

Legal Action

SUMMER • 2004

United States Senate Votes Down Immunity For Gun Industry, 90-8 *NRA Suffers Historic Defeat*

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On March 2, 2004, the United States Senate, by a vote of 90-8, overwhelmingly voted down gun industry immunity legislation that would have stripped gun violence victims of their rights to seek justice in the courts in virtually all cases. The bill, S. 1805, had been the NRA's top legislative priority for several years, and had the backing of President Bush and the Senate leaders of both parties. Nonetheless, a coalition of law enforcement, religious, education, and civil rights groups, led by the Brady Campaign and the Brady Center, succeeded in handing the NRA and the gun industry a historic defeat.

Call it the NRA's Waterloo. Call it the day the gun lobby's extremist agenda was turned back. Mark it down as a great day in history for gun violence victims. In short, the Good Guys won and won big.

S. 1805: An Attack on Gun Violence Victims

S. 1805 would have radically rewritten long-standing principles of negligence and products liability. It would have made negligent gun dealers, distributors, manufacturers and trade associations immune from the civil justice system in virtually all cases in which their negligent business practices or defective designs caused death or injury to innocent persons. The bill was opposed by major police organizations, including the Major Cities Chiefs and the International Brotherhood of Police Officers, mayors from New York City to Los Angeles and at least 55 editorial boards across the country.

Because the bill was also retroactive, even pending cases that had been upheld by the courts would be thrown out. Numerous cases brought by Brady Center attorneys would have been dismissed under the bill, including *Johnson v. Bull's Eye Shooters Supply*, the case

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CAN \$50 MILLION OF NRA MONEY BUY IMMUNITY FOR A RECKLESS GUN DEALER?

IF THE NATIONAL RIFLE ASSOCIATION GETS ITS WAY, THE GUN DEALER WHO ARMED THE D.C. SNIPERS AND SOLD GUNS TRACED TO 52 OTHER CRIMES WILL BE TOTALLY IMMUNE FROM THEIR VICTIMS' LAWSUITS.

Should reckless gun dealers who specialize in selling or "losing" deadly weapons that end up in killers' hands get off scot-free?

Incredibly, the National Rifle Association says Yes.

And if we don't stop them, Congress and the White House will fall into lock step right behind.

The NRA is now demanding a "Stay Out of Court Free" pass for even the most negligent gun dealers. It would exempt them from legal rules that bind every other industry in America.



A special interest out of control

From the day George W. Bush took power, the NRA has bragged about having its own office in the White House. No wonder so many of us fear our country has veered off course! Under Bush the NRA acts like a 4th branch of government. Spending more than \$50 million on political campaigns during the last two elections, the NRA bullies Congress to do its bidding again and again.

But this time it's gone too far.

A virtual "murder weapons superstore"

How much mayhem can one bad gun dealer cause? Consider Bull's Eye Shooter Supply of Tacoma, Washington.

In just three years Bull's Eye managed to "lose" 238 guns. They "lost" the assault rifle used by the D.C. snipers to murder twelve people. Guns sold by Bull's Eye have been tied to 52 other crimes including homicides and kidnappings.

1% of dealers supply 57% of crime guns.

Bull's Eye is one of the tiny minority of gun dealers who sell most of the guns traced to crime. These dealers are almost never prosecuted. Lawsuits may be the only effective constraint on their actions.

Polls show more than 2 out of 3 Americans want dealers like Bull's Eye hauled into court. But the NRA doesn't care what the public thinks—only about achieving its extremist goals.

We can rein in the zealots at the NRA.

You know and most Americans know: Good gun dealers don't need immunity, and bad dealers don't deserve it. The NRA has flat-out lost touch with the American people.

Go to our website: STOPtheNRA.COM

Go to our website now or clip this coupon. Sign our petition and give what you can to help us reach or exceed our goal: 10,000 signatures and \$1 million to keep the heat on Congress and beat back this latest NRA attack.

Brady Campaign to Prevent Gun Violence united with the Million Mom March.

1225 Eye Street, NW, Suite 1100, Washington, D.C. 20005

Yes, I want to help stop the NRA from shielding gun dealers who arm criminals!

