

## Strong Gun Laws Upheld by Courts Nationwide

### Judges Nationwide Reject Second Amendment Challenges to Gun Laws

The Brady Center's Legal Action Project ("LAP") has helped win a string of recent legal victories defending gun laws, including important cases rejecting gun lobby-backed challenges to laws in Washington, D.C., New York, and Texas. These are the latest — and some of the most significant — decisions agreeing with the Brady Center that strong gun laws remain constitutional and rebuffing gun lobby attempts to expand the narrow Second Amendment right recognized by the U.S. Supreme Court in *D.C. v. Heller* and *McDonald v. Chicago*.

### D.C. Victory — Registration and Ban on Assault Weapons & Clips Upheld

*"I believe that Heller II . . . is our most significant loss in court to date."*  
— Gun rights blogger

On October 4, 2011, a conservative panel of the U.S. Court of Appeals for the D.C. Circuit issued a decisive ruling in favor of strong gun laws, refusing to strike down Washington, D.C.'s gun laws, which are among the strictest in the nation. The Legal Action Project assisted the District and filed two amicus briefs in the appeals court.

*Heller v. District of Columbia* ("Heller II") was brought by the same man who successfully challenged Washington, D.C.'s gun ban. The laws at issue were enacted by the District after that decision, and included registration

requirements and a ban on assault weapons and assault clips. In upholding the laws, the D.C. Circuit relied heavily on evidence submitted by the Brady Center on the dangers of assault weapons and assault clips. Other D.C. laws were remanded to the trial court for further proceedings.

Acting Brady Center President Dennis Henigan said of the victory: "Of hundreds of legal challenges to gun laws brought since *Heller*, this one represented the broadest single attack on a set of gun laws. The same court that originally struck down the D.C. handgun ban has now affirmed that strong gun laws are entirely consistent with the Second Amendment."

### New York Victory — Strong Concealed Carry Law Upheld

On September 2, 2011, a federal judge in New York upheld the state's strong laws restricting the carrying of concealed weapons, dismissing a gun lobby lawsuit challenging them under the Second Amendment. The Legal Action Project filed a brief in the case and provided assistance to New York's Attorney General.

The court dismissed the suit, *Kachalsky v. Cacace*, upholding New York's gun law that generally limits concealed carrying of guns to those who are found by law enforcement to have "proper cause" to carry. The judge agreed with LAP's amicus brief that the U.S. Supreme Court's recognition of a Second Amendment right to guns in the home for self-defense does not prevent broad restrictions on the carrying of concealed weapons, such as New York's.

This decision is the latest in a string of court decisions, in California, Illinois, Maryland, and other states, rejecting gun lobby arguments that the Second Amendment provides a broad right to carry guns outside of the home, in public places.

### Texas Victory — No Handguns for Teenagers



On September 29, 2011, a famously "pro-Second Amendment" federal district judge in Texas agreed with the Legal Action Project and dismissed a National Rifle Association challenge to the federal Gun Control Act's prohibition on licensed dealers selling handguns to people under 21. LAP filed an amicus brief in the case supporting the federal law, arguing that laws restricting teenage gun purchases are permissible under the Second Amendment.

The original plaintiff in the case was 18-year-old James D'Cruz, whose Facebook page was filled with violent rhetoric and images. The NRA later removed him from the case.

The NRA, who has another similar lawsuit in Texas that we are fighting, is likely to appeal this decision. LAP will continue to fight both lawsuits. ●

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The holidays are a time to reflect on the year passed, and what's to come. 2011 was (with apologies to Dickens) the best of times and the worst of times, at least in our battle against gun violence.

A week after New Year's, a 22-year-old man opened fire at a meet-and-greet with Representative Gabrielle Giffords outside a Tucson shopping center. Giffords was shot in the head, and 12 others were wounded. Dorwin Stoddard lost his life shielding his wife from gunfire. Dorothy Morris was also killed, as was 9-year-old Christina Taylor-Green, 79-year-old great-grandmother Phyllis Schneck, federal judge John Roll, and Congressional staffer Gabe Zimmerman.

In 2011, America suffered mass shootings in at least 17 states, and school shootings in at least 12 states. And there were the less-publicized shootings that every year wound 100,000 in America, 30,000 fatally.

