



Legal Action

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U.S. Supreme Court To Hear Second Amendment Challenge to D.C. Handgun Law

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Legal Action

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On November 20, 2007, the United States Supreme Court decided to review a recent ruling of a federal appeals court striking down the District of Columbia's strict handgun law as a violation of the Second Amendment to the Constitution. The case, *District of Columbia v. Heller*, is likely to produce the most important Second Amendment ruling in history. The Supreme Court will decide whether Second Amendment rights are limited to the possession and use of firearms in connection with service in state militias, or extend to the personal possession of guns for private purposes. If the Court upholds the appeals court ruling, it would overturn longstanding Second Amendment precedent and potentially put federal, and even state, gun laws at risk. The Brady Center will file a friend-of-the-court brief in the case, and help to coordinate other briefs supporting the D.C. law.

THE SECOND AMENDMENT:

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

In *United States v. Miller* (1939), the Supreme Court's most significant Second Amendment opinion, the Court unanimously held that the "declaration and guarantee" of the Amendment "must be interpreted and applied...to assure the continuation and render possible the effectiveness" of the "well regulated Militia." But in a 2-1 decision, a panel of the D.C. Circuit in the *Heller* case



(captioned *Parker v. D.C.* in the lower courts) defied that clear precedent and reached out to strike down D.C.'s strict handgun ban.

The majority's ruling is deeply flawed, with an agenda to rewrite the Second Amendment to embrace "private purposes" that were neither included in its text, nor supported by its framers. To correct the court's distortions, the Brady Center's Legal Action Project has been publishing a series of essays under the heading *Second Amendment Fantasy: the D.C. Circuit's Opinion in the Parker Case*, on our website: www.gunlawsuits.org. Legal Action Project attorneys have also appeared on television and radio, and in numerous debate forums, to explain the Second Amendment and expose the flaws in the appeals court opinion.

The key to understanding the Second Amendment is to read the *entire* provision and give it meaning. Within this text, no

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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.

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The United States Supreme Court may be on the verge of issuing the most important court ruling in history on the constitutional validity of gun laws. In *District of Columbia v. Heller*, the Court agreed to review the first ruling by a federal appeals court striking down a gun law as a violation of the Second Amendment.

The D.C. Circuit's 2-1 ruling overturning the District's strict handgun law was a laboratory study in rightwing judicial activism. It was a textbook case of judges reversing the decision of an elected legislative body based on their own preconceptions about what the Constitution should mean, but with little regard for what it actually says.

In 1939, the U.S. Supreme Court issued its most complete opinion on the meaning of the Second Amendment. In *United States v. Miller*, the Court wrote that the "obvious purpose" of the right to keep and bear arms was "to assure the continuation and render possible the effectiveness" of the militia. The Court issued an unequivocal command to the lower courts: "It must be interpreted and applied with that end in view."

Since *Miller*, nine federal courts of appeal have taken that command seriously, holding that the Amendment guarantees the people a right to be armed only as part of a "well regulated Militia." As it existed in 1791, the militia was a system of

compulsory military service, administered largely by the states, in which most of the adult male population was required to acquire guns for community defense. Because the militia system disappeared over time, modern gun control laws raise no constitutional issue because they have no affect on the arming of state-regulated militias.

This Constitutional showdown may affect our nation's gun policy for a generation.

The D.C. Circuit, in defiance of the *Miller* decision, ruled that the right to be armed extends to individuals who have no connection to a militia and who want guns for purposes completely unrelated to militia service, including hunting and self-defense. But how does this interpretation account for the phrase, "a well regulated Militia, being necessary to the security of a free State?" The Second Amendment, in fact, is the only provision in the Bill of Rights that includes its own statement of purpose. There is no justification for reading it as if the militia language did not exist. The D.C. Circuit effectively rewrote the Amendment to achieve the result it preferred. This was judicial activism at its worst.

