

## Brady Center Suit Stops NRA-Backed Florida Gag-Rule

### Legal Battle Continues in Appeals Court

On September 14, 2011, the Brady Center won an important victory for doctors, patients, and the First Amendment when a federal judge enjoined an unprecedented new law in Florida that would restrict health care providers, including pediatricians, from warning patients about the risks posed by firearms in the home or offering advice on gun safety. The Brady Center had filed suit on June 6, 2011 and successfully sought a preliminary injunction of the law.

Within hours of the decision, Florida Governor Rick Scott vowed to appeal. The Brady Center will continue to fight against enforcement of the law in the higher court.

The Florida law, H.B. 155, subjects health care providers to possible sanctions, including fines and loss of their medical license, if they discuss or record information in a patient's chart about firearm safety that a medical board later determines was not "relevant" or was "unnecessarily harassing." As the law does not define these terms, it created a severe chilling effect on confidential, life-saving discussions. The suit charges that the law is unconstitutionally vague and violates the First Amendment.

The lawsuit was filed on behalf of several individual practitioners and organizations representing more than 11,000 Florida doctors, including the Florida chapters of the American Academy of Pediatrics, American Academy of Family Physicians, and the American College of Physicians.

Physicians routinely counsel patients about the risks posed to families by firearms in the home. One-third of U.S. homes with children younger than 18 have a firearm, yet more than 40 percent of gun-owning households with children store their guns unlocked. Children ages 5 to 14 years in the United States are 11 times more likely to be killed accidentally with a gun than similarly aged children in other developed countries. Because of these well-documented risks, pediatricians advise parents to keep guns away from children, secured with gun locks, and stored separately from ammunition.

In her September 14 ruling, U.S. District Judge Marcia G. Cooke held that the Brady Center would likely prevail in its facial challenge on grounds that the law was an unconstitutional content-based restriction on speech that specifically targeted firearms issues. Rejecting the State of Florida's argument, Judge Cooke held that the law "does not implicate rights that the Second Amendment protects."

Dennis Henigan, Acting President of the Brady Center to Prevent Gun Violence, stated, "We are pleased that the court has blocked the gun lobby's outrageous and unconstitutional attempt to stop doctors from warning about the severe risks posed by guns in the home. With more than 4,000 children and teens shot in gun accidents every year, it is crucial that doctors be able to warn parents that guns in the home pose a serious risk of injury or death."

Judge Cooke earlier rejected the NRA's motion to intervene in the case, agreeing with the Brady Center that the gun lobby lacked standing. As a result, the



The Brady Center is fighting to allow Florida doctors to warn patients about the risks of guns in the home.

NRA could not participate in hearings about the preliminary injunction and has no right to appeal. This defeat came days after the Brady Center defeated the NRA in its lawsuit against the City of Pittsburgh, in which the NRA tried to strike down the City's lost or stolen gun reporting requirement. See page 4 for more information about that case.

The Florida doctors are also represented by Ropes and Gray and the Florida law firms of Astigarraga Davis, and Weisberg and Kainen. ●

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Imagine a law that barred doctors from informing patients about the health risks of smoking, preventing doctors from giving accurate medical advice to chain smokers who believed tobacco industry “studies” that cigarettes did not cause cancer. Imagine an America where any industry could determine what doctors tell patients about the risks posed by their products, where advertising campaigns that mislead the public about the risks posed by products would go unrebuted by the medical community.

That Orwellian vision came to Florida on June 2. And we at the Brady Center’s Legal Action Project put a halt to it in September and are trying to stop it for good.

For decades guns have been marketed as life-saving devices: a typical handgun advertisement advises mothers that buying a gun is “not just

your right, it’s your responsibility” to protect children. And the gun lobby pushes its product by citing bogus “scientific” studies that purport to “prove” the product’s effectiveness at saving lives.

