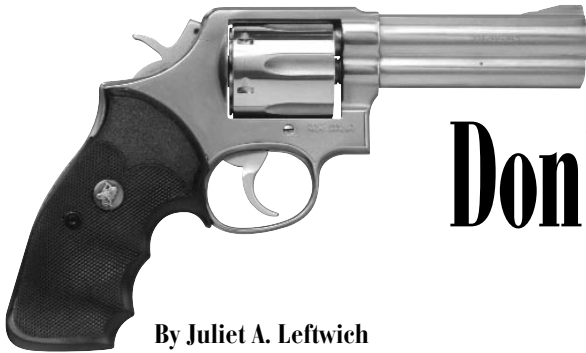


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By Juliet A. Leftwich

Don't give gun makers a break

While most of us are transfixed on the events unfolding in Iraq, the National Rifle Association is quietly pushing legislation through Congress to provide unprecedented legal protection to the domestic gun industry.

On April 9, the House of Representatives passed HR 1036, a bill to broadly prohibit most civil lawsuits against gun manufacturers, distributors, trade associations and dealers. The legislation would preclude actions in state, as well as federal, court and require the immediate dismissal of most lawsuits pending against the industry nationwide. Sen. Larry Craig, R-Idaho, a former NRA board member, has introduced an identical bill, SB 659, in the Senate.

Why should we care? Because it is irrational and irresponsible to immunize a particular industry — especially the gun industry — from the legal consequences of its reckless behavior. Guns kill almost 29,000 Americans each year. Given this horrifying statistic, one would expect Congress to support stronger federal regulation of the gun industry. Not so. In fact, thanks to the unparalleled political power of the NRA, the gun industry has long been afforded special treatment by the federal government. For example, guns are exempt from federal consumer product safety laws. Accordingly, the federal government has no legal authority to set standards for gun manufacturers or order a recall of a gun that has been found to be defective. (Tobacco is the only other product exempt from consumer product safety laws.)

In addition, despite the recent emphasis on homeland security, the federal government allocates astoundingly few resources to the oversight of firearms dealers. Fewer than 500 inspectors are responsible for monitoring more than 104,000 federally licensed firearms dealers, and for enforcing federal explosives laws, nationwide. Given this fact, it is no surprise that gun dealers frequently fail to comply with federal firearms laws and allow guns to end up in the hands of criminals.

The federal immunity legislation would make a bad situation worse by taking away the only tool available to the American public to ensure responsible behavior by the gun industry — litigation. The legislation would shield the industry from liability whenever a person is harmed by the criminal act or misuse of a gun, even if the criminal act or misuse is

a foreseeable result of the negligent behavior of a member of the industry. So, for example, a gun maker would 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 basic safety features. Similarly, a gun dealer would be immune from liability if he or she negligently sold a gun to a criminal and that gun was used to kill an innocent third party.

Gun industry immunity laws alter fundamental principles of tort law. Pursuant to those longstanding principles, individuals and businesses have a societal duty to use due care to avoid foreseeable injury to others. When that duty has been breached, the injured party has the legal right to file a lawsuit seeking damages against the individual or business in question. The threat of lawsuits against the manufacturers and sellers of consumer products — from automobiles to aspirin and teddy bears — provides an incentive to those parties to act responsibly.

California has experience with the devastating impact of statutes immunizing the gun industry. In 2001, the California Supreme Court held that an immunity statute adopted in 1983 shielded an assault weapons manufacturer from a lawsuit brought by the victims of the infamous 101 California St. massacre in San Francisco, even though the gun maker's advertising 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.

In 2002, the California Legislature repealed the state's immunity statute so that the gun industry would be held to the same product liability standards as any other industry. The Legislature's action would be nullified, however, by passage of the federal immunity bills now pending in Congress.

Our country's legal system isn't perfect, but it works. There is simply no reason to change the rules with respect to an industry that is responsible for so much death and destruction.

Juliet A. Leftwich is managing attorney of Legal Community Against Violence, an organization founded in the aftermath of the 101 California St. massacre. LCAV and its project, the Firearms Law Center (www.firearmslawcenter.org), provide education about federal, state and local gun laws.