



The Role of Litigation in Advocating for Gun Safety

“Show me another issue that 90% of Americans agree on.
Maybe puppies and ice cream.”

**Tom Hagy interviews Adam Skaggs of the Giffords Law Center
for the Emerging Litigation Podcast
September 2022**

Gun deaths make headlines daily. It’s no wonder, really. We’re closing in on 400 million firearms in America alone, a huge percentage of all the privately owned guns in the world. It’s easy to buy them, but that’s not the only problem. We also have ghost guns and kits where you can make them at home. DIY deadly weapons is attractive to people who want to commit crimes since these firearms have no traceable serial numbers and are very easy to buy.

According to a BBC report based on statistics from the Centers for Disease Control, there were 1.5 million gun deaths between 1968 and 2017. That’s more than the number of soldiers killed in every U.S. conflict since the American Revolution. In 2020 there were more than 45,000 gun deaths resulting from homicides, suicides, and accidents, more than any other year on record. It’s a 25% increase over five years prior and a 43% increase over 2010.

What do regular Americans think? A [recent CNN SSRS gun](#) poll revealed that the vast majority of the nation favors universal background checks and believes this would be a big step in preventing mass shootings. In fact, most people were under the impression these requirements were in place in one form or another. Conversely, 30% of people polled believe gun laws won’t make a difference. There’s intense support for regulation, outpacing intense opposition. Like almost anything these days, it breaks along party lines, with Independents managing to land at the precise midpoint between the two major parties.

- 52% of Americans strongly favor stricter gun laws.
- 19% Strongly oppose stricter gun laws.
- 92% of Democrats, 65% of Independents, and 39% of Republicans want stricter gun laws.

A recent Politico poll showed that 73% strongly support universal background checks and another 15% support some lesser level of review.

The point is clear: Americans want tighter gun laws. The Supreme Court didn't exactly get that memo, however, not that public opinion is supposed to be their guide. In its June 23, 2022 ruling in *New York State Rifle & Pistol Association v. Bruen, Superintendent of New York State Police*, the court overturned a New York City ban that had been in place since 1913 back when Woodrow Wilson was president, which didn't allow people to carry guns outside their homes. New York Democratic leaders responded by prohibiting the carry of firearms in many public places that they deem "sensitive places," such as colleges, hospitals, subways, parks, stadiums, and Times Square. On the heels of that ruling, the Supreme Court, through several lower court rulings, continued to uphold gun restrictions, including bans on assault style rifles in Maryland and large capacity magazines in New Jersey and California.

At the federal level, President Biden signed into law the Bipartisan Safer Communities Act. Its bipartisan support was so unusual that the word "bipartisan" is actually in the title. The new law does a lot of good, but not as much as the Democrats and gun safety advocates had hoped. Circling back to the CNN SSRS poll, four in 10 of those polled said the new law doesn't go far enough. Others oppose any and all restrictions. "Shall not be infringed" is the constitutional hook they frequently hang their opposition on.

Noteworthy omissions include:

- Requiring purchasers of semiautomatic weapons to be 21 years old.
- Requiring background checks for private sales.

The Act's authors said the law was designed to keep guns out of the hands of dangerous people. It was a product of compromise and misses some key safeguards, but it did achieve the following:

- Enhances background checks for gun buyers between 18 and 21 years old.
- Incentivizes states to enact red flag laws that enable firearms to be temporarily taken away from people deemed dangerous.
- Provides hundreds of millions of dollars for mental health and school safety.
- Prohibits domestic abusers from buying guns.
- Invests in community policing, funding, hiring and training 100,000 additional police officers.
- Establishes a \$15 billion grant program to cities and states to prevent crime and advance equity through supportive services.
- Invests \$5 billion in community violence intervention programs, including \$3 billion to help communities clear court backlogs and solve murders (and there are a lot of unsolved murders).

States are also acting. California Governor Newsom signed a new gun bill that mimics the Texas anti-abortion law in that it enlists state residents to enforce it. In California, you can now take legal action against those who make, sell, transport, or distribute illegal assault weapons (like 50 caliber rifles and ghost guns). Citizen volunteers can collect at least \$10,000 per weapon plus attorney's fees.

