

No. 23-1214

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL SHOOTING SPORTS FOUNDATION
Plaintiff-Appellee,

v.

MATTHEW PLATKIN,
in his official capacity as Attorney General of New Jersey,
Defendant-Appellant.

On Appeal from the United States District Court
for the District of New Jersey, No. 3:22-cv-06646
The Hon. Zahid N. Quraishi

BRIEF OF *AMICUS CURIAE*
RYAN BUSSE IN SUPPORT OF DEFENDANT-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Amicus Curiae Ryan Busse is an individual. He is not a corporation, he has no parent corporation, and no publicly held corporation owns any part of him.

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INTEREST OF THE *AMICUS CURIAE*¹

Amicus curiae Ryan Busse works as a Senior Advisor to Giffords.² Mr. Busse has a deep understanding of the firearms industry, having worked in the industry for more than twenty-five years, including as a senior executive of a leading firearm manufacturer overseeing sales and marketing, as well as a long-time gun owner. Mr. Busse has been nominated for, and received, multiple awards for the work he has done on behalf of the firearm industry. Since leaving his employment within the industry in 2020, Mr. Busse has focused on advocating for safe and responsible firearms sales and ownership, as well as on environmental issues. Mr. Busse has been an advisor to Giffords since June 2021. In this role, Mr. Busse continues to promote sensible gun ownership and regulation. As a testament to his wealth of experience and various career recognitions, Mr. Busse has also served as an advisor for the United States Senate Sportsmen’s Caucus, the Biden Presidential Campaign, and the Department of Interior Hunting and Wildlife Conservation Council.

¹ *Amicus* Ryan Busse submits this brief in support of Appellant. No counsel for a party authored this brief in whole or in part. No party or party’s counsel made a monetary contribution to fund its preparation or submission. No person other than *amicus* or his counsel contributed money to fund this brief’s preparation or submission. *See* Fed. R. App. P. 29(a)(4)(E). *Amicus* files this brief with the consent of the parties, who have given blanket consent to *amicus* briefs in this appeal.

² Giffords is a non-profit policy organization comprised of three distinct entities, Giffords, Giffords Law Center to Prevent Gun Violence, and Giffords PAC. Together, the three entities work serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities. Giffords also advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

Mr. Busse is the author of the 2021 book *Gunfight: My Battle Against the Industry that Radicalized America*. In *Gunfight*, Mr. Busse describes his experiences with gun ownership and his work as a firearms industry executive, including his real world understanding of the political and societal forces that influence the industry’s positions on firearms regulation. Mr. Busse has long worked to reduce gun violence while protecting the rights and interests of gun owners and industry actors.

INTRODUCTION

New Jersey Assembly Bill 1765, which was enacted in July 2022 and codified at N.J. Stat. Ann. §§ 2C:58-33 *et seq.* (“Section 58-35” or “the Statute”), codifies well-established best practices within the gun industry which responsible gun industry members, including appellee National Shooting Sports Foundation (“NSSF”), already engage in and support. Section 58-35 is designed to curb the misconduct of bad actors in the firearms industry; it is not designed to impede the activities of those who act responsibly.

ARGUMENT

Section 58-35’s Reasonable Controls Codify Well-Established Industry Best Practices

Appellee has argued that Section 58-35 is “hopelessly vague,” claiming that it “leaves industry members with no meaningful guidance on how they are supposed to act or . . . how they can conduct their business without running afoul of the statute.” (NSSF Motion for Preliminary Injunction at 21, 22). But these

protestations ring hollow, as gun industry members—including appellee NSSF—have publicly announced their support for, and encouraged compliance with, the types of safeguards set forth in Section 58-35.

Section 58-35(a) states:

(1) A gun industry member shall not, by conduct either unlawful in itself or unreasonable under all the circumstances, knowingly or recklessly create, maintain, or contribute to a public nuisance in this State through the sale, manufacturing, distribution, importing, or marketing of a gun-related product.

(2) A gun industry member shall establish, implement, and enforce reasonable controls regarding its manufacture, sale, distribution, importing, and marketing of gun-related products.