Enclosed is my contribution of \$_____

Name _____

E-mail _____

Address _____

City _____ State _____ Zip _____

WWW.STOPtheNRA.COM

New York Times ad run by the Brady Campaign and www.stopthenra.com

The Brady Center to Prevent Gun Violence is a nonprofit, education, research, and legal advocacy organization established in 1983 to reduce the tragic toll of handgun violence in America.

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It was the victims who did it. In the legislative battle over gun industry legal immunity, innocent Americans, who had been wounded or had lost loved ones to senseless gunfire, stood up to the National Rifle Association and the gun industry. On March 2, 2004, it was David v. Goliath, and Goliath fell. The dramatic defeat of gun industry immunity was the victims' victory.

During the debate, Senator Mike DeWine (R – OH) took the Floor of the United States Senate and quickly went to the core of the issue. The gun industry immunity bill, S.1805, would turn gun violence victims into second-class citizens. "I oppose this bill because . . . it singles out one particular group of victims and treats them differently than all other victims in this country. It sets them apart. It sets them aside, and it treats them differently. It denies them their access to court." As Senator DeWine also argued, the bill also would give gun sellers special privileges. "Other industries face legal challenges. . . Other industries are involved in cases where many people die. We understand that. But we don't grant this kind of immunity from civil liability."

Senator DeWine, Senator Jack Reed (D – RI) and other opponents of the bill eloquently argued that S.1805 was far more radical and unprincipled than other proposals to reform our civil justice system. Congress had debated limits on punitive damages in medical malpractice cases, but no one had argued that negligent doctors should be immune from liability. Congress had debated requiring that most class actions be heard in federal, not state court, but no one

had argued that corporations should be immune from class actions. Congress had debated whether victims of asbestos poisoning should be compensated through alternatives to the court system, but no one had argued that the victims should not be compensated at all.

S.1805 was unprecedented, and grossly unfair, special interest legislation. Yet even objective observers thought it was destined to become law. It was the NRA's top legislative priority. President Bush had promised to sign it. It had already passed the House of Representatives by an overwhelming margin. It had the declared support of 55 Senators. Its leading sponsor,

*On March 2,
2004, it was
David vs. Goliath,
and Goliath fell.*

Senator Larry Craig (R – ID), boasted that 62 Senators were prepared to vote against a filibuster, more than enough to force an up-or-down vote on the bill.

In the final reckoning, however, Senator Craig's promise of 62 votes was nothing but empty puffing. Despite the din of gun lobby propaganda, too many Senators heard, and understood, the truth about this shameful bill. They could not bring themselves to make gun violence victims into second class citizens. The filibuster threat forced Senator Craig to agree to permit amendments to be debated and voted on. That agreement was the beginning of the end for the NRA.

Amendments were passed to require the sale of trigger locks, require background checks for all sales at gun shows, and renew the assault weapons ban.

These amendments were just too much common sense for the NRA to bear. It sent urgent orders to kill the bill. Senator Craig dutifully obeyed by announcing he would vote against his own bill. Senators intent on following the NRA's orders joined with Senate opponents of immunity to vote against final passage. The final vote against S.1805 was a stunning 90 – 8.

This was a battle in which ordinary Americans, touched by the tragic randomness of gun violence, made extraordinary contributions to defeat a powerful lobby. James Ballenger, Sherialyn Byrdsong, Lynn and Griffin Dix, Juanna Hernandez, Tenille Jefferson, Denise Johnson, Dave Lemongello, Ken McGuire, Benny Oberoi, Vicki Snider – these are only some of the victims who fought for the rights of all gun violence victims, and won. The Brady Center salutes them. As their lawyers, however, our greatest tribute to them will be to work tirelessly, in courtrooms throughout our country, to achieve final justice for them and for other gun violence victims. That is exactly what we intend to do.



Dennis A. Henigan
Director, Legal Action Project

Senate Votes Down Immunity For Gun Industry

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brought by victims of the D.C. sniper shootings against the gun shop that “lost” the snipers’ Bushmaster assault weapon along with 237 other guns; Lemongello v. Will Jewelry and Loan, the case brought by former New Jersey police officers Dave Lemongello and Ken McGuire who were almost killed in the line of duty with a gun that was one of twelve sold by an irresponsible dealer to a gun trafficking team in a single transaction; and Dix v. Beretta, the case brought by the parents of 15 year old Kenzo Dix who was unintentionally killed because a gun lacked feasible safety features.

