

THE NRA CHAPTER 11: DISMISSAL IS NOT THE END

BY PROF. ANTHONY MICHAEL SABINO

Supporters of the Second Amendment should not be overly concerned that the National Rifle Association's recent Chapter 11 filing was dismissed. True, it may seem unfair to some that the same laws which have permitted innumerable corporations to reorganize are unavailable to the Association, at least for now. Yet the matter is far from resolved.

The key to understanding the opinion rendered by Bankruptcy Judge Hale is that he did not attack the Right to Keep and Bear Arms nor, to any great extent, the NRA. Rather, the gravamen of his decision demonstrated a keen respect for the constitutional divide between federal and state authority. The court's cogent and rational analysis reflected the judge's opinion that a reorganization proceeding would wrongfully obstruct state regulatory action. It must be remembered that the Association is organized as a charitable corporation under New York state law, and therefore inarguably falls under the jurisdiction of that forum's proper authorities.

The bankruptcy judge was careful to emphasize that, in the typical Chapter

11 case, the debtor faces an existential threat due to distressed finances or pending litigation. It was the choice of this jurist to differentiate the NRA's situation, positing it as driven primarily by the possibility of a dissolution brought about by government action. Yet this rationale might well provide grounds for a different outcome before a higher tribunal.

Presuming there is an appeal, the matter will first come before the U.S. District Court. That bench might accord greater weight to the facts revealed in hearings before the bankruptcy judge, including that the NRA confronts litigation from parties other than New York's regulators, the organization seeks to resolve certain operational issues, and that the sum total of these controversies might endanger the Association's continued existence. A district judge taking a more holistic approach might decide that a reorganization proceeding is, in fact, an appropriate vehicle for rehabilitating the NRA.

Readers of this publication in particular surely recall *Johns-Manville*, the first of the "megabankruptcy" cases.

That industrial giant was completely solvent, but confronted an existential threat from existing and future asbestos litigation, and, moreover, conflict with its insurers as to who would pay for it. Chapter 11 permitted the corporation to resolve its issues, and continue to operate. A different jurist might very well rule that the Association's current situation is no different.

Yet even if the Chapter 11 pathway is foreclosed, and the NRA continues to battle in New York state court, its most powerful protection still lies in that other paramount liberty, Freedom of Speech, as safeguarded by the First Amendment. And so the defense of the Right to Keep and Bear Arms shall continue with the aid of the constitutional guarantee which immediately precedes it. ■

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