



National Shooting Sports Foundation, Inc.

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House Subcommittee on Commercial and Administrative Law

**TESTIMONY OF LAWRENCE G. KEANE,
VICE PRESIDENT & GENERAL COUNSEL
NATIONAL SHOOTING SPORTS FOUNDATION, INC.**

IN SUPPORT OF

**“PROTECTION OF LAWFUL COMMERCE IN ARMS ACT”
(H.R. 1036)**

April 2, 2003

Chairman Cannon and distinguished members of the Subcommittee, my name is Lawrence G. Keane. I am the vice president and general counsel of the National Shooting Sports Foundation, Inc. (“NSSF”). The National Shooting Sports Foundation appreciates the opportunity to appear before the Subcommittee this morning to offer testimony in support of the “Protection of Lawful Commerce in Arms Act.” (H.R. 1036). We strongly support this important common sense legal reform because it will restore integrity and fairness to our nation’s judicial system. We call upon Congress to follow the lead of over thirty states that have already enacted similar legislation to stop reckless lawsuits that seek to destroy and bankrupt a responsible American industry by blaming firearm manufactures for the actions of criminals.

Nothing less is at stake than the future of one of America's oldest, most important industries and the loss of thousands of American jobs vital to the wealth of our economy.

Formed in 1961, the NSSF, with approximately 2,600 members, is the trade association for the firearms and recreational shooting sports industry. We are proud of our industry's cooperative relationship with law enforcement, as exemplified by the joint NSSF – Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) partnership program called “Don't Lie for the Other Guy” that assists ATF in educating federally licensed firearms dealers on how to detect and deter illegal straw purchases of firearms. The American Society of Association Executives recently named the “Don't Lie” program to its Advance America Honor Roll. NSSF's commitment to promoting the safe and responsible use of firearms is typified by our federally funded *Project ChildSafe* and *Project HomeSafe* programs in which NSSF, in partnership with state and local governments, has provided millions of firearm safety education kits including a free firearm locking device to the public throughout the United States.

Beginning in 1998, a group of approximately forty urban politicians, aligned with contingency-fee trial lawyers and anti-gun activists, have flooded our nation's courts with lawsuits filed against law-abiding federally licensed firearms manufacturers, wholesale distributors and retailers. These suits seek to destroy and bankrupt a responsible American industry by blaming firearm manufactures for the actions of criminals. The plaintiffs in these cases do not allege that members of the firearms industry have broken any of our nation's over 20,000 firearm laws. Instead, they allege that the sale of a legal product in accordance with an extensive regulatory system somehow causes crime and that the industry is subverting the law to

funnel firearms to the so-called “criminal market.” These allegations are both highly offensive and patently false.

Despite some success in the courts, this well-funded, coordinated onslaught of reckless lawsuits against members of our industry continues unabated. Recently, the cities of Newark, Jersey City and Camden, New Jersey were permitted to attempt to prove their despicable allegation that the firearms industry knowingly and willingly sells guns to criminals. Several cases are currently pending at the trial court level. In addition, several more cases are currently at various stages of appeal that could be returned to trial courts for costly and time-consuming discovery. A single hundred million dollar verdict will bankrupt virtually all of defendants.

Just this Monday the trial of the National Associations for the Advancement of Colored People (NAACP) lawsuit against over 80 members of the firearms industry began in a Brooklyn federal court before Judge Jack B. Weinstein, well known in legal circles as an activist jurist. As other courts have recognized, these suits against the firearms industry are an improper attempt to use litigation to regulate the design, manufacturer, marketing, distribution and sale of firearms, thereby circumventing the democratic and constitutionally prescribed legislative process and usurping the role of Congress and the state legislatures. For proof of this, you need look no farther than Monday’s opening statement by Dennis Hayes, the NAACP’s general counsel. He said the NAACP was, “asking that the court usher in an equitable code of conduct that changes the way business is done,” and that the case was about asking a federal court “to step in and regulate” the firearms industry.