How The Gun Lobby Was Defeated

The NRA and the industry pulled out all the stops to pass the immunity legislation. They marshaled a huge financial war chest, and used it for a propaganda assault that included extensive television and print advertising. Many of the ads made the absurd claim that providing immunity for reckless gun dealers and manufacturers was necessary to protect America’s soldiers in the war against Iraq and terrorists.

Another common NRA refrain – that the bill would only bar “frivolous” suits – was equally inaccurate. As noted lawyer David Boies said, “the proposed legislation would insulate gun dealers and manufacturers from the obligations to act reasonably and in good faith that every other business has. If the legislation were to pass, sellers of products that are among the most dangerous products would have the least obligation to act reasonably.” Over 60 law professors wrote, “This legislation represents one of the most radical statutory revisions of the common law of torts that any legislature – federal or state – has ever considered, let alone passed.” Former White House Counsel Lloyd Cutler agreed that the bill “would broadly prohibit civil actions against firearms manufacturers and dealers” and would eliminate

traditional common law negligence cases against them.

The bill had passed the House of Representatives, 285–140, and had 55 co-sponsors in the Senate, including both Republican and Democratic leaders. However, opposition to the bill was broad and intense, and included numerous law enforcement, religious, school, health and civil rights groups. The battle to stop immunity – and to support the assault weapons ban – also featured an unprecedented campaign led by stopthenra.com and the Brady Campaign united with the Million Mom March, including multiple press conferences in Los Angeles, New York, Washington, D.C. and other towns and cities around the country, and extensive print and network/cable advertising.

Senator Jack Reed (D – RI) led the fight against immunity on the Senate floor, and vowed to filibuster the legislation if necessary. Other key Senators opposing the bill included Frank Lautenberg (D – NJ), Mike DeWine (R – OH), John Warner (R – VA), Dianne Feinstein (D – CA), Charles Schumer (D – NY), Richard Durbin (D – IL), Carl Levin (D – MI) and Barbara Boxer (D – CA).

As it turned out, a filibuster was not necessary. However, it is worth noting that while Senator Larry Craig (R – ID), NRA-Board member and the chief sponsor of the bill, had boasted for months that the bill had more than 60 supporters, enough to overcome a filibuster, an analysis of the votes on the bill and amendments reveals that a filibuster would have been successful. Instead of a filibuster, Democratic and Republican leaders entered into an agreement under which there would be debate and votes on a series of amendments and then the final bill.

On March 2, a tension-filled day on Capitol Hill, the Senate debated the key amendments: the Feinstein amendment to renew the 1994 federal assault weapons ban and the McCain Amendment to close the loophole allowing gun show sales without background checks.

Although President Bush supported immunity and has stated that he supports extending the assault weapons ban, the White House urged Senators to vote against that and other amendments, calling for a “clean bill.”

Most Senators rejected the President’s call. Senator John Kerry

“This legislation represents one of the most radical statutory revisions of the common law of torts that any legislature – federal or state – has ever considered, let alone passed.”

returned to Washington from the campaign trail to speak forcefully against immunity and to vote in favor of the amendments and against immunity. Moments later, the Senate voted to renew the assault weapons ban for another 10 years, 52–47, and then voted to require background checks for all sales at gun shows, 53–46. The Boxer amendment, that required all new handguns be sold with a child safety lock, had passed the previous week.

Then, after a brief recess, in an unprecedented turn of events, Senator Craig, after leading the floor battle to pass immunity, took to the floor and urged Senators to vote against final passage of the bill. He said that with the addition of the amendments, the bill “is so dramatically wounded that it should not pass.” The Senate voted down S. 1805, as amended, 90–8. The legal rights of gun violence victims were saved. ●

Brady Center Files Suit Against Ashcroft and ATF For Allowing Illegal Assault Weapons

In March 2004, Brady Center attorneys filed a federal lawsuit against Attorney General John Ashcroft and the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), challenging an ATF policy allowing the manufacture of illegal semiautomatic assault weapons. The case, [Brady Campaign to Prevent Gun Violence United With the Million Mom March v. Ashcroft](#), 1:04-cv-00454 (RCL) (D.D.C.), seeks an immediate injunction against this unlawful and dangerous policy, which has allowed the manufacture of potentially thousands of these illegal firearms. The suit was filed as the Brady Campaign launched a drive to save the federal assault weapons ban, set to expire on September 13 of this year, unless President Bush and Congress renew it.

