



On guns, Sanders knows when he's beat, but he's right

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Early in tonight's debate, all of the other candidates pounced on Bernie Sanders for his vote on the Protection of Lawful Commerce in Arms Act. Sanders perceived the futility of trying to explain this to a room full of anti-gun politicians out for his blood, but he has explained it well in the past.

This much-maligned law gets a bad rap. It prevents certain kinds of completely inappropriate lawsuits from being brought against gun manufacturers and dealers, but it does not prevent all lawsuits. This is why the bill received overwhelming support in Congress at the time it passed. Cato's Walter Olson wrote a much more detailed post on both of these issues in 2013 at The Power Line, [which you can read here](#).

The two types of inappropriate suits, in particular: Public nuisance and product liability lawsuits.

"Public nuisance" is a legal term of art. It applies properly to major polluters and others who, on a mass scale, similarly abridge the public's basic rights. If you build an unauthorized dam that causes flooding, that's a public nuisance. If your factory poisons the local water supply, that's a public nuisance. If you build a factory that turns the air black, that's a public nuisance. A gun, lawfully manufactured and sold, is not by any stretch of the imagination a public nuisance under any reasonable legal theory, but you never know what kind of judge you can find with the right lawsuit. The law was passed at a time when efforts were afoot to use such lawsuits to discourage lawful commerce in arms.

Second, there's the defective product lawsuit, which applies properly to products that fail to work as advertised or have unintended side effects. Everyone knows that guns can be used to kill people, but it's simply wrong, as a matter of law, to hold gun manufacturers responsible for the misuse of their properly-functioning product. It should be noted that if a gun were to explode and harm a hunter, he could most certainly sue, as can the user of any other defective product.

The gun industry does not get any special treatment under this law that every other industry does not deserve or enjoy already. Again, at the time the law in question passed, there was an effort afoot to bankrupt the gun industry through such meritless lawsuits. Given that a properly functioning gun is neither a public nuisance nor a defective product, the law is a good thing.