

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

National Shooting Sports Foundation, Inc.,

Plaintiff,

v.

Kwame Raoul,
Attorney General of the State of Illinois,

Defendant.

No. 3:23-cv-02791-SPM

PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION

Plaintiff National Shooting Sports Foundation, Inc. (“NSSF”), hereby submits the following brief response to Defendant’s Motion for Reconsideration of the Court’s application of Administrative Order No. 339 to the above-captioned case, Dkt.13, and states as follows:

1. This is a challenge to House Bill 218, which creates a new state-law cause of action against “firearm industry member[s]” and them alone. 815 Ill. Comp. Stat. 505/2BBBB-(a).

2. HB 218’s proponents claim that they want to rein in criminal gun violence, but the statute does not regulate the criminal misuse of firearms. Instead, it authorizes Illinois courts to impose tort-law liability on licensed manufacturers and sellers of lawful firearms, *even if an industry member’s conduct was fully compliant with all of the many federal, state, and local laws that apply to firearm-related commerce*, and to make them pay to redress harms caused by criminals who misuse their lawful products. Lawful, constitutionally protected conduct may thus give rise to state-tort-law liability if a product is misused in Illinois by someone else.

3. The Attorney General complains that this case should not have been assigned to Your Honor because (he says) it is not related to *Barnett v. Raoul*, No. 3:32-cv-209-SPM. In that case, Your Honor granted a preliminary injunction preventing the Attorney General from enforcing two new provisions, sections 1.9 and 1.10 of 720 ILCS 5/24-1, which “placed sweeping restrictions

and outright bans on the sale, purchase, manufacture, delivery, importation, and possession of many firearms, magazines, attachments, stocks, and grips.” Mem. & Order 3, *Barnett v. Raoul*, No. 3:32-cv-209-SPM (S.D. Ill. Apr. 28, 2023), Dkt.99 (“*Barnett* PI Op.”).

4. Contrary to the Attorney General’s suggestion, the relationship between that case and this case is as direct as it is obvious. First, as the Attorney General concedes, “both cases involve the National Shooting Sports Foundation and the Illinois Attorney General’s Office” as plaintiff and defendant, respectively. Dkt.13 (“Mot.”) ¶5. Second, while the issues in the two cases are not entirely overlapping, at bottom both cases ask whether “the senseless crimes of a relative few” can “justify the infringement of the constitutional rights of law-abiding individuals in hopes that such crimes will then abate or, at least, not be as horrific?” *Barnett* PI Op. 3. The statute in *Barnett* represents an effort by the State of Illinois to deprive law-abiding citizens of their Second Amendment rights *directly*, by prohibiting the general public from acquiring hundreds of models of semiautomatic firearms that are in common use today for lawful purposes. The statute in this case represents an effort by the State of Illinois to deprive law-abiding citizens of their Second Amendment rights *indirectly*, by authorizing sweeping liability on the manufacturers and sellers without which individuals could not obtain lawful firearms, in the hopes that such liability will be so severe as to drive industry participants out of state, if not “bankrupt the industry” altogether—just as we saw in the late 1990s and early 2000s before Congress stepped in to put an end to such incursions. See Sharon Walsh, *Gun Industry Views Accord as Dangerous Crack in Its Unity*, Wash. Post (Mar. 18, 2000), <https://wapo.st/2Zcp5KS>.

5. Furthermore, the Attorney General entirely ignores the fact that HB 218, just like the statute at issue in *Barnett*, operates as a *functional ban on particular types of firearms*. “It is an unlawful practice” under HB 218 for a “firearm industry member” to “advertise, market,

promote, design, or sell any firearm-related product in a manner that reasonably appears to support, recommend, or encourage persons under 18 years of age to unlawfully purchase or possess or use a firearm-related product in Illinois.” 815 Ill. Comp. Stat. 505/2BBBB-(b)(3). And by making it illegal to sell any firearm that is “design[ed] ... in a manner that reasonably appears” to “encourage” minors *not just* to “unlawfully purchase” a firearm, but also to *lawfully* “possess or use” a firearm “in Illinois,” *id.*, HB 218 effectively bans every youth-model rifle and shotgun in Illinois. The question of whether Illinois can ban that class of arms is obviously related to the question of whether it can ban the class of arms dubbed “assault weapons” under the statute at issue in *Barnett*.

6. In sum, this case easily clears the low bar of relatedness.

For the foregoing reasons, the Court should deny the Attorney General’s motion.

Respectfully submitted,

s/ Gary P. Pinter

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Counsel for Plaintiff

August 22, 2023

CERTIFICATE OF SERVICE

I certify that on August 22, 2023, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record.

s/ Gary P. Pinter
GARY P. PINTER