The lawsuit is based, in part, on private correspondence between ATF and Bushmaster Firearms (manufacturer of the Washington, D.C.-area snipers’ assault rifle) revealing that ATF has been allowing gun makers to manufacture new receivers for semiautomatic assault weapons. A receiver is the housing for a gun’s firing mechanism and has a special legal status under the federal Assault Weapons Act (“Act”). The Act treats the receiver as the “firearm” which has been banned by the Act since 1994.

The Brady Center obtained the private letters revealing ATF’s illegal policy through the Freedom of Information Act. The letters

show that ATF has repeatedly allowed gun makers to manufacture new banned receivers for anyone who possessed a semiautomatic assault weapon before the Act took effect and whose receivers have been damaged. While assault weapons manufactured before the Act were “grandfathered” and exempted from the law, Congress presumed that these guns would break down over time and vastly reduce the number of these weapons in circulation. ATF’s illegal policy has instead ensured that these guns remain accessible to criminals in perpetuity.



Assault Rifle
“Receiver”

The documents obtained through the Freedom of Information Act show that ATF has authorized Bushmaster Firearms to manufacture at least 95 new illegal semiautomatic assault weapons since 1997 - but Bushmaster is only one of many gun makers who made assault weapons before the Act was passed. It is likely that ATF has allowed thousands of illegal assault weapons to be manufactured. Shortly after the Brady Center obtained these documents, Congress passed a gun lobby-backed rider to a

federal appropriations bill prohibiting ATF from releasing many documents to the public. (*See story on p.6.*)

Brady Campaign and Million Mom March members are assisting in the suit by documenting the severe danger posed by assault weapons. Albuquerque members Mary Hunt and Joan Shirley filed declarations in federal court describing how their sons were killed with an AK-47, a banned weapon. Their sons were inside a car stopped at an intersection by another vehicle when 30 rounds of bullets were emptied into the car in less than eight seconds. Their sons, Matt Hunt and Kevin Shirley, and a friend, Luis Garcia, were killed.

Detroit member Shikha Hamilton described how she hears gunshots in the neighborhoods surrounding her home every week. She also explained how she moved her daughter’s bed away from her window to avoid her being shot, as two children in Detroit have been killed by assault weapons in their own homes. Washington, D.C. member Joseph Lapp described the danger he faces from illegal guns in his community and Philadelphia member Dr. L. Matthew Schwartz described how he must treat patients with multiple gunshot wounds because of the devastating effect of assault weapons.

Brady Center attorneys will argue this case early this summer in federal district court in Washington, D.C., seeking an immediate halt to ATF’s illegal policy. ●

New Lawsuit Filed on Behalf of Victim of Washington, D.C.-area Snipers

The Brady Center filed suit last fall on behalf of Washington, D.C. sniper victim Pascal Charlot. The suit was filed against Bushmaster Firearms, manufacturer of the XM-15 assault weapon that was used to kill Mr. Charlot and nearly a dozen others in sniper shootings in the Washington, D.C.-area and around the country in fall 2002. The suit is based on a D.C. law that holds assault weapon manufacturers strictly liable for injuries that occur in the city and are caused by their deadly products. A separate suit on

behalf of eight sniper victim families is continuing in a court in Tacoma, Washington, and is scheduled for trial in April 2005.

Mr. Charlot was a 72-year-old retired carpenter and the primary caregiver for his wife, who suffers from Alzheimer’s disease. On October 3, 2002, after cooking dinner for his wife, he was shot and killed by the snipers while crossing a street near his home. His case is pending in federal district court in Washington, D.C.

