Saskia Binder
Policy Analysis Part C
SB57493

MISSING LINKS:

America's Gun Violence Epidemic & The Impact of Federal Policy Protections for the Gun Industry

Executive Summary:

There are too many gun-related deaths in the United States.

Gun mortality rates in the United States are exponentially higher than those seen in any other advanced industrialized nation. In fact, among the 23 nations classified 'high-income' in an economic evaluation by the World Bank, the United States is home to more firearm-related deaths than all 22 other nations combined. Gun violence in America has become a public health and safety crisis of unprecedented proportions, and policymakers are failing to come up with meaningful, realistic answers for how to best combat the nearly 33,000 annual firearm fatalities.

This analysis presents four alternative policy options aimed at reducing the number of people who fall victim to firearm violence each year. The first option discussed is the *status quo,* which, as it stands today, places thousands of Americans in unnecessary and avoidable danger and provides incentives for further outbreaks of preventable gun violence by protecting the gun industry from being held liable for their irresponsible, and even sometimes intentionally negligent practices. This is an issue that touches every corner of American life, and as such policy change is necessary at the federal level to ensure that improvements are made in a standard and uniform manner across the nation.

The second possible course of action is to end the current federal freeze on gun violence research, specifically by repealing the 1995 Dickey Amendment and the 2011 NIH Funding Bill. The potential benefits of combatting the shocking deficit of relevant, actionable data pertaining to gun violence and the impact firearms have on American life are enormous.

Alternative three proposes eliminating federal liability protections for gun companies under the PCLAA by repealing the act in its entirely, while the fourth alternative involves reforming the existing legislation so that victims may take legal action against gun companies through the state court system in jurisdictions where state or local law finds the company's action constitutes criminal negligence or illegal conduct.

Reforming the PCLAA is the superior course of action when all four alternatives are weighed according to risk and return along three evaluative criteria– *political viability, effectiveness,* and *cost.* The gratuitous influence of the National Rifle Association over federal firearms policy and the current conservative majority in federal government makes *political viability* the most important factor in this analysis, and of the four alternatives, reforming the PCLAA is the most politically viable solution to combat gun violence across the nation. Moreover, reforming the act has negligible costs– a financial advantage that makes reforms a more favorable alternative than reversing the research freeze, as achieving the latter would require that the government allocate over ten million dollars annually to gun violence research programs, while the former requires nothing above standard operational and administrative costs.

The broader takeaway from this analysis is how incredibly complex it becomes to solve what seems to be a relatively straightforward, non-negotiable, imperative issue affecting Americans across the nation every day. Despite the complexity, the federal government must act now to stop preventable outbreaks of gun violence from occurring in the future. If lawmakers do not work to undo the legal immunity bestowed upon the gun industry, federal policy will continue to incentivize illegal, dangerous, and irresponsible conduct in the gun industry that puts Americans in increasingly acute danger of falling victim to gun violence as the plague continues to grip the nation.

Introduction

In the United States, deaths by firearm have become a national epidemic. *Put simply, there are too many gun-related deaths in the United States every year.*

For the purposes of this analysis, the definition of 'Gun-Related Deaths' is derived from standards used by the Centers for Disease Control (CDC)'s National Vital Statistics program, generally considered the nation's most comprehensive database of firearm deaths[1]. The CDCs definition of 'death by firearm' encompasses homicides, suicides, unintentional deaths, and deaths of undeterminable intent. Of these, gun suicide is the most prevalent– nationwide, nearly two-thirds of all deaths involving a firearm are suicides, and homicides account for close to the entire remaining third[2].

The significance of the gun death epidemic in the United States becomes even more apparent when the United States is compared to other high-income, advanced nations. A 2010 study by the World Health Organization compared mortality rates in the United States with those of 22 countries considered 'populous' and 'high-income' as defined by the World Bank found that US rates of both gun ownership and gun violence are unprecedented relative to the nation's peers. The United States is responsible for 82% of firearm deaths occurring between all 23 high-income nations, despite the US population accounting for less than half the population of all other high income nations combined.[3] Moreover, a 2015 study by the *American Journal of Medicine* also found that American civilians are more than 25 times more likely to be killed by a firearm than people living in 22 other high-income nations.[4]

If the United States fails to address its gun issue at the federal level, the status quo of political stagnation on gun policy will invariably persist, meaning over 33,000 Americans will continue to lose their lives every year to gun violence. [5] CDC reports concluded a total of 36,252 Americans were fatally shot in the US in 2015; this translates to, on average, 93 Americans dying every day from gun violence in the United States. This rate of violence is an unacceptable burden imposed on public health, safety, and the lives of the American people. The situation demands uniform through unequivocal action from federal government to protect the thousands of American lives imperiled by existing policy (or lack thereof). These reforms are best executed at the federal level to ensure consistency in policy enactment and enforcement.

This analysis finds Alternative D to be the most politically viable, and thus the least risky alternative. Therefore, despite its *moderate* potential for return, this analysis recommends pursuing reforms to the Protection of Lawful Commerce in Arms Act so that suits against gun-industry manufacturers and distributors which are otherwise considered *actionable* under state and local laws are left to the discretion of state and local courts to decide whether they will proceed through the legal system.

Policy Alternatives

A. Status Quo

The status quo is failing the American People. It fails to protect the lives of nearly 30,000 civilians killed by firearms each year; it fails to provide the victims of gun violence and their families with an opportunity to hold the gun industry responsible for negligent practices; and failing to safeguard pathways to gather critical information on gun violence from the undue influence of special interest groups such as the NRA.