The Supreme Court now can set the record straight, reverse the D.C. Circuit opinion and restore the D.C. gun law. Such a ruling would reaffirm that the gun control issue

is one for our elected representatives to decide, free from second-guessing by activist judges who are hostile to strong gun laws. The D.C. handgun law has been on the books for thirty years and has the support of the community. Why should the people of the District of Columbia be deprived of the gun law they believe necessary to protect their community?

But far more is at stake here than the D.C. gun law. If the radical pro-gun interests supporting the *Heller* case achieve a breakthrough Supreme Court ruling, they will use it to challenge other gun laws. Lifesaving laws across the board may be at risk, from state assault weapon bans, to state licensing and registration laws, to the federal machine gun ban, to the Brady Law.

This constitutional showdown may affect our nation's gun policy for a generation. Brady Center lawyers have appeared in over two dozen cases through the years, helping to defend gun laws against the gun lobby's constitutional mythology. The *Heller* case is our most critical challenge.

Our objective is clear: Victory in the United States Supreme Court.



Dennis A. Henigan
Legal Action Project Director

Brady Center Works To Prevent Another Virginia Tech

On April 16, 2007, Seung Hui Cho's horrific rampage at Virginia Tech took the lives of 32 students and faculty. Cho was armed with two semi-automatic pistols and hundreds of rounds of ammunition. He used high-capacity ammunition magazines that had been barred until Congress and the President allowed the federal Assault Weapons Ban to expire in 2004. Although a court found that Cho was mentally ill and posed a danger to himself and the public, he was able to purchase his firearms within a matter of minutes.

In the wake of the Virginia Tech tragedy, Legal Action Project attorneys worked to alert the public and our political leaders about weaknesses in our gun laws that let a dangerous person like Cho so easily obtain firearms. Within days of the shooting, after analyzing publicly-available records, Legal Action Project attorneys and Brady Center President Paul Helmke held a national news conference to announce that Cho was a legally prohibited gun buyer, due to a Virginia court's December, 2005, ruling that he was both mentally ill and dangerous. Stories about Cho's prohibited status appeared on the network news that evening.

Due to weaknesses in the Brady Law's National Instant Criminal Record Check System (NICS), Cho was able to purchase his firearms from Virginia gun shops even though he was a prohibited buyer. Virginia authorities never sent the court order finding Cho mentally ill and dangerous to the NICS system. Brady background checks have stopped over 1.3 million criminals and other prohibited buyers from purchasing guns, but the system is only as good as the records that are



entered into it. Despite the Brady Law's success in blocking many illegal gun sales, an astonishing 90% of relevant mental health records and 25% of felony records are still missing from the background check system.

With the Virginia Tech tragedy yet again reminding Americans about the severe price we pay for our weak gun laws, the Brady Center worked with state and Congressional leaders on how to act now to close these gaps in our background check system. Following the Brady Center's advice, Virginia Governor Tim Kaine (D) issued an executive order requiring that all disqualifying mental health records be forwarded to the Brady background check system. Other states soon followed, with Illinois, Maine, and Missouri passing laws improving background check reporting.

The Brady Center's sister organization, the Brady Campaign to Prevent Gun Violence, is also working at the federal level to

ensure that states improve their reporting to the Brady background check system. The NICS Improvement Act, sponsored by Representative Carolyn McCarthy (D-NY), passed the House of Representatives on June 13, 2007. The Act provides for new funding incentives to encourage states to add to NICS the records of hundreds of thousands of prohibited buyers who are not currently in the system.

On the six-month anniversary of the Virginia Tech tragedy, in a press conference at the U.S. Capitol, the Brady Campaign joined with victims and families who lost loved ones in the shooting to call on the Senate to act on the NICS bill. In a letter to Congress, the Virginia Tech families wrote: "In memory of our loved ones murdered six months ago, and in tribute to the courage of the survivors, we petition the Congress to complete the lifesaving work of strengthening the Brady system." ●