Bushmaster has moved to dismiss the case, arguing that D.C.’s strict liability

act is unconstitutional. However, a recent ruling in [District of Columbia v. Beretta](#), D.C.’s separate lawsuit against the gun industry, upheld the constitutionality of that law. Arguments on Bushmaster’s motion and the Charlot family’s cross-motion for summary judgment are scheduled for later this summer. Mr. Charlot’s family is also represented by Hogan & Hartson, LLP, and the Washington Lawyers Committee for Civil Rights and Urban Affairs. ●

Indiana Supreme Court's 5-0 Ruling Deals Gun Industry Sharp Setback

Gary, Indiana's lawsuit against the gun industry for creating a public nuisance in Gary is moving forward to trial. On December 23, 2003, the Indiana Supreme Court unanimously upheld the City's claims and rejected arguments made by the industry against the suit. City of Gary v. Smith & Wesson Corp., 801 N.W.2d 1222 (Ind. 2003). Brady Center attorneys argued on behalf of the City at a hearing before the Court. The decision reversed a lower court ruling that had dismissed the case.

The City asserts claims for public nuisance and negligence, seeking damages and injunctive relief, against gun manufacturers, distributors, and local gun dealers. The City charges that the industry has designed, marketed and distributed firearms in ways that ensure the widespread accessi-

bility of handguns to prohibited purchasers, including children and criminals. Actions by the industry cause millions of dollars in costs for the City in combating damage from illegal guns. The city seeks damages and also an injunction requiring gun sellers to use reasonable business practices. The Indiana Supreme Court joins the neighboring Ohio Supreme Court in ruling that the law in those states requires the gun industry to use reasonable care in their sale and distribution of guns. A similar case brought by the City of Chicago is also pending before the Illinois Supreme Court.

The City's case is based in part on an undercover sting investigation by the Gary Police Department, conducted in June and July 1999, which revealed the severity of the problem with negligent distribution of guns in Northern Indiana.

During the investigation, undercover officers were able to make straw purchases of at least nine handguns and numerous boxes of ammunition for persons who openly declared to the gun store clerks that they were convicted felons or juveniles. One clerk told an undercover officer that buying a gun for a convicted felon would be a straw purchase and would be illegal, but then advised the officer that if he returned in ten minutes he would make the sale anyway. Clerks refused to make only four of the thirteen straw purchases attempted by the undercover officers.

Pretrial discovery in the case is now underway. Brady Center attorneys represent the City along with Gary law firm, Meyer, Lyles & Godshalk, P.C. ●

California Update: Gun Sellers Agree to Reforms

The lawsuit brought by California cities and counties is now on appeal. After the trial judge granted the gun manufacturers' and trade associations' motion for summary judgment (People v. Arcadia Mach. & Tool, Inc., 2003 WL 21184117 (Cal. Super. Ct. 2003)), the twelve plaintiff California cities and counties, including Los Angeles and Los Angeles County, San Francisco, Oakland and Sacramento, appealed the decision to the California Court of Appeals in San Francisco on June 24, 2003. People v. B&B Group, Inc., No. A103211 (Cal. Ct. App.).

The lawsuits charge that defendants created a public nuisance by supplying an illegitimate market for firearms, and violated California's Business and Professions Code through many of their business practices such as selling

guns without feasible safety features, and selling guns through high-risk dealers and without proper precautions to prevent diversion of guns to criminals and juveniles. The cities and counties seek injunctive relief to end the defendants' dangerous business practices. Defendants could also be required to pay civil penalties.

The trial court had allowed the plaintiffs' suit to proceed against two California gun dealers and three gun distributors. Shortly before trial was set for October 10, 2003, the gun sellers entered into a groundbreaking settlement with the cities. The dealers agreed to take steps that go above and beyond current federal and state law to prevent firearms from being sold into the underground market in California, such as:

- End the sale of firearms at gun shows;
- Implement an enhanced inventory tracking plan to ensure that firearms are not lost or stolen;
- Annually train all employees how to recognize and block sales to straw purchasers;
- Adopt as the store's policy "to go beyond the law in verifying the identity of the actual purchaser of a firearm"; and
- Maintain electronically all firearm trace requests conducted by ATF and provide that information, upon request, to gun manufacturers and distributors, which would enable them to monitor the conduct of the dealers who sell their firearms. ●

New Secrecy Policy at ATF Threatens to Shield “Bad Apple” Dealers

In recent years, a host of lawsuits by individual gun violence victims and the urban municipalities that suffer from concentrations of gun violence have begun to expose the gun industry’s “dirty little secret” – that *thousands of guns recovered in crime are sold each year through a concentrated and identifiable group of gun dealers who engage in risky business practices.* The gun industry knows who these “bad apple” dealers are but refuses to stop selling them guns or to force them to reform. The result is a steady supply of guns for felons and gang members who can acquire all the guns they need from these high risk dealers – using straw buyers or other methods to get around the Brady Law.