B. End the Freeze on Federally Funded Gun Violence Research:

Lift federal restrictions on gun violence research, and increase federal funding for firearms related injury prevention research at the CDC and the NIH. This can be accomplished by removing amendments to two federal appropriations bills– the 1996 Dickey Amendment, and the 2011 NIH Funding Bill, respectively.

The United States lacks basic scientific data and research into the proximate causes of gun violence and gun-related deaths. This kind of injury prevention research is categorically imperative for legislators and policymakers to conduct an accurate analysis of policies and initiatives that will lead to a substantial reduction in the rate at which Americans are being killed by firearms each year.

The federal government can reduce the number of gun deaths nationwide by improving accuracy in the policy design process though expansion of research and available data on the impact of firearms in criminal and public health domains. Specifically, the Federal Government should lift the ban it has imposed on firearms research from the CDC and National Institute of Health (NIH), and should subsequently increase federal research funding to these organizations for research on injury prevention for victims of gun violence. This can be accomplished by removing amendments to two federal appropriations bills– the 1996 Dickey Amendment, and the 2011 NIH Funding Bill,

respectively–forbidding the CDC and NIH, respectively, from using federal research funding for studies that "advocate or promote gun control"[6]. This course of action would eliminate the current gag on fact-based research and help policymakers determine the true impact of firearms on communities' social welfare.

Federal institutions involved in public health research receive billions of dollars every year in federal funding to investigate strategies for injury prevention[7]. Preventative research helps government agencies make quality recommendations about products' safety standards, as well as suggestions for laws to regulate their use and designated methods for enforcing those laws. However, there is an acute absence of existing research on the forces that contribute to gun violence in the United States, and this information vacuum represents a severe impediment to policymakers' ability to accurately understand gun violence or create lasting solutions to combat gun-related deaths.

The lack of research on both gun violence and criminal gun activity in the United States can be directly attributed to the gratuitous influence of the National Rifle Association in federal firearm policymaking. Since the mid-1990s, the NRA has helped to enact a series of federal regulations that restrict the collection and distribution of data on firearms and gun violence in the United States. A 2015 report by *Mayors Against Illegal Guns*[8] found that the federal government conducts almost no scientific research of "how criminals get and misuse guns, or what policies are effective at stopping them". Moreover, gun lobby-backed legislators have passed federal laws restricting law enforcement and medical professionals' abilities to collect, organize, and/or share data regarding firearms' value to public health and public safety. The overall result of these federal regulations has been a drastic curtailment of investigations into gun violence and gun-related crime in the United States. As a result, researchers cannot reach consensus on many important issues in the gun control debate– including but not limited to arguments over the effectiveness of specific gun laws (i.e. open or closed carry); the path by which legally purchased firearms enter the black market; the psychology driving violent behavior involving a firearm; or the most effective way to stop gun-related deaths from occurring in the United States, whether by homicide, suicide, or mass shootings[9].

Of the many federal agencies and research organizations affected by this federal research freeze, The American Centers for Disease Control (CDC) is among the most severely

impacted. The CDC is the preeminent global authority in public health research, but under federal legislation known as the Dickey Act, the CDC has been effectively prevented from conducting any firearm-related research since 1996. The result has been a 96% drop in research relating to gun violence since the Dickey Act's passage in 1996.

C. Revoke the Protection of Lawful Commerce in Arms Act (PCLAA)

The federal government can stop outbreaks of preventable firearm violence by revoking or gratuitous federal protections from civil liability for gun manufacturers, distributors, and dealers under the PCLAA. The Protection of Lawful Commerce in Arms Act provides federal protections for the gun industry against lawsuits based on a third party's criminal misuse of firearms. The act was ratified in 2006 in response to a slew of lawsuits filed by municipal governments against gun manufacturers, distributors, and dealers in the early 2000s. These lawsuits alleged that gun companies' actions consciously encouraged "weapons proliferation in the community" which local governments argued made companies liable for creating a "public nuisance."[10] In theory, the PCLAA provides the industry protection against lawsuits based on third-party criminal misuse off firearms. PCLAA was designed to prevent federally licensed companies in the gun industry from liability in in lawsuits brought against the manufacturers, distributors, or sellers of the weapons used in a criminally negligent manner. The supreme court further expanded this protection through its ruling in *Adames v. Sheaha*[11], wherein the court determined that gun industry companies seeking protection from civil liability under the PCLAA need not necessarily provide proof of a criminal conviction to prove that the firearm was used in a 'criminally negligent' manner. The gun industry has capitalized on this ruling: almost every civil liability lawsuit brought against gun companies has adequate legal grounds and pre-eminent jurisdiction under federal policy to be automatically dismissed through the terms of the PCLAA.

The National Bar association objected to PCLAA's legality because it constituted an infringement on the traditional right of American citizens to seek redress for injuries in court, but through heavy lobbying from the National Rifle Administration the bill inevitably passed congress and was ratified in 2005. Supporters of PCLAA, including the NRA and industry officials, herald the law as a necessary barrier to protect the gun

industry from what they felt were unfair and expensive civil actions that required they assume the blame for crimes they did not themselves commit.

