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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 this 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 businesses 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 do 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,

A handwritten signature in cursive script that reads "Robert D. Evans". The letters are fluid and connected, with a prominent capital 'R' at the beginning.

Robert D. Evans