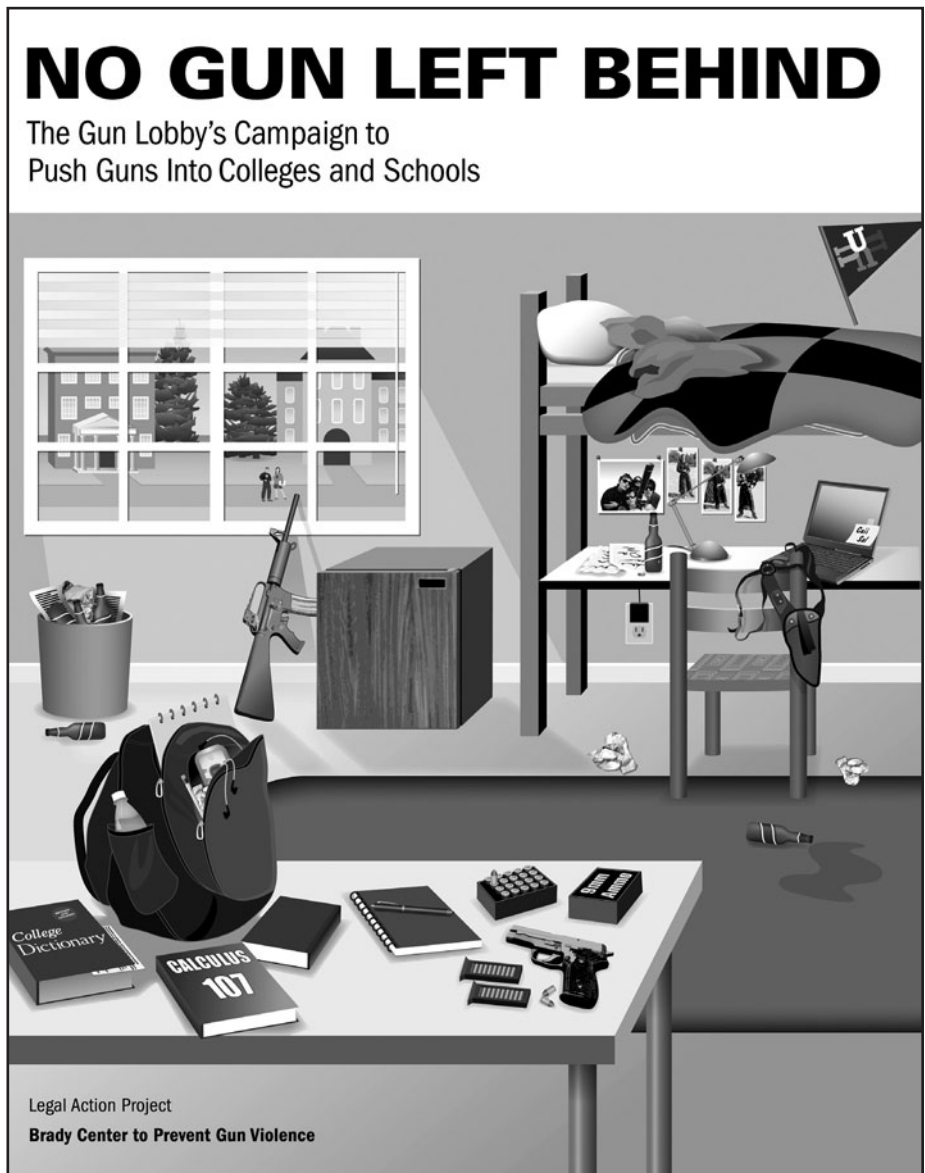
Brady Center Fights Gun Lobby's Campaign To Push Guns Into Colleges and Schools

On April 16, 2007, the day of the Virginia Tech massacre, the gun lobby's first reaction – before we knew who had been killed and injured, who did it, or why – was to call for *more* guns on college campuses, by arming students and faculty. When state legislatures open for business in early 2008, the gun lobby will likely continue to push this “solution” by introducing bills in several states to prohibit colleges and universities from maintaining no-gun policies.