In practice, however, the PCLAA has been applied to block litigation filed by the victims and families of high-profile mass murders–including victims of the 2012 massacre at Newtown Elementary School. These lawsuits have not intended to hold the gun industry liable for third party criminal negligence, instead alleging that gun manufacturers are liable for the violence that resulted from their own negligent behaviors– such as manufacturers' failure to enact feasible safety improvements on weapons, or firearms dealers engaging in improper sales that resulted in a gun falling into the hands of someone who used it to perpetrate violence. However, the PCLAA acts as a protective shield against justice for victims and families that have been harmed by the gun industry. Prohibiting victims of gun violence from holding the gun industry accountable for its reckless or negligent behaviors heightens the odds that this behavior will continue, and that it will lead to otherwise preventable outbreaks of gun violence. Repealing it provides a comprehensive solution to the unnecessary protections that the act provides for an industry rife with negligence and oversight.

D. Reform the PCLAA

Reform the PCLAA so that liability lawsuits predicated on the criminally negligent actions or products of companies fall can proceed in state or local court if the negligent conduct is considered 'actionable' under state or municipal law.

As the PCLAA stands currently, congress has jurisdiction over the legality of bringing civil liability cases against gun manufacturers, dealers, trade associations and distributors. Because federal policy is paramount to state law, the federal government can therefore force state and local courts to dismiss suits brought in pursuit of damages that occurred because of gun industry actors' conduct which state laws otherwise deem illegal and 'actionable'. Reforming the PCLAA, rather than repealing it in its entirety, would allow state law to determine whether state courts will allow victims to bring action against negligence in the gun industry. One such way this can be achieved is to amend the act to explicitly prohibit state and local courts from dismissing actions filed against firearms manufacturers, distributors for damages caused by defective products or negligent conduct that would be actionable under state law in the relevant jurisdiction barring the

presence of the PCLAA. This would include changing the wording of an exception to the PCLAA's protections that is included in the body of the act. Currently, the PCLAA contains a clause known as the *predicate exemption*, which allows lawsuits to proceed in cases where manufacturers "knowingly violated a state or federal law applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought"[12]. However, meeting the standard to claim a predicate exemption is often quite difficult, as courts tend to find that state criminal negligence statutes which do not explicitly address firearms cannot be considered 'applicable to the sale or marketing of the product'. Predicate exceptions were further limited after the ruling in City *of New York v. Beretta Corp U.S.A,* where a federal court of appeals ruled that the predicate exemption applies to statutes that "explicitly regulate firearms, or that have been declared by courts to apply explicitly to the sale and marketing of firearms; or, statutes that do not explicitly regulate firearms, but which clearly implicate the purchase and sale of firearms"[13]. This can be mitigated through an amendment to the current PCLAA mandating that state negligence and public nuisance statutes do not necessarily need to explicitly mention gun commerce for gun-related criminal negligence or public nuisance liability lawsuits to proceed in state or local courts. Giving states jurisdiction over civil liability immunity would help prevent situations where lower courts are forced to dismiss lawsuits seeking damages created after gun companies clearly violated existing negligence or public nuisance state ordinances, putting an end to the current policy's ban on such lawsuits proceeding in either federal, state, or local court.

Evaluative Criteria:

To reach a conclusion on the best course of action, this policy analysis includes an evaluation of the desirability of the projected policy outcomes associated with each policy alternative. In a general sense, 'desirable' policy outcomes are those that serve the public interest– however, as a concept, public interest is often interpreted situationally, meaning any general definition for public interest will undoubtedly remain speculative at best. As such, public interest alone is not considered an adequate benchmark for evaluating policy outcomes. Instead, this policy analysis involves the following set of criteria which– with exception of political viability– all evaluate the desirability of projected outcomes as the degree to which the outcome caters to a specific dimension of the public interest.

I. Political Viability

Political Viability differs from the other criteria in that it measures the *practicality* of projected policy outcomes, i.e. the likelihood that selecting an alternative will produce the desired outcome. In this analysis, *political viability* assesses alternatives based on whether they have the potential to survive the policymaking enacted into law by the current congressional legislature. However, given the unprecedented influence of the National Rifle Association over federal firearms policy, the political viability of each alternative will be measured as an extension of the expected level of opposition to the policy from the NRA. According to the Washington Post, the NRA "has the muscle to make or break (or come damn close) any major piece of gun legislation"[14], largely due to the organization's unprecedented spending capacity and involvement in congressional electoral campaigns and federal policy lobbying. The NRA's annual political expenditures exceed the combined annual spending on political activism by all gun-control advocacy organizations in the United States combined[15], effectively ensuring that the NRA dictates which, if any, federal firearms policies are enacted by the federal legislature. If the NRA is expected to strongly oppose the proposal, the resultant *political unacceptability* of the alternative for congressional representatives controlled by the gun lobby may render the path to policy enactment politically non-viable.

An alternative's prospects of surviving the policy enactment process depend on the intensity and breadth of expected opposition to the alternative from the NRA– which this analysis defines as the *Political Unacceptability* of the alternative. If the alternative will likely be met with opposition that is intense or widespread enough to eliminate any reasonable chance of it being adopted into law by the current congressional legislature, the policy is considered politically unacceptable and is thus politically nonviable. Conversely, a high level of political viability suggests that the proposal has a good chance of becoming a law–indicating that NRA opposition is insufficient to render the alternative politically unacceptable, and that the policy has legitimate potential to complete the policy-enactment process. Alternatives with no chance of being ratified by congress will be rejected under this criterion, even if they otherwise lead to an optimal outcome in terms of the public interest, such as high cost effectiveness or highly efficient in terms of the reduction in the total number of gun-related deaths each year.

