

minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, the war on terror is slow going. In Iraq, suicide bombers and terrorists continue to spread fear across the Sunni provinces in the center of the country. Many of our soldiers have made the ultimate sacrifice. Some folks here at home wonder where the war is going.

It is important to step back and look at the big picture. Just this week, millions of Iraqis have once again exercised the right to vote, a right denied them for decades. And yesterday, the Tyrant of Baghdad was brought to trial.

Two things we take for granted here at home: the right to choose our own government and the guarantee of real justice in a court of law. Saddam Hussein is at long last standing trial for his crimes against humanity. The chickens are coming home to roost for those who have painted the past with blood, and the people of Iraq with their ink-stained fingers are creating a new tomorrow according to popular will.

No matter how difficult life remains in Baghdad and the Anbar Province, the future is now full of hope.

Mr. Speaker, we are the good guys in this war. We are helping create a better world. God bless our troops and the citizens of the new Iraq.

#### ASSISTANCE FOR AMERICA'S POOR

(Mr. MARKEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARKEY. Mr. Speaker, the Republicans have decided not to bring the bill to the House floor today which would slash Medicaid, slash programs for student loans, slash programs for poor people because many conservatives say they are not cutting enough programs for poor people, all to protect tax breaks for the wealthiest Americans. All to protect tax breaks for the wealthiest Americans. And what is the excuse they have used? Hurricane Katrina.

That is why they must cut more programs for poor people, because they do not want to cut the tax cuts, and now they want to delay because Hurricane Wilma is on the way, and the Republicans are saying, Let us wait until the weekend is over and see how big that hurricane is, and then we will be able to cut more programs for poor people, more programs for those most in need in our society, rather than touching those tax breaks for the wealthiest in our country.

Mr. Speaker, hurricanes are the greatest friend conservative Republicans ever had to hurt the poorest people in the country and protect the wealthiest.

#### COMMENDING CENTURY COUNCIL

(Ms. ROS-LEHTINEN asked and was given permission to address the House

for 1 minute and to revise and extend her remarks.)

Ms. ROS-LEHTINEN. Mr. Speaker, I rise on behalf of the Congressional Hispanic Conference to recognize the Century Council and Nickelodeon for their creation of an innovative new program to educate middle school kids about underaged drinking.

The Century Council is a national not-for-profit organization funded by America's leading distillers to develop and implement programs designed to combat drunk driving and underaged drinking.

The Congressional Hispanic Conference has teamed up with Century Council and Nickelodeon to launch Ask, Listen, Learn: Kids and Alcohol Do Not Mix. The program helps adults and children communicate early and often about this important issue in a format and a language designed specifically for them.

I commend the Century Council and Nickelodeon for giving Hispanic parents and children across the Nation such a valuable communications tool to initiate these critically important discussions regarding the dangers of alcohol.

#### NO NEW TAX ON HOMEOWNERSHIP

(Mr. GARRETT of New Jersey asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GARRETT of New Jersey. Mr. Speaker, the cost to buy a new home is about to go up in America. Why is that? Because as soon as next week, Congress is about to vote on placing a new tax on homeownership, a tax that may well raise the cost for the average American who wants to buy their new home.

Years ago, Congress set up Fannie Mae and Freddie Mac with the noble intent to add liquidity to the marketplace and help home buyers. But in an about-face, Congress is about to impose a new tax and at the same time fail to address an inherent flaw in the current system.

Mr. Speaker, legislation before the House would allow Fannie Mae and Freddie Mac to continue to rack up debt on their balance sheets with no limits. These are the same organizations that have been wracked with financial accounting scandals, may have 1.5 to \$1.7 trillion on their balance sheets right now. I say "may" because no one can get a clear financial picture from these entities.

Alan Greenspan has testified to this problem repeatedly, noting that without restriction on the size of the GSE balance sheets, we put at risk our ability to preserve safe and sound financial markets in the United States. American homeowners deserve better. We need to help them and not hurt them.

#### DEMOCRATS NEED A NEW PLAY

(Ms. FOXX asked and was given permission to address the House for 1

minute and to revise and extend her remarks.)

Ms. FOXX. Mr. Speaker, I rise today as a fiscal conservative to set the record straight that Republicans are the party of fiscal discipline. Earlier this year, Republicans passed the budget that cut \$100 billion from the deficit. What did Democrats do? They refused to vote for the budget, another act in their play of obstruction.

Republicans have recommended 98 programs be terminated for a total savings of more than \$4.3 billion. And under Republican leadership, domestic discretionary spending is currently on track to be below last year's levels. What have the Democrats done? Over the last 3 years they have attempted to bust the discretionary budget in the appropriations process by more than \$60 billion. They hope to finance this by raising taxes on small businesses.

So it is not surprising at a time when we must be watchful of taxpayer dollars the Democrats have turned to their playbook and called up one of their favorites, the old tax and spend.

It is time for the Democrats to come up with a new play. In 1997, 51 Democrats had the courage to help Republicans pass the last major entitlement reform bill. I hope they can find that courage again.

#### PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 493, I call up the Senate bill (S. 397) to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The text of the Senate bill is as follows:

S. 397

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Protection of Lawful Commerce in Arms Act".

#### SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

(2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) **PURPOSES.**—The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers

of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

(7) To exercise congressional power under art. IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

### **SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.**

(a) **IN GENERAL.**—A qualified civil liability action may not be brought in any Federal or State court.

(b) **DISMISSAL OF PENDING ACTIONS.**—A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.

### **SEC. 4. DEFINITIONS.**

In this Act:

(1) **ENGAGED IN THE BUSINESS.**—The term “engaged in the business” has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes, time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) **MANUFACTURER.**—The term “manufacturer” means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

(3) **PERSON.**—The term “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) **QUALIFIED PRODUCT.**—The term “qualified product” means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) **QUALIFIED CIVIL LIABILITY ACTION.**—

(A) **IN GENERAL.**—The term “qualified civil liability action” means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or

failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26, United States Code.

(B) **NEGLIGENT ENTRUSTMENT.**—As used in subparagraph (A)(ii), the term “negligent entrustment” means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) **RULE OF CONSTRUCTION.**—The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

(D) **MINOR CHILD EXCEPTION.**—Nothing in this Act shall be construed to limit the right of a person under 17 years of age to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

(6) **SELLER.**—The term “seller” means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) **STATE.**—The term “State” includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) **TRADE ASSOCIATION.**—The term “trade association” means—

(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) **UNLAWFUL MISUSE.**—The term “unlawful misuse” means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

#### SEC. 5. CHILD SAFETY LOCKS.

(a) **SHORT TITLE.**—This section may be cited as the “Child Safety Lock Act of 2005”.

(b) **PURPOSES.**—The purposes of this section are—

(1) to promote the safe storage and use of handguns by consumers;

(2) to prevent unauthorized persons from gaining access to or use of a handgun, including children who may not be in possession of a handgun; and

(3) to avoid hindering industry from supplying firearms to law abiding citizens for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(c) **FIREARMS SAFETY.**—

(1) **MANDATORY TRANSFER OF SECURE GUN STORAGE OR SAFETY DEVICE.**—Section 922 of title 18, United States Code, is amended by inserting at the end the following:

“(z) **SECURE GUN STORAGE OR SAFETY DEVICE.**—

“(1) **IN GENERAL.**—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

“(2) **EXCEPTIONS.**—Paragraph (1) shall not apply to—

“(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

“(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

“(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

“(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

“(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

“(3) **LIABILITY FOR USE.**—

“(A) **IN GENERAL.**—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to

immunity from a qualified civil liability action.

“(B) **PROSPECTIVE ACTIONS.**—A qualified civil liability action may not be brought in any Federal or State court.

“(C) **DEFINED TERM.**—As used in this paragraph, the term ‘qualified civil liability action’—

“(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

“(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

“(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

“(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.”.

(2) **CIVIL PENALTIES.**—Section 924 of title 18, United States Code, is amended—

(A) in subsection (a)(1), by striking “or (f)” and inserting “(f), or (p)”; and

(B) by adding at the end the following:

“(p) **PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.**—

“(1) **IN GENERAL.**—

“(A) **SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.**—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

“(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

“(ii) subject the licensee to a civil penalty in an amount equal to not more than \$2,500.

“(B) **REVIEW.**—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

“(2) **ADMINISTRATIVE REMEDIES.**—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.”.

(3) **LIABILITY; EVIDENCE.**—

(A) **LIABILITY.**—Nothing in this section shall be construed to—

(i) create a cause of action against any Federal firearms licensee or any other person for any civil liability; or

(ii) establish any standard of care.

(B) **EVIDENCE.**—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action relating to section 922(z) of title 18, United States Code, as added by this subsection.

(C) **RULE OF CONSTRUCTION.**—Nothing in this paragraph shall be construed to bar a governmental action to impose a penalty under section 924(p) of title 18, United States Code, for a failure to comply with section 922(z) of that title.

(d) **EFFECTIVE DATE.**—This section and the amendments made by this section shall take effect 180 days after the date of enactment of this Act.

#### SEC. 6. ARMOR PIERCING AMMUNITION.

(a) **UNLAWFUL ACTS.**—Section 922(a) of title 18, United States Code, is amended by striking paragraphs (7) and (8) and inserting the following:

“(7) for any person to manufacture or import armor piercing ammunition, unless—

“(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

“(B) the manufacture of such ammunition is for the purpose of exportation; or

“(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

“(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

“(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

“(B) is for the purpose of exportation; or

“(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;”.

(b) **PENALTIES.**—Section 924(c) of title 18, United States Code, is amended by adding at the end the following:

“(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

“(A) be sentenced to a term of imprisonment of not less than 15 years; and

“(B) if death results from the use of such ammunition—

“(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

“(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.”.

(c) **STUDY AND REPORT.**—

(1) **STUDY.**—The Attorney General shall conduct a study to determine whether a uniform standard for the testing of projectiles against Body Armor is feasible.

(2) **ISSUES TO BE STUDIED.**—The study conducted under paragraph (1) shall include—

(A) variations in performance that are related to the length of the barrel of the handgun or center-fire rifle from which the projectile is fired; and

(B) the amount of powder used to propel the projectile.

(3) **REPORT.**—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report containing the results of the study conducted under this subsection to—

(A) the chairman and ranking member of the Committee on the Judiciary of the Senate; and

(B) the chairman and ranking member of the Committee on the Judiciary of the House of Representatives.

The **SPEAKER pro tempore** (Mr. SIMPSON). Pursuant to House Resolution 493, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Maryland (Mr. VAN HOLLEN) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

## GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 397, the bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 397, the Protection of Lawful Commerce in Arms Act. This legislation passed the Senate by more than a two-thirds vote this summer and contains the same legal reform provisions of H.R. 800 sponsored by the gentleman from Florida (Mr. STEARNS). The Committee on the Judiciary considered and favorably reported H.R. 800 in May of this year.

Just like H.R. 800 and similar legislation that passed the House by more than a two-thirds majority during the last Congress, S. 397 will stop frivolous and abusive lawsuits against manufacturers and sellers of firearms or ammunition by prohibiting lawsuits resulting from the criminal and unlawful misuse of their products from being filed in Federal and State courts.

It is important to stress at the outset what this legislation does not do. First, the legislation does not preclude lawsuits against a person who transfers a firearm or ammunition knowing it will be used to commit a crime of violence or drug-trafficking crime.

Second, it does not prevent lawsuits against a seller for negligent entrustment or negligence per se.

Third, the bill includes several additional exceptions, including an exception for actions in which a manufacturer or seller of a qualified product knowingly violates any State or Federal statute applicable to sales or marketing when such violation was the proximate cause of the harm for which relief is sought.

Finally, the bill contains additional exceptions for breach of contract or warranty in connection with the purchase of a firearm or ammunition, and an exception for actions for damages resulting directly from a defect in design or manufacture of a firearm or ammunition.

Recent trends in abusive litigation have inspired lawsuits against the firearms industry on the theory of liability that would hold it financially responsible for the actions of those who use their products in a criminal or unlawful manner. Such lawsuits threaten to rip tort law from its moorings in personal responsibility and may force firearms manufacturers into bankruptcy.

□ 1030

While some of these lawsuits have been dismissed and some States have

acted to address them, the fact remains that these lawsuits continue to be aggressively pursued. The intended consequences of these frivolous lawsuits could not be more clear: the financial ruin of the firearms industry. As one of the personal injury lawyers suing American firearms companies told the Washington Post, "The legal fees alone are enough to bankrupt the industry."

Lawsuits seeking to hold the firearms industry responsible for the criminal and unlawful use of its products are brazen attempts to accomplish through litigation what has not been achieved by legislation and the democratic process. Various courts have correctly described such suits as "improper attempts to have the court substitute its judgment for that of the legislature." As explained by another Federal judge, "the plaintiffs' attorneys simply want to eliminate handguns."

Personal injury lawyers are seeking to obtain through the courts stringent limits on the sale and distribution of firearms beyond the court's jurisdictional boundaries. A New York appeals court stated recently that "courts are the least suited, least equipped, and thus the least appropriate branch of government to regulate and micro-manage the manufacturing, marketing, distribution, and sale of handguns."

Law enforcement, military personnel rely on the domestic firearms industry to supply them with reliable and accurate weapons that can best protect them in the line of fire. The best and most reliable guns will not be those designed under the requirements personal injury attorneys seek to impose through firearms lawsuits. Rather, these lawsuits threaten to injure the domestic firearms industry, endanger the jobs of thousands of hard-working Americans, and provide to foreign manufacturers an unfair advantage.

One abusive lawsuit filed in a single county could destroy a national industry and deny citizens nationwide the right to keep and bear arms guaranteed by the Constitution. Insofar as these lawsuits have the practical effect of burdening interstate commerce in firearms, Congress has the authority to act under the commerce clause of the Constitution. The Lawful Commerce in Arms Act, by prohibiting abusive lawsuits against the firearms industry, supports core federalism principles articulated by the United States Supreme Court, which has made it clear that "one State's power to impose burdens on the interstate market . . . is not only subordinate to the Federal power over interstate commerce but is also constrained by the need to respect the interests of other States . . ."

Before closing, I think it is important to set the record straight on one item. Some news outlets have claimed that this legislation would have barred a lawsuit involving the D.C. sniper and the gun the sniper obtained after it was stolen from a Washington State gun shop that did not keep track of its inventory and did not realize that the guns were stolen.

Anyone who actually reads this bill will immediately realize that that claim is patently false, and it is important to note that some of the editorial pundits apparently do not believe in reading the bills before they write and publish. Under S. 397 a plaintiff would be permitted to conduct discovery to establish the facts and circumstances surrounding what happened to the firearm while in the possession, custody, and control of the dealer and how it came into the possession of the criminal shooters. A plaintiff would be permitted to have his or her day in court to try to establish whether the dealer knowingly violated or made any false entry in, or failed to make an appropriate entry in, his records, which he is required to keep pursuant to Federal law.

I have here a report of violations filed by the Bureau of Alcohol, Tobacco, and Firearms regarding the Washington State gun dealer. It contains a record of dozens of violations of Federal law and quoting the following: "The licensee's," that is, the dealer's, "bound books were examined and compared to the physical inventory. It was initially determined that there were approximately 300 unaccounted for firearms. These initial 300-plus unaccounted for firearms are considered instances of failure to timely record disposition information in the bound record book."

So under S. 397 a lawsuit against that dealer could go forward, and I include this report in the RECORD at this point. DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

## REPORT OF VIOLATIONS

Name and Address of Proprietor: Borgelt, Brian & Carr, Charles N, Bulls Eye Shooters Supply, 114 Puyallup Ave., Tacoma, WA 98421.

License/Permit Registry Number (if any): 991053013E38708.

County (F&E only): Pierce.

Expiration Date (if any): 5/12/2003.

Date(s) or Period of Inspection: 10/25/2002 through 11/02/2002.

## INSTRUCTIONS

Please write firmly with a ball point pen when completing this form. AFT officers will prepare this form in quadruplicate. The original copy and the suspense copy (where required) will be given to the proprietor or a responsible person representative. The remaining copies will be submitted with the completed inspection report. Supervisors will detach one copy from the completed report for their files. Where corrective action cannot be taken during inspection, proprietors will submit the suspense copy to the Area Supervisor as soon as the required corrections have been made.

## INSPECTION RESULTS

An examination of your premises, records and operations has disclosed the following violations which have been explained to you: Reference Number: 1.

Nature of Violation: 27 CFR section 178.124(a). Failure to maintain ATF F4473s recording firearm transfers to non-licensees.

Information obtained from the Washington Department of Licensing indicates 25 handgun transfers to nonlicensed individuals for which you had no completed ATF F4473s. Additionally, 5 firearms transfers to nonlicensed individuals were located in your

computer sales records for which you had no ATF Form 4473s.

Citation: 27 CFR 178.

Date Planned Correction:

Corrective Action: The licensee shall endeavor to locate the required disposition records, such as ATF F4473s, in order to show evidence that a proper transfer occurred.

Reference Number: 2.

Nature of Violation: 27 CFR section 178.124(b). Failure to keep ATF F4473s in alphabetical, chronological, or numerical order.

The inspection uncovered an area behind the store register where ATF F4473s were kept. The area comprised of one lateral file cabinet drawer and a stack of forms. There were 1257 unfilled ATF F4473s. Filing by stock # is not an acceptable method of filing ATF F4473s.

Citation: 27 CFR 178.

Date Planned Correction:

Corrective Action: The licensee shall immediately file ATF F4473s that were found unfilled during the inspection, including any future completed ATF F4473s.

Reference Number: 3

Nature Of Violation: 27 CFR section 178.124(c)(3)(iii). Failure to properly record on ATF F 4473 the date on which the licensee contacted the NICS, response provided by the system, and/or any identification number provided by the system.

There were 14 ATF F 4473s that did not record this information.

Citation: 27 CFR 178.

Date Planned Correction:

Corrective Action: The licensee shall ensure that the complete background check information is properly entered in the designated area on the ATF F 4473.

Reference Number: 4

Nature Of Violation: 27 CFR 178.125(e). Failure to record dispositions made in the bound books.

The licensee's bound books were examined and compared to the physical inventory. It was initially determined that there were approximately 300 unaccounted for firearms. These initial 300+ unaccounted for firearms are considered instances of failure to timely record disposition information in the bound record book.

Some ways of locating proper disposition of these missing firearms included: 70 ATF Forms 4473 filed that did not get properly entered as bound book dispositions; 25 handgun transactions determined through the State of Washington Dept. of Licensing with no bound book entries; at least 10 dispositions to other licensees unrecorded; and at least 6 dispositions to nonlicensees located in computer sales records that have no proper disposition.

Even after using various sources, 78 firearms remain missing at the close of this inspection with no idea of where they went. List provided to licensee.

Citation: 27 CFR 178.

Date Planned Correction:

Corrective Action: The licensee shall research and resolve all unaccounted open dispositions, and properly record the 70 ATF F 4473 dispositions into the bound books.

See attached list of 78 firearms unaccounted for and report them on an ATF F 3310.11, Licensee Theft/Loss Report.

See list of firearms that no ATF F 4473s have been located on but other records of transfer have been: such as 25 firearms identified by the Washington Department of Licensing and computer records indicating a sale but no other information in regards to the transfer.