In truth, however, bringing a gun into your home is far more likely to kill or injure you or your loved ones than to protect them — and countless people, many of them children, are killed or wounded from guns every hour of every day. In just one recent four month period, four children in Florida — including a 2-year-old — were unintentionally killed with guns found by kids in the home.

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Thankfully, doctors, especially pediatricians, educate and counsel patients about these deadly risks. In the privacy of doctors’ offices, moms and dads discuss, with uncommon frankness, activities that affect their family’s health and safety. Doctors bluntly tell us when we need to lose a few pounds, or quit smoking, or — as the American Academy of Pediatrics recommends — keep guns out of places where children live and play, or at a minimum keep guns unloaded and locked separately from ammunition. This information enables individuals to make an informed decision about whether they truly wish to subject themselves and their family to the risks posed by guns in the home.

But not in Florida.

On June 2, 2011, mothers and fathers in Florida entered a world where their doctors could still alert them to the risks posed by trans fats, household cleaners, and swimming pools, but many would say nothing about what may be the gravest risk in their patients’ homes: guns. If a mom mentioned that her husband keeps a loaded gun in his nightstand, her pediatrician might keep silent, never informing her that this irresponsible practice could kill their two-year-old.

That is because of an outrageous new Florida law that restricted doctors from discussing firearms with patients. While the breadth of the law is disputed, its draconian penalties (including revocation of an offending physician’s license to practice) led many doctors to no longer discuss firearms with patients. And the gun lobby has introduced bills in other states to extend its reign of medical silence.

That is why we brought a lawsuit to strike down this law as an unconstitutional infringement on the First Amendment rights of doctors and patients. With the pro bono assistance of the Ropes and Gray law firm, the courageous leadership of numerous physicians — and your support, on which we rely for all of our work — we succeeded in getting a federal court to enjoin enforcement of the law. While Florida Governor Rick Scott has vowed to appeal, we will continue to fight and will do everything in our power to ensure that families in Florida get the health and safety information they need, and that the gun lobby does not force us all to live in a nightmare world where the NRA, not the AMA, decides what doctors can tell their patients.



**Jonathan E. Lowy**  
Legal Action Project Director

**The Brady Center to Prevent Gun Violence** is a nonprofit, education, research, and legal advocacy organization established in 1983 to reduce the tragic toll of gun violence in America.

**Sarah Brady**  
Chair

**Dennis A. Henigan**  
Acting President

**Jonathan E. Lowy**  
Legal Action Project Director

**Daniel R. Vice**  
Senior Attorney

**Becca Knox**  
Director of Research

**Robyn Long**  
Editor-in-Chief of *Legal Action & Legal and Policy Associate*

1225 Eye Street, NW, Suite 1100  
Washington, D.C. 20005

Phone: (202) 289-7319

Internet: [www.bradycenter.org/legalaction](http://www.bradycenter.org/legalaction)

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# New Brady Center Report Asks: Is the Supreme Court's Redefining of the Second Amendment a Hollow Victory for the Gun Lobby?

The new Brady Center report *Hollow Victory?* comprehensively analyzes challenges to gun laws filed by the gun lobby and gun criminals since the U.S. Supreme Court's Second Amendment rulings in *District of Columbia v. Heller* and *McDonald v. City of Chicago*, and concludes that the gun lobby has failed to expand those narrow rulings to strike down other gun laws. The report finds that the courts have overwhelmingly rejected virtually all of the more than 400 challenges brought against gun laws since *Heller*.

In the June 2008 *Heller* decision, the U.S. Supreme Court held that the Second Amendment provides an "individual right" to possess guns in the home for self-defense. At the same time, Justice Scalia's majority decision rejected the NRA's view that the Second Amendment provided a broad right for virtually anyone to possess or carry virtually any gun anywhere. Instead, the Court went out of its way to caution that the Second Amendment "is not unlimited" and is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." Two years later, in June 2010, the Court, in *McDonald v. City of Chicago*, extended that ruling nationwide.

