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## OP-ED

### Hold Gun Makers Liable For Their Products

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Under the law of products liability, every industry that sells consumer products is fully responsible to make those products free from design or manufacturing defects, and we are all safer because of that. Every industry except one. Ironically that exception is the firearms industry.

Product liability reflects a simple moral and uniquely American principle: Citizens injured by a defective product should be compensated by its maker.

In other words, the cost of injuries should be borne by the manufacturer who profits from the sale of the product, not the injured individual. This provides the financial incentive for manufacturers to thoroughly evaluate and test their products before selling them — and to fix problems once they become apparent. It also creates the equally important reason for manufacturers to incorporate state-of-the-art safety devices.

Auto manufacturers did not spend millions to install air bags because they help the car to function, or as a humanitarian gesture. They were worried about the economic consequence of facing lawsuits for not using air bags when the technology was reasonably available. As a result, fatalities and injuries from front impact car accidents have declined steeply.

Gun makers, however, who sell some of the most dangerous products in America enjoy strong federal immunities from product liability lawsuits under the Protection of Lawful Commerce in Arms Act. This is special interest legislation aimed at insulating gun manufacturers from lawsuits, including product liability cases. It was enacted in 2005 following the D.C. sniper murder case that resulted in a \$2.5 million settlement with a gun company.

This statute was such a coup for the industry that the **National Rifle Association's Wayne LaPierre** called it "the most significant piece of pro-gun legislation in 20 years," adding with characteristic hyperbole, "History will show that this law helped save the American firearms industry from collapse under the burden of these ruinous and politically motivated lawsuits."

The industry did not need this unique gift. It was thriving before the 2005 arms act, when it was subject to the same laws as other manufacturers.

Among other protections, the 2005 arms act provides immunity to gun manufacturers even where the gun defect causes injury or death when the injury or death is caused by a "volitional act that

constitutes a criminal offense." It is noteworthy that the vast majority of injuries and death by guns are caused by such an act.

Perhaps the worst part of the arms act is that it creates a disincentive for gun companies to incorporate safety mechanisms that are available to prevent guns from being used by any one other than the permit holder. Everyone agrees that there is a rampant problem with guns falling into the hands of people other than the permit holder. How often have you heard LaPierre and others blame gun deaths on stolen guns used by criminals and the mentally ill?

Ways to prevent guns from being used by others have been around for decades, starting with gun locks and, more recently, developing into "personalized" guns with thumb or palm print technology and other biometric markers. Available technology would make it nearly impossible for a gun to be used by anyone other than the authorized user, and would not affect the gun's utility.

Just as car lovers continue to love cars despite air bags and seat belts, gun lovers will continue to love guns with this technology. Unfortunately, the gun industry sees no financial reason to incorporate these safety devices, given the law's unique protection. They believe themselves largely immune from product liability lawsuits, unlike car manufacturers. So why would they invest in safety features that would make their products marginally more expensive and possibly affect sales?

The political fight in Washington and state legislatures has understandably focused on making the country safer through reasonable limits on gun sales. We should not forget, however, that there is no "safe" gun when it is in the wrong hands. The technology exists to prevent the use of guns by other than the authorized user, but gun manufacturers have not applied it. Manufacturers should answer for this inherent flaw and litigants and the legal community need to continually test the limits of the 2005 arms act until it is repealed.

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