NSSF claims – incorrectly – that “it remains a mystery what ‘reasonable controls’ means,” given that the Statute enumerates in detail what the reasonable controls are.

(NSSF Motion for Preliminary Injunction at 22.)

The definitions section of the law, Section 58-34, expressly defines “reasonable controls” as:

[R]easonable procedures, safeguards, and business practices that are designed

to:

1. prevent the sale or distribution of a gun-related product to a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under State or federal law, or a person who the gun industry member has reasonable cause to believe is at substantial risk of using a gun-related product to harm themselves or unlawfully harm another or of unlawfully possessing or using a gun-related product;
2. prevent the loss of a gun-related product or theft of a gun-related product from a gun industry member;

3. ensure that a gun industry member complies with all provisions of State and federal law and does not otherwise promote the unlawful sale, manufacture, distribution, importing, marketing, possession, or use of a gun-related product; and
4. ensure that the gun industry member does not engage in an act or practice in violation of any of the regulatory provisions governing firearms set forth in chapters 39 and 58 of Title 2C of the New Jersey Statutes or engage in conduct that constitutes a violation of P.L.1960, c. 39 (C.56:8-2) or any regulations promulgated thereunder.

Further, while in this litigation, NSSF has attacked Section 58-35 because it “commands” firearm industry members to “adopt any and all procedures ‘designed to’ ‘prevent’ or ‘ensure’ a litany of abstract goals,” (*Id.* at 23), elsewhere NSSF has repeatedly acknowledged the merit and attainability of each of the controls required by the statute.

1. **NSSF has advocated for policies that prevent sales to “a straw purchaser, a firearm trafficker, a person prohibited from possessing a firearm under State or federal law.”**

Appellee NSSF has repeatedly urged its members to take precautions against selling firearms to straw purchasers that are consistent with Sections 58-34(1) and 58-35 of the Statute: [T]he public has learned the severe consequences of illegally purchasing a firearm for someone who cannot legally possess one or who does not want to have his or her name associated with the transaction.”³

³ NSSF, “*Don’t lie for the other guy*” *Straw purchase awareness store of the year* (Feb. 20, 2013), <https://www.nssf.org/articles/dont-lie-for-the-other-guy-straw-purchase-awareness-store-of-the-year/>.

Indeed, NSSF has partnered with the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), the federal regulator of the gun industry, to “design[] an educational program to assist firearm retailers in the detection and possible deterrence of ‘straw purchasers.’”⁴ The “Don’t Lie for the Other Guy” campaign aims to prevent the illegal straw purchase of firearms, including by promoting a “Retailer Tool Kit” to assist retailers in recognizing and preventing straw purchases.⁵ NSSF has acknowledged that policies against selling to straw purchasers can be implemented, stating that “Federally licensed firearms retailers are on the front lines every day working to prevent illegal purchases. This is the goal of everyone in the firearms industry. No one in it wants to make sales to prohibited individuals.”⁶ These programs and policies underscore the point that Section 58-35 provides adequate guidance to firearms industry members, and that NSSF and other gun industry members understand, and support, the types of precautions set forth in the Statute.

Indeed, notwithstanding its position in this litigation, NSSF has even emphasized its position in writing to the state of New Jersey. In 2019, Governor

⁴ ATF, *Don’t Lie for the Other Guy* (Apr. 26, 2018) <https://www.atf.gov/firearms/dont-lie-other-guy/>.

⁵ NSSF, *Don’t Lie For the Other Guy, Don’t Lie Retailer Kit*, www.dontlie.org/toolkit-request.cfm (last viewed Apr. 4, 2023).

⁶ NSSF, “*Don’t lie for the other guy*” is a tool box for retailers, not a hammer to be used against them (2014), <https://www.nssf.org/articles/dont-lie-for-the-other-guy-is-a-tool-box-for-retailers-not-a-hammer-to-be-used-against-them/>.