In the context of policies to mediate gun violence in the United States, the NRA can be expected to exert significant influence over gun policy, and is known to have significant ties to traditionally conservative legislators– in 2012 alone, 261 conservative candidates up for election in the house and senate received donations from the NRA (compared to 25 democratic candidates). Of these 261 NRA funded candidates, 213– or 80%– emerged victorious in their bid for a seat in the House or Senate in 2012[16]. The current republican majorities in the house and senate thus indicate that the NRA stands to hold a good deal of sway over the outcome under any of the policy alternatives. Additionally, much of the saliency surrounding gun policy has been either created or compounded by the political ascension of the National Rifle Association since its first attempts to directly influence federal gun policy through its federal lobbying arm, the Institute for Legislative Action[17], established in 1975. The NRA is currently among the most influential special interest groups in the nation: it boasts an annual budget of over $250 million[18], the organization indisputably has the capacity to directly and indirectly exert influence over congressional policymakers' decisions on firearms policy.

II. Effectiveness: Number of Lives Saved

Effectiveness is defined *qualitatively* as the extent to which the projected outcome for the policy alternative is expected to result in a direct reduction in the number of annual gun-related deaths in the United States. If it can be established that signing a policy alternative into law would have prevented a past outbreak of firearm violence were it a law at the time that the violence occurred, then the projected outcome is deemed *effective.* Alternatively put, the effectiveness criterion uses past mortality data to assess whether the policy results in an outcome limits theoretically preventable gun death. Defining effectiveness in this way puts a focus on policy outcomes in terms of their material, concrete public health benefits– i.e. their prospects for preventing fatal injuries caused by firearm violence.

III. Cost: Annual Federal Expenditure on Policy Operations and Maintenance

This analysis ranks the costs associated with each alternative according to the projected level of federal tax funding that the government must provide annually for the long-term maintenance of the policy alternative. As the policy problem is an ongoing epidemic, any solution needs to be sustained over time. The ideal outcome leads to a consistent

reduction in the annual mortality rate over an extended period. Thus, the monetary cost is evaluated terms of the annual expected tax expenditure required for the alternative to produce the projected outcome. Long term cost assesses the annual federal expenditure for the alternative, viewed with mind to the potential duration for which the federal government will be expected or required to use federal tax dollars to maintain the policy.

Projected Outcomes

Table 1: Projected Outcomes Matrix

	POLICY ALTERNATIVES			
EVALUATIVE CRITERIA	Status Quo	Lift Federal Research Freeze	Repeal PCLAA	Reform PCLAA
Political Viability	High	Low	Low	Moderate
Effectiveness: Gun Deaths Prevented	Low	Moderate	High	Moderate
Monetary Costs	$0	$127,272,727.273/year	$0	$0
Cost Desirability: Extent to which the policy will require high federal tax expenditure for long-term effectiveness. High desirability indicates cost-effectiveness.	*High*	Low	High	High

Table 1**:** This table shows how each policy alternative fares when evaluated according to the different criteria. The desirability of the outcome for each alternative is measured as *high, moderate,* or *low.* For example–a high valuation at the intersection of *status quo* and *effectiveness* indicates that the *status quo* produces a desirable outcome according to the *effectiveness* criteria.

Projected Outcomes for Political Viability

The political viability of each alternative is the likelihood that the policy will survive the current congressional legislature, given the conservative political climate, the known heavy influence of the NRA over congressional conservatives, and what can be surmised about the level of opposition the policy will face from the NRA based on their prior involvement in the policy area.

a. *Political Viability: Status Quo*

The status quo in gun policy is highly viable in the sense that it is unlikely to face a high enough degree of opposition from the NRA, even though over 30,000 Americans stand to lose their lives to gun violence each year if no changes occur. In the current political climate, the disproportionate capacity of the NRA to "intimidate republican politicians by turning support for gun rights into a defining test of conservative values", which– according to the Economist– "consistently and successfully diverts attention away from guns to mental illness" as the primary focus of responsive policies to episodes of firearm violence.

b. *Political Viability: Lifting Federal Research Freeze*

The political viability of Alternative B is indeterminable. The NRA has been able to continually block efforts to circumvent the Dickey Amendment in the 15 years since its enactment– this influence is largely the result of the $37.6 million that the organization has donated to Republican lawmakers over the past decade and a half[19]. However, the rising degree of opposition to the research freeze among major medical and scientific interest groups may be able to counter to the influence of the NRA on firearms policy in the future. The scientific community is continually becoming more active in firearms policy lobbying: according to the Washington Post, more than 100 prominent scientists signed a letter calling for the CDC to resume research aimed at identifying effective ways of reducing gun violence in 2013. In 2015, nine prominent medical associations penned a collective letter to congress on behalf of more than 2,000 doctors calling on congress to repeal the Dickey Amendment[20]. Additionally, in July of this year. the American Medical Association passed a resolution urging congress to rescind on its "prohibition on gun violence research[21]". If current trends persist, the magnitude of support from scientific community interest groups for halting the freeze on federal firearms research could reach a point where it stands a chance at breaking through what the LA. Times describes as a "death grip on congressional action"[22] regarding federal firearms research.

c. *Political Viability: Repeal the PCLAA*

A repeal of the PCLAA can be considered *politically viable* given the political potential of a recent wave of stakeholder advocacy pushing for gun reforms in mitigating the impact of opposition to the reforms from the NRA. According to the New York Times,

