



# Fire & Smoke: Government, Lawsuits, and the Rule of Law

*Michael I. Krauss*

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## **Fire & Smoke: Government, Lawsuits, and the Rule of Law** Michael I. Krauss

The state of Mississippi's lawsuit against tobacco companies in 1994 was quickly emulated by more than a dozen other states and then the federal government. Not to be outdone, more than a dozen cities and the federal government have followed the city of New Orleans's lead and sued gun manufacturers. Do these lawsuits signal new directions for more effective public policy or a new and dangerous trend whereby governments use tort law to achieve public policy objectives they were unable to accomplish legislatively? In this new policy report, so-called government "recoupment" lawsuits are carefully examined and found to be flagrant abuses of the constitutional separation of powers, seriously undermining over 200 hundred years of common-law torts adjudication. Author Michael Krauss, a leading legal scholar on the relationship between tort law and personal freedoms, systematically dissects the tobacco and firearm recoupment lawsuits. He shows how such lawsuits betray every criterion of sound, effective, and just tort law. The lawsuits against gun manufacturers can show no damages, no proximate causation, and no wrongdoing. Similarly, governments have no direct damages to claim against tobacco manufacturers and cannot legally stand in the place of individual smokers or their families. This book concludes that recoupment lawsuits are incompatible with civil freedoms, representative democracy, and the rule of law upon which institutions of a free society depend.

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