵¹ Here, the NRA designs the strategy that ensures the deaths of thousands of innocent persons by preventing CDC gun research and preventing reasonable gun reforms.³⁵² It facilitates the deaths by actively controlling the legislative and presidential agendas.³⁵³ Ford knew the protruding bolts presented an increased risk of fire, but to keep the costs down, manufactured and

contributions to influence federal and state legislative officials).

³⁴⁶ See *Thing v. La Chusa*, 771 P.2d 814, 818 (Cal. 1989) (“[T]he existence and scope of the defendant’s duty in this context [is] one for the court.”); *Kelly v. Gwinnell*, 476 A.2d 1219, 1228 (N.J. 1984) (“Defining the scope of tort liability has traditionally been accepted as the responsibility of the courts.”).

³⁴⁷ See 190 Cal. Rptr. 310, 317–18 (Ct. App. 1983). *Soldano* is an example of a person being held liable for blocking a rescuer from obtaining help. *Id.* at 317. In *Soldano*, the Circle Inn bar was across the street from Happy Jack’s bar. *Id.* at 312. A person was being threatened at Happy Jack’s bar. *Id.* When a good Samaritan who witnessed the threat and ran across the street to the Circle Inn bar and asked to use the bar’s phone to call for help, the bartender in the Circle Inn bar refused to permit the bar’s phone to be used and for this was held liable. *Id.* at 312, 317. The holding in *Soldano* is that you cannot block a good Samaritan from rescuing. *Id.* at 317–18. The bartender in the Circle Inn bar is similar to the NRA. The NRA is not shooting anyone; rather, they merely block legislators, who want to reduce the violence, from passing legislation. See *supra* Part I. For blocking the rescue, they should be liable.

³⁴⁸ See *Landmark Case*, *supra* note 278.

³⁴⁹ See 174 Cal. Rptr. 348, 358–363 (Ct. App. 1981) (finding Ford Motor Company liable for selling Ford Pintos that it knew to be defective).

³⁵⁰ *Soldano*, 190 Cal. Rptr. at 317–18; see *supra* note 347.

³⁵¹ *Landmark Case*, *supra* note 278.

³⁵² See Bohannon, *supra* note 293; *supra* Part I.

³⁵³ Luke Johnson, *NRA’s 2016 Donation to Trump Campaign Pays Off*, FORTUNE (Aug. 21, 2019, 3:42 PM), <https://fortune.com/2019/08/21/how-much-did-nra-contribute-trump-campaign> (“In 2016, the NRA spent more than \$30 million on behalf of the Trump campaign.”); Dominic Rushe, *Why Is the National Rifle Association So Powerful?*, GUARDIAN (May 4, 2018, 3:28 PM), <https://www.theguardian.com/us-news/2017/nov/17/nra-gun-lobby-gun-control-congress> (“In 2017, the NRA spent at least \$4.1 million on lobbying [Congress].”).

promoted the Pinto with no changes. In the same manner, NRA executives watch TV and are likely aware of the death count, but nevertheless continue to block all gun reforms. In *Grimshaw*, Ford promoted the sale of defective Pintos and was held liable just as the gun manufacturers promote the sale of guns through the NRA.³⁵⁴

Prevention. Who can best prevent the shooting deaths, the victims or the NRA? The unarmed victims are powerless to prevent their shooting deaths, but the NRA, by ceasing actions that lead to the murders, can assist to reduce the carnage. The unanswered question is why should every American be pressured to buy a gun for self-protection. It makes more sense to adopt legislation that would prevent the worst excuses of gun purchasing and ownership. The legislatures, without the financial pressure of the NRA, will be free to consider and adopt meaningful gun reforms.³⁵⁵

Justice. This is an open-ended consideration of unlisted factors in order to reach a fair result.³⁵⁶ Although it will take a strong judge to apply tort theory to the NRA because they have wrapped themselves in the flag, here, the NRA lobbies to prevent gun control,³⁵⁷ bans gun research by the CDC,³⁵⁸ grades legislators,³⁵⁹ provides funds to pro-gun legislators,³⁶⁰ courts youth with a fraudulent message,³⁶¹ and calls for journalists to be violently “curb stomped.”³⁶² It is foreseeable that the above NRA acts will materially assist in causing some portion of 15,000 gun deaths each year.³⁶³ Finally, each death is a crime caused by a criminal shooter.