More litigation is a certainty. One of the most high-profile cases followed the Sandy Hook mass shooting of children and teachers. Families of the victims were able to get \$73 million from gunmaker Remington over the manufacture and marketing of its Bushmaster assault weapon, the gun used in the rampage. One of Remington's ads featured a rifle against a plain backdrop and the phrase, "consider your man card reissued." Remington argued there was no evidence to establish that its marketing had anything to do with the shooting.

Fortunately for listeners of the podcast I was lucky to secure someone who knows quite a bit about these issues. Adam Skaggs serves as the Giffords Law Center's Chief Counsel and Policy Director. Previously, he was senior counsel at Every Town for Gun Safety and worked at the Brennan Center for Justice, where he toiled away on election law issues. A former litigator at Paul Weiss, Adam's commentary can be found in Slate, Politico, the Atlantic, and the New York Times, and he has been quoted in the Wall Street Journal and the New York Times, and on Fox News and MSNBC. And now he can boast his appearance on the Emerging Litigation Podcast with host Tom Hagy. Adam graduated summa cum laude from Brooklyn Law School, received his MS in Urban Affairs from Hunter College of the City University of New York. He has a BA which he earned with distinction from Swarthmore College. This is my edited interview with Adam, which you can listen to wherever podcasts are distributed. I hope you find it useful. –Tom Hagy

It's been almost 30 years since we've seen Congress get over the divisive politics surrounding guns and gun safety. That's a significant development ...

Tom: Adam Skaggs, thank you very much for speaking with me today.

Adam: Thanks for having me. It's good to have a chance to talk with you, Tom.

Tom: It seems there has been a shift when it comes to addressing the gun issue in America. The focus is more about gun safety, rather than gun bans, except for assault weapons, or super tight controls. Speaking as a someone who was brought up in Ohio where it seems you're issued shotguns and rifles at birth, a safety focus resonates. Our fathers, typically, would teach us how to use guns safely. Like "don't walk with your finger on the trigger" and "don't point it at anyone" and "always assume it's loaded." Would you say that's an accurate characterization of the shift?

Adam: That's probably accurate. We've just seen a bipartisan group come together and pass significant gun safety legislation in the Congress, including almost two thirds of the Senate. Sixty-five senators came together to endorse a bipartisan act—something that hasn't happened for a generation. It's been almost 30 years since we've seen Congress get over the divisive politics surrounding guns and gun safety. That's a significant development that we need to acknowledge. And I don't think anyone on either side of the issue is 100% satisfied with the package, but I think there's something in there for both sides. It's significant, but it's not going to solve the problem of gun violence entirely. I'm not calling it a game-changer, but it's a significant step forward. We are excited that the logjam has broken to some degree and we may be able to make additional progress.

Tom: Yeah, it gave me some hope in general too. They always joke that if both sides are unhappy, it's a good compromise. But, if they could both be unhappy, but move forward on many subjects, we'd be a lot better off. There won't be perfect solution.

Adam: You can't make a big step without taking some initial little steps, so the legislation is significant. We're also seeing progress at the state level. Hundreds and hundreds of positive gun safety laws passed by state legislatures in the last few years. Obviously, there's also movement in the other direction. A number of states have relaxed rules on things

like carrying guns in public. Unfortunately, we've also seen more people getting shot and killed. So I don't want to paint a picture that's unrealistically rosy. The country is often going in opposite directions. The gun safety issue is one in which we see that. But I don't want to lose the "glass half full" part of the picture, because there is significant progress.

Tom: What do you think about that legislation? What are the pros and cons of it?

Adam: Broadly speaking, it didn't do a lot of the things that we've been advocating for. A huge percentage, depending on the poll, between 85% and 95% of Americans support requiring universal background checks, which means that before you can buy a gun, you got to pass a check. I would challenge you to find a listener or someone out there who doesn't think you should have to pass a background check. This legislation didn't require universal background checks, so there is progress to be made. What this legislation did do is provide significant funding for community violence intervention, for people who are involved on the frontlines of the fight against gun violence who are working with those most likely to be involved in violence, whether it's as a victim or a perpetrator. The act set aside millions of dollars to support that important work and millions of dollars to support states implementing so-called extreme risk laws. These allow a court, when presented with evidence that somebody poses a risk to themselves or to others, to temporarily suspend their access to firearms. There are millions of dollars to implement those laws and for mental health services, particularly in schools. That's all positive.

Tom: What about the adequacy of background checks?