**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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How did our political leaders respond to one of their own being shot? Congress failed to even vote on banning the high-capacity assault clips that enabled the Tucson killer to shoot 32 rounds in 16 seconds. Even though the law allowed him to carry his arsenal on the streets of Arizona (despite being too mentally unstable to be allowed on a community college campus), 245 of Giffords' House colleagues co-sponsored legislation to force 49 states and Washington, D.C. to honor concealed carry permits issued by every other state, even when the permit holder would be barred from carrying or possessing a gun under local law. Leave it to Washington politicians to conclude that the lesson from Tucson was to make Arizona's lax gun laws the law of the land.

While Congress ignored our gun violence crisis, in 2011 the Legal Action Project took great strides in the courts to establish that legislatures can still enact strong gun laws, and that gun sellers may be held accountable for supplying criminals. 2011 was a powerful reminder that even though the gun lobby floods our streets with guns, and floods politicians with money and influence, we can beat them in the courts.

- **LAP Beat the NRA in PA!** The Pennsylvania Supreme Court let stand a dismissal of the NRA's lawsuit against Pittsburgh's ordinance requiring the reporting of lost and stolen guns.
- **LAP Stopped Florida's Gag Law Restricting Doctors From Discussing Guns!** Representing several doctors groups, we won an injunction against an outrageous Florida law which could take away medical licenses of doctors who advised patients of the risks of guns.
- **LAP Took On One of America's Top Crime Gun Dealers!** We filed two lawsuits against notorious

Milwaukee gun dealer Badger Guns, on behalf of two pairs of police officers. Already we have beaten back motions to dismiss the suits.

- **LAP Helped Defend Gun Lobby Challenges to Strong, Common Sense Gun Laws Nationwide!** We helped defeat gun lobby lawsuits against common sense gun laws in California, New York, Texas, and Washington, D.C., by assisting lawyers and filing briefs.
- **LAP Won Historic Settlements For Victims!** We won the largest settlement ever against a gun maker for negligence causing the criminal use of a gun, against Kahr Arms for the family of our client, murder victim Danny Guzman. We obtained a favorable settlement for the family of police officer Rodney Johnson, who was killed with a gun sold by Texas gun dealer Carter's Country.

You and I have no choice but to pay tax dollars that fund Congress' dangerous nonsense. But we appreciate that you have a choice whether to support the Brady Center's Legal Action Project — and I hope you agree that we've taken very seriously our duty to use your donation dollars effectively.

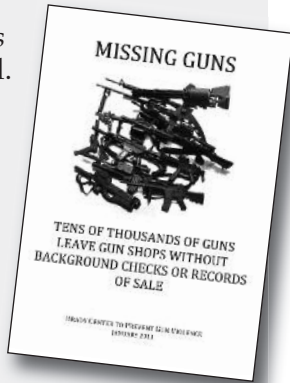
The gun lobby's money and bullying may intimidate politicians in Washington, but they can't stop us from seeking justice and bringing common sense to the courts. As we start a new year, let's remember Christina Taylor-Green, and all those whose lives have been lost or forever damaged from gun violence, and let's pledge to do even more next year to save lives lost to the scourge of gun violence. With your help, this is a fight we can win.

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



# JANUARY

- Filed brief defending the constitutionality of Washington, D.C.'s gun laws.
- Filed brief defending New Jersey's strong concealed carry laws.
- **VICTORY!** Maryland's highest court finds no right to carry firearms in public.
- *Missing Guns* report issued.



# FEBRUARY

- Successfully argued against Utah gun seller's motion to dismiss victim's lawsuit.
- Filed brief urging dismissal of a gun lobby lawsuit claiming a Second Amendment right to carry guns in common areas on public housing property in Delaware.
- Filed brief defending Yolo County and California's strong concealed carry laws.



# MARCH

- Filed brief defending Maryland's strong concealed carry laws. Gun lobby plaintiffs are challenging the constitutionality of Maryland's law which limits the carrying of concealed weapons in public to those who demonstrate a good and substantial reason.
- Filed brief in an appeal of a trial court decision that struck down Ohio's law prohibiting firearm possession by those convicted of drug crimes. Our brief argues that both the history of the Second Amendment and lower court decisions following *Heller* support holding that Ohio's law is constitutional.

