



This opinion editorial appeared in the Daily Journal on August 8, 2005.

Legal Immunity for Gun Industry Is Completely Unjustified

by Juliet Leftwich

On July 29, the U.S. Senate demonstrated its allegiance to the National Rifle Association by passing legislation to provide unprecedented legal immunity to the gun industry. The bill prohibits, with certain narrow exceptions, civil actions and administrative proceedings against manufacturers and sellers of firearms and ammunition and requires the immediate dismissal of most lawsuits pending against the industry nationwide.

The Bush administration strongly supports the legislation, introduced by NRA board member Sen. Larry Craig, R-Idaho. The House version, HR800, is expected to pass easily.

The Senate's action on the immunity bill has paved the way for Congress to alter fundamental principles of tort law radically. Under those principles, individuals and businesses have a duty to use reasonable care to avoid foreseeable injury to others. When that duty has been breached, an injured party may bring an action for damages or other relief against the individual or business. The judicial system determines whether relief should be granted.

The Senate, however, has declared that these long-standing legal principles should exempt one industry - an industry that produces a product that kills or injures 100,000 Americans each year. Such special legal protection for the gun industry is completely unjustified.

Proponents of the immunity bill argue that Congress needs to protect the industry from "frivolous" lawsuits. However, no evidence of such lawsuits has been provided. On the contrary, settlements reached in several recent actions have shown that such actions are meritorious and an effective way to hold negligent gun manufacturers and sellers accountable for their wrongful conduct:

- In June 2004, a West Virginia gun dealer agreed to pay \$1 million to two New Jersey police officers who were shot with a trafficked gun negligently sold by the dealer to a "straw" purchaser who bought the weapon for a convicted felon prohibited from purchasing firearms.
- In September 2004, families of the Washington, D.C.-area sniper shootings entered into a \$2.5 million settlement with Bull's Eye Shooters Supply, the dealer who "lost" the sniper's assault rifle (along with 200 other guns), and Bushmaster Firearms, manufacturer of the weapon.
- In August 2003, 12 California local governments entered into a settlement agreement with two major gun dealers and three wholesale gun distributors, requiring them to reform their business practices to stem the flow of guns to criminals. The local governments had not sought monetary damages.

Each of these actions would have been barred by the immunity bill.

The state of California has firsthand experience with the devastating effect of laws immunizing the gun industry. In 2001, the state Supreme Court held that an immunity statute adopted in 1983 shielded an assault weapons manufacturer, Navegar Inc., from a lawsuit brought by the victims of the infamous 101 California Street massacre in San Francisco.

In 1999, the 1st District Court of Appeal issued a decision allowing the negligence claim against Navegar to go forward. The court rejected Navegar's argument that it should not be held liable for criminal use of the weapons. The court found that such use was foreseeable in light of the company's advertising, which boasted that the gun's surface had "excellent resistance to fingerprints" and called attention to other features that would be of primary interest to criminals (such as a threaded barrel to accommodate silencers and flash suppressors).

The court also found that Navegar's officers knew that the weapon's high firepower, low price and concealability made it the "weapon of choice" for certain criminals.

Despite these facts, the state Supreme Court reversed the Court of Appeal decision, holding that the state's immunity statute provided a complete defense to the gun maker.

Although the court expressed its sympathy to the 101 California Street victims, it stated that any change in the law must come from the Legislature. That change came in 2002, when the Legislature repealed the state's immunity statute so that the gun industry would be held to the same legal standards as any other industry. The federal immunity bill, however, would pre-empt the action of California and every other state, shielding gun makers and sellers from civil liability nationwide.

Passage of the federal immunity legislation is particularly egregious in light of the fact that the federal government has authority neither to set safety standards for guns manufactured in this country nor to order recalls of guns found to be defective.

Thanks to the unparalleled power of the gun lobby, the Consumer Product Safety Act, adopted in 1972, exempts guns and ammunition. (The Gun Control Act of 1968 gave the Bureau of Alcohol, Tobacco and Firearms authority to block the importation of firearms, and the agency has used that authority to keep defectively designed foreign weapons out of the country. Ironically, no federal agency has similar authority with respect to domestically manufactured firearms.)

Under current law, those injured by defectively designed guns may sue over their injuries. Once the immunity bill is enacted, however, gun manufacturers and sellers will be immune from such suits except in the narrowest of circumstances. For example, a gun maker could be immune from liability if a child accidentally shot another child with a gun that appeared to be unloaded, even if the shooting was foreseeable and could have been prevented by the addition of a basic safety feature.

The Senate's passage of this blatant special-interest legislation, which follows less than a year after the failure of Congress and Bush to renew the federal assault-weapon ban, demonstrates once again that our leaders in Washington are more interested in granting favors to the NRA than

in protecting the health and safety of the American public.

Juliet Leftwich is senior counsel of Legal Community Against Violence, a public-interest law center formed after the 1993 assault-weapon massacre at 101 California Street in San Francisco. The group is dedicated to preventing gun violence.