Murphy issued an executive order on this subject that directed the Procurement Bureau of the state's Division of Purchase and Property ("DPP") to issue a Request for Information from all retail dealers or manufacturers of firearms that contracted with the state, to ascertain whether those vendors followed a number of public safety principles. On the subject of straw purchasers, one gun manufacturer's response, in describing its public safety principles, specifically incorporated a statement from NSSF, in which NSSF described "a now 20-year long joint program between the National Shooting Sports Foundation (NSSF) and the ATF . . . to prevent straw purchases."⁷ It also touted NSSF's work with the New Jersey State Police to advocate against dealers allowing straw purchases, and offered that "NSSF would be happy to bring Don't Lie back to NJ in 2020." *Id.*

2. **NSSF and other gun industry members have long touted efforts to prohibit gun sales to a "person who the gun industry member has reasonable cause to believe is at substantial risk of using a gun-related product to harm themselves or unlawfully harm another."**

There are numerous news stories about employees of firearms retailers who refused to sell a gun to a would-be customer because that person appeared dangerous or unwell. Firearms industry members regularly tout these stories, because they

⁷ See State of New Jersey, *Governor Murphy Signs Landmark Executive Order on Gun Safety* (Sept. 10, 2019), available at <https://www.nj.gov/governor/news/news/562019/20190910b.shtml>, and excerpt from publicly released responses to the Executive Order's request for information from firearms dealers, available at <https://s3.amazonaws.com/brady-static/Remington-NJ-EO83.pdf> ("DPP Response").

provide further evidence that industry members want to follow reasonable policies that facilitate responsible gun ownership and protect against illegal bad actors.

To this end, NSSF has acknowledged the importance of not selling firearms to people who are at risk of harming themselves or others. NSSF has stated that it “promotes and values” the “programs that are designed to keep firearms out of the hands who shouldn’t have them. That includes those who might be suffering a mental health crisis as well as prohibited individuals and unsupervised children.”⁸ This initiative by NSSF dovetails with Section 58-35’s requirement for policies to prevent sales to straw purchasers as well as security practices designed to prevent theft of firearms. NSSF has stated that “[k]eeping guns out of the hands of convicted felons, minors, persons determined by a court of law to be ‘mentally defective’ and other individuals prohibited by law from owning firearms is critical to preventing violent crime and keeping communities safe.”⁹ In fact, NSSF does not merely support such restrictions; it has sought to expand them. In the aforementioned response to the DPP’s request for information, the NSSF letter specifically credited one of its initiatives, “FixNICS,” with having “successfully changed the law in 16 states and increased the number of disqualified mental health records by

⁸ Joe Bartozzi, *Mental health and firearm ownership*, *NSSF* (Oct. 6, 2020), <https://www.nssf.org/articles/mental-health-and-firearm-ownership/>.

⁹ NSSF, *Don’t Lie for the Other Guy*, *NSSF REAL SOLUTIONS*, <https://www.nssfrealolutions.org/programs/dont-lie/>.

over 240%.” DPP Response, *supra*, at 16. The National Rifle Association (“NRA”) has made similar statements, stating that “[i]t has been the NRA’s longstanding position that those who have been adjudicated as a danger to themselves or others should not have access to firearms and should be admitted to treatment.”¹⁰

And news reports confirm that responsible gun sellers are taking the policies touted by NSSF to heart. In 2016, an Ohio gun store owner “refused to sell a gun to 25-year-old James Howard. Howard passed a background check, but he made statements that indicated he may want to harm himself or others.”¹¹ The owner said that the purchaser’s behavior “was a red flag.”¹² There are other similar stories of responsible owners and employees refusing to sell to prospective buyers whose behavior raised red flags, including in Pennsylvania,¹³ New York,¹⁴ Florida,¹⁵

¹⁰ Joseph Zeballos-Roig, *The NRA issued a statement supporting Trump’s call to focus on mental illness to reduce gun violence after the shootings in El Paso and Dayton*, Business Insider (Aug. 5, 2019), <https://www.businessinsider.com/nra-statement-backing-trump-el-paso-dayton-shootings-mental-illness-2019-8>.