Law enforcement, researchers, and lawyers for injured victims have been able to expose this secret underside of the gun industry only by gaining access to crime gun trace data gathered by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The trace data tracks, for more than 200,000 crime guns recovered across the United States each year, the distribution path of each gun from the manufacturer down through distributors and dealers until the gun is sold to a member of the public. This data shows, for example, that more than half of the crime guns traced in a given year were sold by only 1% of the licensed firearms dealers, while about 85% of dealers had no traces at all.

The implications of these reports are obvious. Appellate courts in Ohio, New Jersey, Illinois and Indiana, when shown this data as part of municipal lawsuits, have concluded that the gun industry should face trial over its legal responsibility for continuing to sell guns through high-risk dealers.

Just when this secret underside of the gun industry is finally being brought into the public eye, the gun industry and the National Rifle Association persuaded Congress to amend a federal appropriations bill passed in January 2004 that threatens to shield from public scrutiny the ATF crime gun trace data that was critical to exposing the industry’s “dirty little secret.” The Tiarht amendment (named after Todd Tiarht (R – KS)), foreclosed the use of appropriated federal funds to

“disclose to the public” crime gun trace data that has long been gathered by ATF and released.

The Tiarht amendment has not ended the fight, however. New York City, with the assistance of Brady Center attorneys, won the right to obtain the crime gun trace data from ATF when Magistrate Judge Pollak ruled on May 19, 2004, that the Tiarht amendment does not apply to the City’s subpoena of the information. The ATF has appealed

that ruling. The City of Chicago is also fighting application of the Tiarht amendment in its suit against ATF. It seeks to obtain a copy of the ATF crime gun trace database under the Freedom of Information Act (FOIA). The Brady Center filed an amicus brief in April in support of the City, arguing that because the data can be turned over by ATF without the use of appropriated funds the Tiarht amendment is no bar to disclosure. ●

Immunity Bill’s Defeat Paves Way for Trial of Reckless Gun Dealer in Philadelphia

With the defeat of the federal gun industry immunity bill, Tennille Jefferson will finally get her day in court this July. The immunity bill’s defeat in the Senate in March was the last potential impediment to her case, *Jefferson v. Sauers Trading*, No. 02218, April Term, 2001 (Phila. Ct. Common Pleas), with a Philadelphia court having already cleared the way for trial by rejecting numerous attempts by the gun dealer defendant to have the case dismissed.

On April 19, 1999, Tennille Jefferson’s son Nafis was accidentally shot in the head while playing with friends in his South Philadelphia neighborhood. A seven-year-old boy found a loaded .44 caliber Rossi revolver that a criminal apparently had stashed under a car and pulled the trigger. Nafis died later that night at Children’s Hospital.

The gun that killed Nafis was sold by Sauers Trading of Williamsport, Pennsylvania to a gun trafficker high on marijuana. It was the eleventh gun Sauers sold to trafficker Perry Bruce. Bruce paid for each gun with hundreds of dollars in cash, frequently mentioning that he was unemployed and showing his welfare card for identification. In a pre-trial deposition, Bruce admitted that the gun dealer “had to know what I was doing.” Yet the dealer never refused a sale to Bruce or asked why Bruce had so much cash and was so interested in buying guns known to be favored by criminals.

