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Two Important Bills

Congress is considering two very important bills as I write this column. One may already be on the President's desk by the time you read this; the other—with any luck, and a little work by you—won't ever get there.

The first bill is the Protection of Lawful Commerce in Arms Act. In April, the House of Representatives passed this by a wide margin: 285-140. What will this law do, if signed into law? It will prohibit lawsuits against gun manufacturers, distributors, dealers, and importers of firearms if the gun worked as designed. This is designed specifically to stop the absurd lawsuits by which the ambulance chasers are trying to bleed the gun industry dry. The gun industry has won the vast majority of these suits, either at trial, or on appeal. As a previous column by me pointed out, even courts in California and New York won't go along with this nonsense. Winning, however, isn't cheap—and the temptation of gun makers to give in, can be strong. Just look at what happened to Smith & Wesson a few years ago.

Unsurprisingly, there is a lot of whining from the usual suspects about this bill. The *Washington Post's* editorial of April 25, while acknowledging that most of these lawsuits “deserve to fail,” complain that the law is too broad. Should a “gun dealer who sells 50 handguns to the same person be immune from a negligence claim when that person turns around and sells one of those guns to a criminal who kills someone?”¹ This is a great strawman argument—there must be some gun dealer somewhere that has done

¹ “Tort Reform Gunned Down,” *Washington Post*, April 25, 2003, A22.

this, but something tells me if such a case existed, the antigun lawyers would have already filed such a suit. I haven't seen any mention of it.

That same editorial asks, "Should a gun maker that designs and markets products with few or no lawful uses be immune from suit when its guns are used illicitly?" *No* lawful uses? I've yet to see such a gun. Ah, but there's the wiggle room: "few... lawful uses." Yes, they want to leave the door open for lawsuits against "assault weapon" makers—and they don't mean the Intratec DC9—they mean Bushmaster and other makers of tactical rifles used in competition. An article about this same topic in the *Denver Post* opened with a horrifying description of the death of James Buchanan, killed by the Washington DC sniper last year—and explained that this proposed law would ban a suit against the gun store that appears to have "lost track" of the Bushmaster—along with 228 other guns over a three year period.²

Now, I am prepared to believe that an employee might have been ripping off the gun store. I can see how a few guns might disappear. But 228 guns? Even at an average wholesale price of \$300 (a fraction of the cost of the Bushmaster used in the DC murders), that's \$60,000 or more of merchandise. I think I would notice something like that if I were running a gun store. If there isn't a *criminal* case to be made against either the gun store's owner, or one of his employees, I would be *very* surprised. At a minimum, if that many guns have "disappeared," I'm surprised that BATF hasn't pulled the store's license. I can feel a certain grudging agreement that perhaps a civil suit against the gun store is appropriate, if nothing else, to find out how so many guns left the store without paperwork.

² Anne C. Mulkern, "NRA aims for ban on lawsuits," *Denver Post*, May 4, 2003.

But here's the rub, and part of why I can't take seriously this criticism of this proposed law: "Buchanan's family and other relatives of those killed in the sniper attacks have filed lawsuits against the manufacturer and dealer that furnished the Bushmaster rifle police say was used in the killings."³ The *manufacturer* is going to be driven out of business by this lawsuit—and the manufacturer did nothing wrong. Bushmaster sold the gun to a federally licensed dealer. Holding the maker responsible for a gun store's failure to exercise appropriate care of inventory is absurd. If the cost of protecting manufacturers from this sort of extortion is some limits on suits against irresponsible retailers, I guess it's a price that I am willing to pay. The greed of the ambulance chasers who started these lawsuits against the gun industry may cause an overreaction. Mr. Buchanan's next of kin will have no one to blame for this but the ambulance chasers.

The Senate is going to be a tougher place for the Protection of Lawful Commerce in Arms Act. At first glance, it would seem to be an easy win: it has 52 co-sponsors in the Senate already. That means more than half of the Senate's voting members have already expressed their support! The Democratic *leadership* knows, however, that with the rapid change in attitudes about guns in America since September 11th, these lawsuits are their only realistic way to ban guns—by bankrupting the industry. (I emphasize the Democratic *leadership* because among the co-sponsors of this bill include several Democratic senators from Midwestern and Western states: Ben Nelson of Nebraska, Max Baucus of Montana, and Tim Johnson of South Dakota, just to name a few.) If this bill hasn't already passed the Senate by the time you read this—make a call to your U.S.

³ *Ibid.*

Senators, and let them know that this is important—pass it, and put it on President Bush’s desk for his signature.

There’s another bill in the Congress that is already demonstrating President Bush’s cunning—and the naivete of a lot of gun rights activists. You may recall that the federal assault weapons law passed in 1994 had a sunset provision. Unless it is renewed next year, on September 13, 2004, it goes away! Gun makers can resume putting bayonet lugs on their AR-15s (doubtless bringing back the massed bayonet charges that formed such a large part of urban crime in the early 1990s), and resume manufacturing of 20 and 30 round magazines.

President Bush said during the 2000 campaign that he supported the assault weapons law. Most recently, he has said that he would sign a renewal if it came to his desk. A lot of gun rights activists—including a fair number of intelligent people that I know—just went off the deep end about this, swearing to vote against him in 2004. Bush’s cunning—already well demonstrated in the last two years of outmaneuvering Democrats in Congress and totalitarian thugs in the Middle East—is again in play.

As a recent Baltimore *Sun* editorial pointed out, “Mr. Bush has said he would sign an extension of the ban, but would not move to tighten loopholes that allow many high-powered, military-type rifles to remain legal.... Mr. Bush is not expected to actually lobby for extension of the ban, which probably dooms its chances in a Republican-led Congress where Democrats, too, quiver in fear of the politically lethal gun lobby.”⁴

President Bush knows that the assault weapon ban is very popular in America—doubtless for the same reason that uneducated people in the medieval period

⁴ “Taking Cover,” Baltimore *Sun*, May 12, 2003.

overwhelmingly believed that the Earth was flat. Attempting to educate the masses about this is a losing proposition. The assault weapon ban is so central to the beliefs of the mass media that any serious attempt at correcting the misimpression that these are automatic weapons will simply not be tolerated. You might as well argue to a medieval peasant that the Earth was round.

On the other hand, Bush can say, “I’ll sign a renewal,” and know that there is no way that such a bill will make it to his desk. It’s like promising to take your aunt and uncle the missionaries out to a fancy restaurant the next time you are passing through Timbuktu. It costs you nothing; makes you look like a good-hearted sort (assuming your aunt and uncle aren’t any brighter than the average voter); and costs *nothing*. Of course, this also means that we have to make sure that such a renewal doesn’t make it out of the House of Representatives—so get ready to let your Congressman know that you don’t want the renewal passed.

Fortunately, we have some unexpected allies on this in Congress: Senator Feinstein (D-CA), and Rep. Carolyn McCarthy (D-NY). Surprised? Well, I think they would be surprised as well. You see, they have introduced competing assault weapon ban bills. Feinstein is pushing a bill to make the assault weapon ban permanent—no changes to the banned guns and magazines. Carolyn McCarthy is pushing a bill to expand the definition of an “assault weapon” so that it includes a big chunk of the semiautomatic guns in the U.S.⁵ With a little luck, McCarthy’s bill will generate so much upset from Americans who “don’t think a gun owner needs an assault weapon” that

⁵ “Feinstein pushes Bush on guns,” *San Francisco Chronicle*, May 9, 2003, A1.

Congress will decide to put this entire hot potato back in the fire—and watch the current assault weapons law expire on September 13, 2004.

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