To counter this dangerous plan, the Brady Center published a report in May, 2007, called *No Gun Left Behind: The Gun Lobby's Campaign to Push Guns Into Colleges and Schools*. See <http://www.bradycampaign.org/action/schools>. This report not only exposes the gun lobby's plan, it explains how pushing guns on campus would cost lives, not save them.

The day of the “Massacre at Virginia Tech”... the first reaction of the gun lobby was that we need more guns on the college campuses of our nation.

The college age years are among the most volatile in most people's lives. Youths aged 18-24 engage in much higher levels of risky behavior than any other age group in society. They commit more violent gun crime, including homicide, engage in more binge drinking and illegal drug use, and often attempt suicide. Introducing guns into that psychic cauldron, in the close quarters of college campus living, would lead to more



deaths. In addition, guns in dorm rooms would be easy targets for gun thieves who use stolen guns to commit additional crimes.

Moreover, two Harvard studies have shown that college *gun owners* engage in a significantly higher percentage of risky behavior than their non-gun-owning college peers, such as binge drinking,

using drugs, or getting hurt in alcohol-related fights.

So, why should we make guns *more* available on college campuses? Obviously, we shouldn't. We need to make society safer by reducing access to guns by prohibited persons, not make college campuses more dangerous by turning them into armed camps. ●

Frank D'Andrea: Gun Lobby Point Man and Arms Supplier to Drug Gangs

In October, the Brady Center released its latest explosive investigative report: *Guns for Gangs: Profile of A Rogue Gun Dealer*.

The report details the incredible tale of Frank D'Andrea, a driving force of the gun lobby's efforts against reasonable gun laws, a major supplier of guns to ruthless drug gangs, and a criminal himself. D'Andrea's story epitomizes the inextricable nexus between our nation's weak firearms laws, the gun lobby that pushes for – and profits from – those laws, and the criminals who wreak havoc on our streets as a result.

D'Andrea was the owner of D'Andrea's Gun Case in Stratford, Connecticut, and was a "frequent critic of stronger gun-control laws." He was the plaintiff in an NRA-subsidized lawsuit aimed at striking down Connecticut's assault weapon ban. According to government documents, for two decades he also ran the gun shop of choice for New England gangsters and drug traffickers, routinely supplying firearms to "notoriously violent felons." Prosecutors called his shop "a convenient, one-stop shopping place for violent and prolific narcotics traffickers, convicted felons" and other prohibited gun buyers. A federal indictment charged that D'Andrea's small shop ranked as "the source of the second largest number of guns recovered in connection with crimes in the State of Connecticut."

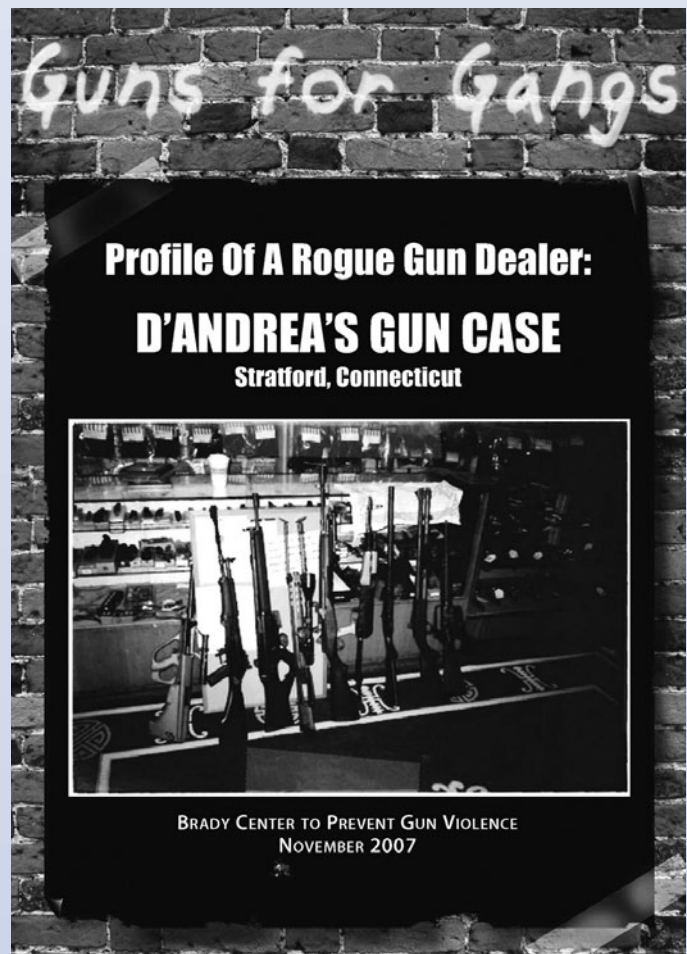
A particularly notorious repeat customer of D'Andrea was Frankie "the Terminator" Estrada, leader of what was described as "one of the most prolific, profitable and violent drug trafficking organizations in the history of the City of Bridgeport." Estrada stated that "it was common knowledge in the 1980s and 1990s that D'Andrea was the place to go to buy guns without any questions." According to prosecutors, Estrada purchased over 100 guns, including AK-47 and AR-15 semiautomatic assault rifles, Street Sweeper assault shotguns, and numerous handguns from D'Andrea.