In upholding the dismissal of similar suit by Miami-Dade County a Florida appellate court wrote, “The County’s request that the trial court use its injunctive powers to mandate redesign of firearms and declare that the [firearms manufacturers’] business methods create a public nuisance, is an attempt to regulate firearms and ammunition through the medium of the judiciary.... The judiciary is not empowered to ‘enact’ regulatory measures in the guise of injunctive relief. The power to legislate belongs not to the judicial branch of government but to the legislative branch.”

Winning on the merits is not necessary in order for these politicians and antigun activists to impose through litigation a gun control agenda repeatedly rejected by Congress and not supported by the American public. At the time he filed his suit, Chicago Mayor Richard Dailey said, “We’re going to hit them where it hurts – in their bank accounts...” Andrew Cuomo, then Housing and Urban Development Secretary, threatened firearms manufacturers with “death by a thousand cuts.” NAACP president Kweisi Mfume said its lawsuit was “an effort to break the backs” of industry members. These antigun plaintiffs can implement their gun control policies throughout the entire nation if the coercive effect resulting from the staggering financial cost to defend these baseless suits forces industry members into a Hobson’s choice of either capitulation or bankruptcy. Companies have gone bankrupt vindicating themselves against baseless lawsuits, just ask Dow Corning.

The collective, industry-wide cost to defend these ill-conceived, politically motivated suits has been truly staggering. Exact figures are unavailable because the defendants are competitors and each considers its defense costs to be confidential business information.

However, based on discussions with insurance industry executives, manufacturers' corporate counsel, reading cost estimates in various publications and NSSF's own experience as a defendant in these cases, I believe a conservative estimate for the total, industry-wide cost of defense to date now exceeds \$100 million dollars. This is a huge sum of money for a small industry like ours. The firearms industry taken together would not equal a Fortune 500 company. The cost of litigation is borne almost exclusively by the companies themselves. With few exceptions, insurance carriers have denied coverage. These antigun plaintiffs have carefully drafted their complaints to take them outside of liability insurance coverage in order to apply maximum financial pressure on the defendant manufacturers. Because of these lawsuits, firearms industry members now confront skyrocketing premium increases when renewing their insurance policies. In addition, insurance policies now universally excluded coverage for these types of suits. This has resulted in large, across-the-board, price increases for consumers. In addition, in these trying economic times, taxpayers of the cities that have chosen to pursue the utterly discredited notion that manufacturers are responsible for the acts of criminals are forced to shoulder their city's cost of pursuing such a lawsuit, money that would be better spent hiring more police officers.

These lawsuits threaten the very existence of the manufacturers that produce the tools our military and law enforcement agencies use every day to protect America and our freedoms both here at home and abroad. If these companies are driven out of business, from whom will our military and law enforcement purchase firearms? Make no mistake about it these lawsuits have national defense and homeland security implications.

The legislation you are considering today is perhaps more important for what does not do. It does not, as antigun interest groups have falsely alleged, “close the courthouse doors” to those who have been injured by firearms that have been illegally sold, supplied to one likely to use the firearm in a manner involving an unreasonable risk of injury to himself or another, or defectively designed or manufactured. The bill expressly provides that injured parties will still be able to assert well-recognized tort law claims against the manufacturers and sellers of firearms. The loudest voices arrayed in opposition to this legislation are the same antigun interest groups that are orchestrating and financing the litigation assault to regulate the firearms industry in ways Congress has rejected and not supported by the American public. It is that abuse of our judicial system that this legislation is carefully drafted to stop, nothing more and nothing less.

Let me conclude my remarks where I began them. Over thirty states have already enacted similar laws to stop “junk” lawsuits designed to destroy the industry and to achieve gun control regulation through litigation. Within the week West Virginia Governor Bob Wise signed legislation to prevent such suits. The time has come for Congress to enact a common sense legal reform to restore integrity and fairness to our judicial system, protect American jobs and industry and to prevent an unconstitutional attempt to circumvent Congress and the state legislatures.

The National Shootings Sports Foundation strongly urges you to vote in favor of the *Protection of Lawful Commerce in Arms Act* (H.R. 2037). I thank you Mr. Chairman for permitting the NSSF to address the Subcommittee and for the Subcommittee’s attention this morning.

Respectfully Submitted,

Lawrence G. Keane