In addition, the licensee will annotate the bound book disposition entries with date, name, and address and note that no ATF F 4473 exists.

Report Bushmaster rifle, model PCWA3X, Serial number L284320 on an ATF F F3310.11, Licensee Theft/Loss Report, and make note in the bound book.

I Have Received a Copy of This Report of Violations (Proprietor's signature and title):

Date:

Signature and Title of Inspection Officer: Sandra Y. Sherlock, ATF Inspector.

Date: 11/04/2002

#### PROPRIETOR'S CERTIFICATION

Note: Proprietors must notify the ATF official below when corrective actions required as a result of this inspection have been completed. Failure to notify ATF may subject proprietors to a recall inspection or to other administrative action.

Mail or Delivery to (Address): Area Supervisor, Bureau of Alcohol, Tobacco, and Firearms, 915 2nd Avenue, Room 790, Seattle, WA 98174.

#### CERTIFICATION

I certify that the corrective actions required as a result of this inspection have been completed.

Signature and Title of Proprietor:

Other Remarks

Mr. SENSENBRENNER. Mr. Speaker, this commonsense legislation is long overdue. Congress must fulfill its constitutional duty, then exercise its authority under the commerce clause to deny a few State courts the power to bankrupt the national firearms industry and deny all Americans their fundamental constitutionally guaranteed right to bear arms. I urge the passage of this critical legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. VAN HOLLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong opposition to this dangerous and misguided bill that would exempt gun dealers from liability even when they negligently sell weapons to criminals.

It is particularly distressing that we are taking up this bill at this particular time. It was just 3 years ago this month, in October, when the community that I represent right outside here of Washington, DC was terrorized by two snipers, who left 10 people dead and three people injured. The snipers obtained their weapons from a negligent gun dealer in Washington State.

Mr. Speaker, I have been struck by how some people in this institution and other places believe that the name given to a bill will somehow fool the American people as to what the bill actually does. This bill has the title on it Protection of Lawful Commerce in Arms Act. In fact, what the bill does is to make lawful many negligent actions that today are unlawful. What it actually does is protect those gun dealers who are engaged in wrongful, negligent sales of weapons to criminals. How does it do it? Very simple. It lowers the legal standard of care that gun dealers must today exercise to prevent guns from falling into the hands of criminals.

As a result, the passage of this bill will make it easier, easier, for criminals to get weapons and it will ensure that those gun dealers who negligently,

negligently, put guns in the hands of criminals will not be held responsible for their wrongful actions. And it is a sad day, Mr. Speaker, in this body when special interests and the gun industry exert such influence that they are able to convince the Congress to strip innocent victims of crimes of their rights and instead extend protections to those unscrupulous dealers who put guns into the hands of criminals.

Now, proponents of this legislation will tell us that most gun dealers in our Nation are honest and law abiding. I agree. That is true. In fact, the Bureau of Alcohol, Firearms, and Tobacco has found that about 1 percent, about 1 percent, of gun dealers are responsible for nearly 60 percent of the guns that are traced to crimes. So if most gun dealers are honorable and responsible citizens, why do they need protection? They do not. The real beneficiaries of this legislation are those small handful of dealers who are negligently putting guns in the hands of criminals. It is protecting the bad apples. It is giving them a green light to go ahead and say I see nothing when they are engaged in sales to wrongdoers.

The proponents of this bill, as we have heard, will tell us it is only intended to stop so-called "frivolous lawsuits." That notion has been soundly rejected by victim advocates across this country, and it is an insult to the victims who seek redress against those dealers who profit from negligently selling to violent predators.

Let us focus for a minute on the victims of gun crimes in our country. Should we not be protecting them? Why do we not have a bill entitled the "Protection of Gun Violence Victims" on the floor today? Let us look at some cases. We have talked about the sniper case. I differ strongly with the chairman of the committee, and the bill, as the testimony has made clear, would not have allowed that suit to go forward. I represent that area where so many people lost their lives 3 years ago this month. On many sunny days when the snipers gunned down people who were going about their ordinary business, filling up their gas at gas stations, shopping at grocery stores, cutting their grass, a child who was going to school. Before those snipers were caught, they killed 10 people and wounded three. The snipers have been caught, convicted, and they are behind bars.

The snipers carried out those attacks with a Bushmaster XM-15 semiautomatic .223 caliber rifle. The rifle came from Bull's Eye Shooter Supply in Tacoma, Washington, which had an extensive history of firearms violations and had not reported the rifle as missing as required by Federal law because they said they did not know the rifle was missing. According to the ATF, this store and its owner had a long history of firearms sales and records viola-

On January 16, 2003, the families of many of the victims of the sniper attacks who were killed brought a lawsuit against that gun store for their losses and injuries. The victims of that heinous crime spree received a \$2.5 million settlement. Let us be clear. If this law had been in effect at that time, those victims and their families would have received nothing. In fact, this bill was being debated on the floor of this House 3 years ago this month when those killings were going on, and this House realized how bad it would look to victimize those people twice, to have them victimized once by the snipers and again by the United States Congress by denying their day in court, and that is why this House decided to withdraw the bill at that time from consideration from the floor of the House. Here we are 3 years later coming back and passing legislation that would have denied them their right. Shame on us.

Let us talk about another case. In New Jersey, June, 2004, two former New Jersey police officers, Ken McGuire and Dave Lemongello, were shot in the line of duty with a trafficked gun that had been negligently sold by a West Virginia dealer. Those two officers received a \$1 million settlement for the negligence of this dealer. The dealer had sold the gun along with 11 other handguns in a cash sale to a straw buyer, a trafficker, someone who got the guns because he could legally obtain them but then turned around and sold them to a criminal who committed the crimes. If this bill had been in effect then, that case would have been dismissed and justice for those police officers would have been denied. And because of that, many law enforcement officers and organizations have written a letter opposing this bill, a copy, Mr. Speaker, which I will insert in the RECORD.

Should we not be trying to create additional incentives to improve the business practices of these gun dealers, not give them a green light to be negligent? What happened to protecting the victims? This bill does just the opposite. It provides a shield to an industry that should be providing a standard of care at least equal to other industries and businesses. Why do we want to make the gun industry the most protected industry in America?

It is inconceivable that we are here today at the behest of the gun industry to provide immunity that no other industry enjoys and at the expense of the victims of gun violence. This bill will shut the courthouse doors on many victims who have legitimate claims.

In the interest of truth in advertising, the real name of this bill should be the "Protection of Negligent Gun Dealers Act."

I urge my colleagues to oppose this.

OCTOBER 19, 2005.

Re: Law Enforcement Opposition to S. 397.

U.S. CONGRESS,

U.S. SENATE,

Washington, DC.

DEAR SENATOR: As active and retired law enforcement officers, we are writing to urge

your strong opposition to any legislation granting the gun industry special legal immunity. S. 397 would strip away the legal rights of gun violence victims, including law enforcement officers and their families, to seek redress against irresponsible gun dealers and manufacturers.

The impact of this bill on the law enforcement community is well illustrated by the lawsuit brought by former Orange, New Jersey police officers Ken McGuire and David Lemongello. On January 12, 2001, McGuire and Lemongello were shot in the line of duty with a trafficked gun negligently sold by a West Virginia dealer. The dealer had sold the gun, along with 11 other handguns, in a cash sale to a straw buyer for a gun trafficker. In June 2004, the officers obtained a \$1 million settlement from the dealer. The dealer, as well as two other area pawnshops, also have implemented safer practices to prevent sales to traffickers, including a new policy of ending large-volume sales of handguns. These reforms go beyond the requirements of current law and are not imposed by any manufacturers or distributors.

If immunity for the gun industry had been enacted, the officers' case would have been thrown out of court and justice would have been denied. Police officers like Ken McGuire and Dave Lemongello put their lives on the line every day to protect the public. Instead of honoring them for their service, legislation granting immunity to the gun industry would deprive them of their basic rights as American citizens to prove their case in a court of law. We stand with officers McGuire and Lemongello in urging you to oppose such legislation.

Sincerely,

International Brotherhood of Police Officers (AFL-CIO Police union).

Major Cities Chiefs Association (Represents our nation's largest police departments).

National Black Police Association (Nationwide organization with more than 35,000 members).

Hispanic American Police Command Officers Association (Serving command level staff and federal agents).

National Latino Peace Officers Association.

The Police Foundation (A private, non-profit research institution).

Michigan Association of Chiefs of Police.

Rhode Island State Association of Chiefs of Police.

Maine Chiefs of Police Association.

Departments listed for identification purposes only: Sergeant Moises Agosto, Pompton Lakes Police Dept. (NJ); Sheriff Drew Alexander, Summit County Sheriff's Office (OH); Sheriff Thomas L. Altieri, Trumbull County Sheriff's Office (OH); Director Anthony F. Ambrose III, Newark Police Dept. (NJ); Chief Jon J. Arcaro, Conneaut Police Dept. (OH); Officer Robert C. Arnold, Rutherford Police Dept. (NJ); Chief Ron Atstupenas, Blackstone Police Dept. (MA); Sheriff Kevin A. Beck, Williams County Sheriff's Office (OH); Detective Sean Burke, Lawrence Police Dept. (MA); Chief William Bratton, Los Angeles Police Dept. (CA); Special Agent (Ret) Ronald J. Brogan, Drug Enforcement Agency; and Chief Thomas V. Brownell, Amsterdam Police Dept. (NY).

Chief (Ret) John H. Cease, Wilmington Police Dept. (NC); Chief Michael Chitwood, Portland Police Dept. (ME); Chief William City, Oklahoma Police Dept. (OK); Chief Kenneth V. Collins, Maplewood Police Dept. (MN); Chief Daniel G. Davidson, New Franklin Police Dept. (OH); Asst. Director Jim Deal, US Dept. Homeland Security, Reno/Lake Tahoe Airport (NV); Chief Gregory A. Duber, Bedford Police Dept. (OH); Captain George Egbert, Rutherford Police Dept. (NJ);

Sterling Epps, President, Association of Former Customs Agents, Northwest Chapter (WA); Chief Dean Esserman, Providence Police Dept. (RI); and Captain Mark Folsom, Kansas City Police Dept. (MO).

Chief Charles J. Glorioso, Trinidad Police Dept. (CO); Superintendent Jerry G. Gregory (ret), Radnor Township Police Dept. (PA); Chief Jack F. Harris, Phoenix Police Dept. (AZ); Chief (Ret.) Thomas K. Hayselden, Shawnee Police Dept. (KS); Terry G. Hillard, Retired Superintendent, Chicago Police Dept. (IL); Steven Higgins, Director (Ret.) ATF; Chief Ken James, Emeryville Police Dept. (CA); Chief Calvin Johnson, Dumfries Police Dept. (VA); Chief Gil Kerlikowske, Seattle Police Dept. (WA); Deputy Chief Jeffrey A. Kumorek, Gary Police Dept. (IN); Detective John Kotnour, Overland Park Police Dept. (KS); Detective Curt Lavarello, Sarasota County Sheriffs Office (FL); Chief Michael T. Lazor, Willowick Police Dept. (OH); Sheriff Simon L. Leis, Jr., Hamilton County Sheriffs Dept. (OH); and Sheriff Ralph Lopez, Bexar County Sheriff (TX).

Chief Cory Lyman, Ketchum Police Dept. (ID); Chief David A. Maine, Euclid Police Dept. (OH); Chief J. Thomas Manger, Montgomery County Police Dept. (MD); Chief Burnham E. Matthews, Alameda Police Dept. (CA); Chief Michael T. Matulavich, Akron Police Dept. (OH); Chief Randall C. McCoy, Ravenna Police Dept. (OH); Sergeant Michael McGuire, Essex County Sheriff's Dept. (NJ); Chief William P. McManus, Minneapolis Police Dept. (MN); Chief Roy Meisner, Berkley Police Dept. (CA); Sheriff Al Myers, Delaware County Sheriff's Office (OH); Chief Albert Najera, Sacramento Police Dept. (CA); Chief Mark S. Paresi, North Las Vegas Police Dept. (NV); Sheriff Charles C. Plummer, Alameda County Sheriffs Department (CA); Chief Edward Reines, Yavapai-Prescott Tribal Police Dept. (AZ); Chief Cel Rivera, Lorain Police Dept. (OH).

Officer Kevin J. Scanell, Rutherford Police Dept. (NJ); Robert M. Schwartz, Executive Director, Maine Police Dept. (ME); Chief Ronald C. Sloan, Arvada Police Dept. (CO); Chief William Taylor, Rice University Police Dept. (TX); Asst. Chief Lee Roy Villareal, Bexar County Sheriffs Dept. (TX); Chief (Ret) Joseph J. Vince, Jr., Crime Gun Analysis Branch, ATF (VA); Chief Garnett F. Watson, Jr., Gary Police Dept. (IN); and Hubert Williams, President, The Police Foundation (DC).

Mr. VAN HOLLEN. Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary, for yielding me this time.

Mr. Speaker, my home State of Texas is well known for the number of residents who enjoy hunting and value their right to own a gun. Today firearms are found in half of all Texas households. A State law similar to S. 397 which protects the gun industry from frivolous lawsuits, in fact, is already in effect.

Texans, like most Americans, use guns for recreation, hunting, and personal protection. Unfortunately, there are some people who want to make gun manufacturers liable for what other others do with their firearms.



Our courts are already overloaded with frivolous lawsuits designed to top-ple industries that manufacture products a few individuals in our society have decided are not safe or appropriate for Americans to have.

□ 1045

It is the typical liberal mindset. They know better than other people what is best for them.

If this bill does not pass, Texans and other Americans will be less able to protect themselves from burglars, rapists, and murderers.

The Department of Justice estimates that 1.5 million Americans every year defend themselves using a firearm.

The Constitution protects all Americans' right to bear arms. The second amendment states, "The right of the people to keep and bear arms shall not be infringed."

Mr. Speaker, to allow frivolous lawsuits to constrain the right of Americans to lawfully use guns is both irresponsible and unconstitutional.

I urge my colleagues to support this legislation.

Mr. VAN HOLLEN. Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I really wish that today we could exercise our conscience and vote without the interference of the National Rifle Association.

I do believe in the second amendment, the Bill of Rights, that indicates that you are allowed to bear arms; but this legislation has nothing to do with the first or the second amendments, freedom of expression or the right to bear arms.

More than 10 years ago, as a member of the Houston City Council, I passed the first gun safety legislation that held parents responsible for guns in their homes, that children were then able to take and cause a tragedy. I remember the physician at the Texas Medical Center, Texas Children's Hospital Emergency Room, coming and testifying. I remember a parent coming and holding a very limp child, a paraplegic. They stood before us and they said this is the result of a shooting by a gun by a child who got the gun because of an irresponsible parent. That has not stopped the State of Texas and hunters from going to hunt. In fact, it has been noted that it saved lives and saved dollars.

Here we now have legislation with a blocked rule that suggests that no one can sue, no one can bring a suit of liability against gun manufacturers, and we are now suggesting that this is embedded in the likes and the hearts of the second amendment.

Is it the second amendment that says to a Philadelphia mother who won a settlement of only \$850,000 from a gun dealer who negligently sold multiple guns to a gun trafficker, a child found

one of the guns on a street in Philadelphia and accidentally shot the mother's 7-year-old son, is there some reason, Mr. Speaker, we should not have these kinds of lawsuits? Is there some reason, Mr. Speaker, that this now putting forward only a negligence per se exception will, in fact, disallow States like Arkansas, Louisiana, Maine, Massachusetts, Nebraska, North Dakota, Rhode Island, Vermont, Washington, West Virginia, the citizens in those particular States cannot sue at all because they cannot meet the standard because there is no such standard as negligence per se?

It is unfortunate that the amendments that we were prepared to offer were not accepted; and as presently written, H.R. 800 makes individuals who sell machine guns, semiautomatic weapons, and large capacity ammunition feeding devices immune from that lawsuit, the same kind of bill that we have here before us.

In my own State of Texas, a San Antonio police officer named Hector Garza was brutally murdered when he responded to a family violence call. His assailant was armed with a MAC-10 semiautomatic pistol and AK-47 assault rifle. The shooter also murdered his wife and shot his uncle in the leg. Police Chief Al Phillips said that with the fire power the shooter possessed, the incident might have turned into a bloodbath and he could have killed multiple officers.

This is wrong-headed and misdirected. It is time now for us to vote this legislation down. What a shame for the NRA to buy this Congress.

Mr. Speaker, I oppose this legislation, S. 397, the Protection of Lawful Commerce in Arms Act, just as I did with my colleagues in the case of H.R. 800 in the Judiciary Committee and H.R. 1036 during the 108th Congress. Just as in the case of the malignant Bankruptcy legislation, S. 256, that finessed itself to the House floor for consideration and then to passage into law, H.R. 1036 passed in Committee body last Congress without having given many members the opportunity to have very substantive amendments considered—shielded by "parliamentary inquiry."

So too did Members have very important proposals to improve this very troubled piece of legislation. S. 397, like its predecessor and House companion in the 108th Congress, seeks to shield irresponsible gun manufacturers, vendors, dealers, distributors, and importers from liability under the guise of protection from "frivolous lawsuits."

As the Democrats of this Committee stated quite eloquently in its "Dissenting Views" (108–59), courts around the country have recognized that precisely the types of cases that would be barred by this bill are grounded in well-accepted legal principles, including negligence, products liability, and public nuisance. These courts have held that those who make and sell guns—like all others in society—are obligated to use reasonable care in selling and designing their product, and that they may be liable for the foreseeable injurious consequences of their failure to do so even if those foreseeable consequences include unlawful conduct by third parties. This bill, if en-

acted, would nullify these decisions, rewriting and subverting the common law of those States, and then, only with respect to a particular industry.

In the past iteration of this legislation, I offered an amendment that would exempt from the scope of the bill any lawsuit brought by a plaintiff who was harmed as the result of an unlawful transfer of a machine gun, semi-automatic assault weapon, or large capacity ammunition feeding device.

The U.S. Code, in Section 922 of Title 18, makes it unlawful for a person from transfer or possess a machine gun, semi-automatic assault weapon, or large capacity ammunition feeding device.

In addition, before the Committee on Rules earlier this week, I joined my colleague from California, Ms. LOFGREN in offering an amendment captioned "Lofgren 044," that proposes an additional exception to the definition of "qualified civil liability action" for law enforcement officers acting in that capacity. This legislation creates very overbroad prohibitions for civil lawsuits against manufacturers, distributors, dealers, or importers of firearms, and this amendment seeks to protect one of many classes of parties that might be aggrieved as a result of firearm use.

While I do sit on the Committee on Homeland Security, one does not have to sit on this body to know that our first responders need and deserve protection from unintended situations. These men and women sit at the front line and are the first to act when our Nation is threatened. The de minimis effort that we as legislators can give is to protect legitimate claims filed by them in connection with the use of firearms.

