



NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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*For Immediate Release*

**CORPORATION COUNSEL MICHAEL A. CARDOZO  
TO PRESENT ORAL ARGUMENT TOMORROW IN FEDERAL CASE  
AGAINST IRRESPONSIBLE GUN INDUSTRY PRACTICES;  
EFFORTS ARE PART OF CITY'S CAMPAIGN  
TO RID NEW YORK CITY OF ILLEGAL FIREARMS**

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, [media@law.nyc.gov](mailto:media@law.nyc.gov)

New York, Sept. 20, 2007 – Corporation Counsel Michael A. Cardozo will present oral argument in Manhattan Federal Court **tomorrow morning** – Friday, Sept. 21, 2007 – in an important case involving gun manufacturers and distributors. (*Editor's Note: All details on time and place of the court appearance appear later in this release.*)

"This lawsuit presses gun manufacturers and distributors to do the right thing and take the simple steps to stop the sale of guns to dealers who repeatedly fuel the black market for illegal guns. These steps would save lives in our City – and throughout the country," noted Cardozo.

The case now before the appellate court (the U.S. Court of Appeals for the Second Circuit) has a complex legal history. In early 2000, New York City brought a lawsuit against many of the nation's largest gun manufacturers on the grounds that the manufacturers' failure to supervise the sales practices of a small number of their gun dealer-customers contributed to the flood of illegal guns used in crimes in the City and nationwide.

The suit, *City of New York v. Beretta USA Corp.*, seeks an injunction to require gun manufacturers and distributors to adopt reasonable practices to assure that their products are not sold to criminals and other persons forbidden from purchasing guns. The City's suit alleges that some gun manufacturers and distributors turn a blind eye to the small number of their retail dealers who sell guns in an irresponsible manner. The City intends to prove in court that if manufacturers and distributors monitored their dealers more closely, dangerous sales practices such as "straw purchases" (in which a legal purchaser acts as a "stand-in" for an illegal purchaser) and "multiple sales" (in which purchasers make single purchases of large numbers of guns for illegal resale) could be prevented, and the flow of illegal guns into the City would be reduced. The City is not seeking monetary damages; rather, it seeks to require more responsible marketing and distribution practices by the gun industry.

Weeks before the case was supposed to go to trial, Congress – led by National Rifle Association Board Member, Senator Larry Craig – passed legislation, inaptly titled the "Protection of Lawful Commerce in Arms Act," that attempted to strip the state and federal judiciary of the ability to hear certain cases involving the gun industry.

The appeal to be argued tomorrow will require the Second Circuit to decide whether the lower court judge correctly ruled that the City's lawsuit could continue to trial, because the City's lawsuit is not included within the plain terms of the Commerce in Arms Act. The appeals court will also be asked to decide

whether the entire Commerce in Arms Act unconstitutionally oversteps Congress' power to regulate the state and federal judiciary, and violates other constitutional provisions.

In the lower court ruling – rendered on Dec. 1, 2005 – Federal District Court Judge Jack B. Weinstein of the Eastern District of New York ruled in favor of New York City. Although he held that the Commerce in Arms Act is constitutional, he also found it does not apply to the City's gun case – and he allowed the matter to proceed in court.

"Congress enacted laws that regulate gun sales in order to protect Americans. For the gun industry to stand idly by while criminals sidestep these processes is unconscionable. We urge industry members to recognize their responsibility in ensuring that firearms are distributed legally and not on the black market," Cardozo added.

**Reporters or members of the public interested in attending oral argument can go to the U.S. Court of Appeals for the Second Circuit at 500 Pearl St. in lower Manhattan, Ceremonial Courtroom, 9th Floor. The court calendar starts at 10 a.m. tomorrow, and the City's case is fourth. The three-judge panel scheduled to hear the case includes: Circuit Judges Jose A. Cabranes, Robert A. Katzmann and Roger J. Miner. NOTE: The City's Corporation Counsel will also be available afterward outside court to address television, radio, print and other reporters.**

In addition to Michael Cardozo, the City's legal team also includes Eric Proshansky, Gail Rubin, June Buch, Richard Costa, Melanie Ash and Ari Biernoff of the Law Department's Affirmative Litigation Division.

Legal assistance was also provided by Robert Peck of the Center for Constitutional Litigation; Michael Elkin and Thomas Lane of the law firm Winston & Strawn LLP; the Brady Center to Prevent Gun Violence; and the law firm Wilmer Cutler Pickering Hale and Dorr LLP.

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