A tearful Tennille Jefferson spoke out against the gun industry immunity bill last year, traveling to Washington, D.C. to urge her Senators to oppose the bill. Unfortunately, Pennsylvania Senators Arlen Specter (R – PA) and Rick Santorum (R – PA) sponsored the legislation to strip her of her legal rights and refused to meet with her. Brady Center attorneys have litigated Mrs. Jefferson’s case along with Philadelphia co-counsel Mark Lewinter of Anapol, Schwartz, Weiss, Cohan, Feldman and Smalley. ●

State Courts Hear Challenges to Concealed Carry Laws

On September 24, 2003, the Supreme Court of Ohio upheld Ohio's longstanding prohibitions on the carrying of concealed weapons without an actual self-defense need, finding them valid restrictions on the dangers of hidden weapons. Klein v. Leis, 99 Ohio St. 3d 537 (2003). Four individuals and the Second Amendment Foundation, which backed the lawsuit, sued the State and City of Cincinnati seeking to bar enforcement of the concealed carry laws and declare them unconstitutional. Plaintiffs wanted the state to allow gun owners to carry a concealed weapon in any public place, even without a legitimate need, training, or basic competence in the use of a deadly firearm. The Court sensibly found that "there is no constitutional right to bear concealed weapons." The Brady Center, along with the City of Cincinnati's Solicitor, represented the City throughout the case.

On January 15, 2004, the New Mexico Supreme Court rejected a challenge to that state's concealed carry statute, a "shall issue" law that gives police no discretion to reject applicants for concealed carry permits as long as they have no criminal record. State ex rel. New Mexico Voices for Children, Inc. v. Denko, No. 28373 (N.M. 2003). The challengers argued that the New Mexico Constitution prohibits the carrying of concealed weapons because it states that "nothing herein shall be

held to permit the carrying of concealed weapons." The Court disagreed, holding that this clause means that "there is no constitutional right to carry concealed weapons, though, there is also no constitutional prohibition against the Legislature providing so by statute."

The Court had struck down a previous version of the law in 2002 because it allowed municipalities to opt-out of the law, running afoul of state law pre-empting cities from enacting laws regulating firearms. Baca v. New Mexico Dep't of Pub. Safety, 47 P.3d 441 (N.M. 2002). The law upheld by the Court in January did not contain the opt-out language.

Federal Appeals Court Rules Gun Maker Can Be Held Liable For JCC Shootings

On November 20, 2003, the U.S. Court of Appeals for the Ninth Circuit reinstated a case brought by the families of victims of a 1999 shooting at the North Valley California Jewish Community Center. The case, Ileto v. Glock, 349 F.3d 1191 (9th Cir. 2003), is named for Joseph Ileto, a postal worker who was killed shortly after white supremacist Buford Furrow carried in an arsenal of semi-automatic handguns and rifles and opened fire on pre-schoolers and camp counselors. The victims' families brought negligence and public nuisance claims against manufacturers and

distributors of the guns for failing to use reasonable care in their sale and distribution, thereby providing Furrow with access to firearms.

The Court's decision reverses the trial court's dismissal of the case in June 2002. Defendants requested the Court reconsider its ruling, but the Ninth Circuit panel of judges rejected that request in a decision issued May 28, 2004. The ruling is the first by a federal appeals court to find that gun manufacturers and distributors owe a duty to use reasonable care in their sale and distribution of guns, joining a chorus of recent state court rulings.

Challenges to D.C. Control Laws Thrown Out

In a decision issued January 14, 2004, the federal D.C. District Court upheld the District of Columbia's longstanding handgun ban and rejected a Second Amendment challenge backed by the National Rifle Association. Seegars v. Ashcroft, 297 F.Supp.2d 201 (D.D.C. 2004). U.S. District Judge Reggie Walton dismissed the lawsuit and ruled that, "The Second Amendment does not confer an individual a right to possess firearms. Rather, the Amendment's objective is to ensure the vitality of state militias." Plaintiffs have appealed the judge's ruling. In a separate case, U.S. District Judge Emmet Sullivan also upheld the District of Columbia's strong gun laws in Parker v. District of Columbia, 311 F.Supp.2d

103 (D.D.C. 2004) (issued March 31, 2004). The CATO Institute backed this lawsuit challenging the constitutionality of the District's handgun ban on Second Amendment grounds. Judge Sullivan's ruling has also been appealed. The Brady Center filed an amicus brief in support of the District in both the Seegars and Parker cases.