The NRA does not ask anyone to pull a trigger and it does not pull a trigger itself. What it does is block safety legislation which permits gun violence to thrive. For this they should be liable in damages. The remedy

³⁵⁴ See *Grimshaw*, 190 Cal. Rptr. at 358–63.

³⁵⁵ See Kessler, *supra* note 292 (suggesting that one reason the NRA is so powerful legislatively is “because more than half of congressional incumbents have gotten money and organizational help from the group, with many members having long-standing financial relationships with the NRA that date back years”); see also Bump, *supra* note 290 (noting that the NRA asserts power legislatively by spending on elections and giving “candidates for office a letter grade indicating how good (or bad) the lawmaker is on gun issues”).

³⁵⁶ See Green, *Duty Problem II*, *supra* note 331, at 256.

³⁵⁷ See, e.g., Bohannon, *supra* note 293.

³⁵⁸ *Id.*

³⁵⁹ See *supra* note 290 and accompanying text.

³⁶⁰ See *supra* note 292 and accompanying text.

³⁶¹ See Binkley & Hoyer, *supra* note 107 (finding that the NRA donates millions of dollars to school programs, including rifle teams and JROTC clubs).

³⁶² Oppenheim, *supra* note 105.

³⁶³ See Hepburn & Hemenway, *supra* note 59, at 417 (finding that “the research suggests that households with firearms are at higher risk for homicide, and there is no net beneficial effect of firearm ownership”).

against the NRA is simple: It is to pay damages and encourage legislators to pass reasonable gun safety legislation.

The theory of civil conspiracy requires four elements to be shown: The defendant, “not present at the scene of the crime, [1] agreed with others on a specific course of action; [2] the primary purpose of that agreement was to promote violent behavior; [3] the manifestation of the violent behavior must be the perpetuation of the course of action; and [4] the manifestation must be an illegal and/or tortious act.”³⁶⁴ In the *Donald* case, the Klan asked for the murder of a black man.³⁶⁵ The Klan Wizard was not present for the beating and hanging.³⁶⁶ The NRA plots to sell guns and block all gun reforms, foreseeing that their conduct will result in some portion of 15,000 persons being shot to death. Wayne LaPierre, the chief executive of the NRA, was not present for the high school mass murders or the spousal killings. Because of his control of the legislatures through blocking measures such as donations and report cards he will be held liable just as if he had been present at the shootings and pulled the trigger. The point of the civil conspiracy is that the chief executive and board who design and implement the lethal strategy to block gun safety reforms are just as liable as if they were present and pulled the trigger.³⁶⁷

The conspiracy is the implied agreement between the NRA and the shooter to stoke the production and sale of guns so that violent actors can buy them and use them to commit crimes. To make certain these foreseeable deaths occur, the NRA blocks CDC gun research and prevents police departments from recording or disclosing the facts of gun violence,³⁶⁸ such as the brand of gun. But what about the point that the shooter and the NRA never talked? The case *Bierczynski v. Rogers* holds that a civil conspiracy can be implied from the conduct of the actors.³⁶⁹ In *Bierczynski*, two persons conspired to race their cars on a public highway.³⁷⁰ The facts are that the

³⁶⁴ Damon Henderson Taylor, *Civil Litigation Against Hate Groups Hitting the Wallets of the Nation's Hate-Mongers*, 18 BUFF. PUB. INT. L.J. 95, 119 (2000).

³⁶⁵ See Composite Complaint, *supra* note 11, at 13.

³⁶⁶ *Id.* at 16–17.

³⁶⁷ See *supra* text accompanying note 364.

³⁶⁸ See Frank J. Vandall & George Benston, *Legal Control over the Supply of Handguns: An Analysis of the Issues with Particular Attention to the Law and Economics of the Hamilton v. Beretta Suit Against Handgun Manufacturers*, 26 PACE L. REV. 305, 353–57, 381 (2006) (detailing the legal limitations on recordkeeping for handgun sales and crimes).

³⁶⁹ 239 A.2d 218 (Del. 1968).

