

Gun Control And The New Federal Law Shielding Gun Manufacturers From Lawsuits

by {ga=ddean}

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When President George W. Bush signed the newly-passed [Protection of Lawful Commerce in Arms Act](#) (in pdf format) into law on October 26th, it marked a major victory for the National Rifle Association and gun manufacturers, who have been pushing for the legislation for years. It also marked a tremendous defeat for New York City and the many other cities that have pending lawsuits against the gun industry.

The law is specifically designed to end those lawsuits. It specifically exempts firearm manufacturers, distributors, dealers, and importers from civil liability for injuries and deaths caused by their products (it was quite a week for shielding big business, as the House of Representatives also passed the so-called [“Cheeseburger Bill,”](#) which prohibits lawsuits against fast food restaurants for causing obesity). While the law allows lawsuits in the case of a defective gun or criminal conduct by a manufacturer or dealer, it prohibits lawsuits of the kind filed by numerous individuals and municipalities, including New York City, and calls for any pending suits to be dismissed immediately.

The Protection of Lawful Commerce in Arms Act is also likely to frustrate local efforts to control the flow of guns into New York City. The City Council [passed a law](#) in January (in pdf format) that [allows victims of gun violence to sue gun manufacturers](#) and dealers who have not adopted strict standards to prevent illegal trafficking. Manufacturers and dealers that abide by those standards are exempt from being sued. While the city’s lawyers will likely argue otherwise, it is likely that the new federal law effectively overturns the city’s law.

Supporters of shielding the gun industry from liability argue that it is necessary to protect firearms manufacturers from [“frivolous”](#) and [“reckless”](#) lawsuits designed to bankrupt the gun industry. Opponents, on the other hand, argue that [the ability to sue is necessary](#) to hold gun manufacturers and dealers responsible for negligent practices that result in shooting deaths.

A Brief Issue In The Mayoral Campaign

Fallout from the law’s passage even entered into the mayoral campaign. Fernando Ferrer criticized Mayor Michael Bloomberg’s contributions to six members of Congress who voted to pass the bill, and suggested that the mayor had “joined the gun lobby.” In criticizing the law and the mayor, Ferrer pointed out that [shootings have increased by six percent this year](#) over the

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same period in 2004(in pdf format), even as crime in the city has decreased overall. Bloomberg, who had lobbied against the new law, released a statement after the bill passed, calling it [“a disgraceful piece of legislation”](#) that “will make it easier for criminals to get firearms and put our law enforcement officers at greater risk.”

Are the Lawsuits Effective in Preventing Gun Violence?

At best, it remains an open question whether the recent spate of lawsuits is an effective way to deter gun crime. [Opponents of gun control argue](#) that there is no evidence to suggest that gun control reduces violent crime, and that it [may in fact increase crime by taking guns out of the hands of law-abiding citizens](#). . Lawsuits, they say, are an attempt by gun control advocates to bankrupt gun manufacturers.

However, the lawsuits that have been filed against the gun industry in recent years have been focused not on gun sales to law abiding citizens, but against what the suits claim is [negligent behavior by gun manufacturers](#) and dealers that allows guns to wind up in the hands of criminals. Evidence suggests that [a small number of dealers are responsible](#) for selling a majority of the guns used in crimes.

New York City’s lawsuit attempted to show that many of the guns used in crimes here in New York are originally sold in states with weaker gun control laws and brought to the city illegally. For example, the New York Post reported on October 15th that authorities had arrested a man suspected of bringing as many as 75 illegal firearms into New York City in less than a year. The suspect was allegedly part of a ring that purchased the guns in Virginia and sold them on the streets of New York. Virginia recently weakened a state law limiting the number of handguns a single individual could purchase in a month, a law initially passed in an attempt to curb gun smuggling.

The theory behind the litigation is similar to efforts in recent decades to use lawsuits to improve the safety of a number of consumer goods, from automobiles to children’s toys. Individuals and cities filing these lawsuits hope to give gun manufacturers and dealers the financial incentive to do what they can to prevent this illegal gun trafficking.

Is the Liability Shield Necessary?

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While proponents of shielding gun manufacturers from lawsuits argue that such a measure is needed to discourage frivolous lawsuits, the irony is that the legal system has been doing a good job, in New York City and elsewhere, of weeding out the lawsuits that are without merit. In 2001, for instance, New York's highest court, the Court of Appeals, [overturned a Brooklyn jury's verdict](#) that had awarded close to four million dollars in damages to Stephen Fox, who was permanently disabled after being shot by a friend. In the case, *Hamilton v. Baretta U.S.A.*, the court argued in part that "the connection between defendants, the criminal wrongdoers and plaintiffs is remote, running through several links in a chain," and thus legal liability for the manufacturers was inappropriate. Similarly, a federal judge in Brooklyn [dismissed a suit brought by the National Association for the Advancement of Colored People \(NAACP\)](#), saying that the organization had failed to prove its public nuisance claim against the gun industry's marketing practices. And a New York State appellate court found the trial court had [properly dismissed another nuisance lawsuit](#), this one filed by Attorney General Eliot Spitzer on behalf of the state.

Yet the lawsuit filed by New York City seemed to have avoided the problems that doomed the attempts by Stephen Fox, the NAACP, and New York State. In fact, the same judge that dismissed the NAACP's suit [allowed the city's to go forward](#) (in pdf format). Now that the Protection of Lawful Commerce in Arms Act has become law, it is likely only a matter of time before the city's suit is also dismissed. Any attempt to invoke the local law passed by the City Council in January is also likely to fail.

Gun control opponents could be right when they claim that lawsuits against the gun industry will not reduce gun crimes. Now, because of the new liability shield law, New York City will not have an opportunity to find out.

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