¹¹ Chanda Neely, *Gun shop owner thwarts possible mass shooting at Ohio University*, *Cleveland.com* (Mar. 27, 2016), https://www.cleveland.com/metro/2016/03/gun_shop_owner_thwarts_possibl.html.

¹² *Id.*

¹³ Rudy Chinchilla, *Man Threatened Temple University While Buying Rifle Bullets, Police Say*, NBC News Philadelphia (Aug. 4, 2019), <https://www.nbcphiladelphia.com/news/local/temple-university-threats-buying-bullets-patrick-buhler/165883/>.

¹⁴ Douglass Dowty, *Police: How Syracuse University student was stopped while planning mass shooting*, *Syracuse.com* (Apr. 5, 2018), https://www.syracuse.com/crime/2018/04/police_how_syracuse_university_student_was_stopped_while_planning_mass_shooting.html.

¹⁵ Brian Ross, Gerry Wagschal, Rhonda Schwartz, *Gun Store Owner: We Alerted FBI to ‘Suspicious’ Customer Weeks Before Orlando Shooting*, ABC News (June 16, 2016), <https://abcnews.go.com/US/orlando-shooter-turned-gun-store-suspicious/story?id=39901107%20772-263-9222>.

Texas,¹⁶ Minnesota,¹⁷ and Illinois.¹⁸ Conversely, when gun sellers do not implement appropriate safeguards to screen out purchasers with red flags, consequences can be fatal, as demonstrated recently by the Colorado Springs massacre.¹⁹

3. Gun industry members, including NSSF, have long supported policies designed to “prevent the loss of a gun-related product or theft of a gun-related product.”

NSSF maintains that the industry espouses reasonable measures with respect to screening and security measures. For example, NSSF promotes programs such as “10 Tips for Firearms Retail Workplace Safety” and “Operation Secure Store.” The 10 Tips for Firearms includes creating a safety plan and a safety program with “[s]tandardized policies [that] should outline responsibilities and accountability for all staff members,” and “ensure that safety practices are understood and reinforced constantly.”²⁰ “Operation Secure Store” similarly “support[s] the firearms

¹⁶ CBS Austin, *APD: South Austin shooting spree suspect charged with murder* (July 13, 2018), <https://cbsaustin.com/news/local/affidavit-suspect-in-s-lamar-homicide-tried-to-by-gun-suppressor-before-shooting-spreed>.

¹⁷ Stephen Groves & Trisha Ahmed, *FBI: Minnesota man was making arsenal, revered mass shooters*, AP NEWS (Dec. 16, 2022), <https://apnews.com/article/minnesota-d5004c013cfc4520481f4cad047e9cd9>.

¹⁸ Megan Hickey, *“We did the right thing”*: Manager of Oak Forest gun shop speaks about moments when Keturah Wilson demanded ammunition and was denied, CBS Chicago (Apr. 5, 2022), <https://www.cbsnews.com/chicago/news/manager-of-oak-forest-gun-shop-speaks-about-moments-when-keturah-wilson-demanded-ammunition-and-was-denied/>.

¹⁹ The shooter was arrested a year prior to the shooting and this would have triggered the “red flag” law if it had been applied in this Colorado county. Emma Tucker, *Prior 2021 arrest of Colorado Springs gunman puts spotlight on the politics of Red Flag Laws*, CNN (Nov. 27, 2022), <https://www.cnn.com/2022/11/27/us/colorado-springs-red-flag-gun-law/index.html>.

²⁰ John Bocker, *10 Tips for Firearms Retail Workplace Safety*, NSSF (Nov. 21, 2017), <https://www.nssf.org/articles/10-tips-for-firearms-retail-workplace-safety/>.

industry's efforts in promoting public safety by proactively educating [federal firearms licensees] in identifying and quantifying vulnerabilities and risks associated with the business of firearms commerce and industry-related operations as a whole."²¹ And in the NSSF letter submitted in the DPP Response, NSSF additionally explained that it "matches ATF reward offers" and emphasized the "seminars/videos" it provides to dealers and stores in support of policies to prevent loss and theft. *Supra*, at 16.