³⁷⁰ *Id.* at 221.

drivers merely looked at each other and rapidly accelerated.³⁷¹ This was sufficient for a conspiracy although the court did not discuss it.³⁷² The point of *Bierczynski* is that the parties to the conspiracy do not have to say “let’s kill someone.” They merely have to engage in conduct that they know carries a substantial risk of taking someone’s life. They sped down the road. The NRA likewise engage in the twenty-two acts that predictably result in death.

Blasting,³⁷³ storing large amounts of dynamite,³⁷⁴ and impounding millions of gallons of industrial slime³⁷⁵ are “abnormally dangerous” activities. The persons who do this are held strictly liable. The NRA should be held strictly liable for encouraging and supporting the sale of more guns connected with the blocking of all reasonable legislative safety bills. This blocking is an “abnormally dangerous” activity because it ensures a large number of deaths each year. The NRA could reduce liability by supporting the repeal of the PLCAA and promoting gun safety legislation.

Another cause of action to file against the NRA is intentional infliction of emotional distress (IIED).³⁷⁶ This action grew out of a California garbage collection case almost seventy years ago.³⁷⁷ The plaintiff was a refuse collection association.³⁷⁸ The defendant was a garbage collector and a member of the association who strayed beyond his assigned collection area to increase his customers.³⁷⁹ Because of this, the association threatened to beat him and cut his tires unless he stopped violating the contract.³⁸⁰ The collection agency filed a breach of contracts case against the violator, but the garbage collector cross-claimed for damages.³⁸¹ The Supreme Court of California responded by creating a new tort, IIED. It has four elements: (1) intent; (2) causation in fact of the distress; (3) the distress must be severe; and (4) the conduct must be extreme and outrageous.³⁸² Clearly the NRA intends to cause fear by means of gun proliferation and blocking gun safety. Because of the fear and terror of mass shootings, schools, churches,

³⁷¹ *Id.* at 230.

³⁷² *Id.* at 221.

³⁷³ *Spano v. Perini Corp.*, 250 N.E.2d 31, 33 (N.Y. 1969).

³⁷⁴ *Yukon Equip., Inc. v. Fireman’s Fund Ins. Co.*, 585 P.2d 1206, 1208 (Ala. 1978).

³⁷⁵ *Cities Serv. Co. v. Florida*, 312 So. 2d 799, 803 (Fla. Dist. Ct. App. 1975).

³⁷⁶ *See* RESTATEMENT (SECOND) OF TORTS § 46 (AM. LAW INST. 1965).

³⁷⁷ *See State Rubbish Collectors v. Siliznoff*, 240 P.2d 282, 283 (Cal. 1952).

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.* at 284.

³⁸¹ *Id.*

³⁸² *Id.*; *see also Snyder v. Phelps*, 562 U.S. 443, 451 (2011); *Harris v. Jones*, 380 A.2d 611, 614 (Md. 1977).

synagogues, temples, stadiums, and concert venues have hired armed security.³⁸³ The enormous amount of money spent on these gun violence deterrents manifest the nation's fear of being shot. The NRA knows it causes this terror and indeed intends it in order to sell more guns.³⁸⁴ They reason that a frightened person is more likely to buy a gun.³⁸⁵ The fear of being shot at home or in these venues is caused in fact by the NRA as part of their campaign of fear to increase gun sales.³⁸⁶ If there were meaningful gun controls, there would be fewer shootings, less fear, and fewer gun sales.³⁸⁷ The NRA knows this.³⁸⁸ The severity of the distress is obvious: Mental distress is shown by the fact that no one wants to be shot. The family and friends of shooting victims seek counseling.³⁸⁹ The extreme and outrageous element of IIED is met by showing that the NRA is controlled by gun manufacturers and the NRA strives to promote fear and the sale of more guns and to oppose all efforts at reasonable gun control legislation.³⁹⁰ Over 50%

³⁸³ Observations of author, F. J. Vandall. My observation is that people will take steps to defend themselves. Therefore, because of the epidemic of shooting deaths, schools, temples, churches, and parents have bought guns. These guns go home at night and may lead to accidental deaths there. Students may find the school guns and use them. The NRA stokes these natural fears by blocking gun safety reforms. The result is more death.