The Brady Center report also recounts how D'Andrea supplied numerous other traffickers and criminals with guns.

During repeated federal law enforcement inspections, D'Andrea was cited for hundreds of violations of

federal and state gun laws, including illegal assault weapon sales, "off the book" sales, sales to buyers who stated they were prohibited by federal law from buying guns, and sales completed without conducting Brady background checks.

Finally, in 2006, federal prosecutors brought criminal charges against D'Andrea for crimes related to his illegal gun sales. Constrained by weak federal gun laws, however, the federal government agreed to permit D'Andrea to continue to manage his store even after his indictment. It took the State of Connecticut to shut him down under the state's stronger gun dealer licensing laws. D'Andrea was sentenced on September 7, 2007, to 3 1/2 years in prison and a \$75,000 fine. He is ordered to report to prison by January 18, 2008. ●



Gun Makers Lose Appeal of Gary, Indiana Lawsuit

On October 29, 2007, the Indiana Court of Appeals ruled 3-0 that Gary, Indiana's lawsuit against gun manufacturers may proceed, holding that the 2005 federal "Protection of Lawful Commerce in Arms Act" does not shield the gun industry from liability for irresponsible sales practices that funnel guns to the criminal market. The decision is the first appellate ruling to interpret the industry's shield law.

The Court held that Gary's case, charging that defendant manufacturers knowingly violated Indiana's public nuisance statute, was sufficient to fit within one of the exceptions to the new legal shield law. It allows Gary's lawsuit against sixteen gun manufacturers and six northern Indiana gun dealers to proceed to trial. Legal Action Project lawyers have represented Gary in the suit from its inception.

"When the gun industry injures the public, it should be held accountable," said Paul Helmke, President of the Brady Center and former Mayor of Fort Wayne, Indiana. "We are gratified that Indiana appellate courts have once again given the green light for the case to proceed." In December 2003, a unanimous decision by the Indiana Supreme Court held that the City stated valid claims alleging "that the Manufacturers knowingly participated in a distribution system that unnecessarily and sometimes even intentionally provided guns to criminals, juveniles, and others who may not lawfully purchase them."

The decision has national implications, as it is the first appellate ruling to decide that gun makers who knowingly violate state public nuisance laws can still be held accountable, despite the new federal statute. Cases raising similar questions are pending before

appeals courts in New York, Washington, D.C., and California.

Gary's case began with a sting of northern Indiana gun dealers that supplied more than 60 percent of the crime guns recovered in the city. The dealers' sales to undercover officers posing as "straw purchasers" was captured on videotape before the suit was filed, and confirmed the dealers' gross misconduct in supplying the underground market. Gary also sued the major gun manufacturers who sold handguns through these dealers and profited from the diversion of guns to criminals.