Adam: The legislation authorizes more detailed, heightened background checks for people under the age of 21. So, if you've got an 18-year-old trying to buy an assault weapon, the legislation authorizes doing some additional screening to make sure they don't pose the risk. Look at these teenage mass shooters that we've seen in the past several months in places like Buffalo, Uvalde, and Highland Park, Illinois. Now we'll have the ability to have enhanced background checks for underage purchasers of assault weapons and other firearms.

Tom: What about the so-called "boyfriend loophole"?

Adam: The law closed that loophole to some degree. Somebody who's convicted of domestic violence, if they're not a spouse of or living with you or have a child with the victim and they've been convicted of domestic abuse, up until now they were able to buy firearms. A spouse would be prohibited, but a boyfriend would not. Closing that loophole is a significant development.

A lot of Americans would be surprised to know that there really wasn't a federal gun trafficking crime in place until this law was passed.

Tom: What about private or black-market sales?

Adam: The bill makes it a federal crime to engage in gun trafficking and illegally buying a gun for somebody that you know is prohibited for one reason or another. A lot of Americans would be surprised to know that there really wasn't a federal gun trafficking crime in place until this law was passed. In all these ways the law improves the picture and helps us move forward. No one's saying we finished the job or that this is going to solve gun violence. America has a gun

violence epidemic unlike any of our peer countries. There's a ton of work to do. We need to use every tool that we can to address it and mitigate this problem.

Tom: It's been a while since gun laws were changed or enacted, right?

Adam: Yes. The fact that we've made *any* step forward, even an incremental one, is significant. It's literally been since the 90s that Congress has been able to act on this. It just shows that the public has had enough. They're demanding that their leaders take action to respond to this ongoing crisis. It's not a coincidence that this logjam has been broken. It's not a coincidence that there are Republicans who came forward to support this legislation. They didn't do so in a vacuum. They did it because they went home, they talked to their constituents after these horrific mass shootings – school children being gunned down in their classrooms – and they heard a uniform, non-party line call for action from their constituents. That's what got us to where we are. What we've seen recently will be a foundation to continue building an appropriate response to the gun violence crisis.

Tom: That's a good lesson in general. Making a lot of noise *actually does matter* and you can do that in more ways than just voting (although that's critical). Pressure works. Looking at universal background checks, what's not universal about them now? For instance, I went to buy a shotgun to take my nephew skeet shooting, and I had a background check. So where is it not universal?

Adam: What people don't realize is that in most states, while it's true that if you go to a gun store, a federally licensed gun dealer, your brick-and-mortar gun shop, you're going to have to take a background check. That's how most people buy guns. So most people assume that you're going to have to take a background check. But in most states if you buy a gun from a private citizen, not a store, they don't have to run a background check. In most of the country if you are somebody who has a felony conviction, if you are someone who's prohibited from having a gun because of domestic violence, or because you've been committed to a mental hospital, if you went to the store, and you filled out the paperwork and you tried to buy a gun, you'd be prohibited. But if you go to an internet website and see somebody trying to sell a gun and you meet them in a parking lot, they will sell you that gun without any background check whatsoever. Those private sales are the ones that don't require a background check.

Tom: What are you hoping to achieve in private sales?

Adam: What we advocate for is this: If you're a private seller and you have some guns in your collection you want to sell, conduct the sale at a dealer and run a background check through a dealer on the stranger that you're selling the gun to. Now, if you're selling a gun to your brother or sister, someone you know well, we're not trying to make people like that run a background check. Another exception would be when a parent gifts their child their first rifle. What we are saying is, if you meet a stranger on an internet website, or through a classified ad, and you don't know anything about this person or their background, make sure that they pass a background check. Americans agree with that, so I don't think this is anything radical. I don't think this is anything that interferes with anybody's rights. It's commonsense to make sure people that intend to do harm, people with criminal intentions, don't have an easy way to get their hands on a firearm.

Tom: After requiring private sellers to have a check run on unknown buyers, assuming you accomplish that, what would be the next couple of realistic steps that would have an impact?

Adam: One of the pieces of this legislation that Congress just passed is intended to support states that are implementing extreme-risk laws. These are laws that, if you have a family member, or if law enforcement becomes

aware of somebody who's threatening to shoot up a school or threatening to commit workplace violence or somebody who's talking about suicide, you can go to a court and say: "Look, here are the social media postings, here are the threats this person made to harm themselves or to hurt their schoolmates" or whatever it may be, and you can get a temporary order. This isn't going to prevent them from having a firearm for their whole life. This is just going to be for the day, the issue, or the crisis that something's going through. And you can get a court order that says, "Look, until you can resolve your, whatever you're going through, you're not going to be able to buy a firearm or legally possess a firearm."