Since June 2008, gun criminals and the gun lobby have continued to file new legal challenges, totaling over 400, including cases seeking to allow people to venture out armed into riots, to allow teenagers to carry loaded guns in public, to force guns onto the streets of our nation's capital, and to take away police discretion to allow the carrying of loaded guns in public. But aside from overturning the handgun bans challenged in *Heller* and *McDonald*, the gun lobby's efforts to expand the rulings to other types of gun laws have failed in the courts.

*Hollow Victory?* finds that the gun lobby's unsuccessful challenges have been aimed at five major gun policy areas and that in response, courts have held that under the Second Amendment:

1. there is no right to carry hidden, loaded firearms in public
2. there is no right to military-style assault weapons and assault clips
3. felons and domestic abusers have no right to possess firearms
4. gun owners may be required to safely store guns in homes
5. gun owners may be required to register their guns

Illustrating the courts' reluctance to extend *Heller's* narrow ruling, the U.S. Court of Appeals for the 4th Circuit recently rejected a claim that the Second Amendment grants a right to carry guns in cars in national parks, saying: "This is serious business. We do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights." Another federal court concluded, "*Heller* does not hold, nor even suggest, that concealed weapons laws are unconstitutional."

*Hollow Victory?* concludes that while future court cases still place at risk the authority of legislators to protect our communities from gun violence, for now *Heller* remains nothing more than a "hollow victory" for the gun lobby. ●

## BRADY CENTER SECOND AMENDMENT LAWSUITS

### Brady Center Files Brief in Colorado Concealed Carry Lawsuit

The Brady Center filed an amicus brief on July 19, 2011 in the U.S. Court of Appeals for the 10th Circuit in *Peterson v. LaCabe*, urging dismissal of a lawsuit challenging Colorado's restrictions on concealed carrying of loaded firearms in public by out-of-state residents. To protect public safety, Colorado only allows visitors to carry concealed guns in public if they have concealed carry licenses

from states that have reciprocity with Colorado, and only if they are residents of the state in which they were issued the license. Plaintiffs argue that out-of-state residents have a right to carry loaded, concealed firearms in Colorado even if they do not meet Colorado's requirements to carry concealed weapons. The Brady Center's brief highlights the severe danger posed by concealed weapons, with studies showing that the carrying of firearms in public is not a useful or effective form of self-defense

and, in fact, repeatedly has been shown to increase the risks that one will fall victim to violent crimes.

### Brady Center Files Brief in Support of San Diego's Concealed Carry Permitting Process

The Brady Center, along with the Police Foundation and the International Brotherhood of Police Officers, filed an amicus brief on August 12, 2011 in the U.S. Court of Appeals for

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the 9th Circuit in defense of San Diego County's concealed handgun permitting process in *Peruta v. County of San Diego*. The case is on appeal after the trial court dismissed a gun lobby lawsuit, in which the Brady Center assisted the County. The Brady Center's brief contends that the U.S. Supreme Court's decisions in *Heller* and *McDonald* held only that there is a Second Amendment right to possess guns in the home for self-defense, and allow law enforcement discretion to permit or deny people to carry hidden handguns in public.

## Brady Center Files Briefs in Cases Challenging Illinois Public Carry Regulations

On July 25, 2011, the Brady Center filed two amicus briefs in federal courts in Illinois urging dismissal of gun lobby lawsuits challenging the validity of Illinois law regulating the public carry of firearms. The Second Amendment Foundation, Illinois Carry, and four individual plaintiffs brought *Moore v. Madigan*, arguing that the Second Amendment gives them the right to carry loaded guns in public and that Illinois' regulatory scheme is unconstitutional. The Illinois State Rifle Association and an individual plaintiff brought *Shepard v. Madigan*, which asserts virtually identical claims. Both Brady Center briefs argue that the Second Amendment right recognized in *Heller* and *McDonald* is limited to the home, and does not provide a right to carry guns in public. The briefs also explain the severe danger posed by concealed weapons and carrying firearms in public.