Tony Walker and Lukas Cohen, of the Walker Law Group in Indiana, and Robert S. Peck of the Center for Constitutional Litigation, serve as co-counsel with the Brady Center in the case. ●

Second Amendment Challenge to D.C. Handgun Law

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private purposes are protected. The intent of the framers was to protect the "well regulated Militia," which, under Article I of the Constitution, could be called forth "to execute the Laws of the Union, suppress Insurrections, and repel Invasions." That is the only expressed intent of the Second Amendment, and, indeed, if it is interpreted to protect more than that, the first thirteen words of the Amendment would have been unnecessary.

Moreover, even the second half of the Second Amendment supports its militia purpose. The phrase "keep and bear Arms" had an exclusively military meaning to the framers. Every time the words "bear Arms" or "bearing Arms" was used by Congress between 1774 and 1821 a military meaning was intended.

The fact that such militia arms were often "kept" at home does not change this understanding, as Congress *required* militia members to purchase their militia arms and bring them to muster in a statute passed a year after the Second Amendment was adopted.

The militia purpose is also confirmed by James Madison, who authored the first draft of the Second Amendment, including a conscientious objector clause: "but no person religiously scrupulous of bearing arms shall be compelled to render military service in person." Had Madison intended for the Second Amendment phrase "keep and bear Arms" to protect use of guns for private purposes, it would not have occurred to him to draft language protecting those

who had religious objections to "bearing arms" in service to the militia.

The framers had alternative formulations available to them had they wanted to protect private ownership and use of guns for private purposes in the Second Amendment. For example, the New Hampshire ratifying convention proposed the following amendment to the Constitution: "Congress shall never disarm any Citizen unless such as are or have been in Actual Rebellion." Is that what the Second Amendment looks like? No.

Oral argument in the case is expected some time in March 2008, with a decision by the end of the Court's term in June 2008. ●

Federal Court in Oklahoma Strikes Down Guns-At-Work Law As Unconstitutional

On October 4th, 2007, a federal judge in Oklahoma ruled that the state's guns-at-work law impermissibly conflicts with the federal obligation of all employers to ensure a safe workplace, and struck it down as unconstitutional. *ConocoPhillips v. Henry*, 2007 WL 2908879 (N.D. Okla. 2007). The court cited the Brady Center's November 2005 *Forced Entry* report throughout its opinion, even labeling the Oklahoma statute a "forced entry" law "because [it] force[s] a private property owner to allow entry of firearms onto [his] property." See the report at: <http://www.bradycampaign.org/action/workplace>.

The ruling is critical, not only because it places a significant roadblock in front of the NRA's continued campaign to enact state laws that would prohibit employers from barring guns on company property, including parking lots, but because it recognizes that an employer's general duty under the Occupational Safety and Health Act extends to the hazard of gun-related workplace violence.

"This court agrees with the author of the Brady Center [*Forced Entry* report] who stated that it is 'likely a breach of OSHA's general duty clause if a company does not ban guns from its premises ... because guns can be easily retrieved from such areas by disgruntled employees,'" Judge Kern wrote.

"In a situation involving workplace violence, the presence of an unauthorized firearm on company property immediately and significantly increases the risk that an employee will suffer death or serious harm. The presence of these unauthorized firearms is precisely the type of 'condition' that is likely to lead to death

or serious harm that employers must abate," the court added. Restricting guns to locked vehicles "does not prevent the dangerous workplace situations that the general duty clause seeks to prevent," the court concluded.

Over the last two years, the NRA has been losing this fight in state legislatures due to solid opposition from the business community and the diligent efforts of Brady and the Million Mom March activists. The decision has been appealed and the Brady Center will fight to affirm it with help from the law firm of McDermott Will & Emery. ●

Grieving Parent Sues Wal-Mart

A suit was recently filed against Wal-Mart Stores in Albany, New York for negligently selling a gun to a mentally disturbed man who promptly used it to shoot and kill himself.