³⁸⁴ See NRA, *Wayne LaPierre Fights for the Second Amendment Before the United Nations*, NRA-ILA <https://www.nra.org/articles/20120711/wayne-lapierre-defends-the-second-amendment-before-the-united-nations> (last updated July 2012). This piece, posted on the NRA's website, quotes its CEO proclaiming "[o]ur Second Amendment is freedom's most valuable, most cherished, most irreplaceable idea. History proves it. When you ignore the right of good people to own firearms to protect their freedom, you become the enablers of future tyrants whose regimes will destroy millions and millions of defenseless lives." *Id.* Portraying a limitation on the right of individuals to own firearms as a gateway to tyranny and mass destruction is one example of the type of fear creating activity the NRA engages in that ultimately improves gun sales and support for an unrestricted second amendment.

³⁸⁵ See Polly Mosendz, *Fear-Based Gun Buying Is Back*, BLOOMBERG (Apr. 3, 2018), <https://www.bloomberg.com/news/articles/2018-04-03/fear-based-gun-buying-is-back>.

³⁸⁶ See American Conservative Union, *CPAC 2015—Wayne LaPierre*, YOUTUBE: NRA (Feb. 27, 2015), <https://www.youtube.com/watch?v=wfPkD4oqCVI><https://www.youtube.com/watch?v=wfPkD4oqCVI>. In this video, Wayne LaPierre addresses a crowd at the Conservative Political Action Conference and warns, "every day of every year, innocent, good, defenseless people are beaten, bloodied, robbed, raped, and murdered . . . when a criminal attacks, politicians aren't there to protect you. Laws can't protect you. And the media's lies, they can't protect you, either. You're on your own. But you know what can protect you when no one else can, when no one else will? The ironclad, absolute safeguard of the Second Amendment right to keep and bear arms." *Id.*

³⁸⁷ See Hepburn & Hemenway, *supra* note 59, at 433. Even background checks, the least stringent form of gun control, promote the idea that some gun sales should not go forward because the likelihood of the gun being used violently is too high. More stringent forms of gun control would result in fewer gun sales and fewer shooting deaths.

³⁸⁸ See *supra* note 387 and accompanying text.

³⁸⁹ Terry Spencer et al., *For School Shooting Survivors, Trauma Has No Time Limit*, AP (Apr. 18, 2019), <https://apnews.com/0b020b37e24a42778342d4a728a64e5e>.

³⁹⁰ See *How America's Gun Industry Is Tied to the NRA*, NPR (Mar. 13, 2008, 8:21 PM), <https://www.npr.org/2018/03/13/593255356/how-americas-gun-industry-is-tied-to-the-nra>; see also *supra* notes 292 and 384 and accompanying text.

of the U.S. population favors reasonable gun reform legislation.³⁹¹ Because the NRA has a stranglehold on legislators and promotes the sale of more guns, the elements of IIED are clearly met.³⁹² This is made manifest by the fact that the District Attorney for the State of New York is seeking to revoke the NRA's tax-exempt status as a charitable organization.³⁹³ Instead, the NRA is an arm of the gun manufacturers. The clear plastic book bags make obvious what might happen to fans at a football game or to children at school.³⁹⁴ Finally, *Soldano v. O'Daniels* manifests that a suit in negligence is also available.³⁹⁵

III. IMPACT OF THE SUIT

The proposed suit will result in access to justice for the thousands of victims of gun violence. It will open the doors to the courts for the victims. For example, the parents of the children shot at Marjory Stoneman Douglas High School will be able to sue the NRA. They will be able to sue and obtain damages and enjoin dangerous conduct. At present, because most shooters are impecunious and gun sellers are protected by the PLCAA, there is no one to sue when your child is shot. The impact of my proposed suit is that it provides a person with a pathway to sue the NRA. The impact of the civil suit will be to force the NRA to pay damages and to cease injurious conduct.