The amendment did not say that gun dealers should be liable simply because they sold a gun that was used in a crime, nor does it say that the families of all 297 officers shot to death between 1997 and 2001 should be able to recover. It simply stated that when a gun dealer sells 12 or 50 or 100 guns to a person who is clearly going to turn around and sell those guns on the street, that dealer should be held accountable. Now, the proponents of this bill may argue that the negligence per se exception protects police officers because it allows suits against dealers who violate other statutes, like the Brady Act. But that is simply not true. It would not have protected Mr. Lemongello, who brought his suit in a State that does not recognize the doctrine of negligence per se. I would also point out that this bill steps all over States' rights. As we've seen, with the Schiavo case and other tort reform efforts, the leadership of the House is all too eager to ignore principles of federalism when it suits their ideological needs. I believe that this bill is just another example of that principle.

More than 30,000 gun deaths occur each year, so the almost blanket immunization from suit proposed in this legislation represents nothing more than an unwarranted and unjust special interest giveaway to the powerful gun lobby and a shameful attack on the legal rights of countless innocent victims of gun violence. Never before has a class of persons harmed by the dangerous conduct of others been wholly deprived of the right to legal recourse.

The Lofgren-Jackson Lee amendment would have protected the right to sue for members of the law enforcement community along with

their spouses or next of kin in the event of their wrongful death. I urge my colleagues to support this important amendment.

As presently written, H.R. 800 makes those individuals who sell machine guns, semi-automatic weapons, and large capacity ammunition feeding devices immune from suit. It makes no sense that the sellers of weapons that have been banned by Congress can avoid civil liability when the guns they sell are used in crimes.

Congress has enacted this ban on machine guns, semi-automatic assault weapons, and large capacity ammunition feeding devices for an obvious reason—these assault weapons are dangerous.

The deadly characteristics of semi-automatic weapons and assault rifles was tragically illustrated in my home state of Texas. A San Antonio police officer named Hector Garza was brutally murdered when he responded to a family violence call. His assailant was armed with a Mac—10 semi-automatic pistol and an AK—47 assault rifle. The shooter also murdered his wife and shot his uncle in the leg. Police Chief Al Phillipus said that with the firepower the shooter possessed the incident "might have turned into a bloodbath" and he "could have killed multiple officers."

I will offer this amendment because the exceptions to the general ban on lawsuits against gun manufacturers and merchants is too narrow. One such narrow exception allows the victims of gun violence to sue a gun seller only if the gun purchaser is subsequently convicted of the gun-related crime.

This exception is insulting to the victims of gun violence. It prioritizes the rights of negligent gun sellers and criminals before the rights of the victims of gun violence.

H.R. 800 should be amended to allow the victims of gun violence to seek civil damages when there are allegations of wrongdoing. Under this amendment, the victims of gun violence will not have to wait for a criminal conviction in order to seek justice.

To make those individuals who sell Congressionally banned machine guns, semi-automatic assault weapons, and large capacity ammunition feeding devices liable for their negligent acts. I also offer this amendment so that the victims of gun violence can seek civil damages prior to the conviction of the gun purchaser.

In addition, I will offer an amendment that will exempt from the scope of the bill those lawsuits involving injury or death to minors under the age of 16.

As presently written, S. 397 prohibits all civil lawsuits against gun manufacturers, dealers, distributors, and trade associations for damages resulting from the criminal or unlawful gun use by the injured person or a third party.

There are a few limited exceptions to the overall ban. However, none of the exceptions in the bill protects the rights of minors, or the parents of minors, to sue for civil damages when a minor is injured or killed by a gun that is negligently or recklessly manufactured or distributed.

As it is presently written, a gun merchant could negligently or recklessly sell a gun to a criminal. That gun could then be used to seriously injure or kill a minor. Under S. 397, the negligent gun seller would be immune from any civil liability.

It is absurd to deny the families of children killed or injured by the negligence or reckless-

ness of gun distributors an opportunity to sue. At the very least, the victims of gun violence and their families deserve an opportunity to have their claims heard by a judge and jury.

It is certainly foreseeable that some guns will accidentally fall into the hands of children and serious injuries or tragic deaths may result. Those gun distributors and sellers who fail to conduct adequate background checks, or fail to take other measures to ensure that guns to do not fall into criminal hands should not be free from liability. Gun merchants have a responsibility to conduct their business safely and protect the lives of children. When they fail to do so they should be held accountable in a court of law.

Gun manufacturers and merchants should be liable in courts of law when their negligent acts result in the death or injury to a minor.

Mr. Speaker, this is a bad bill, and the amendments that strive to make some improvements that will provide relief to parties that need protection were closed out without consideration. For the reasons above stated, I reject this legislation and I urge my colleagues to join me.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. BOUCHER), my Democratic colleague on the Committee on the Judiciary.

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Speaker, I thank the gentleman for yielding me time.

I rise in support of S. 397, the Protection of Lawful Commerce in Firearms Act.

It will prohibit lawsuits against firearms manufacturers, legal distributors, dealers or importers for damages resulting from the misuse of a firearm by a third party.

The bill is very similar to a House bill that I joined with the gentleman from Florida (Mr. STEARNS) in sponsoring earlier this year. Our House bill achieves the same objectives as the Senate bill now before us, and the House bill has been cosponsored by 257 Members of this body.

The lawsuits against the firearms industry are nothing more than thinly veiled attempts to circumvent the legislative process and achieve gun control through litigation.

Frustrated that Congress and most State legislatures have rejected repeated attempts to have gun control imposed, some have now turned to the courts in their effort to limit the legal availability of firearms.

I want for my constituents and for all Americans to be able to purchase guns for lawful purposes. The vast majority of gun owners use their firearms responsibly. They should not be restricted in their future purchases because the threat of lawsuits has rendered the American market economically unattractive for the manufacturers.

While the bill before us will prohibit lawsuits against manufacturers and others in the chain of distribution based upon misuse of the firearm, it does not interfere with traditional

remedies for damages resulting from defects or design in the manufacture of products.

The bill provides no shelter to those who would sell firearms illegally. It does not affect suits against anyone who has violated other State or Federal laws.

This bill is a commonsense measure to eliminate lawsuits which unjustly interrupt the legal sale of a legal product.

A majority of States, including my home State of Virginia, enacted similar laws prohibiting these suits.

With our votes today, we will provide a much-needed additional response. I urge approval of the measure.

Mr. VAN HOLLEN. Mr. Speaker, I wish my colleague from Virginia would come meet with 10 families from the Washington area who had victims killed during the sniper attacks 3 years ago, as well as the police officers from New Jersey, and tell them that those lawsuits were frivolous lawsuits.

Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. FARR).

Mr. FARR. Mr. Speaker, I rise in strong opposition to this bill.

I would first like to say that I support the rights of gun owners and hunters, but this bill makes it clear this is not about the second amendment. This bill is about a direct assault on our civil justice system that endorses unscrupulous corporate behavior.

Once again, with this bill, democracy has been thwarted by bringing this bill to the floor. Very reasonable amendments were offered, but the majority adopted a restrictive rule that prevented them from being heard on the floor today.

One of those amendments would have expanded the ban on armor-piercing bullets also. For God's sake, who in this country needs to own armor-piercing bullets?

We are not legislating via the intended democratic process. The people of this country want and deserve an open and participatory government, not law by fiat.

I urge a strong "no" vote on this bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 5 minutes to the gentleman from Florida (Mr. STEARNS), the principal author of the bill.

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, I thank the distinguished chairman of the Committee on the Judiciary for his help in bringing this bill to the floor. He has been a leader on this bill in shepherding it through the Committee on the Judiciary time and time again.

I also want to thank my colleague from Virginia (Mr. BOUCHER) for introducing this bill with me through the last three sessions of Congress and all the other Members who have strongly supported the Protection of Lawful Commerce in Arms Act over the years.

Mr. Speaker, this is a bipartisan bill. Almost the same bill passed this House



on this floor 285 to 140. Over 60 Democrats supported it.

This legislation will stop baseless lawsuits against gun manufacturers or dealers based on the criminal or unlawful third-party misuse of firearms.

This may seem like an obvious idea. After all, would we hold a car company responsible if a driver gets drunk or reckless and hits somebody with a vehicle? Of course not. This is the United States of America where we are responsible for our own actions; but yet these frivolous lawsuits against a vital, legitimate and perfectly lawful industry have continued unabated for the last several years in the simple hope of bankrupting this industry.

This is a commonsense, logical piece of legislation whose time has come. The States, the courts and the American people have decided again and again that these harmful and baseless lawsuits are unfair and must be done away with.

If anyone does not believe me, let us take a look at this map. It shows that 33 States, or two-thirds of the United States, have laws prohibiting these same frivolous lawsuits. These States consider it fair and just to prevent these junk lawsuits. I am proud to say my home State of Florida is one of those States. The bill we are considering today is designed to simply mirror these States and what they have done to provide a unified system of laws United States-wide.

There have also been dozens and dozens of lawsuits at the local, State, and Federal levels which have rejected this theory that gun manufacturers should be held liable for what violent criminals do with their lawful products.

I have three charts here which list in detail these cases. It is really quite impressive the number of these frivolous lawsuits that have been rejected out of hand.

If my colleagues would bear with me, I would like to focus on a recent case in this last chart which is circled. This case took place in the County of Los Angeles, California. The cities of Los Angeles, San Francisco, and 12 other California municipalities filed lawsuits against 28 manufacturers, six distributors and three associations. This was a mammoth case and they lost. They appealed it, and it was unanimously upheld by a lower court and the appellate court.

I would remind my colleagues that this is an idea that has been enormously popular with the public, also. A March 2005 poll conducted by the Moore Information Public Information Research Company showed that a remarkable 79 percent of the American people believe that firearm manufacturers should not be held legally responsible for violence committed by armed criminals.

The fact of the matter is that there are several pending lawsuits which continue to abuse the judicial system and would threaten legitimate, lawful businesses, including in New York City and right here in the District of Columbia.

We must also consider that just the mere threat of these suits or taking the first couple of legal steps to defend these suits simply can be enough to force some of the smaller companies out of business. As one proponent of this tactic once bragged, we are going to make the gun industry die a "death by a thousand cuts."

This legislation will end these coercive and undemocratic lawsuits.

I remind my colleagues and those who are watching at home that this legislation is very narrowly tailored to allow suits against any bad actors to proceed. It includes carefully crafted exceptions to allow legitimate victims their day in court for cases involving defective firearms, breaches of contract, criminal behavior by a gun maker or seller, or the negligent entrustment of a firearm to an irresponsible person.

In conclusion, Mr. Speaker, I am pleased that we are voting on this bill. It has been a 6-year effort. It is with a great deal of satisfaction to the 257 bipartisan cosponsors that this bill, H.R. 800, as amended by the Senate and passed by the Senate two to one, 65 to 31, is poised to pass in this Congress as a bipartisan law.

I urge my colleagues to join with us in voting for this piece of legislation.

Mr. VAN HOLLEN. Mr. Speaker, it seems that the charts that my colleague showed listing all the lawsuits actually make the case for how the system is working because, as he knows, many of those cases have been dismissed by the court. The court looked at them; and those cases that were frivolous, it decided to dismiss.

So why are we trying to change the rules? It is because there are some cases that have merit, like the sniper cases and others, that would continue to go through, and under this legislation, they will not. Why change the rules to deny legitimate victims their day in court?

Mr. Speaker, I yield 3 minutes to my colleague from New York (Mrs. MCCARTHY) who has been such a leader on this important issue in protecting the victims of gun violence.

□ 1100

Mrs. MCCARTHY. Mr. Speaker, I thank my colleague from Maryland for doing such a wonderful job on handling this issue.

Let me first say something. The legislation in front of us, as far as I am concerned, is frivolous. When we think about the millions and millions of lawsuits that have been filed over the last 10 years, only 57 have actually involved the gun industry, 57, and for that we are taking time up here in Congress.

We hear constantly that this is a good bipartisan bill, that over 200 of our Members, Republicans and Democrats, basically support this legislation. May I remind many of my colleagues that the NRA has put extraordinary pressure on Members, and certainly even in the States.

With that being said, there are people out there that need to protect our victims, and they should be protecting our victims. My family went through a terrible tragedy years ago, and it was because of gun violence.

Now, they are saying that the gun industry has nothing to do with the person that buys the gun. Well, I say they do have a purpose. We know that the gun industry, when they ship the guns to gun dealers, and then a gun is used in the commission of a crime, through the tracing it goes back to the gun dealer to say that this store bought the gun from here. They keep statistics on this. In New York State, over 60 percent of the guns used in crime are traced back to the manufacturers.

With that being said, the majority of our gun stores are legitimate owners. But again, 1 percent is causing over 60 percent of the harm in this Nation. With this bill that is going to be passed today, and it will be passed today and will be signed by the President, is not doing any favor for the citizens of the United States.

Our courts are working, and they should continue to work. But again, it comes down to where the victims should be allowed to have their day in court. What we are doing to the gun industry is allowing them to have a blanket, a blanket. My colleagues say that we can have our day in court. The hoops that they will have to go through will make it near impossible.

The States that have the right, through their attorneys general, to sue the gun manufacturers should have their day in court. We are not looking to put anyone out of business. We are not looking to take the right of someone to own a gun, but the gun industry and these bad dealers are costing this country over \$100 billion in health care every single year, and here we are going to give them blanket immunity.

I do not understand this. This is not common sense. This is not protecting the American people. And when the American people and my gun owners hear exactly what should be done, they agree with us. It is up to the American people to have their voices heard.

I urge my colleagues to defeat this legislation. It is not good for the American people, it is not good for the health care system.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Indiana (Mr. PENCE).

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, I thank the chairman for yielding me this time and I thank him and the gentleman from Florida (Mr. STEARNS) for their visionary leadership on this bipartisan legislation.

The right to keep and bear arms is enshrined in the second amendment of the Constitution of the United States, and the Protection of Lawful Commerce in Arms Act today will reaffirm our Nation's ability to keep, bear, and

manufacture lawful firearms in the United States of America. By passing this bill, Congress will prevent one or a few State courts from bankrupting the national firearms industry with baseless lawsuits.

Mr. Speaker, a gun, by its very nature, is dangerous. But throughout the history of tort law in this Nation, we have built on the principle of individual responsibility in which a product may not be defined as defective unless there is something wrong with the product, not with the way that it is used. The progeny of cases that have emerged in recent years against gun manufacturers flies in the face of both our Constitution as well as the history of common law and its tradition.

It is time for Congress to fulfill its congressional duty, exercise its authority under the commerce clause, and prevent a few State courts from bankrupting our national firearms industry that has as its foundation our constitutional right to keep and bear arms.

Mr. VAN HOLLEN. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. MEEHAN).

Mr. MEEHAN. Mr. Speaker, the gun industry would like to see this legislation passed today so that they can protect their profits. But I would like to talk about the real people who will be affected by this bill, people who have suffered enough.

I would like to talk about a 26-year-old father of two from my home State of Massachusetts whose death was a direct result of negligence by a gun maker. Five years ago, Danny Guzman was leaving a holiday party to go home to see his daughters, Tammy and Selena, but he never made it home. Standing on the street, Danny Guzman was struck down by a stray bullet fired from a 9 millimeter handgun. That gun that killed him made its way into criminal hands because a gun factory employee had stolen it from his workplace and sold it on the black market.

But this is no isolated incident. In that same year, over 25,000 guns hit America's streets after being stolen or lost under suspicious circumstances. And, according to court testimony in the case, stealing guns happened at the plant "all the time," and it happened all the time because no system was in place to prevent theft. It happened all the time because the gun company was negligent. And, in this particular case, the employee got his job at the gun plant despite a criminal record that included a history of drug abuse, theft, and violence.

Mr. Speaker, when big tobacco lied about the dangers of smoking, we held them accountable. When the pharmaceutical industry markets dangerous drugs, we hold them accountable, too. But what do we do when gun makers and dealers ruin countless lives through their reckless behavior, through their negligence? This House considers legislation to provide them special protection and to deny gun victims and their families the justice they deserve.

If this bill becomes law, the Guzman family in Massachusetts, in addition to losing a husband, a son, and a father, will lose their right of legal recourse and justice. It would be an unspeakably cruel case of justice denied.

I strongly oppose this legislation and I urge my colleagues to do the same. Businesses in the firearms industry do not deserve special treatment under the law.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Colorado (Mr. SALAZAR) who is always welcome on this side of the aisle.

(Mr. SALAZAR asked and was given permission to revise and extend his remarks.)

Mr. SALAZAR. Mr. Speaker, I thank the gentleman for yielding me this time. I rise today in support of Senate bill 397, the Protection of Lawful Commerce in Arms Act. I would like to thank the gentleman from Florida (Mr. STEARNS) and the gentleman from Wisconsin (Mr. SENSENBRENNER) and the Committee on the Judiciary for all their hard work on this much-needed piece of legislation.

Mr. Speaker, I consider myself a strong supporter of the second amendment to our Constitution and truly believe in the rights of Americans to keep and bear arms.

For a long time, I have been very dismayed at the anti-gun lobby's effort to litigate the gun industry to death. Taking gun manufacturers, wholesalers, and distributors to court for the actions of criminals is ludicrous. These are mostly small to medium-sized business owners who cannot afford to pay lawyer fees to avoid lawsuits.

Senate bill 397 is a bipartisan effort to reform the civil liability system to ensure that those who lawfully make and sell firearms cannot be held liable for the misuse and criminal use of those firearms.

The current system is equivalent to someone stealing my Chevrolet truck, committing a crime with it, and then GM being sued for millions of dollars for their misdeeds. Now this, to me, is ridiculous. It is time for Congress to derail the efforts of certain organizations whose aim is to bankrupt the firearms industry through litigation.

I urge my colleagues on both sides of the aisle to join me in supporting Senate bill 397, a commonsense measure to protect small businesses and preserve the second amendment rights of American citizens.

Mr. VAN HOLLEN. Mr. Speaker, I yield myself such time as I may consume.

I want to address an issue we have not covered this morning, which deals with the question of terrorists trying to get their hands on guns in this country. We know from our reports and records that Osama bin Laden and other terrorists have said to their terrorist network that they can easily obtain weapons in the United States, and we know from a government accountability study from January of this year

that between February 3 and June 20 of 2004, 35 known or suspected terrorists, those are people who are on the terrorist watch list, purchased guns in the United States, and that from July 1 through October 31 of last year 12 additional people on the terrorist watch list purchased guns in the United States.

Now, I think many Americans would be surprised to know that you can be on the terrorist watch list and you can go to the airport and try and board an airplane, and because you are on the terrorist watch list, we say no, we want to protect the public, we are not going to let you board this airplane and compromise the safety of other passengers on that plane. But that person can then get in their car at the airport, go to their local gun store and buy as many semiautomatic weapons as that terrorist wants. What is more, that person can walk into that gun store and say, hey, guess what? I am on the terrorist watch list, and I want 12 semiautomatic assault weapons, and under this bill, if we pass it today, we could not hold that gun store owner liable in any way for a wrongful sale.

How do I know that? We offered an amendment in committee. Very simple. Let me read the language of the amendment. We said, we do not want to except from lawsuits and liability a seller who knows that the name of the person appears in the violent gang and terrorist organization file maintained by the Attorney General and the person subsequently used the qualified product, the weapon, in the commission of a crime.