"the biggest gun makers in the nation are owned by private equity firms run by wall street titans"[23]. These wall street giants stand to exercise a great deal of sway over federal policy as their capital holdings have the potential to match those of the NRA– giving them real potential to counter the NRA freeze on legislative reforms for gun industry liability policy. The decision by Cerberus Capital Management to put the nation's largest gun manufacturer, Freedom Group, up for sale in December 2012 following the mass shooting at Sandy Hook Elementary School provides one example of how stakeholder advocacy can provide a feasible counterweight to the NRA's influence over gun reform. Freedom Group manufactured the semiautomatic rifle used in the Newtown massacre[24] to murder twenty-eight people– twenty-two of whom were elementary school children[25]. Cerberus Management's decision shows that a "wall street firm bending to concerns about an investment's societal impact rather than a profit-at-all-costs ethos[26]" is materially possible– even probable– given the magnitude of tragedy that the nation experiences regularly due to persistent, endemic outbreaks of gun violence.

d. *Political Viability: Reform the PCLAA*

It is more politically viable to reform the PCLAA than it is to manage a complete repeal of the bill, given the current degree of control and influence that the NRA exercises over gun-control policy, and the fact that the PCLAA was created specifically by and for the interests of the National Rifle Association.

Projected Outcomes for Effectiveness

Effectiveness is the extent to which the projected outcome under a policy results in a tangible, direct reduction in, or mitigation of, gun-related deaths. A reduction in gun violence can be measured according to trends in the nation's annual gun mortality rates.

a. *Effectiveness: Status Quo*

The status quo is highly ineffective in reducing the number of gun-related deaths that occur in the United States each year. Current policies are not projected to reduce the occurrence of preventable outbreaks of gun violence.

a. Effectiveness: Lifting Federal Research Freeze:

Alternative B is projected to be effective in reducing the annual gun-death rate. However, Alternative B also carries a lower degree of certainty that the projected outcome

associated the policy will occur if acted on. This is due to the impossibility of assigning an accurate value to research that has not actually been conducted. Still, it is possible to stipulate that increasing federal funding for research on gun violence will lead to a direct reduction in the number of people killed by guns by comparing gun violence to other leading causes of death in terms of mortality rate and the level of federal research funding provided for the area. A study in the *Journal of the American Medical Association* found that in relation to its mortality rate, gun violence is the least researched cause of death in the United States[27].

Researchers behind the study further stipulate that the "disproportionate effect of gun violence on the young, and the fact that guns cause a huge number of non-fatal injuries which are not reflected in the gun mortality rate, makes it "likely that the true magnitude of research funding disparity [between gun violence and other causes of death] when considering years of potential life lost or lived with disability, is even greater" than what the study was able to account for[28].

b. Effectiveness: Repealing the PCLAA

Repealing the PCLAA in its entirely will result in the most effective outcome in terms of the extent to which it is expected to reduce gun related deaths. This projected outcome can also be predicted with more certainty than the outcome associated with alternative

As it stands today, the PCLAA provides an incentive for the gun industry to engage in negligent business practices that make avoidable episodes of gun violence more likely to occur. Prior to the legislation's enactment in 2005, product liability lawsuits resulted in some of the most important safety advances in the gun industry– including some of the most basic safety requirements, such as prohibiting manufacturers from producing guns that accidentally fire when dropped[29].

c. Effectiveness: Reforming the PCLAA

Reforming the PCLAA to allow liability suits in state and local courts would eliminate the incentive for gun companies to engage in practices that put people in avoidable dangerous situations where they fall victim to gun violence. Reforming the act is considered *effective* in that it will transfer suits in which gun industry defendants are being accused of conduct deemed criminally negligent under state law into the jurisdiction of state courts, whereas the current federal law requires that state courts

dismiss such cases, even if the state law finds that the gun company's practices could be considered criminally or unlawfully negligent.

The 2007 murder of Jennifer Magano[30] is one of many real-world example of how leaving civil liability suits for the gun industry under federal jurisdiction creates dangerous conditions of immunity for negligent industry actors. In 2007, Jennifer Magano separated from her husband Scott and obtained a restraining order against him due to a history of domestic abuse. Both the domestic violence charge and the protective order legally prohibited her husband from purchasing firearms, but he was nonetheless able to purchase two handguns to the negligence and carelessness of the gun store employees. The cashier did not ask Scott for identification or run a criminal background check despite later telling authorities that he thought Scott Magano looked 'suspicious'. Later, the cashier left Scott alone in the store without supervision, giving Scott the opportunity to steal a third weapon without anyone noticing. Three months later, Scott Magano broke into Jennifer's home and used the stolen gun to knock her unconscious, kidnap her, and later murder her. A lawsuit was filed on Jennifer's behalf posthumously that accused the gun shop of 'actionable negligence' under state law, but the pre-eminence of federal protection under the PCLAA led the court to dismiss the case. Transferring responsibility over cases in which the gun industry company has engaged in what the state law considers 'criminally negligent conduct' to state courts, such that actionable claims will indeed proceed in state court will prevent future situations similar to the aftermath of Magano's murder, where federal jurisdiction pre-eminence stripped the victim and her family of the opportunity to seek justice and created further incentives for negligence in the gun industry.