The Complaint in *Brunner v. Wal-Mart Stores, Inc.*, No. 1057 (N.D.N.Y.), alleges that Stephen Brunner had been committed to a mental health facility for two weeks during 2005 for delusions, catatonia and other mental illnesses. Sometime after his release, on October 10, 2005, Stephen entered Wal-Mart and asked the clerk for a .30-06 caliber rifle. According to the Complaint, a friend of Stephen's implored the Wal-Mart clerk not to sell Stephen the gun, telling the clerk that Stephen suffered from mental illness and would pose a danger to himself or others with the gun. The Complaint alleges that Wal-Mart ignored his friend's pleas and sold Stephen the gun, stating it was not Wal-Mart's problem. On the federally-required sales forms Stephen answered that he was not a drug user and had never been committed to a mental institution, both of which were

untrue. Two days later, Stephen shot himself with the rifle. ●

Brady Center Files Amicus Brief in Wyoming

In October, The Brady Center, along with the National Center for Victims of Crime, filed an *amicus* brief in *Wyoming v. U.S.*, No. 07-8046 (10th Cir. 2007), supporting the government's right to prohibit individuals convicted of misdemeanor crimes of domestic violence from possessing firearms.

Wyoming passed a statute in 2004 allowing people convicted of domestic violence misdemeanors to partially expunge their convictions, strictly for the purpose of regaining the ability to possess firearms. This was an attempt by legislators to circumvent the Lautenberg Amendment - the federal law that prohibits possession of a firearm by those who have been convicted of misdemeanor crimes involving domestic violence. ATF notified the state that it was in conflict with federal law and that persons convicted of domestic violence misdemeanors would continue to be prohibited from possessing firearms under federal law. Wyoming brought suit against ATF, and lost before the U.S. District Court of Wyoming. The state appealed to the U.S. Court of Appeals for the Tenth Circuit and the Brady Center supported ATF, arguing that a uniform federal standard determines whether state law allows an individual to regain the ability to possess firearms. A ruling in favor of Wyoming would allow states to circumvent federal gun laws and could end up voiding federal restrictions on firearms possessors.

The parties await a ruling. The law firm of Steptoe and Johnson is representing the Brady Center in this case. ●

Three Term NRA Board Member Arrested After Brady Center Exposed Illegal Gun Dealing

In the summer of 2006, the Brady Center issued its Gun Industry Watch report, *Death Valley: Profile Of A Rogue Gun Dealer*, exposing the NRA's continuing efforts to prevent enforcement of federal gun laws against its lawbreaking Board Member, Sandy Abrams. Abrams ran Valley Gun shop in Baltimore, Maryland, a gun dealership cited with more than 900 federal gun law violations. Valley Gun's firearms were linked to at least 11 homicides, 41 assaults, 49 drug crimes, and 101 cases of illegal concealed carrying of guns. The Gun Industry Watch report led to a firestorm of television and front page newspaper coverage of Abrams' violations, leading him to resign from the NRA's Board.

NRA lawyers filed suit against the government to protect Abrams and prevent revocation of his federal firearms license. They ultimately lost their case in October 2006. After nearly a decade of escalating violations and hundreds of crime gun sales, Abrams finally lost his license. Yet, as the Brady Center had warned, weak federal gun laws allowed Abrams to transfer hundreds of firearms from his shop to his "personal collection." After losing his license, Abrams continued selling his collection of firearms without background checks.

In June 2007, Abrams was arrested and charged with violating Maryland state law for illegally selling felon Keith Showalter a Yugoslavian SKS assault rifle,

a Bushmaster XM-15 assault rifle (the same model used in the D.C. sniper shootings), and a Remington semi-automatic assault rifle. On February 18, 2007, Showalter fired seven shots from an SKS assault rifle at two Baltimore County police officers. The officers returned fire and killed Showalter. Baltimore County Detective William Ryan wrote in charging documents that "[i]f Mr. Abrams had followed legally prescribed methods to sell the firearm, the sale would not have been approved due to Keith Showalter's prohibiting criminal record."

Abrams is also charged with illegal possession of a fully automatic machine gun with a silencer. Abrams' trial is scheduled for January 2008. ●

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