We had a vote in committee on this amendment. Every Republican member of the committee voted no, every Democratic member of the committee voted yes. The gentleman from California (Mr. WAXMAN) and I tried to get through the Committee on Rules an amendment so the whole House could consider this proposition. What did the Committee on Rules say? No.

It seems to me outrageous that we would pass a bill that would allow someone to walk into that gun store, the gun store owner knows that person is on the terrorist watch list, they sell the person a gun, the person goes out and murders people and, under this legislation, guess what? You can no longer hold them liable. That is a shame.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, the plain language of the bill says that the hypothetical the gentleman from Maryland just talked about falls under the negligent entrustment exemption from the bill, so a lawsuit could proceed. Read the bill.

Mr. Speaker, I yield 2 minutes to the gentleman from Kentucky (Mr. DAVIS).

Mr. DAVIS of Kentucky. Mr. Speaker, I am a lifetime member of the National Rifle Association and a life-long shooting sports enthusiast. I have been an outspoken supporter of second

amendment rights and strongly support the original intent of this bill.

I regret the legislation we are voting on today contains the Kohl-Reed storage device amendment. We need to protect the firearms industry, an industry I would like to remind my colleagues on the other side of the aisle is responsible for arming our troops, our law enforcement professionals, including the Capitol Police. But responsible gun owners should not have further limits placed on their second amendment rights. Unfortunately, it has become necessary to enact legislation to protect responsible owners, manufacturers, and sellers from frivolous liability lawsuits and criminals and others who irresponsibly handle firearms.

The original legislation from the House had 257 cosponsors and the original bill in the Senate, which did not contain the Kohl-Reed amendment, had 62 cosponsors. I do not understand why then we are about to pass a measure that is a compromise of the two bills that were overwhelmingly supported by both Chambers.

Among the provisions of this amendment is a requirement of using devices like a trigger lock to protect an individual from a release of liability if a criminal should take their weapon. For example, trigger locks can violate a fundamental safety rule of keeping everything out of the trigger guard until ready to shoot. The very real safety hazard is that the lock could actually depress the trigger as it enters the trigger guard if the weapon is not cleared.

Having said that, though, I think it is very important and I urge my colleagues to support the Protection of Lawful Commerce in Arms Act, because we need to take immediate steps to protect the firearms industry and manufacturers and responsible gun owners from the liberal left's culture of frivolous litigation and to legislate by lawsuit.

□ 1115

Mr. VAN HOLLEN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, let me mention that the gentleman from Maryland (Mr. VAN HOLLEN) has a long and prominent history in knowing the laws of this Nation in his earlier life, and as well rendering them in the proper manner.

And I want to follow the comments that you made about the amendments offered in the committee, and as well make mention of the fact of the kind of complete reckless, if you will, lacking of sensitivity, to putting forward real balanced legislation.

In our dissenting views, the Democrats of this committee mentioned courts around the country, and by the way, there are views about gun safety across the aisle. But courts around the country have recognized that precisely the types of cases that would be barred by this bill are grounded in well-ac-

cepted legal principles, including negligence, products liability and public nuisance.

These courts have held that those who make and sell guns, like all others in society, are obligated to use reasonable care in selling and designing their products and that they may be liable for foreseeable injurious consequences.

The courts have answered this question. They have rejected frivolous lawsuits. And those that have merit they have accepted. I offered an amendment that would exempt from the scope of the bill any lawsuit brought by a plaintiff who was harmed as a result of an unlawful transfer of a machine gun, semi-automatic assault weapon, or large-capacity ammunition feeding device.

These particular arms, illegal. And therefore the manufacturer does have some liability in it. And this latest offering of the bill, the gentlewoman from California (Ms. ZOE LOFGREN) and myself offered a bill that would exempt law enforcement officers.

This bill does not even exempt law enforcement officers. And even in this climate of homeland security, it is well known that our first responders need to be protected by the reckless use of machine guns and AK-47s. And this legislation turns a blind eye to reality. It turns a blind eye to the shooting of children. It turns a blind eye to the sniper in Washington, to the Philadelphia mother.

I ask my colleagues to vote against this legislation. This is not the second amendment. This is the NRA free legislation.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Speaker, I rise in strong support of S. 397, the Protection of Lawful Commerce in Arms Act, and thank the chairman of the Judiciary Committee, the gentleman from Wisconsin, for bringing this legislation forward.

The second amendment to the U.S. Constitution clearly declares that the rights of citizens to keep and bear arms shall not be infringed. Despite this fundamental protection, an extreme minority determined to restrict the supply of firearms and firearms ownership has discovered a new tool, frivolous lawsuits.

Recently, more than 30 cities and counties have filed lawsuits against the firearms industry alleging that the industry is liable for the actions of third parties, including those that use lawful firearms in a criminal manner. Many legitimate firearms manufacturers could be forced to go out of business due to the prohibitive costs of defending these targeted lawsuits.

If the courts are so allowed to decide the fate of gun manufacturers, then the trial lawyers and the courts will effectively be regulating the supply of firearms and thus the right of citizens to bear arms.

However, legislatures, not courts, are the proper forums for deciding the

scope of regulation for the firearms industry. S. 397 would prevent plaintiffs from bringing civil actions against firearm manufacturers and sellers for the criminal or unlawful misuse of third parties of properly made firearms. This bill will help to put an end to the judiciary legislating in the firearms field.

It will also serve as an important statement that responsibility for wrongdoing should rest with the wrongdoer. As Oliver Wendall Holmes stated in an 1894 Harvard Law Review article: "Why is not a man who sells firearms answerable for assaults committed with pistols bought of him since he must be taken to know the probability that sooner or later someone will buy a pistol of him for some unlawful end?"

The principle seems to be pretty well established in this country, at least, that everyone has a right to rely upon his fellow man acting lawfully. Over 30 States have enacted legislation to prevent junk lawsuits against the firearms industry based on the criminal behavior of others. These States have thus declared that the responsibility for wrongdoing should rest with wrongdoers. Congress should follow the States' lead and pass S. 397.

The House has passed the Protection of Lawful Commerce in Arms Act on several occasions. Now the Senate has passed it. We have a chance to send this bill to the President of the United States.

I urge my colleagues to support this important legislation.

Mr. VAN HOLLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I will include in the RECORD the following letters in opposition to S. 397. Letters from the ABA, letters from two former directors of the ATF, a letter from a number of nationally recognized organizations, and letters from a number of law professors.

Mr. Speaker, a moment ago, I raised the scenario of a terrorist getting denied access to an airplane because they are on the terrorist watch list going down to a local gun shop and saying, You know, I am on that watch list, can I get some guns? And under this legislation, that individual would be allowed to purchase those guns.

I have read the bill, and that is why I offered the amendment in committee. And what the bill says very clearly under negligent entrustment is essentially if the gun dealer knows or should know that the person to whom the product is supplied is likely to use the product in a manner involving unreasonable risk of physical injury.

Now, we all might say common sense tells us that that would cover a person on the terrorist watch list. But you know what, that is not what the explanation was in committee. In fact, I have the committee transcript here, and the gentleman from Utah (Mr. CANNON) stated that the reason that

they did not want to adopt the amendment was not because the bill already covered that scenario. The real reason was they have questions about the reliability of the terrorist watch list and whether or not someone who is on the terrorist watch list is legitimately put there.

Well, here is the question. If the terrorist watch list is good enough to deny someone access to an airplane because that will put the public safety at risk, why is it not good enough to deny someone a firearm who goes down to the local gun store?

We have tried to make it a condition that people who are on the terrorist watch list cannot purchase weapons at gun stores. The Attorney General in testimony before our committee said maybe we should think about that. We have not passed that as a Congress.

And so for the chairman of the committee to say that the gun store owner will be assumed to know that person is a danger, when the United States Congress and the Judiciary Committee have refused to make that decision, it is just plain wrong. The Congress has not gone on record saying that someone on the terrorist watch list should not get a gun. Why should we expect a gun dealer and seller to do that?

So this does open a loophole that would allow exactly the scenario I talked about.

It would close the door on lawsuits by the victims of the snipers in this area. The letters I submitted for the RECORD from law professors and others make it absolutely clear that that is what this does.

Look, we have got a system for bringing lawsuits. We heard from the author of the bill, the gentleman from Florida (Mr. STEARNS), a number of cases that were filed that he said were frivolous. Most of those cases were in fact dismissed from the courts.

The system is working. Frivolous lawsuits were dismissed. But what this legislation would do is to change the rules. It does not have to change the rules to protect the ones that were dismissed; they have been dismissed under the existing rules. So why are we changing them? Because we want to deny people who bring legitimate suits today, people like the families of the sniper victims, people like the officers from New Jersey, the police officers, who I must point out, again, and emphasize obtained settlements in those lawsuits.

We want to close the courthouse door on them. I would just ask a very simple question, Mr. Speaker, my colleagues. We have a bill here saying we are going to protect the Lawful Commerce in Arms Act, which in fact changes the rules to make what is today unlawful, lawful.

Why do we not go about the business of passing legislation to protect the victims of gun violence rather than that small handful of bad-apple gun dealers who wrongfully and negligently help put the guns in the hands of kill-

ers in this country and allow them to go on the kind of rampage that leads to the death of so many people.

The killers are in jail. Thank God for that. But why should someone who is known to be negligent, who the ATF found to be negligent and later closed the gun shop, why should that person not be liable for their contribution to the negligence and to the deaths and sufferings that were faced by those families? Let us get about protecting the victims.

Mr. Speaker, the material I previously referred to is as follows:

AMERICAN BAR ASSOCIATION,  
GOVERNMENTAL AFFAIRS OFFICE,

Washington, DC, April 4, 2005.

DEAR SENATOR: I am writing on behalf of the American Bar Association to express our strong opposition to S.397, the Protection of Lawful Commerce in Arms Act, and to similar legislation to enact special tort laws for the firearms industry. The ABA opposes S.397, and has opposed similar legislation in the past two Congresses, because we believe the proposed legislation is overbroad and would unwisely and unnecessarily intrude into an area of traditional state responsibility.

The responsibility for setting substantive legal standards for tort actions in each state's courts, including standards for negligence and product liability actions, has been the province of state legislatures and an integral function of state common law since our nation was founded. S.397 would preempt state substantive law standards for most negligence and product liability actions for this one industry, abrogating state law in cases in which the defendant is a gun manufacturer, gun seller or gun trade association, and would insulate this new class of protected defendants from almost all ordinary civil liability actions. In our view, the legitimate concerns of some about the reach of a number of suits filed by cities and state governmental units several years ago have since been answered by the deliberative, competent action of state courts and within the traditions of state responsibility for administering tort law.

There is no evidence that federal legislation is needed or justified. There is no hearing record in Congress or other evidence to contradict the fact that the state courts are handling their responsibilities competently in this area of law. There is no data of any kind to support claims made by the industry that it is incurring extraordinary costs due to litigation, that it faces a significant number of suits, or that current state law is in any way inadequate. The Senate has not examined the underlying claims of the industry about state tort cases, choosing not to hold a single hearing on S.397 or its predecessor bills in the two previous Congresses. Proponents of this legislation cannot, in fact, point to a single court decision, final judgment or award that has been paid out that supports their claims of a "crisis". All evidence points to the conclusion that state legislatures and state courts have been and are actively exercising their responsibilities in this area of law with little apparent difficulty.

S. 397 proposes to exempt his one industry from state negligence law. The proposed federal negligence law standard will unfairly exempt firearms industry defendants from the oldest principle of civil liability law: that persons, or companies who act negligently should be accountable to victims harmed by this failure of responsibility. Negligence laws in all 50 states traditionally impose civil liability when individuals or busi-

nesses fail to use reasonable care to minimize the foreseeable risk that others will be injured and injury results. But this proposed legislation would preempt the laws of the 50 states to create a special, higher standard for negligence actions for this one protected class, different than for any other industry, protecting them from liability for their own negligence in all but extremely narrow specified exceptions. The ABA believes that state law standards for negligence and its legal bedrock duty of reasonable care should remain the standard for gun industry accountability in state civil courts, as these state standards for the rest of our nation's individuals, businesses and industries.

The proposed federal product liability standards will unfairly insulate firearm industry defendants from accountability in state courts for design defects in their products. The proposed new federal standard would preempt the product liability laws in all 50 states with a new, higher standard that would protect this industry even for failing to implement safety devices that would prevent common, foreseeable injuries, so long as any injury or death suffered by victims resulted when the gun was not "used as intended".

Under existing product liability laws in most states, manufacturers must adopt feasible safety devices that would prevent injuries caused when their products are foreseeably misused, regardless of whether the uses are "intended" by the manufacturer, or whether the product "fails" or "improperly" functions. Thus automakers have been held civilly liable for not making cars crashworthy, even though the "intended use" is not to crash the car. Manufacturers of cigarette lighters must make them childproof, even though children are not "intended" to use them. Under this proposed legislation, however, state laws would be preempted so that gun manufacturers would enjoy a special immunity.

Enactment of S. 397 would also undermine responsible federal oversight of consumer safety. The broad and, we believe, unprecedented immunity from civil liability that would result from enactment of S. 397 must be viewed against the existing legal backdrop of the present, unparalleled immunity the firearms industry enjoys from any federal safety regulation. Unlike other consumer products, there is no federal law or regulatory authority that sets minimum safety standards for domestically manufactured firearms. This is because the firearms industry was able to gain an exemption for firearms from the 1972-enacted Consumer Product Safety Act, the primary federal law that protects consumers from products that present unreasonable risk of injury. Over the last 30 years, an average of 200 children under the age of 14 and over a thousand adults each year have died in gun accidents which might have been prevented by existing but unused safety technologies. A 1991 Government Accounting Office report estimated that 31 percent of U.S. children's accidental firearm deaths could have been prevented by the addition of two simple existing devices to firearms: trigger locks and load-indicator devices. Sadly, these minimal safety features are still not required.

This bill, if enacted, would insulate the firearms industry from almost all civil actions, in addition to its existing protection from any consumer product safety regulations. Such special status for this single industry raises serious concerns about its constitutionality; victims of gun violence have the right—as do persons injured through negligence of any party—to the equal protection of the law.

The risk that states may at some future date fail to appropriately resolve their tort

responsibilities in an area of law—where there is no evidence of any failure to date—cannot justify the unprecedented federal preemption of state responsibilities proposed in this legislation. The ABA believes that the states will continue to sort out these issues capably without a federal rewriting of state substantive tort law standards. The wiser course for Congress, we believe, is to respect the ability of states to continue to administer their historic responsibility to define the negligence and product liability standards to be used in their state courts. For these reasons, we urge you to reject S. 397.

Sincerely,

ROBERT D. EVANS.

DEAR SENATORS AND REPRESENTATIVES: The undersigned former Directors of the Bureau of Alcohol, Tobacco, and Firearms ("ATF") write to express our grave concern over pending legislation that the Congress is now considering. S. 397 and H.R. 800 would provide sweeping immunity to members of the gun industry in numerous cases. While there are many disturbing aspects to this bill from a policy perspective, this letter concerns one that is especially disturbing to us, as it threatens ATF's ability to fully and effectively enforce our nation's gun laws.

Supporters of gun industry immunity have added language to S. 397 and H.R. 800 that was not included in the gun immunity bills considered by the last Congress (H.R. 2037, S. 659, S. 1805, and S. 1806). This new language includes provisions that threaten to block law enforcement efforts by the ATF, as well as state governments. Specifically, the legislation would now prohibit certain law enforcement "administrative proceeding(s)." §4(5)(A). This goes well beyond barring civil damages suits, and is apparently intended to curtail law enforcement proceedings against gun sellers who violate the law. Given the serious and persistent danger posed to society by irresponsible gun sellers who supply the criminal gun market and other prohibited purchasers, we find it outrageous that Congress would contemplate tying the hands of law enforcement to protect scofflaw dealers.

This broad new language threatens to block any ATF "administrative proceeding" that seeks "fines, or penalties, or other relief" resulting from unlawful use of firearms by third parties. §4(5)(A). The bill would likely prohibit ATF from initiating enforcement proceedings including those to:

Prohibit ATF from initiating proceedings to revoke a gun dealer's federal firearm license if the dealer supplies guns to criminals or other prohibited buyers. Current law enables ATF to initiate proceedings to revoke a federal firearm license if a gun dealer willfully violates federal law, such as by transferring a gun to a criminal. 18 U.S.C. §923(e).

Limit ATF's ability to prevent the importation of non-sporting firearms used frequently in crimes. Current law enables ATF to initiate proceedings to prohibit the importation of firearms that do not have a "sporting purpose." 18 U.S.C. §925(d)(3).

We know from experience how important it is that ATF be able to enforce our nation's gun laws to prevent firearms from being obtained by terrorists, other criminals, and the gun traffickers who supply them. To protect our citizens from the scourge of gun violence Congress should be strengthening our laws and increasing ATF's resources and ability to enforce those laws. To handcuff ATF, as this bill does, will only serve to shield corrupt gun sellers, and facilitate criminals and terrorists who seek to wreak havoc with deadly weapons. To take such anti-law enforcement actions in the post-9/11 age, when we know that suspected terrorists are obtaining firearms, and may well seek them from irresponsible gun dealers, is nothing short of madness.

The bill also would likely limit the ability of state attorneys general to bring actions against gun sellers who violate state law, such as those who engage in "straw sales" to someone who illegally buys guns on behalf of prohibited buyers. Had this bill been the law, California may not have been able to levy the \$14.5 million fines Wal-Mart recently paid to settle a civil suit brought by the California Attorney General concerning numerous violations of state law, including sales to straw buyers. The bill would also jeopardize state and local law enforcement proceedings to shut down "kitchen table" dealers who sell guns out of their homes to criminals.

In closing, we would note that many of us have other reservations as well about substantive aspects of S. 397/H.R. 800. But even without those troublesome aspects, the restrictions placed on law enforcement should be reason enough for Congress to reject this dangerous legislation. We urge Congress to reject S. 397 and H.R. 800.

STEPHEN HIGGINS,  
*Director (Ret.) ATF,*  
1982-1995.

REX DAVIS,  
*Director (Ret.) ATF,*  
1970-1978.

DEAR MEMBER OF CONGRESS: Please oppose any legislation that would limit the legal rights of gun violence victims.

The National Rifle Association and others in the gun lobby are pushing legislation that would deprive gun violence victims of their legal rights and give special legal privileges to the gun industry (House bill H.R. 800 and Senate bill S. 397).

Similar legislation was defeated in the last Congress, and it must be stopped again in the 109th Congress.

Recently, gun violence victims have exercised their legal rights and held reckless and irresponsible gun sellers accountable:

Families of victims of the 2002 D.C.-area sniper attacks won a \$2.5 million settlement from Bull's Eye Shooter Supply, the dealer who "lost" the snipers' assault rifle, and Bushmaster Firearms, the assault weapon maker who supplied Bull's Eye, while turning a blind eye to its disgraceful record of missing guns and regulatory violations. Further, as part of the settlement, Bushmaster agreed to inform its dealers of safer sales practices that will prevent other criminals from obtaining guns—something Bushmaster had never done before.