NSSF has similarly encouraged "secure firearm storage, providing the means to securely store firearms when not in use, and educating the public about storage options so that firearms are not accessible by those at risk of self-harm or harm of others."²² NSSF's information provided to the DPP specifically touted "Project ChildSafe, a program of the National Shooting Sports Foundation," which promotes firearm safety education and provides firearm safety kits specifically to guard against exactly that potential issue. DPP Response, *supra*, at 17. NSSF's website explains that "[p]rograms promoting safe firearm storage practices work. There is no other way to explain the fact that with over 380 million firearms in the U.S. today, accidents with firearms have dropped to historical lows."²³ NSSF has further stated:

²¹ NSSF, *Operation Secure Store*, <https://operationsecurestore.org>.

²² Joe Bartozzi, *Mental health and firearm ownership*, NSSF (Oct. 6, 2020), <https://www.nssf.org/articles/mental-health-and-firearm-ownership/>.

²³ Steve Sanetti, *The success of safe storage programs, by the numbers*, NSSF (Sept. 11, 2017), <https://www.nssf.org/articles/the-success-of-safe-storage-programs-by-the-numbers/>.

“Proper firearm storage is the #1 way to help prevent accidents, as well as deter thefts. Secure storage can also play a role in helping to prevent access by persons going through a difficult time.”²⁴

NSSF’s declarations of support for the safe storage of firearms are not unique within the industry. The NRA has emphasized in its trainings and blog posts how important it is to “make sure all firearms cannot be reached by anyone who should not have access to them without your consent. Store guns so they are not accessible to unauthorized persons.”²⁵ The NRA further warns that owners should not rely solely on mechanical locking devices to keep firearms stored safely, noting that “these can fail and should not be used as a substitute for safe gun handling and the observance of all gun safety rules. Always remember that, while these devices prevent the weapon from being loaded or fired, they will not stop it from being stolen. That’s why it’s so important to use it in conjunction with a proper storage device.”²⁶ Responsible gun industry members already promote safely securing guns and understand what reasonable measures can be taken to implement such policies—and Appellee NSSF and the NRA agree with these policies.

²⁴ NSSF, *Retailers emphasize gun safety as sales rise and Families Stay Home*, NSSF (Mar. 20, 2020), <https://www.nssf.org/articles/nssf-retailers-emphasize-gun-safety-as-sales-rise-and-families-stay-home/>.

²⁵ NRA, *Eddie Eagle GunSafe® program*, For the Parents | Eddie Eagle GunSafe® Program, <https://eddieeagle.nra.org/parents/>.

²⁶ NewsCore, *How to store guns safely in your home*, Fox News (Feb. 6, 2017), <https://www.foxnews.com/real-estate/how-to-store-guns-safely-in-your-home>.

Similarly, gun industry members have long implemented and encouraged anti-theft and inventory-tracking policies and practices to prevent economic loss and ensure safety. For example, NSSF has emphasized that “[a] few hours of preparation can go a long way toward protecting your business and community, and it can help secure the prosperity of your business once a crisis subsides.”²⁷

The industry has also long benefitted from a guide published by the ATF, “Loss Prevention for Firearms Retailers,” which, in two pages, enumerates a host of best practices to secure gun inventory and prevent theft. Over the two pages, the ATF provides more than thirty suggestions to retailers as to how to “evaluate the security of your premises and help you develop a strategy for preventing losses.”²⁸ These include commonsense items undertaken in any retail enterprise, such as maintaining “timely and accurate acquisition and disposition records,” implementing alarm systems, and educating employees about loss prevention measures.²⁹ These are reasonable measures that any retailer—including gun industry members—can and do implement.

²⁷ NSSF Security and Compliance Team Members, *Protecting Your Firearm Business and the Public During a Crisis* (Mar. 19, 2020), <https://www.nssf.org/articles/protecting-your-firearms-business-and-the-public-during-a-crisis/>.

