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Nuisance Lawsuits and Assault Weapons

S. 1805, the bill to ban nuisance lawsuits against gun makers, distributors, and retailers, died on March 2. NRA, other gun rights groups, and ordinary gun rights activists like you and me killed it. Unfortunately, we didn't have any choice; the Senate had attached a renewal of the 1994 assault weapons ban to it.

Journalists across America portrayed the death of S. 1805 as a great victory for the NRA, and a sign of NRA's continuing dangerous control of the political process. As an example, the *Atlanta Journal-Constitution* editorial observed, "Those who say that negotiating with the gun lobby is like making a deal with the devil owe the archfiend an apology.... As they have demonstrated, they want that immunity only on their terms, with no compromise and no tolerance for any effort that might reduce the toll in lost and broken lives attributed to guns. And while that absolutist approach is troubling, the docile willingness of so many in Congress to accommodate that extremism is more troubling still." The editorial went on to falsely claim that S. 1805 "would make the gun industry immune to civil lawsuits."¹

As is usually the case, when mainstream journalists write about gun control (or almost anything else) they get the facts wrong, and their interpretation of these facts is also wildly wrong. As regular readers know, S. 1805 did not give immunity from civil lawsuits, but only from a class of lawsuits that seek to hold manufacturers, distributors, and dealers responsible for crimes committed with legally sold guns. Traditional product

¹ "Pry Congress from cold, deadly clutch of the NRA," *Atlanta Journal-Constitution*, March 5, 2004, available at <http://www.ajc.com/opinion/content/opinion/0304a/05guns.html>, last accessed March 14, 2004.

liability suits for defective guns would not have been affected. An injured party could still sue a dealer who violated existing gun control laws, such as a “straw man” sale, or failing to perform required background checks. Bull’s Eye Shooters Supply, a Washington State retailer who somehow “lost” hundreds of guns—including the rifle used in the DC sniper shooting—would still have been at risk of suit. The manufacturer, who in good faith sold the rifle to a licensed dealer, and had no control or knowledge of Bull’s Eye’s *at least* careless business practices, would not have been at risk.

Killing S. 1805 was terribly important to the gun control groups, because they know that these nuisance lawsuits—which the courts have overwhelmingly rejected—are the only realistic chance that they have to ban guns. The gun control groups consider the nuisance lawsuits so important that they attached renewal of the 1994 federal assault weapons law to S. 1805 in a last, desperate attempt to kill it. Make no mistake about this; attaching the renewal to S. 1805 was not a sign of the strength of the gun banners, but of their weakness. They could *not* stop S. 1805, but they could feed it a “poison pill.”

Imagine that you are a gun prohibitionist, and think of the 1994 assault weapons ban as your ten-year old son. He’s not too bright; you had high hopes for him at birth, but it is apparent that he was born with some serious mental deficiencies, and he has an incurable disease; he’s likely to die in September. You have a younger son, too, not quite six years old. The younger son doesn’t seem all that bright, either, but you still have some hopes for him to develop. You have to make *Sophie’s Choice*: which child will die, so that the other may live? The gun prohibitionists decided, when they attached the assault weapons ban renewal to S. 1805, that the assault weapons ban was the ten-year old that they were willing to sacrifice, in the hopes of keeping the six-year old alive.

The prohibitionists invested enormous political capital on the assault weapons ban renewal; Senators John Kerry and John Edwards actually took time off from campaigning for President to return to the Senate, and do what the taxpayers pay them to do: vote. Both Democratic candidates for President, of course, voted for the assault weapons ban renewal, and this is why it passed 52-47. Without the votes of Kerry and Edwards, S. 1805 would have continued forward without the ban, and would be on its way to becoming law. Make no mistake about it: for all the talk that the Democratic Party has been making about “support for gun rights,” when push came to shove, the two leading contenders, who have missed more than 40% of Senate votes this term, managed to show up—and vote against the interests of gun owners.²

Where do we go from here? The gun banners know that they have no realistic chance of getting the assault weapon ban renewal through Congress, except attached to some other bill. While a majority of Americans, out of ignorance, support the assault weapon ban, there are few that have any enthusiasm for it—including, oddly enough, some of the gun banners. National Public Radio’s March 11th coverage of the issue included this remarkable statement by Tom Diaz of the Violence Policy Center, who has played a major part in the assault weapon ban: “If the existing assault weapons ban expires, I personally do not believe it will make one whit of difference one way or another in terms of our objective, which is reducing death and injury and getting a particularly lethal class of firearms off the streets.” Diaz went on to complain that the

² Michael Williams, “Senate Voting Records,” <http://www.mwilliams.info/archives/001349.php>, last accessed March 14, 2004.

problem was the “copycat” assault weapons.³ Of course, that’s what NRA pointed out in 1994—a ban by brand and model would be easily circumvented, and a ban by functional description would include guns owned by tens of millions of Americans.

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³ Larry Abrahamson, “Hill Battle Brews over Assault Weapons Ban,” National Public Radio, *Morning Edition*, March 11, 2004, <http://www.npr.org/features/feature.php?wfId=1760128>, last accessed March 14, 2004.