## Brady Center Files Brief in Montana "Firearms Freedom Act" Case

The Brady Center, joined by a coalition of law enforcement, domestic violence and gun violence prevention groups, filed an amicus brief on July 28, 2011 in the U.S. Court of Appeals for the 9th Circuit urging the Court to strike down the Montana "Firearms Freedom Act" as unconstitutional and a dangerous threat to communities and national

security. The Montana "Firearms Freedom Act" purports to exempt Montana-made firearms from federal laws requiring background checks (to keep guns away from criminals) and serial numbers (to allow law enforcement to trace crime guns). If upheld, the law also would allow the sale of guns, illegal under federal law, that can evade metal detectors, and would allow the manufacture of armor-piercing ammunition banned by federal law.

## Brady Center Fights NRA Lawsuit Seeking to Arm Teenagers

On May 18, 2011, the Brady Center filed an amicus brief in *D'Crux v. McCraw*, a case brought in Texas by the NRA seeking to allow teenagers to buy and carry handguns. The Brady Center brief argues that the Texas ban on persons under 21 carrying concealed guns is constitutional. The brief explains the dangers of allowing teenagers access to handguns, noting that arrests for many violent crimes peak at ages 18 to 20, and that 18-20 year-olds make up only 5% of the population, but account for about 20% of homicide and manslaughter arrests. Studies show that young persons under 21 are more impulsive, with less judgment and foresight of consequences.

## Victory in California! Judge Strikes Down Challenge to Concealed Carry Permitting Process in Yolo County

On May 16, 2011, a federal court handed yet another victory to cities and counties seeking to restrict loaded, hidden guns in public. The court rejected a challenge to a Yolo County, California restriction on the concealed carrying of weapons. The Brady Center filed an amicus brief in the case, *Richards v. Prieto*, successfully arguing that the Second Amendment does not protect a broad right to carry guns in public. The ruling allows Yolo County to retain its local permitting process that requires a demonstration of good cause and good moral character to carry a concealed weapon.

## Victory in California! Court Finds Gun Show Ordinance Constitutional

On May 2, 2011, the U.S. Court of Appeals for the 9th Circuit ruled, in *Nordyke v. King*, that an ordinance banning possession and sales of firearms on county-owned property in Alameda County, California was constitutional under the Second Amendment. The judges agreed with a brief filed by the Brady Center arguing that the County's gun laws were permissible under the Second Amendment. The Brady Center has helped defend this law since *Nordyke* was filed in 1999.

## Brady Center Victory Over NRA in Pittsburgh Gun Law Case

On June 15, 2001, the Brady Center won an important victory over the NRA when the Pennsylvania Supreme Court upheld a dismissal of an NRA lawsuit against the City of Pittsburgh. The NRA had sued to strike down a law requiring gun owners to report lost or stolen guns to the police, but the Court refused to review an appeals decision that the NRA lacked standing to sue.

Since the Brady Center was retained by Pittsburgh in May 2009 to represent the City, pro bono, against the NRA lawsuit, Brady Center attorneys have served as lead counsel, defeating the NRA in every court to hear the case, including victories in the trial court in July 2009, an appeal to the Commonwealth Court in August 2010, and the NRA's request for review with the Pennsylvania Supreme Court.

## Brady Center Files Brief in Support of L.A.'s Concealed Carry Permitting Process

The Brady Center filed an amicus brief on April 18, 2011 in federal court in California, in *Birdt v. Beck*, urging the court to dismiss a lawsuit seeking a right to carry loaded firearms in Los Angeles without a showing of necessity. The Brady Center's brief argues that the Second Amendment right is limited to the home.