These kinds of tools are tailored to the situation rather than acting as lifetime prohibitions on anyone having guns. When there's clear evidence that somebody is posing a threat, you can temporarily make sure that they don't have a firearm. The mass shootings we've seen lately are young people, 18-, 19-, 20-years-olds committing these crimes. Imagine if you could give a person like that a year, give a person like that five years, and get them some assistance and some help. Maybe they're not as at risk of committing the horrific acts that we've seen committed in recent months. Those are the kinds of tools we support. These laws have been passed in both red states and blue states. They've been signed by Republican governors and Democratic governors. It's the type of thing that shows this issue doesn't have to be politically divisive. On every level, we can reach consensus and can come together on some of the most basic public safety measures. Extreme risk laws are one area where I think we have and can continue to show some bipartisan progress.

Tom: I want to get your insights on the role of litigation. But before I do that, I just want to say you sound extremely reasonable. I'm out there on social media a lot and posts from all side. It would seem people on both sides of the issue would find you extremely reasonable.

Adam: I guess I'll just say thank you for that. This is an issue that a lot of people think is going to be divisive, that people are never going to agree on anything. I think that's wrong. People are going to disagree on the margins. And they're going to fight about the extreme left or the extreme right, taking positions that are out of step with the majority of the country. But these basic ideas, like people who have demonstrated record of threatening to cause damage to others, people who have lengthy criminal records and have been involved in violent crime, maybe we should keep them from having deadly weapons.

It's just time for our elected officials to stop listening to extremists.

Tom: These don't seem like radical ideas.

Adam: These are not controversial positions. I mean, show me another issue that 90% of Americans agree on. Maybe puppies and ice cream are about the only thing that 90% of people also favor. There's a huge swath of the public that agrees with some basic measures. And frankly, it's just time for our elected officials to stop listening to extremists. They need to stop listening to the gun lobby and the extremists that would say that any gun law whatsoever violates some kind of basic freedom, and to just start to put into law what these vast majorities of Americans agree with.

Tom: Well, my personal commentary is that it has more to do with riling up voters than it does with anything else. What do you think the role of litigation plays in this?

Adam: It plays more than two roles, but two are worth emphasizing.

The first is to address extremists who challenge any gun law as if it's an infringement of basic freedoms and constitutional rights. These laws have enormous public support, but when we are finally able to get them passed, often not an hour or two go by before they're challenged by an extremist political movement. The extremists argue that any gun law is one law too many, whether it's raising the minimum age to buy an assault rifle to 21, restrictions on particular types of firearms, or restrictions on carrying guns in certain public spaces. There are those of us out there who think you shouldn't be able to buy a military weapon of war before you can legally buy a six pack of beer. By and large courts have been supportive of the ability of democratically elected lawmakers to enact gun safety laws. Most of these overreaching challenges to gun safety laws have failed in the past, but we have an extreme ultra conservative super majority on the Supreme Court which just recently struck down a more than 100-year-old restriction on carrying guns in public in New York and basically said more people have a right to carry guns in public. We're going to see more people – whether it's driving down the highway or driving down Main Street or walking through a shopping mall – carrying guns. The Supreme Court has said, nope, we can't restrict carrying guns in public. That's going to pose some challenges.

The second role of litigation is to mitigate the costs of gun violence. For instance, the Sandy Hook families brought a lawsuit against Bushmaster, the company that sold the assault weapon that was used in that massacre, and held them accountable, reaching a record-breaking settlement with Bushmaster's insurance companies. We have seen in recent months and years an attempt to hold gun companies – those engaged in marketing militaristic weapons to civilians, with a highly questionable marketing and advertising approach – accountable for the damage that their products can cause. I think we're going to be seeing more of this.

Tom: What kind of litigation are you seeing?