The successful suit will reduce gun violence by eliminating the NRA from coercive lobbying. With the NRA hamstrung, I anticipate that federal

³⁹¹ See Chris Kahn, *Americans Support Gun Control but Doubt Lawmakers Will Act: Reuters/Ipsos Poll*, REUTERS (Feb. 8, 2019), <https://www.reuters.com/article/us-florida-shooting-anniversary-poll/americans-support-gun-control-but-doubt-lawmakers-will-act-reuters-ipsos-poll-idUSKCN1PX11I> (demonstrating in a poll of more than 6,800 adults that “69 percent of Americans, including 85 percent of Democrats and 57 percent of Republicans, want strong or moderate restrictions placed on firearms”); see also Steven Shepard, *Gun Control Support Surges in Polls*, POLITICO (Feb. 28, 2018), <https://www.politico.com/story/2018/02/28/gun-control-polling-parkland-430099> (“Roughly 2 in 3 Americans now say gun control laws should be made more strict in the wake of the murder of 17 people at Marjory Stoneman Douglas High School, according to a number of polls, including a new POLITICO/Morning Consult poll that shows support for stricter gun laws among registered voters at 68 percent, compared with just 25 percent who oppose stricter gun laws.”).

³⁹² See Bump, *supra* note 290.

³⁹³ See Danny Hakim, *New York Expands N.R.A. Inquiry to Group's Board Members*, N.Y. TIMES (Aug. 6, 2019), <https://www.nytimes.com/2019/08/06/us/nra-board-subpoena-letitia-james.html> (“[T]he New York attorney general's office issued a subpoena seeking documents from more than 90 current and former members of the organization's board. The subpoena is an escalation of a continuing investigation into the tax-exempt status of the N.R.A. . . .”); see also Stracqualursi & Moghe, *supra* note 110.

³⁹⁴ See Nadra Nittle, *Clear Backpacks Probably Won't Prevent School Shootings*, RACKED (Apr. 2, 2018), <https://www.racked.com/2018/4/2/17182000/clearbackpacks> (“The idea is that clear bags will act as a deterrent and make it harder . . . to bring a weapon on campus.”).

³⁹⁵ See 190 Cal. Rptr. 310, 317 (Ct. App. 1983).

and state legislators will begin to represent the needs of the people: They will pass legislation designed to reduce gun violence. The legislatures will rebalance without the weight of the NRA tilting the scales in favor of the gun manufacturers, rather than the people.

CONCLUSION

This Article does not suggest that the NRA has asked or ordered an NRA member to commit murder, but that the NRA has worked to block all gun safety legislation and should therefore be liable for civil damages.³⁹⁶ Importantly, the proposed suit will not impinge on the First or Second Amendment rights of the NRA.

The case for liability against the NRA is stronger than the case in *Donald v. United Klans of America, Inc.* In *Donald*, one person was killed, whereas here, 15,000 gun violence victims will foreseeably die each year. Here each of the NRA's acts contributes to the victims' deaths. The KKK was a reclusive organization with a few thousand white supremacist members. However, the NRA now boasts 5.5 million members. It accepts the loss of thousands of people in order to facilitate the sale of more guns. One way to explain the proposed suit is that tort liability is a cost for the NRA of blocking all gun reform and acting to encourage expansive dangerous gun ownership. In the past few years, the KKK has been all but invisible. In contrast, the NRA is omnipresent and has completely controlled the national and state legislative agendas regarding gun violence. The carnage in America will not abate until the NRA is held accountable for actively promoting excessive gun sales and blocking gun control legislation.

³⁹⁶ See Mariella Padilla, *San Francisco Declares the N.R.A. a 'Domestic Terrorist Organization'*, N.Y. TIMES (Sept. 4, 2019), <https://www.nytimes.com/2019/09/04/us/san-francisco-nra-terrorist.html> ("Unsettled by recent mass shootings across the nation, the San Francisco Board of Supervisors unanimously approved a resolution this week declaring the National Rifle Association a domestic terrorist organization."); see also Danny Hakim, *N.R.A. President to Step Down as New York Attorney General Investigates*, N.Y. TIMES (Apr. 27, 2019), <https://www.nytimes.com/2019/04/27/us/oliver-north-nra.html> ("Even before her election [to the position of New York Attorney General] last year, Ms. James . . . told Ebony magazine that the N.R.A. held itself 'out as a charitable organization' but was actually 'a terrorist organization.'").