

## Jonathan W. Cuneo

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May 16, 2023

Senator Anne Carney  
Representative Matthew Moonen  
Committee on the Judiciary  
100 State House Station  
Room 438  
Augusta, Maine 04333

Re: Testimony of Jonathan Cuneo concerning H.P 1085, An Act to Create a Civil Cause of Action for Persons Suffering Damages Arising from the Sale of Abnormally Dangerous Firearms

Good morning, Senator Carney, Representative Moonen and members of the Judiciary Committee.

My name is Jonathan Cuneo. I appear before you today to discuss the particular provisions of Representative Millet's proposed legislation relating to the marketing of firearms targeting minors or others who are legally prohibited from accessing firearms.

There is a simple reason why our laws set age limits for purchasing some legal products, such as alcohol, tobacco and firearms: Before a certain age the decision to use these products is not the decision of a consenting adult, but the decision of a child.

I was a member of the legal team that brought the first case against the Joe Camel advertising campaign. Our case predated the FTC case and the Attorney General cases. It was a private action brought by an individual under California law. The theory of our private case was that it induced young people to violate California law to purchase cigarettes underage.

The theory of this civil case was that the marketing campaign for Joe Camel spoke to vulnerable children in a language that grownups did not understand. Joe Camel was if nothing else an ugly guy, a misfit, but he always had a cool car and one or more attractive women around him. That was a powerful and striking image.

In the few short years after Joe Camel was introduced in 1988, he was as recognizable to young children as Mickey Mouse or Ronald McDonald. Adolescence can be a trying a time of vulnerability and adolescent males can be susceptible to campaigns that prey on their perceived weakness. That is exactly what happened in the Joe Camel campaign.

The tobacco industry studied children and concluded that some were very susceptible to advertising. Within a short period of time, Camel was transformed as a brand. Before Joe, Camel was mostly a brand of unfiltered cigarettes that competed with Lucky Strike and Chesterfield. As a result of the campaign, Camel's sales exploded over 30-fold. In fact, it was so successful it briefly spiked an increase in cigarette smoking in America.

The FTC and the States Attorney General came later. As part of the settlement and in conjunction with a Congressman, our team released documents that directly showed youth targeting. This was nationwide news. As a result of our case and that of the Attorney General cases, the tobacco industry put Joe Camel behind it and voluntarily agreed to cease and desist this type of youth targeting.

What's happening with guns almost appears like "deja vu all over again." No matter your opinion about guns everyone is horrified when a youngster as young as six shoots his teacher or an adolescent commits a mass murder, or a maniac opens fire in a mall or market.

Even conservatives recognize that there is a problem. Last Saturday's *Wall Street Journal* featured an article by Holman Jenkins, a conservative that stated, "Who among those responsible (gun) owners really doubts as Scientific American put it that for parts of America guns have gone from 'utilitarian tools for hunting and self defense to a form of psychological solace.'" His answer, "Law abiding gun enthusiast, dealers and law enforcement would support a well targeted campaign that could stigmatize gun ownership as a form of compensation for personal inadequacy or total of deranged identity politics."

The Violence Policy Center (disclosure: I once served on their board) published a study, "*Start them Young - Following the Tobacco Industry's Path: The Search for Replacement Shooters.*" Link attached. <https://vpc.org/publications/start-them-young/>. Because of the decline in hunting, some weapons marketers have changed their focus from bolt action rifles to military assault style rifles. Under federal law an individual must be 18 to purchase a rifle, 21 to purchase a handgun.

Marketing deadly products to youth is a danger and a black mark on our society. The modest provision in this bill would provide a civil remedy to any victims who could proximately show that he or she was injured by improper marketing of firearms to youth.

The cause of action in this bill provides significant limitations on liability. The cause must be proximate. There are no punitive damages. It narrowly merely provides a limited civil remedy for those who are directly and proximately injured by improper marketing.

That private remedy has salutary benefits. It satisfies the need for compensation in circumstances when compensation is due. The plaintiff must show that the marketer caused the injury. It is also a deterrent to false marketers. Any marketer must know it faces civil liability for deceptive or improper ads.

Also, as the Joe Camel case demonstrates, a private action can be a springboard for positive change. Government resources are limited, and the government cannot be depended on to act in all circumstances.

Mr. Jenkins argues that the way to curb gun violence is changing public attitudes. Actions by courts and legislatures can help alter public opinion. In my lifetime, public attitudes have changed in civil rights, against drunk driving and towards marriage equality. Let's not forget that *Brown v. Board of Education* began as a private action to gain access to schools. State legislators changed public attitudes about drunk driving by toughening the laws in response in part to a campaign by Mothers Against Drunk Driving ("MADD"). Ethnic slurs, once acceptable if not fashionable, now may be actionable in the workplace. Civil justice, legislation and changed attitudes go hand in hand.

I urge the Committee to look favorably on this provision of the Bill.