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Hillary Plays Gun Card Against Bernie, But The Protection Of Lawful Commerce In Arms Act Is Sound

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The Democratic candidates just had something vaguely resembling a debate in Las Vegas. There was hardly any clash of arguments and philosophies, except when Hillary Clinton played the gun card against Bernie Sanders.

The Vermonter is pure as driven snow on almost every belief dear to America's collectivists and nanny-staters, but has been pronounced guilty of deviationism on gun control laws. Hillary Clinton blasted her main rival by pointing out that he voted against the Brady Handgun Violence Prevention Act as a member of the House and in favor of the Protection of Lawful Commerce in Arms Act (PLCAA) as a member of the Senate, joined by 50 Republicans and 14 Democrats. Every now and then, a leftist politician gets something right. President Obama has helpfully identified occupational licensure as damaging to job aspirations of many poor people, for example – and Bernie Sanders appears to understand that gun control laws are no panacea. (That probably has something to do with the fact that Vermont has very lax gun laws and yet a very low rate of gun violence.)

I would like to focus on PLCAA, which Hillary attacked, saying, “It was pretty straightforward to me that [Sanders] was going to give immunity to the only industry in America. Everybody else has to be accountable, but not the gun manufacturers.”

Typically, that's misleading.

The 2005 PLCAA was enacted to stop the plethora of nuisance suits that anti-gun activists were bringing against gun manufacturers, suits meant to bleed them to death with litigation costs if they didn't cave in to the demands of the activists. Using litigation as a weapon against perceived enemies is an abuse of our legal system, but it appeals to win-at-any-cost crusaders. Former New York governor Eliot Spitzer, back when he was the state's attorney general, reportedly told Glock, “If you do not sign, bankruptcy lawyers will be knocking at your door.”

Thus, litigation (mostly but not exclusively in state courts) was meant to and could have seriously disrupted commerce in firearms. Congress responded with a law to protect that commerce, as it is constitutionally authorized to do. Under Article I, Section 8, Congress may “regulate” interstate commerce, a power included to keep the states from enacting laws and policies to hinder the movement of goods, and Article IV, Section 1 gives Congress power “to prescribe the effect” of state law in other states.

Cato Institute’s Walter Olson correctly states that “Congress’s formula for resolving litigation amounted in essence to restoring, not overturning, the traditional common law bounds of gun liability.” PLCAA does not, contrary to Mrs. Clinton’s claim, give gun manufacturers immunity. They can still be sued if they knowingly sell to criminals, and they have no immunity from suits over negligence. They’re as “accountable” as are all other manufacturers.

In their fervor to stop gun violence, the activists think they’d like to drive gun makers out of business through suits claiming that they are liable whenever a deranged person uses one of their products to kill innocent people. The obstacle to that was and remains the common law principle that the producer or seller of any product is not liable for deliberate misuse of that product.

PLCAA codifies that principle, thereby preventing activists from using nuisance suits to accomplish the national anti-gun objectives they cannot achieve through normal political processes. That’s a sound law.

Above I wrote “think they’d like” with reference to the anti-gun activists because I doubt they would actually like the consequences of driving all gun manufacturers in America out of business, either through litigation or legislation. Let’s suppose that PLCAA had never been passed and, following dozens of successful suits against Glock, Smith & Wesson, and other gun makers, the bankruptcy attorneys have paid their visits and the companies are defunct. Gun violence then stops, right?

Of course not. There are millions of guns in America and anyone bent on obtaining one for an illegal purpose will find a way to do so. Guns will also be smuggled in from other countries. Some will be homemade. Crime with firearms will go on as if nothing had happened, but some non-criminals will be hurt by the use of unreliable guns that were the best they could get.

Which is to say, it would be the same as Prohibition.

When the 18th Amendment made legitimate commerce in alcoholic beverages illegal, the result wasn’t national sobriety and rectitude as the activists had forecast, but instead a host of new problems stemming from all the illegitimate commerce in beer, wine, and booze.

Does Senator Sanders understand that there is nothing to be gained by driving gun makers out of business? Perhaps so. Socialists have many blind spots when it comes to the malign effects of government meddling, but they don’t necessarily have to be blind to every single one.

As for Hillary Clinton, this attempt to capitalize on the ill-informed and reflexive opposition her “base” voters have for guns and other leftist hobgoblins is par for the course.