Two former New Jersey police officers, Ken McGuire and Dave Lemongello, shot in the line of duty with a trafficked gun negligently sold by a West Virginia dealer, won a \$1 million settlement. The dealer had sold the gun, along with 11 other handguns, in a cash sale to what turned out to be a straw purchasing team. After the lawsuit, the dealer, as well as two other area pawnshops, implemented safer practices to prevent sales to traffickers, including a new policy of ending large-volume sales of handguns. These reforms go beyond the law and are not imposed by any manufacturers or distributors.

If the NRA's special interest legislation had passed Congress, these victims would never have obtained justice and it would be business as usual for these dangerous gun sellers.

Instead of trying to close the courthouse doors to victims, Congress should be investigating the gun industry, cracking down on the corrupt dealers who arm drug gangs and other criminals, and passing stronger laws to stop gun deaths.

Please protect gun violence victims and OPPOSE any Immunity legislation (H.R. 800/

S. 397) that would deprive them of their legal rights.

Sincerely,

#### NATIONAL GROUPS

Alliance for Justice.  
American Association of School Psychologists.  
American Association of Suicidology.  
Americans for Democratic Action.  
American Humanist Association.  
American Public Health Association.  
Brady Campaign To Prevent Gun Violence  
United With the Million Mom March.  
Child Welfare League of America.  
Children's Defense Fund.  
Church Women United.  
Coalition To Stop Gun Violence.  
Common Cause.  
Congregation of Sisters of St. Agnes Leadership Team.  
Consumer Federation of America.  
Consumers for Auto Reliability and Safety.  
Disciples Justice Action Network.  
Equal Partners in Faith.  
Evangelical Lutheran Church in America.  
Hadassah The Women's Zionist Organization Of America.  
HELP Network.  
League of Women Voters of the U.S.  
Legal Community Against Violence.  
National Council of Jewish Women.  
National Council of Women's Organization.  
National Research Center for Women & Families.  
Physicians for Social Responsibility.  
Presbyterian Church (USA).  
Public Citizen.  
Religious Action Center of Reform Judaism.  
States United to Prevent Gun Violence.  
The American Jewish Committee.  
The Ms. Foundation for Women.  
The Society of Public Health Education (SOPHE).  
The United States Conference of Mayors.  
Unitarian Universalist Association of Congregations.  
Veteran Feminists of America.  
Women's Institute for Freedom of the Press.

#### STATE/LOCAL ORGANIZATIONS

Arizona  
Physicians for Social Responsibility—Arizona Chapter  
Arkansas  
Arkansas Coalition Against Domestic Violence.  
California  
Khadafy Foundation for Non-Violence.  
Concerned Citizens of Leisure World.  
Sisters of Saint Joseph of Orange.  
Physicians for Social Responsibility.  
Marin Friends Meeting.  
Orange County Substance Abuse Prevention Network.  
Youth Alive.  
Gray Panthers.  
Society of Public Health Education.  
Physicians for Social Responsibility—Sacramento.  
Orange County Citizens for the Prevention Of Gun Violence.  
Violence Prevention Coalition of Orange County.  
Women Against Gun Violence.  
Long Beach Coalition for the Prevention of Gun Violence.  
Alameda County Million Mom March Chapter.  
Contra Costa County Million Mom March Chapter.  
Los Angeles County West Million Mom March Chapter.  
Marin County Million Mom March Chapter  
Napa.

Solano County Million Mom March Chapter.

Nevada County Million Mom March Chapter.

Orange County Million Mom March Chapter.

Sacramento Valley Million Mom March Chapter.

San Diego County Million Mom March Chapter.

San Fernando Valley Million Mom March Chapter.

Santa Clarita Million Mom March Chapter.

Silicon Valley/Santa Clara County Million Mom March Chapter.

Sonoma County Million Mom March Chapter.

South Bay/Long Beach Million Mom March Chapter.

#### Colorado

Colorado Progressive Coalition.  
Physicians for Social Responsibility—Colorado Chapter.

Colorado Ceasefire Capitol Fund.  
Denver Million Mom March Chapter.

#### Connecticut

Hog River Music, LLC.  
Society of Public Health Education.  
Greater New Haven N.O.W.  
New England Coalition To Prevent Gun Violence.

Central Connecticut Million Mom March Chapter.

Fairfield County Million Mom March Chapter.

#### District of Columbia

STARS.  
R.O.O.T.  
Life After Homicide.  
Society of Public Health Education—National Capitol Area Chapter.  
District of Columbia Million Mom March Chapter.

#### Florida

IRC Coalition Against Gun Violence.  
Florida Coalition to Stop Gun Violence.  
Vero Beach Coalition against Gun Violence.

Central Florida Million Mom March Chapter.

Northeast Florida Million Mom March Chapter.

South Florida Million Mom March Chapter.

Tampa Bay Million Mom March Chapter.

#### Georgia

American Public Health Association.  
Georgia Federation of Professional Health Education.  
Metro Atlanta Million Mom March Chapter.

#### Illinois

Citizens Resource for Children.  
Episcopal Peace Fellowship Chicago Consumer Coalition.  
Chicago Survivors Million Mom March Chapter.  
North Suburban Chicagoland Million Mom March Chapter.  
Southwest Chicagoland Million Mom March Chapter.  
Springfield Million Mom March Chapter.

#### Indiana

Hispanic/African American Public Policy Institute.  
Infinite Inc.  
Hoosiers Concerned About Gun Violence.

#### Iowa

University of Iowa CPH/CBH.  
Iowans for the Prevention of Gun Violence.

#### Kentucky

Lexington and Central Kentucky Million Mom March Chapter.

#### Maine

Action Committee of Peace Action.  
Maine Citizens Against Handgun Violence.  
New England Coalition To Prevent Gun Violence.

Southern Maine Million Mom March Chapter.

#### Maryland

Life After Homicide.  
Maryland Consumer Rights Coalition, Inc.  
Ceasefire Maryland.  
Montgomery County Million Mom March Chapter.

#### Massachusetts

The Sandbox Foundation.  
Stop Handgun Violence.  
Greater Boston Million Mom March Chapter.  
Massachusetts's Consumers' Coalition.  
New England Coalition To Prevent Gun Violence.

#### Michigan

League of Women Voters of Michigan.  
Michigan Partnership to Prevent Gun Violence.  
Detroit Million Mom March Chapter.  
East Metro Detroit Million Mom March Chapter.  
Mid-Michigan/Lansing Million Mom March Chapter.  
Novi Million Mom March Chapter.  
Southwest Michigan Million Mom March Chapter.  
West Metro Detroit/Washtenaw County Million Mom March Chapter.

#### Minnesota

Citizens for a Safer Minnesota.  
The Healing Circle.  
League Of Women Voters of Duluth.  
Northland Minnesota Million Mom March Chapter.  
Twin Cities Million Mom March Chapter.

#### Missouri

Missouri Society for Public Health Education.

#### Nevada

XPOZ.

#### New Hampshire

New Hampshire Million Mom March Chapter.

New England Coalition To Prevent Gun Violence.

#### New Jersey

Union for Reform Judaism, NJWHVC.  
Woodbridge Homeowners for Quality of Life.

Coalition For Peace Action.  
Society of Public Health Education.  
Ceasefire NJ.  
Bergen/Passaic County Million Mom March Chapter.

Essex County Million Mom March Chapter.  
Mercer County Million Mom March Chapter.

Shore County Million Mom March Chapter.

#### New York

Men Elevating Leadership.  
Mothers Against Guns, Inc.  
NY Chapter of the Society for Public Health Education.  
New Yorkers Against Gun Violence (NAYGV).  
Lenox Hill School Based Primary Care Program.  
New York Public Interest Research Group.  
Brooklyn King's Million Mom March Chapter.

Broome County Million Mom March Chapter.

Capitol Region Million Mom March Chapter.

Manhattan Million Mom March Chapter.  
Nassau County Million Mom March Chapter.

Queens Million Mom March Chapter.  
Suffolk County Million Mom March Chapter.

Westchester County Million Mom March Chapter.

#### North Carolina

North Carolinians Against Gun Violence.  
Forsyth Mothers And Others Million Mom March Chapter.  
Wake County Million Mom March Chapter.  
West Triangle Million Mom March Chapter.

#### Ohio

Women Against Gun Violence.  
Inter-religious Partners in Action of Greater Cleveland.  
Diocesan Social Action Office of Cleveland.  
Ohio Coalition Against Gun Violence.  
Cleveland Million Mom March Chapter.  
Greater Cincinnati Million Mom March Chapter.

#### Oklahoma

Oklahomans For Gun Safety Million Mom March Chapter.  
University of Oklahoma.

#### Oregon

Oregon Consumer League.  
Ceasefire Oregon.  
Physicians for Social Responsibility—Oregon.

Lane County (Eugene) Million Mom March Chapter.

Multnomah County (Portland) Million Mom March Chapter.

#### Pennsylvania

Not Fair!  
Ceasefire Pennsylvania.  
Allegheny County Million Mom March Chapter.  
Center County Million Mom March Chapter.  
Montgomery and Delaware County Million Mom March Chapter.  
Philadelphia Million Mom March Chapter.

#### Rhode Island

Rhode Island Million Mom March Chapter.  
New England Coalition To Prevent Gun Violence.

#### Texas

Austin Physicians for Social Responsibility.  
Central Texas (Austin) Million Mom March Chapter.  
Dallas Million Mom March Chapter.  
South Texas Million Mom March Chapter.

#### Utah

Peace and Justice Commission of Salt Lake Catholic Diocese.  
Gun Violence Prevention Campaign of Utah.  
Salt Lake City Million Mom March Chapter.

#### Vermont

New England Coalition To Prevent Gun Violence.

#### Virginia

VA Interfaith Center for Public Policy.  
Charlottesville Million Mom March Chapter.  
Hampton Roads Million Mom March Chapter.  
Northern Virginia Million Mom March Chapter.  
Richmond Million Mom March Chapter.  
Roanoke Million Mom March Chapter.

#### Washington

Clark County (Vancouver) Million Mom March Chapter.

#### Wisconsin

Mothers Against Gun Violence.  
Peace and Justice Committee of the ELCA of Greater Milwaukee.



Milwaukee Million Mom March Chapter.  
Wisconsin Anti-Violence Effort.

THE UNIVERSITY OF MICHIGAN  
LAW SCHOOL,  
Ann Arbor, MI.

DEAR SENATORS AND REPRESENTATIVES: As a professor of law at the University of Michigan Law School, I write to alert you to the legal implications of S. 397 and H.R. 800, the "Protection of Lawful Commerce in Arms Act." My colleagues, who join me in signing this letter, are professors at law schools around the country. This bill would represent a substantial and radical departure from traditional principles of American tort law. Though described as an effort to limit the unwarranted expansion of tort liability, the bill would in fact represent a dramatic narrowing of traditional tort principles by providing one industry with a literally unprecedented immunity from liability for the foreseeable consequences of negligent conduct.

S. 397 and H.R. 800, described as "a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others," would largely immunize those in the firearms industry from liability for negligence. This would represent a sharp break with traditional principles of tort liability. No other industry enjoys or has ever enjoyed such a blanket freedom from responsibility for the foreseeable and preventable consequences of negligent conduct.

It might be suggested that the bill would merely preclude what traditional tort law ought to be understood to preclude in any event—lawsuits for damages resulting from third party misconduct, and in particular from the criminal misuse of firearms. This argument, however, rests on a fundamental misunderstanding of American tort law. American law has never embraced a rule freeing defendants from liability for the foreseeable consequences of their negligence merely because those consequences may include the criminal conduct of third parties. Numerous cases from every American jurisdiction could be cited here, but let the Restatement (Second) of Torts suffice:

**"449. TORTIOUS OR CRIMINAL ACTS THE PROBABILITY OF WHICH MAKES ACTOR'S CONDUCT NEGLIGENT"**

"If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby." (emphasis supplied)

Similarly, actors may be liable if their negligence enables or facilitates foreseeable third party criminal conduct.

Thus, car dealers who negligently leave vehicles unattended, railroads who negligently manage trains, hotel operators who negligently fail to secure rooms, and contractors who negligently leave dangerous equipment unguarded are all potentially liable if their conduct creates an unreasonable and foreseeable risk of third party misconduct, including illegal behavior, leading to harm. In keeping with these principles, cases have found that sellers of firearms and other products (whether manufacturers, distributors or dealers) may be liable for negligently supplying customers or downstream sellers whose negligence, in turn, results in injuries caused by third party criminal or negligent conduct. In other words, if the very reason one's conduct is negligent is because it creates a foreseeable risk of illegal third party conduct, that illegal conduct does not sever

the causal connection between the negligence and the consequent harm. Of course, defendants are not automatically liable for illegal third party conduct, but are liable only if—given the foreseeable risk and the available precautions—they were unreasonable (negligent) in failing to guard against the danger. In most cases, moreover, the third party wrongdoer will also be liable. But, again, the bottom line is that under traditional tort principles a failure to take reasonable precautions against foreseeable dangerous illegal conduct by others is treated no differently from a failure to guard against any other risk.

S. 397 and H.R. 800 would abrogate this firmly established principle of tort law. Under this bill, the firearms industry would be the one and only business in which actors would be free utterly to disregard the risk, no matter how high or foreseeable, that their conduct might be creating or exacerbating a potentially preventable risk of third party misconduct. Gun and ammunition makers, distributors, importers, and sellers would, unlike any other business or individual, be free to take no precautions against even the most foreseeable and easily preventable harms resulting from the illegal actions of third parties. And they could engage in this negligent conduct persistently, even with the specific intent of profiting from sales of guns that are foreseeably headed to criminal hands. Under this bill, a firearms dealer, distributor, or manufacturer could park an unguarded open pickup truck full of loaded assault rifles on a city street corner, leave it there for a week, and yet be free from any negligence liability if and when the guns were stolen and used to do harm. A firearms dealer, in most states, could sell 100 guns to the same individual every day, even after the dealer is informed that these guns are being used in crime—even, say, by the same violent street gang.

It might appear from the face of the bill that S. 397 and H.R. 800 would leave open the possibility of tort liability for truly egregious misconduct, by virtue of several exceptions set forth in Section 4(5)(i). Those exceptions, however, are in fact quite narrow, and would give those in the firearm industry little incentive to attend to the risks of foreseeable third party misconduct.

One exception, for example would purport to permit certain actions for "negligent entrustment." The bill goes on, however, to define "negligent entrustment" extremely narrowly. The exception applies only to sellers, for example, and would not apply to distributors or manufacturers, no matter how egregious their conduct. Even as to sellers, the exception would apply only where the particular person to whom a seller supplies a firearm is one whom the seller knows or ought to know will use it to cause harm. The "negligent entrustment" exception would, therefore, not permit any action based on reckless distribution practices, negligent sales to gun traffickers who supply criminals (as in the above example), careless handling of firearms, lack of security, or any of a myriad potentially negligent acts.

Another exception would leave open the possibility of liability for certain statutory violations, variously defined, including those described under the heading of negligence per se. Statutory violations, however, represent just a narrow special case of negligence liability. No jurisdiction attempts to legislate standards of care as to every detail of life, even in a regulated industry; and there is no need. Why is there no need? Because general principles of tort law make clear that the mere absence of a specific statutory prohibition is not *carte blanche* for unreasonable or dangerous behavior. S. 397 and H.R. 800 would turn this traditional

framework on its head; and free those in the firearms industry to behave as carelessly as they would like, so long as the conduct has not been specifically prohibited. If there is no statute against leaving an open truckload of assault rifles on a street corner, or against selling 100s of guns to the same individual, under this bill there could be no tort liability. Again, this represents radical departure from traditional tort principles.

My aim here is simply to provide information, and insure that you are not inadvertently misled about the meaning and scope of S. 397 and H.R. 800. As currently drafted, this Bill would not simply protect against the expansion of tort liability, as has been suggested, but would in fact dramatically limit the application of longstanding and otherwise universally applicable tort principles. It provides to firearms makers and distributors a literally unprecedented form of tort immunity not enjoyed or even dreamed of by any other industry.

Professor Sherman J. Clark, University of Michigan Law School; Professor Richard L. Abel, UCLA Law School; Professor Barbara Bader Aldave, University of Oregon School of Law; Professor Mark F. Anderson, Temple University Beasley School of Law; Professor Emeritus James Francis Bailey, III Indiana University School of Law; Professor Elizabeth Bartholet, Harvard Law School; Professor Peter A. Bell, Syracuse University College of Law; Professor Margaret Berger, Brooklyn Law School; Professor M. Gregg Bloche, Georgetown University Law Center; Professor Michael C. Blumm, Lewis and Clark Law School; Professor Carl T. Bogus, Roger Williams University School of Law; Professor Cynthia Grant Bowman, Northwestern University School of Law; Director of the MacArthur Justice Center and Lecturer in Law, Locke Bowman, University of Chicago Law School; Professor Scott Burris, Temple University Beasley School of Law; Professor Donna Byrne, William Mitchell College of Law; Professor Emily Calhoun, University of Colorado School of Law.

Professor Erwin Chemerinsky, Duke Law School; Associate Clinical Professor Kenneth D. Chestek, Indiana University School of Law; Associate Professor Stephen Clark, Albany Law School; Professor Marsha N. Cohen, University of California Hastings College of the Law; Professor Anthony D'Amato, Northwestern University School of Law; Professor John L. Diamond, University of California Hastings College of Law; Professor David R. Dow, University of Houston Law Center; Professor Jean M. Eggen, Widener University School of Law; Associate Professor Christine Haight Farley, American University, Washington College of Law; Associate Professor Ann E. Freedman, Rutgers Law School—Camden; Professor Gerald Frug, Harvard Law School; Professor Barry R. Furrow, Widener University School of Law; Associate Clinical Professor Craig Futterman, University of Chicago Law School; Professor David Gelfand, Tulane University Law School; Professor Phyllis Goldfarb, Boston College Law School; Professor Lawrence Gostin, Georgetown University Law Center; Professor Michael Gottesman, Georgetown University Law Center.

Professor Stephen E. Gottlieb, Albany Law School; Professor Phoebe Haddon, Temple University Beasley School of Law; Professor Jon D. Hanson, Harvard Law School; Professor Douglas R. Heidenreich, William Mitchell College of Law; Professor Kathy Hessler, Case Western Reserve University School of Law; Professor Eric S. Janus, William

Mitchell College of Law; Professor Sheri Lynn Johnson, Cornell Law School; Professor David J. Jung, University of California Hastings College of Law; Associate Professor Ken Katkin, Salmon P. Chase College of Law, Northern Kentucky Univ.; Professor David Kairys, Temple University Beasley School of Law; Professor Kit Kinports, University of Illinois School of Law; Professor Martin A. Kotler, Widener University School of Law; Professor Bailly Kuklin, Brooklyn Law School; Professor Arthur B. LiFrance, Lewis and Clark Law School; Professor Sylvia A. Law, NYU School of Law.

Professor Ronald Lasing, Lewis and Clark Law School; Professor Robert Justin Lipkin, Widener University School of Law; Professor Hugh C. Macgill, University of Connecticut School of Law; Professor Mari J. Matsuda, Georgetown University Law Center; Associate Professor Finbarr McCarthy, University Beasley School of Law; Director (Retired Professor) Christine M. McDermott, Randolph County Family Crisis Center, North Carolina; Professor Joan S. Meier, George Washington University Law School; Professor Naomi Mezey, Georgetown University Law Center; Professor Eben Moglen, Columbia Law School; Professor Dawn C. Nunziato, George Washington University Law School; Professor Michael S. Perlin, New York Law School; Clinical Professor Mark A. Peters, Northwestern School of Law, Lewis and Clark College; Professor Mark C. Rahdert, Temple University Beasley School of Law; Professor Denise Roy, William Mitchell College of Law.