Projected Outcomes for Cost:

The cost of each alternative is the federal tax revenue that the government will be forced to allocate to gain the benefits associated with the policy every year. If the monetary cost does not represent any significant increase from the normal bureaucratic expenses associated with operations in the federal legislature (i.e. salary of federal employees, maintenance and building expenses), then this analysis considers the monetary cost of the alternative *negligible*, which is represented as a baseline cost of $0.

a. *Cost: Status Quo*

   Maintaining the status quo will not require an increase in federal expenditure. Therefore, the long-term costs of maintaining the status quo are represented as a baseline zero.

b. *Cost: Lift Federal Research Freeze*

   Alternative B will require the greatest increase in federal tax expenditure to achieve a reduction in the gun mortality rate. According to a report by the Journal of American Medicine, the federal government only spent $22 million on researching gun violence over an 11-year period between 2004 and 2015. However, if the federal government increased its funding of gun violence research to match its research expenditures for other leading causes of death with similar mortality rates to that of gun violence, the total expenditure over that same 11-year period on gun violence would have exceeded $1.4 billion[31].

c. *Cost: Repealing the PCLAA*

   There is no long-term maintenance or operations cost of repealing the PCLAA. This analysis finds the projected monetary cost to be zero, in the sense that it is equivalent to, and expected not to deviate appreciably the normal bureaucratic costs associated with maintaining policy at the status quo.

d. *Cost: Amending the PCLAA*

   There is no long-term maintenance or operations cost of reforming the PCLAA. This option is a purely legislative measure, and does not require any federal tax expenditure to remain operational. The costs of reforming the act are therefore zero– i.e. the monetary cost of the Alternative Does not exceed the normal bureaucratic costs of maintaining the status quo.

Policy Tradeoffs

On an issue, as complex and contentious as gun control and the regulation of firearms within the United States, there are invariably trade-offs which policymakers will be required to make when taking any proposed course of action to solve such a grave and severe health and safety crisis. For the purposes of this analysis, the specific tradeoffs and opportunity costs associated with a final decision to pursue each of the policy alternatives (and the associated outcomes) will be

evaluated according to *risk tradeoff analysis (RTA)*. RTA involves a comparison of the relative risks and payouts associated with each alternative. According to the traditional logic of risk analysis, poor-risk outcomes will usually be associated with poor potential returns; conversely, high-risk outcomes are generally associated with large potential payouts. By this logic, the RTA conducted in this analysis will compare each alternative along the dual lines of degree of risk associated with the projected outcome, and potential benefit derived from the outcome, respectively.

When evaluating the magnitude of risk associated with a policy alternative, this analysis will use the following three-step process. First, I will evaluate the risks associated with the projected outcomes under each alternative. Second, I will analyze and measure the risk according to the magnitude of harm and probability of harm. Third, I will identify any possible techniques for mitigating the degree of risk, including– if possible– strategies of *avoidance* and *containment* that are congruous with the policy alternative. Following the evaluation of risk, this analysis will then evaluate the potential returns associated with the projected outcome under each alternative, and weigh this against the risk calculation.

Table 2: Risk-Return-Tradeoff Analysis (RTA)

	MAGNITUDE OF RISK	PROBABILITY OF RISK	**RISK ESTIMATION**	MAGNITUDE OF RETURN	PROBABILITY OF RETURN	**RETURN ESTIMATION**
Status Quo	*High*	*High*	***High***	*Low*	*High*	***Low***
Increase Research Funding & Lift Freeze	*High*	*High*	***High***	*High*	*Low*	***Moderate***
Repeal PCLAA	*High*	*High*	***High***	*High*	*Low*	***Moderate***
Reform PCLAA	*Moderate*	*High*	***Moderate***	*Moderate*	*Moderate*	***Moderate***

Table 2: This chart provides a summary of the predicted level of risk and the anticipated degree of returns (benefits) that pursuing that alternative poses to provide. Risk and Return estimations are classified as either *high, moderate,* or *low.* The ideal policy carries negligible risk and high return; however, due to the fundamental tradeoff between the level of risk and the potential return on an investment, it is extremely unlikely to find a policy that will guarantee the perfect risk-return balance. Therefore, we calculate risk and return estimations as a product of the *magnitude* and *probability* of both the risks and the returns associated with each alternative.

RTA: Status Quo

The risks associated with the status quo are evident and plainly quantifiable. First, by recommending the status quo, upwards of 33,000 American civilians stand to lose their lives each year to gun violence, as the status quo leaves the epidemic intact and does nothing to address the massive loss of life occurring annually within the United States. This analysis therefore finds the magnitude of risk to be *high,* and the probability of the risk occurring to be *high* as well. Barring some major change in the current political power balance, created by an unanticipated crisis or tragedy, the probability that there will be a massive loss of life (representing a high degree of risk) if the status quo does not change is near 100%.

The main source of potential return (or benefit) associated with choosing the status quo is that the Alternative Can be expected to cost the government nothing to implement. With a monetary cost of $0, the status quo might seem like an acceptable option to the average fiscal conservative policymaker. But this analysis finds that the risks associated with the status quo, in terms of human lives lost, outweigh the potential monetary return associated with pursuing the status quo as the recommended policy alternative. In the first 2 months of 2016 alone, the nonprofit Gun Violence Archive reported 6,886 incidents of gun violence, leading to 1,781 deaths and 3,475 nonfatal injuries[32]. The American people are suffering under policy as it now stands, and as such this analysis thus does not recommend the status quo as a viable or beneficial policy solution to America's gun violence problem.

RTA: Lift Federal Research Funding Freeze

The potential risks associated with policy Alternative C, lifting the federal research funding freeze, and increasing research on gun violence in the United States, are as follows. First, this alternative has *poor political viability* in the current political climate. It remains to be seen whether interest groups can muster the power to overwhelm the NRA's influence over current research policy, but according to current projections, it is unlikely that a republican-controlled executive branch, congress, and house of representatives would be a viable climate for passing legislation that directly seeks to challenge the influence of the NRA and work to undo some of the lobby's work in ensuring information on gun violence and firearms in the United States is kept under a tight lid. As such, this analysis finds the probability of risk *high* and the magnitude of risk *high*– in that there is a good chance that if this bill were proposed today, it would not be politically viable and would fail to garner the requisite support from policymakers in the federal legislature.