The District of Columbia's unique Assault Weapons Manufacturing Strict Liability Act was also upheld as constitutional in an important ruling by the District of Columbia Court of Appeals on April 29, 2004. The District of Columbia, and several individual citizens of D.C., brought suit against 25 gun manufacturers and distributors under the Strict Liability Act for all damages that flowed from injuries in the District caused by assault weapons or high-capacity semi-automatic firearms sold by those defendants. The trial court originally dismissed the District's claims, but a three-judge panel upheld the District's strict liability act, which does not require proof of fault in order to find defendants liable. The Brady Campaign filed an amicus brief in support of the District during its appeal.

The District also brought claims of public nuisance and negligence against the gun industry, which were dismissed by the Court, flouting the trend of appellate decisions for cities against the gun industry in Ohio, Illinois, New Jersey, and Indiana. The District asked the full court to rehear these claims. District of Columbia v. Beretta, U.S.A. et al., Nos. 03-CV-24, 03-CV-38, 2004 WL 905959 (D.C. App. April 29, 2004). ●

Brady Center Report Finds Assault Weapon Law “On Target”

Has the Federal Assault Weapons Act reduced the use of assault weapons in crime? Yes. So concludes a new study published by the Brady Center using data analysis by experts at Crime Gun Solutions, LLC.

The study, “On Target: The Impact of the 1994 Federal Assault Weapons Act,” analyzed more than a million crime gun traces conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) over the last 10 years. It found that while assault weapons constituted 4.82% of crime gun traces in the 5-year period before the ban, they made up only 1.61% of the crime gun traces after the ban, a drop of 66% from the pre-ban rate. Moreover, ATF trace data shows a steady year-by-year decline in the percentage of assault weapons traced, suggesting that the longer the statute has been in effect, the less available these guns have become for criminal misuse. Indeed, the absolute number of assault weapons traced has also declined, during a period when the number of ATF crime gun traces increased dramatically.

The steady decline in the use of assault weapons in crime is one of the reasons law enforcement is united in working to save the federal ban, which is due to expire on September 13, 2004 unless Congress and President Bush act to renew it. Earlier this year these two points – law enforcement backing and the effectiveness of the ban – were cited by Senator John Warner (R – VA) as the reasons he switched from opposing the ban 10 years ago to voting for its renewal this year.

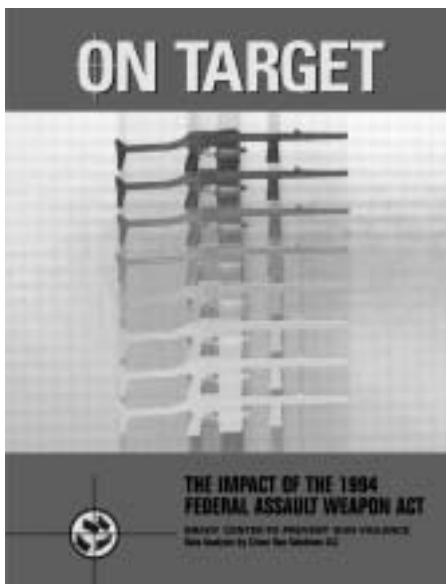
Senators Warner and DeWine (R – OH) co-sponsored a renewal bill along with Senators Feinstein (D – CA) and Schumer (D – NY) that passed the Senate 52–47 on March 2nd. A total of 10 Republican Senators broke from the NRA to support renewal of the federal ban. The renewal was passed as an amendment to the gun industry

immunity bill that was defeated once gun control measures were attached to it.

The “On Target” study also looked at the problem, created by the gun industry, of “copycat” assault weapons. These are guns, like the Bushmaster XM–15, Intratec’s AB (“After Ban”)–10, and Olympic Arms PCR (“Politically Correct Rifle”), with minor changes in features made to evade the federal ban. Although these guns also pose a danger to society and have been banned in some states, “On Target” found that industry efforts to evade the federal ban through the sale of these weapons has not eliminated the 1994 Act’s beneficial effects. Even if copycat weapons are included, there has still been a 45% decline between the pre-ban period and the post-ban

period in the percentage of ATF crime gun traces involving assault weapons.

The study concludes that while the Federal Assault Weapons Act is not perfect and should be strengthened, it has reduced the use of these high-firepower weapons in crime and, if allowed to expire, “would be a serious blow to public safety.” ●



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