Professor Joyce Saltalamachia, New York Law School; Clinical Assistant Professor David A. Santacroce, University of Michigan School of Law; Professor Niels Schaumann, William Mitchell College of Law; Professor Margo Schlanger, Washington University School of Law; Professor Marjorie M. Shultz, University of California Boalt School of Law; Senior Lecturer Stephen E. Smith, Northwestern University School of Law; Professor Peter J. Smith, George Washington University Law School; Professor Norman Stein, University of Alabama School of Law; Professor Duncan Kennedy, Harvard Law School; Professor Frank J. Vandall, Emory University School of Law; Professor Kelly Weisberg, University of California Hastings College of the Law; Professor Robin L. West, Georgetown University Law Center; Professor Christina B. Whitman, University of Michigan School of Law; Professor William M. Wiecek, Syracuse University College of Law; Professor Bruce Winick, University of Miami School of Law; Professor Stephen Wizner, Yale Law School; Professor William Woodward, Temple University Beasley School of Law.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, a gun by its very nature must be dangerous. So may an automobile or a knife, or a piece of machinery that does not work properly. There are a lot of dangerous things that we as human beings utilize; and if they work properly, they can be utilized for some-

thing that is good and something that is lawful.

Tort law, however, rests upon a foundation of individual responsibility, in which the product may not be defined as defective unless there is something wrong with the product, rather than with the product's user.

And what this bill attempts to do is to get tort law back to its original moorings where the manufacturer of the product that is not defective in its nature is not legally liable for the criminal misuse of that product by its user.

That is what the issue is before the House today in consideration of S. 397. Now, S. 397 while preventing frivolous and abusive lawsuits also ensures that bad actors can continue to be sued.

The bill allows the following types of lawsuits to be filed: first, an action against a person who transfers a firearm or ammunition knowing that it will be used to commit a crime of violence or drug-trafficking crime or a comparable or identical State felony law;

Second, an action brought against the seller for negligent entrustment or negligence, per se;

Third, actions in which a manufacturer or seller of a qualified product violates a State or Federal statute applicable to the sales or marketing when such violation was the proximate cause of the harm for which the relief is sought. And this exception would specifically allow lawsuits against firearms dealers such as the dealer whose firearm ended up in the hands of the D.C. snipers and those who fail to maintain the required inventory lists necessary to ensure they are alerted to any firearms theft;

Fourth, actions for breach of contract or warranty in connection with the purchase of a firearm or ammunition, and actions for damages resulting directly from a defect in design or manufacture of a firearm or ammunition.

This is a carefully crafted bill. It provides immunity for people who have not done anything wrong, even thought their products may be used in a criminal nature; but it does allow lawsuits to proceed against the bad actors.

It ought to be passed. I am sure it will be passed, and finally we can lay this issue to rest after 6 years of debate. I urge the Members to support this legislation, to send it to the President for his signature, and then we can move on.

Mr. HONDA. Mr. Speaker, I rise today to express my concern over S. 397, the Protection of Lawful Commerce in Arms Act. The safe and lawful use of firearms is very important to me. When I was in the California State Assembly, I chaired the Public Safety Committee where I worked to pass sensible gun safety legislation and I have voted to ban assault weapons. I firmly believe we must pass sensible gun laws for the safety of all.

The measure on the House floor today is intended to protect a manufacturer or seller of a firearm, from any legal liability stemming from the criminal or unlawful misuse of that firearm.

The legislation also requires the immediate dismissal of pending lawsuits, even cases in which a court has found the suit to be meritorious. I fear this bill will deny justice to innocent victims of gun violence, and therefore I will oppose it.

In recent years, dozens of individuals and municipalities have filed lawsuits against gun manufacturers for damages caused by gun violence. Such suits typically contend that gun makers knowingly provide weapons to irresponsible gun dealers, who then take advantage of gun sale loopholes to sell weapons to criminals. Some of these lawsuits by victims of gun violence have begun to expose how the gun industry's reckless, though not always technically criminal, sales tactics supply criminals with weapons.

The gun lobby argues that S. 397 prohibits "frivolous" lawsuits, while allowing "legitimate" cases to proceed through the legal system. However, many legal experts confirm that this bill would give the gun industry sweeping immunity that no other industry has, and would bar many meritorious cases brought by victims of gun violence injured or killed by negligent gun sellers and manufacturers. The bill would even restrict many cases in which a product defect is at issue.

S. 397 seeks to provide sweeping legal immunity to an industry that already enjoys exemptions from Federal health and safety regulations. It would dramatically re-write liability law for the direct benefit of a single industry.

Furthermore, lawsuits brought on behalf of officers injured or killed in the line of duty by guns negligently sold by dealers, would be barred. If immunity for the gun industry is enacted, police officers who put their lives on the line every day to protect the public would have no legal recourse when they are harmed due to another's negligence.

Mr. Speaker, we should not be providing this blanket immunity to the gun industry and I therefore oppose this measure.

Mr. HOYER. Mr. Speaker, I do not believe that manufacturers or sellers of weapons should be liable for injuries, which result from the use of their products in criminal ways, simply because they produce and distribute their products.

The manufacture, distribution and sale of firearms is legal in our Nation. And unless a manufacturer or seller of arms acts in some wrongful or criminal way, holding them liable effectively as insurers—I believe is inappropriate and probably a violator of the Constitution's Commerce Clause.

For example, I believe that the lawsuit pending in Federal court between the District of Columbia and Beretta and other gun manufacturers is an example of a claim that would effectively make gun manufacturers insurers for wrongful conduct. I expect the manufacturers to prevail in that case.

However, the bill before us goes beyond this premise, and overreaches in key respects.

First, I oppose the "look back" provision in this bill that requires the immediate dismissal of civil liability lawsuits against gun manufacturers that are pending on the date of enactment.

As a matter of principle and as a matter of policy, I do not believe that Congress should pass legislation that interferes with on-going civil lawsuits. This is tantamount to changing the rules in the middle of the game, and I generally believe this approach is inappropriate.

And second, I am troubled that, as the American Bar Association has pointed out, the legislation would preempt State product liability laws with a new, higher standard that would protect the gun industry even if it failed to implement safety devices that would prevent foreseeable injuries, so long as an injury or death suffered by a victim resulted when the gun was not "used as intended."

Today, manufacturers must adopt feasible safety devices that would prevent injuries caused when their products are foreseeably misused, regardless of whether the uses are "intended" by the manufacturer, or whether the product "fails" or "improperly" functions.

If perfected, I might well have voted for this bill. However, no amendments were allowed by the Republican Majority to answer the concerns I have expressed. Therefore, I will vote "no."

Mr. PAUL. Mr. Speaker, while I sympathize with the original objective of S. 397, the Protection of Lawful Commerce in Arms Act, I am forced to oppose this legislation primarily because of unconstitutional gun control amendments added to the bill in the Senate.

As a firm believer in the Second Amendment to the United States Constitution and an opponent of all Federal gun laws, I cannot support a bill that imposes new, unconstitutional gun controls on Americans. I believe that the Second Amendment is one of the foundations of our constitutional liberties. In fact, I have introduced legislation, the Second Amendment Protection Act (H.R. 1703), which repeals misguided Federal gun control laws such as the Brady Bill.

Senate amendments added two sections to S. 397 that impose unconstitutional controls on American gun owners and sellers.

First, a section was added to the bill to outlaw any licensed gun importer, manufacturer, or dealer from selling, delivering, or transferring a handgun without a "secure gun storage or safety device." Each and any violation of this requirement can result in a person being fined up to \$2,500 or having his license revoked. This gun lock requirement amounts to the imposition of a new Federal tax on each handgun sale because gun buyers will be forced to pay the cost of the "secure gun storage or safety device" that is required with a handgun, irrespective of if that device is desired. Further, the severe penalties for non-compliance—whether intentional or accidental—add yet more weight to the crippling regulations that hang over gun transactions in the United States.

Second, a section was added to the bill to create draconian penalties for people who possess "armor piercing" bullets. Just like the Democratic Congress before it that passed the "assault weapons" ban, the Republican Congress is poised to give in to anti-gun rights scare tactics by selectively banning bullets. Instead of each gun owner being able to decide what ammunition he uses in his gun, Federal bureaucrats will make that decision. To recognize the threat such regulation places on gun owners, just consider that a gun without ammunition is nothing more than an expensive club. Regulating ammunition is the back door path to gun regulation.

The "armor piercing" bullets restriction imposes a 15 years mandatory minimum sentence for just carrying or possessing such bullets—even without a gun—during or in "relation to" a crime of violence or drug trafficking.

Given the wide scope of criminal laws and the fact that people are on occasion accused of crimes they did not commit, this provision promises to discourage many non-violent, law-abiding individuals from possessing ammunition protected under the Second Amendment. Further, it does not take much imagination to see how such a provision could be used by an anti-gun prosecutor in the prosecution of an individual who used a gun in self defense, especially considering that use of such bullets to murder can result in a death sentence. In such instances, a defendant who exercised self defense may well accept a guilty plea bargain to avoid the severe enhanced penalties imposed under S. 397.

I am particularly disturbed that the House of Representatives' leadership has taken the unusual step of bringing S. 397 to the floor for a vote without House members at least having an opportunity to vote on removing the gun control amendments. Instead of voting on a bill that contains the new gun control provisions, we should be considering H.R. 800, the House version of S. 397 prior to its perversion by gun control amendments. Notably, Gun Owners of America has written to House members to request that they oppose S. 397 and, instead, support H.R. 800. Last month, I wrote to House Speaker DENNIS HASTERT, Majority Leader TOM DELAY, and Committee on the Judiciary Chairman JAMES SENSENBRENNER of my opposition to these anti-gun rights provisions in S. 397. While I am concerned about some of the federalism implications of H.R. 800, it is a far superior bill because it neither requires gun locks nor restricts gun owners' ammunition choices.

With 258 sponsors and cosponsors, H.R. 800 would easily pass the House. The House voting for H.R. 800 would allow the differences between H.R. 800 and S. 397 to be reconciled in conference committee. In conference, every expectation would be that the new gun control provisions would be stripped from the legislation given that the original, unamended S. 397 had 62 Senate sponsors and cosponsors—a filibuster proof majority—in the Senate.

I regret that, under the guise of helping gun owners, the House of Representatives is today considering imposing new unconstitutional gun controls. I, thus, must oppose S. 397.

Mrs. CUBIN. Mr. Speaker, I hail from a State that respects the fundamental, individual right to own firearms granted to all Americans by the Second Amendment. This right, so essential to our liberty, is under assault by legal teams bent on destroying the firearms industry.

They have tried and failed to accomplish this in the People's House and in State legislatures. Now they are using our courts, filing lawsuits with no legal merit, yet still incurring tremendous legal expense.

These lawsuits rest on the misguided notion that those in the firearm industry are liable for the criminal misuse of their products. This is a dangerous precedent. It makes as much sense as suing car manufacturers for damage, injury or death caused by car thieves or joy riders.

It is important to every firearm owner in the State of Wyoming that these lawsuits stop. If allowed to continue, firearms could become unavailable and unaffordable to the law-abiding citizen. The Protection of Lawful Commerce in Arms Act will stop these lawsuits, while protecting causes of action based on

negligence, defective product and other valid claims.

I ask my colleagues to pass this legislation. By doing so, we stand up for the constitutional right of law-abiding Americans to protect themselves, their homes, and their families.

Ms. KILPATRICK of Michigan. Mr. Speaker, I rise in opposition to S. 397, the Protection of Lawful Commerce in Arms Act. My opposition to the measure is based on my belief that it is overly expansive and overreaching. This bill prohibits civil liability lawsuits against gun manufacturers from being brought in Federal or State court.

My congressional district is beset by gun violence. I believe that gun owners, manufacturers and dealers must assume responsibility for the wanton gun violence that is being perpetrated as result of the willful neglect of gun dealers who cast blind eyes to illegal and irresponsible gun sales to minors, felons and potential terrorists. It appears to me that we are unwisely and gratuitously insulating gun manufacturers from bona fide civil lawsuits.

This bill protects gun manufacturers but does absolutely nothing to protect innocent victims of gun violence. I am also concerned that we have prohibited suits from being brought in both Federal and State courts and that police officers shot in the line of duty are barred from filing lawsuits. For the families of fallen officers, their only recourse to obtain compensation for the loss of their loved one is through the civil lawsuit process.

I contend that it is vital to preserve the right of citizens to seek redress through civil lawsuits for any harm they experience by virtue of the neglect and irresponsibility of gun manufacturers and dealers. I urge my colleagues to vote, "no" on S. 397, and to support the rights of potential victims of gun violence.

Mr. BRADLEY of New Hampshire. Mr. Speaker, I rise today in support of The Protection of Lawful Commerce in Arms Act. It is critical that the House once again pass this legislation in order to reduce the burden of unsubstantiated lawsuits and the infringement on our Second Amendment rights.

When crimes are committed by a person using a firearm, I support tough sentencing guidelines as well as full and vigorous enforcement of all applicable laws. We must focus on the perpetrators of the crime, rather than frivolous lawsuits directed at gun manufacturers which will only restrict the rights of lawabiding citizens.

The State of New Hampshire has a long history of protecting individual rights and liberties. For millions of Americans, and the many citizens of New Hampshire, firearms provide protection for individuals and their families. I stand in support of this legislation and I will work to see that the Second Amendment right of our citizens to protect themselves will not be infringed upon.

Mr. GRAVES. Mr. Speaker, I rise today in support of the Protection of Lawful Commerce in Arms Act.

Over the last few years, trial lawyers have filed suit against firearms manufacturers across the country in the hopes of bankrupting the industry. These frivolous lawsuits are often based on the dubious premise that gun manufacturers should be held liable for the actions of others who use their products in a criminal or unlawful manner.

This abuse of the legal process demands strong Congressional action, and we are responding with this legislation. This bill will protect the firearms industry from lawsuits based

on the criminal or unlawful third-party misuse of their products. This law is necessary to prevent a few state courts from undermining our Second Amendment rights guaranteed by the Constitution. Contrary to many rumors, this bill will not prevent legitimate victims from having their day in court for cases involving defective firearms, breaches of contract, criminal behavior by a gun maker or dealer, or the negligent entrustment of a firearm to an irresponsible person.

Mr. Speaker, while I have serious concerns about the trigger lock language added to this bill in the Senate, the Protection of Lawful Commerce in Arms Act is an important step in the right direction. The reality is that we need a bill to be signed into law, and this is our greatest opportunity to accomplish meaningful reform which benefits all lawful gun owners and enthusiasts. These irresponsible lawsuits seriously threaten the supply of guns and ammunition available for hunting, self-defense, collecting, competitive or recreational shooting, and other lawful activities, and it is time to put a stop to them.

Mr. STARK. Mr. Speaker, I rise in opposition to the so-called Protection of Lawful Commerce in Arms Act because I don't believe that giving gun makers, gun dealers, and gun trade associations special exemption from lawsuits makes our streets any safer.

If this law had been in place, the families of victims of the DC-area sniper could never have held negligent suppliers accountable. In September 2004, eight victims received a settlement from the dealer that "lost" the snipers' assault rifle from its inventory, along with at least 238 other guns. The victims' families also received a settlement from the manufacturer who negligently supplied the dealer despite its record of missing guns and regulatory violations. Most importantly, as part of the settlement, the manufacturer agreed to instruct its dealers of safer sales practices that should prevent other criminals from obtaining guns.

Since the National Rifle Association owns about two-thirds of the Congress, guns have fewer safety regulations than teddy bears. The American people can't look to Congress to protect them, so they have no choice but to turn to the courts. It's no surprise that this last resort will now be shut down out of deference to the almighty gun industry.

As if this blatant pandering to an industry responsible for widespread violence and mayhem isn't bad enough, this bill also violates the fundamental right of every American to have their day in court. As soon as the President signs this bill into law, Americans will be able to sue the manufacturer of any product except for guns for death, injury, and any other kind of negligence. Congress, at the behest of the NRA, will close the courthouse doors to gun victims.

I vote "no" on this bill because no industry, certainly not the gun industry, should have the right to conduct their business without the oversight of the judicial system.

Mr. DAVIS of Illinois. Mr. Speaker, I rise today in opposition to S. 397, the Protection of Lawful Commerce in Arms Act. This resolution immunizes the gun industry—including manufacturers, distributors, dealers, or importers of firearms and ammunition—from civil liability arising from the criminal and unlawful misuse of their products. Advocates of this bill believe that it is necessary to pass in order to prevent the rise of "frivolous" lawsuits against compa-

nies that manufacture and distribute firearms. Advocates say, the Second Amendment of the Constitution protects the rights of these companies to irresponsibly sell their products without any repercussions for the misuse of their product. I believe there is a delicate balance between the right to bear arms, a right provided by the Constitution, and the need to prevent gun violence. This bill, if passed into law, will unfairly shift the balance. Through the laws vested in the Constitution, every American has been given the responsibility to keep and bear arms, but this resolution will dismantle all progress that has been made toward the fight against crime.

Each year more than 30,000 gun-related deaths occur; a third of these 30,000 deaths are committed with malicious "intent by customers of the arms industry who exploit their Second Amendment Right. Since 2000, we have witnessed a 9 percent increase in gun-related homicides. In 2003, firearms were used in over 365,000 cases of violent crime. Fifty percent of all the African American youngsters between the ages of 15 and 19, who die, die from gun violence. When guns and ammunitions reach the wrong hands, we must be able to hold accountable the companies that put destructive weapons in the hands of these criminals.

My dissent for this bill focuses around the lack of responsibility required by arms dealers. When the desired intent of a product is to fatally wound an object through legal or illegal means, there will always be the need of a high demand of accountability. For cases of gun violence in which the firearms industry should be held responsible, this resolution does not protect its victims. In past years, State and Federal Courts have found these types of cases to be grounded in such credible legal principles as negligence, product liability, and public nuisance. If this legislation passes, the high demand of accountability and liability required by firearms companies will drastically decrease. For these reasons, I cannot support the bill.

Mr. UDALL of Colorado. Mr. Speaker, some of my constituents have let me know they disagreed with my past vote against similar legislation. They asked me to take a closer look and consider voting for this bill today, and I promised to do so.

However, after careful review of the bill and consideration of points raised by its supporters and opponents, I have concluded that I cannot in good conscience vote for it.

I voted against similar legislation in the past because I was not convinced there was a need for Congress to take such action to restrict certain lawsuits against the manufacturers and sellers of firearms. And I still am not convinced that the potential adverse consequences of those lawsuits are so great that Congress should close the courthouse door to people who think they have valid claims.

And, as in the past, I am particularly reluctant to support legislation that would go further than barring future lawsuits by requiring the immediate dismissal of cases under active consideration by the courts. It seems to me that this is a dangerous precedent for the legislative branch to undertake, and the courts are in a much better position than Congress to decide whether the people who have brought those pending cases have valid claims or whether their complaints are frivolous or malicious.