²⁸ *Id.*

²⁹ Bureau of Alcohol, Tobacco, and Firearms, *Loss Prevention for Firearms Retailers*, <https://www.atf.gov/firearms/docs/guide/loss-prevention-firearms-retailers/download>.

4. NSSF has repeatedly emphasized that gun industry members should comply with State and federal laws.

The landing page for NSSF's website advocates for the lawful sale and use of firearms, stating:

- “NSSF leads the way in advocating for the industry and its business and jobs, keeping guns out of the wrong hands, encouraging enjoyment of recreational shooting and hunting and helping people better understand the industry's lawful products.”
- “We are the firearm industry, and we're dedicated to promoting the safe, responsible use of our products. As a leading authority on gun safety, it's our duty to pass that knowledge on to others.”
- “The firearms industry is committed to the safe, legal, and responsible ownership and use of firearms, and works on a daily basis to stop their criminal misuse. We share the concerns of all Americans, and we are working toward real solutions that help create safer communities.”

Similarly, the NSSF document submitted to the DPP repeatedly underscores its willingness and ability to comply with both federal and state law on numerous topics addressed by the NJ law at issue in this case. *See* DPP Response, *supra*, at 15-18. Thus, any position by NSSF that its members do not understand, or cannot adhere to, the reasonable controls defined in Section 58-34(3)-(4) contradicts NSSF's public statement that it believes it is duty-bound to promote safe and lawful gun sales

and ownership. Indeed, these public statements offer evidence to the contrary: there are reasonable controls already recognized and accepted within the industry. Moreover, responsible gun owners have already implemented these kinds of controls. Section 58-35 simply codifies the actions that good actors are already taking.

5. Section 58-35's requirements support responsible gun industry behavior.

As demonstrated above, there is a core understanding of what constitutes a reasonable control and procedure among gun industry members, and to a large extent that understanding has been developed by the industry itself. In his 25 years inside the industry, Mr. Busse visited hundreds of firearms retailers. In Mr. Busse's experience, the vast majority adhere to the spirit of reasonableness, and many go further and institute their own training and monitoring systems to guard against irresponsible actions. It is Mr. Busse's opinion that the Statute merely codifies what are already accepted as industry best practices.

The Statute as drafted is more effective than an exhaustive list could ever be. First, any exhaustive list would quickly become obsolete, and its requirements vestigial, given ever-changing security and screening methods. Second, any purportedly exhaustive list would risk emboldening bad actors by incentivizing them to seek out technical exceptions that are irresponsible and dangerous. "The vagueness doctrine does not require 'perfect clarity and precise guidance.'" *Ward*

v. Rock Against Racism, 491 U.S. 781, 794 (1989). Regulations “cannot, in reason, define proscribed behavior exhaustively or with consummate precision.” *United States v. Thomas*, 864 F.2d 188, 195 (D.C. Cir. 1988); *Metro. Washington Chapter v. D.C.*, 57 F. Supp. 3d 1, 30 (D.D.C. 2014).

Section 58-35 strikes the proper balance between being adequately prescriptive such that it provides guidance to industry members while avoiding the pitfalls of a putatively exhaustive list that would quickly become both a relic and an invitation to regulatory evasion. Responsible members of the gun industry and responsible gun owners should welcome Section 58-35. It checks bad actors, preventing them from destroying the critical social contract among gun owners, gun industry members, and the communities they live in.

CONCLUSION

For these reasons, and the reasons set forth in the brief filed by the New Jersey Attorney General, the Court should affirm the District Court’s judgment.

Respectfully submitted,

/s/ Jim Davy

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned certifies that this brief contains 3,581 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii), and has been prepared in proportionally spaced typeface using 14-point Times New Roman font. As permitted by Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned has relied upon the word count feature of this word-processing system in preparing this certificate.

I further certify that I am a member in good standing of the bar of the Third Circuit.

Date: April 7, 2023

/s/ Jim Davy

Jim Davy

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2023, an electronic copy of the foregoing was filed with the Clerk of Court for the United States Court of Appeals for the Third Circuit using the appellate CM/ECF system.

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Date: April 7, 2023

/s/ Jim Davy

Jim Davy