A second risk associated with lifting the federal research freeze is that the alternative is much more expensive than any of the other options. This analysis found that Alternative B scores *poor* on cost desirability (i.e. the cost of implementing and maintaining the policy is expected to be high). Indeed, increasing research on gun violence is the only option presented in this analysis in which the government faces certain upfront costs and long-term maintenance expenses for which it must allocate federal tax dollars.

Although it entails a large monetary investment, it should not be discounted that the projected outcome under Alternative B also stands to deliver concrete, significant returns. The primary benefit of increasing federal research funding about gun violence and firearms is that it can help to counter the vacuum of relevant, actionable evidence available to policymakers looking for concrete solutions to address the nation's exceedingly high rates of gun-related deaths and injuries. According to the American Statistical Association in a press release entitled *Lack of Federal Funding, Research and Political Influence Yields Little Data, Confidence to Prevent Gun Violence*, "little is known about gun violence primarily due to a lack of research on the topic", and that "routine tracking of incidents…"– a standard practice in scientific research on firearm violence– "…sheds light on the dangers of accessibility, particularly among today's youth"[33]. Policy Alternative B thus offers an opportunity for real improvement on current gun violence trends that is both likely to occur, if the Alternative Can pass in the political climate, and additionally likely to persist and become a long-term source of improvement to reduce the number of gun-related deaths occurring in the United States each year. Therefore, this analysis concludes that Alternative B presents *high* potential returns on the investment it will require in terms of federal tax expenditure.

RTA: Repeal the PCLAA

The risks associated with repealing the PCLAA are as follows: first, the projected outcome under policy Alternative C looks to have *poor political viability*. It is more politically viable for gun-industry liability projection to become an issue on a state level (as opposed to its status as a federal policy issue), than it is politically viable for the PCLAA to be entirely overturned due to the continued heavy influence of the NRA in the federal policy arena generally, and the additional fact that the NRA was responsible for this specific act's passage from the outset. Thus, this analysis concludes that there is a *high* magnitude of risk, and a *high* probability of risk associated with Alternative B. Despite its poor political viability, the option of revoking the PCLAA scores *high* on cost-desirability and effectiveness (in reducing the number of gun-related deaths in the US).

Repealing the PCLAA can be expected to bring about a greater return in terms of *effectiveness* than reforming the act, as Alternative D (reform) will invariably result in

several states passing laws that prevent civil liability suits against the gun industry from being considered 'actionable' in a state or local court. Additionally, reforming the PCLAA has a projected cost of $0, and therefore scores *high* on cost desirability. In sum, the potential returns for Alternative C are *high.*

RTA: Reform the PCLAA

The potential risks for policy Alternative D– reform the PCLAA to allow lawsuits considered actionable under state or local law to proceed in state and local courts– are as follows. First, Alternative D scores *moderate* on the political viability criterion. Alternative D has the highest score out of all the alternatives along the lines of political viability, but there is still a moderate level of risk associated with getting the bill through the current republican legislature, given the grip of the NRA over many conservative policymakers at the federal level. Therefore, this analysis finds Alternative D presents *moderate* risks.

The potential returns for Alternative D are also *moderate.* Alternative D scores *moderate* in terms of effectiveness– a lower effectiveness rating than Alternative C, as leaving the issue for state governments poses the risk that lawsuits will not be allowed in state or local courts in traditionally red states. This means that despite the benefit many states would enjoy under Alternative D, there will invariably be several states who will not benefit at all, and will continue to suffer from the same rates of gun violence as under the status quo if Alternative D is chosen as the preferred course of action.

Policy Recommendation:

Out of the four potential policy alternatives, this analysis concludes that the best option to combat the epidemic of gun violence in the United States would be to pursue reforms to the Protection of Lawful Commerce in Arms Act (PCLAA) to allow state and local law to determine whether lower courts can allow lawsuits brought against gun-industry distributors and manufacturers for conduct considered actionable under the relevant state or local law. Alternative D outranks the other policy alternatives when evaluated according to potential risk and potential return. Although the returns are only *moderate* in terms of the effectiveness of the policy alternative in combatting gun violence and reducing the number of gun-related deaths in the United States each year, the magnitude of risk– in terms of the risk that the current political climate and control of the NRA over federal firearms policy–is *moderate,* meaning it carries a lower degree of risk than any other alternative. Given the contentiousness of the gun control debate and the vice-grip that the NRA currently exercises over federal policy designed to combat the gun violence epidemic, this analysis makes a final recommendation for federal policy reforms of the PCLAA, as this alternative has the best prospects of becoming actualized into law. The lower degree of risk associated with greater political viability effectively mitigates the alternative's poor effectiveness score relative to the effectiveness of other alternatives. Additionally, pursuing amendments to the existing PCLAA is a no-cost alternative, making it highly *cost* desirable– a benefit to the alternative that renders it superior to the other alternatives on the higher end of the spectrum in terms of performance in the risk-return analysis. In sum, analysis finds that reforming the PCLAA is the most advisable course of action to address the nation's escalating gun mortality epidemic.