It happens that this bill deals with lawsuits against firearms manufacturers. But this concern about changing the legal rules to prohibit further consideration of active cases (as opposed to pending ones) would be the same for similar lawsuits against the makers or sellers of other consumer products that are inherently dangerous, if not lethal, when misused—for example, automobiles and electronic devices.

And, while the bill before us—which has already passed the Senate—differs in some respects from versions we have considered before, it too would apply to pending cases.

At the very least the House should have been able to debate and decide on possible changes to the bill. But that did not happen, because the Republican leadership insisted on bringing the bill to the floor under restrictive procedures that essentially barred any amendments from being offered. I strongly object to this way of considering such legislation.

Most of the debate about this bill has been about its significance for firearms manufacturers—and, if the bill dealt only with manufacturers, I might have come to a different conclusion about the need for liability protection. But the provisions related to sellers or other distributors—provisions that are equally or more important—are another matter.

I also think we should at least debate and consider whether reducing the deterrent effect of potential liability might increase the chance that firearms could knowingly or negligently be transferred to criminals or terrorists. I think the seriousness of this is illustrated by the report of the Government Accountability Office (GAO) indicating that last year alone there were at least 56 times when people the federal government considered known or suspected terrorists attempted to purchase firearms.

It's true that under current law, even actual—let alone suspected—membership in a terrorist organization, by itself, is enough to bar someone from purchasing a firearm. But instead of considering a possible change to this part of current law, today we are debating whether the law should be changed to reduce, not strengthen, the legal deterrents to such purchases.

Mr. Speaker, I know that litigation can be costly, and I am not in favor of frivolous lawsuits. Nor am I in favor of banning gun ownership or abolishing the domestic gun manufacturing industry. Earlier this year, for example, I voted against an amendment that would have banned the export of certain American firearms overseas. And since the House last considered similar legislation I have also undertaken a deeper review of Second Amendment concerns and my staff and I have met with thoughtful and enthusiastic Coloradans (like my good friend Rick Reeser) who feel differently about the implications and desirability of this legislation. I have also had many informative conversations with many Colorado sportsmen and women, including some of my staff who make a compelling case that gun ownership is not just a question of legal rights but also about respecting and preserving a critical component of individual liberty. I embrace this view and respect their concerns and acknowledge the need for a less divisive debate about the preserving Second Amendment rights.

But, after a careful reading of the provisions of this legislation and the most objective review that I can make of the arguments for and against its enactment, I still think we in the

Congress should leave it to the courts to decide which of the lawsuits covered by this bill are frivolous and which are not. For all these reasons, and especially because we were not even permitted to consider any changes, I cannot support this legislation.

Mr. OTTER. Mr. Speaker, I rise today to add my support to S. 397, the Protection of Lawful Commerce in Arms Act.

I also commend Senator LARRY CRAIG from Idaho on his leadership on this legislation, defending Americans' Second Amendment right to bear arms.

The Protection of Lawful Commerce in Arms Act, S. 397, is bipartisan, common-sense legislation that takes an important step toward preventing reckless lawsuits targeting the firearms industry. Such misguided claims against the legal manufacture and sale of firearms and ammunition are akin to suing the Postal Service or an envelope manufacturer over someone committing the crime of mail fraud—it just doesn't make sense. The bill provides protection for those in the firearms industry from lawsuits arising from the acts of people who criminally or unlawfully misuse their products. The bill preserves citizen access to firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting and competitive or recreational shooting.

I believe that manufacturers and sellers of firearms and ammunition must be protected from restrictions on interstate or foreign commerce. In light of the concerted efforts by opponents of the Second Amendment to destroy the gun industry through frivolous lawsuits, it has become imperative that we protect the jobs and economic well-being of the thousands of people who work for manufacturers and sellers of firearms and ammunition. I find the idea of holding an industry liable for the criminal misuse of their legal products deplorable. Our nation cannot allow the innocent to pay for the dealings of the guilty, or we circumvent the very foundation of the rule of law. It is the individuals who commit violent crimes, not the makers of the means, who must take personal responsibility for their actions through the restitution and civil penalties affirmed by law. This should be the case whether or not a firearm was used to commit the crime.

Without this legislation, further unfounded lawsuits against the gun industry will lead inevitably to an encroachment upon our Second Amendment rights. Congress must work diligently to reduce the level of political rhetoric surrounding gun control, protect the Second Amendment, and promote the role of personal responsibility in society.

This bill is a key element of our effort to bring some sanity to what's become a thriving personal injury industry in this country. Americans understand that suing legitimate firearms manufacturers and dealers out of existence won't stop criminal gun violence. But trial lawyers are eager to cash in on the pain of victims, and criminals rarely have deep pockets. This puts the responsibility where it belongs.

I joined my colleagues in the House in passing similar legislation during the 108th Congress. That unfortunately got held up in the Senate. I am hopeful we will take the opportunity today to pass this bill with no changes so it can go to the President's desk for a signature. This legislation is long overdue.

Mr. SCOTT of Virginia. Mr. Speaker, once again we find ourselves here debating the scope of the Second Amendment and whether

its purpose is to protect the sanctity of state militias or provide a fundamental right to individuals, irrespective of their relationship to state militias, to possess firearms. While this bill cites in its findings that the Second Amendment protects the right of individuals to bear arms, there has been a definitive resolution by the courts of just what right the Second Amendment protects.

In *United States v. Miller*, the Supreme Court wrote in 1939 that the "obvious purpose" of the right to keep and bear arms in the Second Amendment was "to assure the continuation and render possible the effectiveness" of state militias and that the guarantee of that right "must be interpreted and applied with that end in view." This language was a clear indication that the Second Amendment right to "bear arms" guarantees the right of the people to maintain effective state militias, but does not provide any type of individual right to own or possess weapons.

Mr. Speaker, for more than sixty years following the Supreme Court's decision in *Miller*, there was little judicial debate regarding the scope of the Second Amendment. In fact, virtually every federal appeals court has decided this issue and only one, the Fifth Circuit in *United States v. Emerson*, has endorsed the individual rights view. Since the Emerson opinion in 2001—which was joined by only two circuit court judges and actually upheld the gun law at issue—the individual rights view has been rejected by the Fourth, Sixth, Seventh, Ninth and Tenth Circuits. The First, Second, Third and Eighth Circuits also have issued definitive rulings rejecting the individual rights view.

The First Circuit held that the second amendment applies only to firearms having a "reasonable relationship to the preservation or efficiency of a well-regulated militia." 1939 *Miller* case.

In 1984, in the Second Circuit, the court cited *Miller* for the proposition that the right to possess a gun was "not a fundamental right" because the Second Amendment did not guarantee the right to keep and bear a weapon unless the evidence showed the firearm had some "reasonable relationship" to the preservation or efficiency of a well regulated militia—*U.S. v. Toner*.

In 1996, in the Third Circuit, defendant's possession of machine guns did not have a connection with militia-related activity required for second amendment protections to apply—*U.S. v. Rybar*.

The Fourth Circuit, a 1995 case, stated that courts have consistently held that the second amendment only confers a collective right of keeping and bearing arms which bear a reasonable relationship to the preservation or efficiency of a well-regulated militia—*Love v. Pepersack*.

The Sixth Circuit, in 2000, held that the lower courts have uniformly held that the second amendment preserves a collective rather than an individual right—*U.S. v. Napier*.

The Seventh Circuit, the second amendment establishes no right to possess a firearm apart from the role possession of the gun might play in maintaining a State militia. That is a 1999 case—*Gillespie v. City of Indianapolis*.

The Eighth Circuit stated that the purpose of the second amendment is to restrain the Federal Government from regulating the possession of arms where such regulation would

interfere with the preservation or efficiency of the militia. That is a 1992 case—*U.S. v. Hale*.

The Ninth Circuit in 2003 stated that it is this collective rights model which provides the best interpretation of the second amendment—*Silveira v. Lockyer*.

The Tenth Circuit, a 1977 case, to apply the amendment so as to guarantee an appellant's right to keep an unregistered firearm which has not been shown to have any connection with the militia, merely because he is technically a member of the Kansas militia, would be unjustifiable in terms of either logic or policy—*U.S. v. Oakes*.

The Eleventh Circuit, a 1997 case concerning motivating the creation of the second amendment, convinces us that the amendment was intended to protect only the use or protection of weapons reasonably related to a militia actively maintained and trained by the States—*U.S. v. Wright*. I believe these cases are evidence of the remarkable degree of judicial consensus on the meaning of the Second Amendment.

Mr. Speaker, I suggest that if my colleagues across the aisle want to amend the Constitution, they should do it by amendment rather than attempting to do it through findings.

Mr. Speaker, this bill also contains a provision requiring a conviction before a defendant who has violated 18 U.S.C. 924(h) can be sued. Requiring a conviction before an offender can be sued for the civil consequences of his unlawful acts would constitute an extraordinary change in traditional civil liability standards. The public will remember that O.J. Simpson was found civilly liable for damages, even though he had been acquitted in criminal court. Moreover, such a requirement would create absurd results, based on what a prosecutor may decide to do in a particular case, and when he decides to do it. The prosecutor may choose not to prosecute a particular case at all, for various reasons. This would preclude a claim, regardless of how egregious the injuries or clear the liability. Or, even where the case is prosecuted, the prosecutor may decide to plea bargain by allowing a defendant who has unlawfully transferred a number of guns to plead guilty to one transfer and drop the remainder. It would be absurd to allow one case to go forward and not others, depending on which case was technically pleaded. Of course, it is always possible that a case will be thrown out because of an unlawful search or seizure because of a coerced confession, or simply because the prosecutor is unable to obtain a conviction. And even where there is a conviction, the timing of the conviction, alone, may be dispositive of the claim, because there is nothing in the bill or the law which tolls the statute of limitations on a civil claim, pending a conviction. And there is nothing in the bill to deal with what happens if the conviction is reversed or appeal.

Absent a conviction, the unlawful transfer still must be proven in order to pursue the case. This should be protection enough for someone who causes another harm by criminal conduct.

Mr. Speaker, this bill is an unprecedented attack on the due process rights of victims injured by the misconduct of an industry that seeks to escape the legal rules that govern the rest of us and I urge my colleagues to oppose this bill.

I submit the following list of cases supporting collective view for the RECORD.

A Sampling of Court Decisions that Support the Militia Interpretation of the Second Amendment from The Legal Action Project.

## U.S. SUPREME COURT

*U.S. v. Miller*, 307 U.S. 174 (1939).  
*Lewis v. United States*, 445 U.S. 55 (1980).

## U.S. COURTS OF APPEALS

*U.S. v. Parker*, 362 F.3d 1279 (10th Cir. 2004).  
*U.S. v. Lippman*, 369 F.3d 1039 (8th Cir. 2004).  
*U.S. v. Price*, 328 F.3d 958 (7th Cir. 2003).  
*U.S. v. Graham*, 305 F.3d 1094 (10th Cir. 2002).  
*U.S. v. Lucero*, 43 Fed. Appx. 299 (10th Cir. 2002).  
*U.S. v. Bayles*, 310 F.3d 1302 (10th Cir. 2002).  
*Silveira v. Lockyer*, 312 F.3d 1052, rehearing en banc denied, 328 F.3d 567 (9th Cir. 2003).  
*Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002).  
*U.S. v. Twenty-Two Various Firearms*, 38 Fed. Appx. 229 (6th Cir. 2002).  
*U.S. v. Hancock*, 231 F.3d 557 (9th Cir. 2000), cert. denied, 121 S. Ct. 1641 (2001).  
*U.S. v. Finitz*, 234 F.3d 1278 (9th Cir. 2000), cert. denied, 121 S. Ct. 833 (2001).  
*U.S. v. Lewis*, 236 F.3d 948 (8th Cir. 2001).  
*U.S. v. Hemmings*, 258 F. 3d 587 (7th Cir. 2001).  
*U.S. v. Hager*, 22 Fed. Appx. 130 (4th Cir. 2001).  
*Gillespie v. City of Indianapolis*, 185 F.3d 693 (7th Cir. 1999), cert. denied, 528 U.S. 1116 (2000).  
*U.S. v. Napier*, 233 F.3d 394 (6th Cir. 2000).  
*U.S. v. Baer*, 235 F.3d 561 (10th Cir. 2000).  
*U.S. v. Wright*, 117 F.3d 1265 (11th Cir.), cert. denied, 522 U.S. 1007 (1997).  
*U.S. v. Rybar*, 103 F.3d 273 (3rd Cir. 1996), cert. denied, 522 U.S. 807 (1997).  
*Hickman v. Block*, 81 F.3d 98 (9th Cir.), cert. denied, 519 U.S. 912 (1996).  
*U.S. v. Farrell*, 69 F.3d 891 (8th Cir. 1995).  
*Love v. Peppersack*, 47 F.3d 120 (4th Cir.), cert. denied, 516 U.S. 813 (1995).  
*U.S. v. Friel*, 1 F.3d 1231 (1st Cir.1993).  
*U.S. v. Hale*, 978 F.2d 1016 (8th Cir. 1992), cert. denied, 507 U.S. 997 (1993).  
*U.S. v. Nelsen*, 859 F.2d 1318 (8th Cir. 1988).  
*U.S. v. Toner*, 728 F.2d 115 (2d Cir. 1984).  
*Thomas v. City Council of Portland*, 730 F.2d 41 (1st Cir. 1984).  
*Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir. 1982), cert. denied, 464 U.S. 863 (1983).  
*U.S. v. Oakes*, 564 F.2d 384 (10th Cir. 1977), cert. denied, 435 U.S. 926 (1978).  
*U.S. v. Graves*, 554 F.2d 65 (3rd Cir. 1977).  
*U.S. v. Swinton*, 521 F.2d 1255 (10th Cir. 1975), cert. denied, 424 U.S. 918 (1976).  
*U.S. v. Warin*, 530 F.2d 103 (6th Cir.), cert. denied, 426 U.S. 948 (1976).  
*U.S. v. Johnson*, 497 F.2d 548 (4th Cir. 1974).  
*Eckert v. City of Philadelphia*, 477 F.2d 610 (3rd Cir.), cert. denied, 414 U.S. 839 (1973).  
*U.S. v. Day*, 476 F.2d 562 (6th Cir. 1973).  
*Cody v. U.S.*, 460 F.2d 34 (8th Cir.), cert. denied, 409 U.S. 1010 (1972).  
*U.S. v. Decker*, 446 F.2d 164 (8th Cir. 1971).  
*U.S. v. Synnes*, 438 F.2d 764 (8th Cir. 1971), vacated on other grounds, 404 U.S. 1009 (1972).  
*U.S. v. McCutcheon*, 446 F.2d 133 (7th Cir. 1971).  
*Stevens v. U.S.*, 440 F.2d 144 (6th Cir. 1971).  
*U.S. v. Tot*, 131 F.2d 261 (3rd Cir. 1942), rev'd on other grounds, 319 U.S. 463 (1943).  
*U.S. v. Cases*, 131 F.2d 916 (1st Cir. 1942), cert. denied sub nom., *Velazquez v. U.S.*, 319 U.S. 770 (1943).

## U.S. FEDERAL DISTRICT COURTS

*Parker v. District of Columbia*, 311 F. Supp. 2d 103 (D.D.C. 2004).  
*Blackburn v. Jansen*, 241 F. Supp. 2d 1047 (D. Neb. 2003).  
*Golt v. City of Signal Hill*, 132 F. Supp. 2d 1271 (C.D. Cal. 2001).  
*Olympic Arms v. Magaw*, 91 F. Supp. 2d 1061 (E.D. Mich. 2000).  
*U.S. v. Willbern*, 2000 WL 554134 (D. Kan. Apr. 12, 2000).

*U.S. v. Bournes*, 105 F. Supp. 2d 736 (E.D. Mich. 2000).

*U.S. v. Boyd*, 52 F. Supp. 2d 1233 (D. Kan. 1999), aff'd, 211 F.3d 1279 (10th Cir. 2000).

*U.S. v. Henson*, 55 F. Supp. 2d 528 (S.D. W. Va. 1999).

*U.S. v. Visnich*, 65 F. Supp. 2d 669 (N.D. Ohio 1999).

*U.S. v. Caron*, 941 F. Supp. 238 (D. Mass. 1996).

*Moscowitz v. Brown*, 850 F. Supp. 1185 (S.D.N.Y. 1994).

*U.S. v. Kruckel*, 1993 WL 765648 (D.N.J. Aug. 13, 1993).

*Krisko v. Oswald*, 655 F. Supp. 147 (E.D. Pa. 1987).

*U.S. v. Kozerski*, 518 F. Supp. 1082 (D.N.H. 1981), cert. denied, 496 U.S. 842 (1984).

*Vietnamese Fishermen's Association v. KKK*, 543 F. Supp. 198 (S.D. Tex. 1982).

*Thompson v. Dereta*, 549 F. Supp. 297 (D. Utah 1982).

*U.S. v. Kraase*, 340 F. Supp. 147 (E.D. Wis. 1972).

*U.S. v. Gross*, 313 F. Supp. 1330. (S.D. Ind. 1970), aff'd on other grounds, 451 F.2d 1355 (7th Cir. 1971).

## STATE COURTS

*Arnold v. Cleveland*, 616 N.E.2d 163 (Ohio 1993).

*State v. Fennell*, 382 S.E.2d 231 (N.C. 1989).

*U.S. v. Sandidge*, 520 A.2d 1057 (D.C.), cert. denied, 108 S.Ct. 193 (1987).

*Kalodimos v. Village of Morton Grove*, 470 N.E.2d 266 (Ill. 1984).

*Masters v. State*, 653 S.W.2d 944 (Tex.App. 1983).

*City of East Cleveland v. Scales*, 460 N.E.2d 1126 (Ohio App. 1983).

*State v. Vlacil*, 645 P.2d 677 (Utah 1982).

*In Re Atkinson*, 291 N.W.2d 396 (Minn. 1980).

*State v. Rupp*, 282 N.W.2d 125 (Iowa 1979).

*Commonwealth v. Davis*, 343 N.E.2d 847 (Mass. 1976).

*Burton v. Sills*, 248 A.2d 521 (N.J. 1968), appeal dismissed, 394 U.S. 812 (1969).

*Harris v. State*, 432 P.2d 929 (Nev. 1967).

Mr. GENE GREEN of Texas. Mr. Speaker, I rise in support of the Protection of Lawful Commerce in Arms Act. I am an original co-sponsor of the House version of this legislation, H.R. 800.

A lawsuit against a gun manufacturer simply for being a gun manufacturer has no business in American courts.

I am proud that every court in our judicial system has agreed with that and has thrown out these frivolous lawsuits.

However, in U.S. courts we have the American rule, where each side pays their own legal fees under normal circumstances, instead of the English rule, where the loser usually pays.

Generally, I support the American rule because it is fairer to individuals seeking relief from large firms.

Unfortunately the American rule can mean that frivolous lawsuits which have no chance of going anywhere still impose a terrible burden on parties.

Some people in this country are politically opposed to the firearm industry and believe most firearms should be illegal or hard to obtain.