# Brady Center Wins Largest Damages Payment Ever By Gun Manufacturer Charged with Negligence Leading to Criminal Use of Gun

In July 2011, after over a decade of litigation in which the Brady Center represented murder victim Danny Guzman's family pro bono, gun manufacturer Kahr Arms agreed to settle the case for nearly \$600,000. The settlement is the largest damages payment ever by a gun manufacturer for negligence leading to the criminal use of a gun. The settlement is also significant because it was made after enactment of the Protection of Lawful Commerce in Arms Act ("PLCAA"), a federal gun law that the gun industry contends shields it from most liability cases. By agreeing to the settlement, Kahr Arms averted a pending motion challenging the applicability and constitutionality of the PLCAA.

On Christmas Eve 1999, Danny Guzman, a young father of two daughters, was shot and killed in front of a Worcester, Massachusetts nightclub. Six days later, police recovered the murder weapon, a 9 mm Kahr Arms handgun without a serial number, behind an apartment building, after a four-year-old child found the loaded gun.

On behalf of Danny's family, the Brady Center sued Kahr Arms for negligently operating its manufacturing plant without security or inventory controls and failing to screen

employees for drug addiction or criminal backgrounds. The suit charged that the gun used to kill Danny Guzman was taken by Kahr Arms employee Mark Cronin, who was hired despite a public record of drug addiction, theft, alcohol abuse, and several assault charges. Cronin stated that he was able to take guns from the Kahr Arms factory at will, before the guns had serial numbers stamped on them. These guns are highly valued by criminals as they are virtually untraceable. Worcester Police Captain Paul F. Campbell called Kahr Arm's recordkeeping so "shoddy" that it was possible to remove weapons without detection.

Kahr Arms had moved to dismiss the case, arguing that the PLCAA bars such cases. In response to Kahr Arm's dismissal motion, Brady Center attorneys argued that the statute does not immunize gun companies in cases such as this and is unconstitutional. Prior to enactment of the PLCAA, the court had ruled that the Guzman family's claims were meritorious and should proceed to trial.

Danny Guzman's family was also represented by the Worcester, Massachusetts Law Office of Hector E. Pineiro and Bob Beadel. ●



## Gunmaker to pay \$600K in death lawsuit

BOSTON (AP) — A Massachusetts gun-maker has agreed to pay nearly \$600,000 to the families of one man who was killed and another man who was wounded in a shooting involving a gun allegedly stolen from the company, a national gun-control group announced Tuesday.

The Brady Center to Prevent Gun Violence announced the settlement in Washington, D.C., calling it the largest damages payment ever made by a gun manufacturer accused of negligence leading to the criminal use of a gun.

### I support the work of the Legal Action Project.

To help keep guns off our streets and out of the hands of dangerous people, I would like to make a tax-deductible contribution in the amount of:

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## Victories in Two Wisconsin Lawsuits by Police Officers Against Top Crime Gun Dealer!

Two Milwaukee trial courts have rejected a gun dealer's efforts to dismiss lawsuits filed by the Brady Center on behalf of four injured police officers. The lawsuits were filed against Badger Guns, which has ranked as the number one crime gun dealer in America.

In June 2009, Milwaukee police officers Bryan Norberg and Graham Kunisch were seriously wounded by a teenager who they allege obtained the gun used to shoot them in an illegal straw sale by Badger Guns, when the shooter, who could not legally buy a gun because he was under 21 years of age, picked out the handgun he wanted while in the store with the straw purchaser, an unlawful drug user.

Badger Guns filed a motion to dismiss, arguing that the federal Protection of Lawful Commerce in Arms Act ("PLCAA") immunizes gun dealers from Wisconsin liability law. The Brady Center contended that the law does not apply to Badger Guns.

On June 9, 2011, Judge Thomas R. Cooper of the Circuit Court of Milwaukee County denied Badger's motion, agreeing with the Brady Center's arguments that the PLCAA allows the officers' claims if Badger knowingly violated gun laws and negligently entrusted the gun used to injure the officers.