Works Cited

---

[1]Gun Violence by the Numbers. (2017, January 19). Retrieved February 09, 2017, from http://everytownresearch.org/gun-violence-by-the-numbers/

[2] Ben Casselman, Matthew Conlen and Reuben Fischer-Baum. (2016, August 24). Gun Deaths in America. Retrieved February 09, 2017, from https://fivethirtyeight.com/features/gun-deaths

[3] "U.S. firearm death rate ten times higher than other high-income countries." *News*. N.p., 03 Feb. 2016

4 "US Gun Control: What Is the NRA and Why Is It so Powerful?" BBC News. BBC, 08 Jan. 2016. Web. 28 Mar. 2017.

[5] Erin Grinshteyn and David Hemenway, "Violent Death Rates: The US Compared with Other High-income OECD Countries, 2010," American Journal of Medicine, 2015.

[6] How the Gun Lobby is Depriving Police, Policy Makers, and the Public of Data. (n.d.). Retrieved February 09, 2017, from https://everytownresearch.org/reports/access-denied/

[7] How the Gun Lobby is Depriving Police, Policy Makers, and the Public of Data. (n.d.). Retrieved February 09, 2017, from https://everytownresearch.org/reports/access-denied/

[8] How the Gun Lobby is Depriving Police, Policy Makers, and the Public of Data. (n.d.). Retrieved February 09, 2017, from https://everytownresearch.org/reports/access-denied/

[9] Foran, Clare. "The Missing Data on Gun Violence." *The Atlantic*. Atlantic Media Company, 21 Jan. 2016.

[10] Hamburger, Tom, Peter Wallsten, and Sari Horwitz. "NRA-backed Federal Limits on Gun Lawsuits Frustrate Victims, Their Attorneys." *The Washington Post*. WP Company, 31 Jan. 2013.

[11] Justice Denied: The Case Against Gun Industry Immunity. (n.d.).

[12] Justice Denied: The Case Against Gun Industry Immunity. (n.d.),

[13] Justice Denied: The Case Against Gun Industry Immunity. (n.d.),

[14] Cillizza, Chris. "A Story of the NRA's Influence — in 2 Charts." *The Washington Post*. WP Company, 19 Dec. 2012.

[15] "US Gun Control: What Is the NRA and Why Is It So Powerful?" *BBC News*. BBC, 08 Jan. 2016. Web.

[16] "The NRA and Congress." *The Washington Post*. WP Company, n.d. Web. 28 Mar. 2017.

[15] "US Gun Control: What Is the NRA and Why Is It So Powerful?" BBC News. BBC, 08 Jan. 2016. Web. 28 Mar. 2017.

[18] US Gun Control: What Is the NRA and Why Is It So Powerful?" BBC News. BBC, 08 Jan. 2016. Web. 28 Mar. 2017

[19] Keller, Jared. "The One Law That Could Help Bring About an End to America's Gun Crisis. *"Pacific Standard*. Pacific Standard, 07 Dec. 2015. Web.

[20] Keller, Jared. "The One Law That Could Help Bring About an End to America's Gun Crisis. *"Pacific Standard*. Pacific Standard, 07 Dec. 2015. Web.

[21] "The NRA Has Blocked Gun Violence Research for 20 Years. Let's End Its Stranglehold on Science." *Los Angeles Times*. Los Angeles Times, n.d. Web. 28 Mar. 2017.

[22] "The NRA Has Blocked Gun Violence Research for 20 Years. Let's End Its Stranglehold on Science." *Los Angeles Times*. Los Angeles Times, n.d. Web. 28 Mar. 2017.

[23] Lattman, Peter. "In Unusual Move, Cerberus to Sell Gun Company." *The New York Times*. The New York Times, 18 Dec. 2012.

[24] Sorkin, Andrew Ross. "Wall Street, Invested in Firearms, Is Unlikely to Push for Reform." *The New York Times*. The New York Times, 17 Dec. 2012. Web. 28 Mar. 2017.

[25] Vogel, Steve, Sari Horwitz, and David A. Fahrenthold. "Sandy Hook Elementary Shooting Leaves 28 Dead, Law Enforcement Sources Say." *The Washington Post*. WP Company, 14 Dec. 2012.

[26] Lattman, Peter. "In Unusual Move, Cerberus to Sell Gun Company." *The New York Times*. The New York Times, 18 Dec. 2012.

[27]Vogel, Steve, Sari Horwitz, and David A. Fahrenthold. "Sandy Hook Elementary Shooting Leaves 28 Dead, Law Enforcement Sources Say." *The Washington Post*. WP Company, 14 Dec. 2012. Web. 28 Mar. 2017.

[28] Vogel, Steve, Sari Horwitz, and David A. Fahrenthold. "Sandy Hook Elementary Shooting Leaves 28 Dead, Law Enforcement Sources Say." *The Washington Post*. WP Company, 14 Dec. 2012. Web. 28 Mar. 2017.

[29] Justice Denied: The Case Against Gun Industry Immunity. (n.d.). Retrieved February 9, 2017.

[30] Justice Denied: The Case Against Gun Industry Immunity. (n.d.). Retrieved February 9, 2017.

[31] Bryanschatz. "This Chart Shows How Research on Gun Violence Has Been Gutted." *Mother Jones*. N.p., n.d. Web. 28 Mar. 2017.

[32] Board, Editorial. "Gun violence in America is out of control." *The Washington Post*. WP Company, 22 Feb. 2016. Web. 02 May 2017.

[33] Lack of Federal Funding, Research + Political Influence Yields Little Data, Confidence to Prevent Gun Violence