So these folks do not have a problem spending non-profit money and public money on a losing lawsuit in pursuit of ideology.

However, that is not fair to the firearm industry, which is not only completely legal, but has the right to own their product enshrined in the U.S. Constitution.

Therefore, it is particularly bad that the firearm industry has had to pay \$200 million to

defend themselves from frivolous lawsuits that have never, ever succeeded in court.

S. 397 only protects legitimate businesses that comply with Federal, State and local firearm laws.

The bill does not waive liability for actually defective products, breach of contract or warranty, or other causes that are not related to third-party criminal misuse of firearms.

If we are going to sue firearm makers for armed robberies, why not go on and sue the auto maker who made the get-away car?

The idea is absurd, but some groups and politicians want to punish firearm manufacturers for their very existence.

As a result, we must pass S. 397 and send it to the President.

Mr. MORAN of Virginia. Mr. Speaker, I rise today in strong opposition to the "Protection of Lawful Commerce in Arms Act."

This bill is an attempt to carve out an exclusive liability exemption, and its vote on the floor today is a giveback to the gun industry at a significant cost to the American people.

Under this bill, manufacturers and sellers of firearms or ammunition will not be held accountable for even the most irresponsible distribution of weapons that kill innocent people, including police officers, children and bystanders of gang violence.

While the wholesale prohibition against lawsuits may allow several exemptions, these exclusions overhaul years of legal negligence standards.

I'm concerned that this bill for the gun industry sets an impractical legal standard for even the most reasonable litigation.

In the Washington-area, we are particularly sensitive to gun violence. You may not all remember, but our nation was held captive for three weeks in October 2002 while two men systematically killed ten people and wounded three others with a sniper rifle obtained from an irresponsible gun dealer that "lost" over 200 other unaccounted for guns.

The language in this bill is so restrictive that survivors of the victims would not have had any legal recourse against the company whose negligent business practices led to the deaths of their family.

Under the bill, we are eliminating a powerful incentive for gun dealers to value accountability and keep guns out of the wrong hands. We are implicitly condoning their irresponsible behavior.

I understand the desire to protect the American judicial system from what some people perceive as frivolous lawsuits. But gun manufacturers and sellers should not be able to write their own liability standard into law.

We aren't debating a product that has an inconsequential impact on our nation.

Almost 30,000 people in our country die from firearm injuries, murders, and suicides each year.

According to the National Center for Injury Prevention and Control, as recently as 2002, 2,893 young people were murdered by firearms. That accounts for the second leading cause of death for young people under 19 in the United States.

Our economy even suffers from this senseless violence. From the loss of productivity, medical treatment and rehabilitation and legal costs, gun violence costs the U.S. at least \$100 billion annually.

Instead of putting forth a national plan to end this futile cycle of death, extending the



ban on assault weapons, or even prohibiting people we know are on our own terrorist list from obtaining weapons, we are debating how to best shield the gun industry from accountability and responsibility.

Mr. Speaker, it is unfortunate today that we are sending the wrong message to gun manufacturers and the worst of all possible messages to the public: We are not willing to put special interests aside to protect the American people.

Mr. SCHWARZ of Michigan. Mr. Speaker, I rise today in strong support of S. 397, the Protection of Lawful Commerce in Arms Act.

As a gun owner, it troubles me that many interest groups and local municipalities have decided that the way to reduce gun violence is to put the manufacturers of firearms and firearm parts out of business through lawsuits and the fear of lawsuits. Their actions run counter to the main purpose of gun ownership: protection.

The Second Amendment was not written as a mere exercise in constitutional thought. It had a practical purpose: First, to ensure that citizens would have the tools to protect their families and their homes and, second, to ensure that an armed militia could be called up to defend the country in emergencies.

But these lawsuits, Mr. Speaker, have the potential of crippling the American firearms industry, in the same manner as the threat of medical liability has crippled the medical industry. Why would we want to go down that route? Why would we want to put firearms out of the reach of law-abiding citizens.

S. 397, and H.R. 800, the companion legislation of which I was proud to be an original co-sponsor, would prohibit state and Federal lawsuits against the gun industry for deaths resulting from unlawful actions of the user.

In my estimation, Mr. Speaker, these lawsuits are a threat to our hard-earned Second Amendment rights. It is entirely proper that we should prevent such unconstitutional actions. I commend the gentleman from Florida, Mr. STEARNS, and Chairman SENSENBRENNER for their hard work on this legislation, and I urge passage of the bill.

Mr. EMANUEL. Mr. Speaker, I rise in strong opposition to S. 397, the Gun Manufacturers Liability Protection Act. Shielding gun manufacturers, dealers and distributors from liability is one of the most egregious forms of corporate welfare we've considered in this House all year.

This is George Orwell legislation at its finest—all industries are equal, but some are more equal than others. If you sell beer to a 17-year-old and he causes an accident, you can be held liable. But if you allow a 17-year-old to walk out of your store with a high powered rifle, don't worry. Congress has your back.

Mr. Speaker, this is not a hypothetical case. Last year the families of DC sniper victims settled for \$2.5 million with Bull's Eye Shooter Supply and Bushmaster Firearms, because Bull's Eye allowed Lee Boyd Malvo to shoplift a military quality rifle—one of 233 guns they could not account for when investigated by the ATF. Some of my colleagues call this a frivolous lawsuit. I don't think there is anything frivolous about 233 missing guns.

In July of this year we gift wrapped a provision in the Medical Malpractice Bill that shielded the pharmaceutical industry from liability on any drug that made it through the regular FDA

approval process. Coincidentally, Merck Pharmaceuticals was at the same time facing multiple lawsuits tied to its misrepresentation of the dangers of the prescription drug Vioxx.

Thanks to this Congress, Americans can continue to exercise their Constitutional right to seek redress in the court system, unless it involves guns or drugs.

I am gratified to see that this bill does include certain common-sense provisions such as child safety locks and a ban on armor-piercing bullets. We fought hard for these ideas in the Clinton Administration and I urge my colleagues to resist any pressure to have them removed.

Despite my support for these ideas I must vote no on the overall bill. Mr. Speaker, this bill denies Americans one of their most basic rights in order to provide special protections for a very special interest. I urge my colleagues to resist the gun lobby and defeat this bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). All time for debate has expired.

Pursuant to House Resolution 493, the Senate bill is considered read and the previous question is ordered.

The question is on the third reading of the Senate bill.

The Senate bill was ordered to be read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the Senate bill.

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, this 15-minute vote on passage of S. 397 will be followed by a 5-minute vote on the motion to instruct on H.R. 2744.

The vote was taken by electronic device, and there were—yeas 283, nays 144, not voting 6, as follows:

[Roll No. 534]

YEAS—283

Aderholt	Boucher	Crenshaw
Akin	Boustany	Cubin
Alexander	Boyd	Cuellar
Baca	Bradley (NH)	Culberson
Bachus	Brady (TX)	Cunningham
Baird	Brown (SC)	Davis (AL)
Baker	Brown-Waite,	Davis (KY)
Barrett (SC)	Ginny	Davis (TN)
Barrow	Burgess	Davis, Jo Ann
Bartlett (MD)	Burton (IN)	Davis, Tom
Barton (TX)	Butterfield	Deal (GA)
Bass	Buyer	DeFazio
Bean	Calvert	Dent
Beauprez	Camp	Diaz-Balart, L.
Berkley	Cannon	Diaz-Balart, M.
Berry	Cantor	Dingell
Biggert	Capito	Doolittle
Bilirakis	Cardoza	Drake
Bishop (GA)	Carter	Dreier
Bishop (UT)	Chabot	Duncan
Blackburn	Chandler	Edwards
Blunt	Chocola	Ehlers
Boehlert	Coble	Emerson
Boehner	Cole (OK)	English (PA)
Bonilla	Conaway	Everett
Bonner	Cooper	Feeney
Bono	Costa	Ferguson
Boozman	Costello	Fitzpatrick (PA)
Boren	Cramer	Flake

Foley	Latham	Renzi
Forbes	LaTourette	Reyes
Ford	Leach	Reynolds
Fortenberry	Lewis (CA)	Rogers (AL)
Fossella	Lewis (KY)	Rogers (KY)
Fox	Linder	Rogers (MI)
Franks (AZ)	LoBiondo	Rohrabacher
Frelinghuysen	Lucas	Ros-Lehtinen
Gallely	Lungren, Daniel	Ross
Garrett (NJ)	E.	Royce
Gerlach	Mack	Ryan (OH)
Gibbons	Manzullo	Ryan (WI)
Gilchrest	Marchant	Ryun (KS)
Gillmor	Marshall	Salazar
Gingrey	Matheson	Sanchez, Loretta
Gohmert	McCaul (TX)	Sanders
Goode	McCotter	Saxton
Goodlatte	McCrery	Schmidt
Gordon	McHenry	Schwarz (MI)
Granger	McHugh	Scott (GA)
Graves	McIntyre	Sensenbrenner
Green (WI)	McKeon	Sessions
Green, Gene	McMorris	Shadegg
Gutknecht	Melancon	Shaw
Hall	Mica	Sherwood
Harris	Michaud	Shimkus
Hart	Miller (FL)	Shuster
Hastings (WA)	Miller (MI)	Simmons
Hayes	Miller, Gary	Simpson
Hayworth	Mollohan	Skelton
Hefley	Moran (KS)	Smith (NJ)
Hensarling	Murphy	Smith (TX)
Herger	Murtha	Sodrel
Herseth	Myrick	Souder
Higgins	Neugebauer	Spratt
Hinojosa	Ney	Stearns
Hobson	Northup	Strickland
Hoekstra	Norwood	Stupak
Holden	Nunes	Sullivan
Hostettler	Nussle	Sweeney
Hulshof	Obey	Tancredo
Hunter	Ortiz	Tanner
Hyde	Osborne	Taylor (MS)
Inglis (SC)	Otter	Taylor (NC)
Issa	Oxley	Terry
Istook	Pearce	Thomas
Jenkins	Pence	Thompson (CA)
Jindal	Peterson (MN)	Thornberry
Johnson (CT)	Peterson (PA)	Tiahrt
Johnson (IL)	Petri	Tiberi
Johnson, Sam	Pickering	Turner
Jones (NC)	Pitts	Upton
Kanjorski	Platts	Walden (OR)
Kaptur	Poe	Walsh
Kelly	Pombo	Wamp
Kennedy (MN)	Pomeroy	Weldon (FL)
Kind	Porter	Weldon (PA)
King (IA)	Price (GA)	Weller
King (NY)	Pryce (OH)	Westmoreland
Kingston	Putnam	Whitfield
Kline	Radanovich	Wicker
Knollenberg	Rahall	Wilson (NM)
Kolbe	Ramstad	Wilson (SC)
Kuhl (NY)	Regula	Wolf
LaHood	Rehberg	Young (AK)
Larsen (WA)	Reichert	Young (FL)

NAYS—144

Abercrombie	Doggett	Kildee
Ackerman	Doyle	Kilpatrick (MI)
Allen	Emanuel	Kirk
Andrews	Engel	Kucinich
Baldwin	Eshoo	Langevin
Becerra	Etheridge	Lantos
Berman	Evans	Larson (CT)
Bishop (NY)	Farr	Lee
Blumenauer	Fattah	Levin
Brady (PA)	Filner	Lewis (GA)
Brown (OH)	Frank (MA)	Lipinski
Brown, Corrine	Gonzalez	Lofgren, Zoe
Capps	Green, Al	Lowey
Capuano	Grijalva	Lynch
Cardin	Gutierrez	Maloney
Carnahan	Harman	Markey
Carson	Hastings (FL)	Matsui
Case	Hinchey	McCarthy
Castle	Holt	McCollum (MN)
Clay	Honda	McDermott
Cleaver	Hoolley	McGovern
Clyburn	Hoyer	McKinney
Conyers	Inslee	McNulty
Crowley	Israel	Meehan
Cummings	Jackson (IL)	Meek (FL)
Davis (CA)	Jackson-Lee	Meeks (NY)
Davis (IL)	(TX)	Menendez
DeGette	Jefferson	Millender
Delahunt	Johnson, E. B.	McDonald
DeLauro	Jones (OH)	Miller (NC)
Dicks	Kennedy (RI)	Miller, George

Moore (KS) Rush  
Moore (WI) Sabo  
Moran (VA) Sánchez, Linda  
Nadler T.  
Napolitano Schakowsky  
Neal (MA) Schiff  
Oberstar Schwartz (PA)  
Olver Scott (VA)  
Owens Serrano  
Pallone Shays  
Pascrell Sherman  
Pastor Slaughter  
Paul Smith (WA)  
Payne Snyder  
Pelosi Solis  
Price (NC) Stark  
Rangel Tauscher  
Rothman Thompson (MS)  
Ruppersberger Tierney

Towns  
Udall (CO)  
Udall (NM)  
Van Hollen  
Velázquez  
Visclosky  
Wasserman  
Schultz  
Waters  
Shays  
Watson  
Watt  
Waxman  
Weiner  
Wexler  
Woolsey  
Wu  
Wynn

The vote was taken by electronic device, and there were—yeas 209, nays 216, not voting 8, as follows:

[Roll No. 535]

YEAS—209

Abercrombie  
Ackerman  
Allen  
Andrews  
Baca  
Baird  
Baldwin  
Barrow  
Bean  
Becerra  
Berkley  
Berman  
Berry  
Bishop (GA)  
Bishop (NY)  
Blumenauer  
Boren  
Boucher  
Boyd  
Brady (PA)  
Brown (OH)  
Brown, Corrine  
Butterfield  
Camp  
Capps  
Capuano  
Cardin  
Cardoza  
Carnahan  
Carson  
Case  
Chandler  
Clay  
Cleaver  
Clyburn  
Conyers  
Cooper  
Costa  
Costello  
Cramer  
Crowley  
Cueellar  
Cummings  
Cunningham  
Davis (AL)  
Davis (CA)  
Davis (IL)  
Davis (TN)  
DeFazio  
DeGette  
Delahunt  
DeLauro  
Dicks  
Dingell  
Doggett  
Doyle  
Edwards  
Emanuel  
Engel  
Eshoo  
Etheridge  
Evans  
Farr  
Fattah  
Filner  
Ford  
Frank (MA)  
Gonzalez  
Gordon  
Green, Al  
Green, Gene

Aderholt  
Akin  
Alexander  
Bachus  
Baker  
Barrett (SC)  
Bartlett (MD)  
Barton (TX)  
Bass  
Beauprez  
Biggert  
Bilirakis  
Bishop (UT)  
Blackburn  
Blunt  
Boehlert  
Boehner  
Bonilla  
Bonner

NAYS—216

Bono  
Boozman  
Boustany  
Bradley (NH)  
Brady (TX)  
Brown (SC)  
Brown-Waite,  
Ginny  
Burgess  
Burton (IN)  
Buyer  
Calvert  
Cannon  
Cantor  
Capito  
Carter  
Castle  
Chabot  
Chocola

English (PA)  
Everett  
Feeney  
Ferguson  
Fitzpatrick (PA)  
Flake  
Foley  
Forbes  
Fortenberry  
Fossella  
Foxy  
Franks (AZ)  
Frelinghuysen  
Gallegly  
Garrett (NJ)  
Gerlach  
Gibbons  
Gilchrest  
Gillmor  
Gingrey  
Gohmert  
Goode  
Goodlatte  
Granger  
Graves  
Green (WI)  
Gutknecht  
Hall  
Harris  
Hart  
Hastings (WA)  
Hayes  
Hayworth  
Hefley  
Hensarling  
Herger  
Hobson  
Hoekstra  
Hostettler  
Hulshof  
Hunter  
Hyde  
Inglis (SC)  
Issa  
Istook  
Jenkins  
Jindal  
Johnson, Sam  
Kelly  
Kennedy (MN)  
King (IA)  
King (NY)  
Kingston  
Kirk

Kline  
Knollenberg  
Kolbe  
Kuhl (NY)  
LaHood  
Latham  
LaTourette  
Lewis (CA)  
Linder  
LoBiondo  
Lucas  
Lungren, Daniel  
E.  
Mack  
Manzullo  
Marchant  
McCaul (TX)  
McCotter  
McCrery  
McHenry  
McHugh  
McKeon  
McMorris  
Mica  
Miller (FL)  
Miller (MI)  
Miller, Gary  
Moran (KS)  
Murphy  
Musgrave  
Neugebauer  
Ney  
Northup  
Norwood  
Nunes  
Nussle  
Osborne  
Otter  
Oxley  
Paul  
Pearce  
Pence  
Peterson (PA)  
Petri  
Pickering  
Pitts  
Platts  
Poe  
Pombo  
Porter  
Price (GA)  
Putnam  
Radanovich  
Ramstad

Boswell  
Davis (FL)  
DeLay

Keller  
Moran (VA)  
Myrick

NOT VOTING—8

□ 1204

Mr. DAVIS of Kentucky changed his vote from “yea” to “nay.”

Mrs. McCARTHY changed her vote from “nay” to “yea.”

So the motion to instruct was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES

The SPEAKER pro tempore (Mr. SIMPSON). Without objection, the Chair appoints the following conferees on H.R. 2744: Messrs. BONILLA, KINGSTON, LATHAM, Mrs. EMERSON, Messrs. GOODE, LAHOOD, DOOLITTLE, ALEXANDER, LEWIS of California, Ms. DELAURO, Messrs. HINCHEY, FARR, BOYD, Ms. KAPTUR, and Mr. OBEY.

There was no objection.

REMOVAL OF NAME OF MEMBER  
AS COSPONSOR OF H.R. 551

Mr. HONDA. Mr. Speaker, I ask unanimous consent to have the name of my colleague from Arizona (Mr. FRANKS) removed as a cosponsor of H.R. 551. His name was added in error.

NOT VOTING—6

Boswell  
Davis (FL)

□ 1153

Ms. EDDIE BERNICE JOHNSON of Texas, Ms. SCHAKOWSKY, and Mr. DICKS changed their vote from “yea” to “nay.”

Ms. LORETTA SANCHEZ of California, Mrs. EMERSON, Mr. MORAN of Kansas, and Mr. JONES of North Carolina changed their vote from “nay” to “yea.”

So the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mrs. MUSGRAVE. Mr. Speaker, on rollcall No. 534 I was unavoidably detained. Had I been present, I would have voted “yea.”

MOMENT OF SILENCE IN MEMORY OF VICTIMS OF RECENT EARTHQUAKE IN PAKISTAN, INDIA AND AFGHANISTAN

The SPEAKER. The Chair would ask all Members to stand and observe a moment of silence in memory of the victims of the recent earthquake in Pakistan, India and Afghanistan.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Without objection, proceedings will resume with a 5-minute vote.

There was no objection.

MOTION TO GO TO CONFERENCE ON H.R. 2744, AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006

MOTION TO INSTRUCT OFFERED BY MS. DELAURO

The SPEAKER. The unfinished business is the vote on the motion to instruct on H.R. 2744 offered by the gentlewoman from Connecticut (Ms. DELAURO) on which the yeas and nays are ordered.

The Clerk will redesignate the motion.

The Clerk redesignated the motion.

The SPEAKER. The question is on the motion to instruct.

This will be a 5-minute vote.