Adam: We've seen lawsuits against the most irresponsible members of the firearms industry. My organization, the Giffords Law Center, is involved in various lawsuits against so-called ghost gun companies. We've just seen a couple of major lawsuits in New York against companies that sell essentially do-it-yourself firearms where you get kits and build your own firearm. At the end of the day, after sometimes as little as 15 minutes putting these together, they function just the same as a Glock pistol that you buy only after you pass a background check. But they don't have serial numbers and they don't require background checks. These irresponsible companies are profiting from marketing practices that are distinctly designed to sell guns to people who can't legally purchase them. We have seen a wave of litigation against these irresponsible actors in the firearms industry. We are going to see more of that as the industry gets bolder and bolder and defies what Americans really expect of responsible economic actors. We will see more litigation to hold them accountable. And that's a good thing.

Tom: What cases are you watching that we should be aware of?

Adam: There are a number of cases. After the Supreme Court decision there has been a tsunami of cases being litigated in the courts. They're doing things like challenging minimum age laws, challenging restrictions on assault weapons, challenging access to kind of large capacity magazines that study after study has shown increase the casualty counts when we have these mass shooting incidents. So there's a huge volume of litigation on that front.

But there's also litigation on the side of gun safety. In the wake of these horrific mass shootings in Buffalo, New York, in Uvalde, Texas and in Highland Park, Illinois, the families who have lost loved ones and survivors are going to be looking to hold accountable not just the shooters, but the industry that provided the shooters with the tools to commit those atrocities.

The security guard was outgunned by an assailant who was equipped for a battlefield in Iraq or Afghanistan.

Tom: Has there been a shift in what gun law opponents are seeking?

Adam: In recent years the industry has been moving away from things like selling handguns for self-defense or rifles and shotguns for hunting and sport purposes. It's really moved into an aggressive space of selling tactical combat-style, not only firearms, but tactical gear, like body armor and combat-style helmets. So when you see someone like the shooter in Buffalo, who encountered an armed guard – a “good guy with a gun trying to stop a bad guy with a gun,” to use the NRA’s words – when the bad guy with a gun is equipped with body armor, military-style tactical gear, and a combat helmet, that complicates things. It was a security guard outgunned by an assailant who was equipped for a battlefield in Iraq or Afghanistan. And the guard was killed. Go back 15 years to look at that kind of body armor at a trade show sponsored by the industry. You had to either be law enforcement or military and you had to have ID to get into that section of the gun show. Today, the company is supplying that kind of tactical gear dead center at gun shows. You don't have to have any kind of law enforcement background to buy that equipment. It’s not a surprise that people intent on doing harm are going to equip themselves. It's not your grandfather's “good guy with a gun” anymore because the only good guy with a gun that's equipped to stop somebody intent on doing harm can’t stop someone as easily if they have a more dangerous gun and tactical gear. The industry has sunk to new lows in terms of seeking profit and is selling gear to your average citizen that really has no place in a civilized society other than on a battlefield.

Tom: I want to get this out to as many lawyers as I can. If lawyers wanted to work with you or address these issues, what would you tell them about resources or support that are available?

Adam: There are a few organizations that have lawyers on staff, legal teams like Giffords Law Center that are trying to do this work, whether it's defending laws or challenging irresponsible practices on the part of the industry. But tell lawyers in private practice to partner with organizations like [Giffords Law Center](#). We have a broad network of pro bono volunteers that work with us, whether it's just researching gun safety laws and trying to figure out the kind of legislation we need to pass, or helping us defend commonsense gun safety laws from these extremist challenges, or actually bringing lawsuits to challenge ghosts gun sellers or people selling tactical combat body armor to civilians. There's a role for private lawyers, and I would encourage them to reach out to organizations like Giffords Law Center to find out how they can get involved.

Tom Hagy

We'll make sure we get the word out. So, Adam, thank you very much for speaking with me about this today.

Adam Skaggs

It's been a pleasure. I really appreciate the opportunity.



This article is based on Episode 44 of the Emerging Litigation Podcast published on July 26, 2022, titled “The Role of Litigation in Advocating for Gun Safety with Adam Skaggs.” It is not a precise transcript; it has been liberally edited for clarity and readability. You can listen to this and all episodes at [LitigationConferences.com](https://www.litigationconferences.com). To contact the Giffords Law Center or to learn more about the good work they are doing, visit them at [Giffords.org](https://www.giffords.org). To contact Tom Hagy write to Editor@LitigationConferences.com. The podcast is the audio companion to the Journal on Emerging Issues in Litigation a collaborative project between HB Litigation and the Fastcase legal research family, which includes Full Court Press, Law Street Media, and Docket Alarm. The podcast itself is a joint effort between HB and our friends at Law Street Media. © Copyright 2022