The ruling followed a similar May 17, 2011 ruling by Judge Timothy Dugan, also of the Circuit Court of Milwaukee County, allowing another Brady Center case against Badger Guns to proceed. That case was filed on behalf of Milwaukee police officers Alejandro Arce and Jose Lopez III, who allege they too were injured by a shooter who used a handgun that was illegally sold by Badger Guns in a straw sale.

Patrick Dunphy of the Brookfield, Wisconsin law firm of Cannon & Dunphy is serving as local co-counsel in the case.

## Texas Victory! Settlement Reached in Negligent Gun Shop Case

In April 2011, the Brady Center achieved a significant settlement on behalf of Houston police officer Joslyn Johnson, whose husband, Houston police officer Rodney Johnson, was killed by a gun she alleged was illegally sold by Texas gun dealer Carter's Country. The lawsuit included claims that Carter's Country was liable under negligence and negligence per se and was filed in the District Court of Harris County on September 22, 2008.

Officer Rodney Johnson, 40, was shot and killed by Juan Quintero, 34, a felon. The lawsuit contended that the murder weapon was illegally sold by Carter's Country to Quintero's wife, Theresa Lynn Quintero, in a straw sale. Juan Quintero, a prohibited purchaser due to his status as a felon and undocumented alien, picked out the gun, but store employees allowed his wife, a U.S. citizen, to fill out the required paperwork for its purchase.

The Brady Center to Prevent Gun Violence served as co-counsel in the case with local Houston attorney Ben Dominguez, II.

## Brady Center Appeals Dismissal to Alaska Supreme Court

On August 29, 2011, the Brady Center filed a brief with the Alaska Supreme Court, asking the Court to reverse a Juneau trial court decision that dismissed a lawsuit brought by the family of murder victim Simone Young Kim against the gun dealer who armed Simone's killer.

Simone was killed on August 4, 2006 by Jason Coday, who used a rifle he obtained two days earlier from Rayco Sales, a Juneau gun shop. Coday was a fugitive from justice and a methamphetamine user, and was thus prohibited from buying or possessing guns. Rayco's owner, Ray Coxe, claims he left Coday unattended on the sales floor and that Coday walked out of the shop with the rifle after leaving the \$200 purchase price behind. The Kims contend that Coxe illegally sold the gun to Coday, and that Coxe is liable even under his version of events.

The trial court held that the Protection of Lawful Commerce in Arms Act ("PLCAA") gave immunity to Rayco Sales, even if the shop was negligent or reckless.

The Kims are asking the Alaska Supreme Court to reinstate the case, as a jury could find that Coxe illegally sold the gun, the PLCAA does not bar the case, and the PLCAA is unconstitutional.

The Kims are also represented by Juneau, Alaska attorney Mark Choate of the Choate Law Firm.

## Utah Victory! Case Against Negligent Gun Dealer May Proceed

On June 16, 2011, the Utah Supreme Court ruled that a lawsuit against Sportsman's Fast Cash, the pawn shop that armed the Trolley Square Mall shooter, may proceed to trial. The Brady Center represents Carolyn Tuft, who was injured and whose 15-year-old daughter was killed in the shooting.

The Utah Supreme Court ruling lets stand a February 28, 2011 ruling by Salt Lake County Third Judicial District Court Judge Glenn Iwasaki. Judge Iwasaki denied the pawn shop's motion for summary judgment which sought to dismiss the lawsuit filed by Carolyn Tuft. The suit charges that the pawn shop illegally sold a pistol grip firearm to Trolley Square Mall shooter Sulejman Talovic even though Talovic informed the shop that he was only 18-years-old. The suit also charges that the pawn shop failed to comply with laws requiring additional documentation from resident alien gun buyers like Talovic.

Carolyn Tuft is also represented by Mark Williams of the Salt Lake City law firm Jones Waldo.