# 2011

2011 was a banner year for LAP's the courts. Some highlights of our

# JULY



- Won largest damages payment ever by gun manufacturer for negligence leading to criminal use of a gun for the family of our client.
- Filed brief in 9th Circuit to strike down Montana "Firearms Freedom Act."
- Filed brief in 10th Circuit supporting Colorado's restrictions on carrying concealed firearms in public by out-of-state residents.
- Filed two briefs defending Illinois' concealed carry laws.

# AUGUST

- Filed brief in 9th Circuit urging the court to affirm the lower court's decision to dismiss a gun lobby attack on San Diego County and California's strong concealed carry laws. We filed a similar brief on behalf of Yolo County in the 9th Circuit one month later.
- Filed brief with Alaska Supreme Court on behalf of gun violence victim.



# SEPTEMBER

- **VICTORY!** Court grants preliminary injunction against gag-rule for Florida doctors.
- Filed a brief in support of Obama Administration's rule seeking to curb assault weapon trafficking to Mexico.
- **VICTORIES!** Texas and New York courts reject gun lobby challenges.
- Second *Missing Guns* report issued.
- Kansas Supreme Court grants review of victim's lawsuit. Read more about this case on page 6.
- Filed appeal on behalf of shooting victim in New York.

## APRIL

- Won settlement from Texas gun dealer for family of slain police officer.
- Filed brief defending Los Angeles County and California's strong concealed carry laws.
- Filed brief defending several local West Virginia gun laws against gun lobby attacks.
- Filed brief in New York trial court for 16-year-old basketball star who was shot with trafficked gun. The suit alleges that gun companies sold 190 guns to a trafficking ring, including one 87 handgun sale.



## MAY

- *Officers Gunned Down* report issued.
- Successfully argued against motion to dismiss lawsuit brought on behalf of two injured Wisconsin police officers.
- **VICTORY!** Court rejects gun lobby challenge to California's concealed carry laws, agreeing with arguments in our brief.
- Filed brief arguing that the Texas ban on persons under 21 carrying concealed guns is constitutional.



## JUNE

- **VICTORY!** Pennsylvania Supreme Court dismisses NRA suit against Pittsburgh law requiring reporting of lost or stolen guns. We served as lead counsel for Pittsburgh.
- Filed lawsuit on behalf of Florida doctors against NRA-backed gag-rule.
- Successfully argued against motion to dismiss second lawsuit on behalf of two injured Wisconsin police officers.
- Utah Supreme Court rules that our lawsuit on behalf of victims may proceed to trial.
- *Hollow Victory?* report issued.



efforts to stand up for families and communities in  
r accomplishments from 2011 are summarized here.

## OCTOBER

- **VICTORY!** D.C. Circuit Court issues a decisive ruling in favor of strong gun laws, largely relying on briefing and testimony from LAP. The court upheld D.C.'s registration law and ban on assault weapons and assault clips. LAP assisted D.C. and filed two amicus briefs in the appeals court.
- Appealed dismissal of Connecticut lawsuit against gun dealer who supplied domestic violence abuser with the gun he used to kill his ex-wife in front of the couple's children.

## NOVEMBER

- Filed brief defending Cook County, Illinois' assault weapons ban.
- Filed brief in Connecticut appeals court urging the court to rule that the Federal Protection of Lawful Commerce in Arms Act does not bar claims against gun dealers who violate gun laws.

## DECEMBER

- Wrote article for the New York State Bar Association discussing our liability lawsuits and detailing how the Protection of Lawful Commerce in Arms Act still allows lawsuits against law-breaking gun dealers. The article will assist legal practitioners who bring cases against the gun industry.



# Did You Know...?

Whenever common sense gun legislation is proposed, the gun lobby likes to respond that America doesn't need new gun laws, "we just need to enforce the laws on the books." That argument would never be taken seriously in any other policy area. We generally enforce the laws on the books **and** pass new laws when they are needed. The only reason the gun lobby's argument has some popular appeal is that people do not know just how inadequate our gun laws are. For example ....

**Did you know...** that it is legal to sell a gun without any background check, and almost half of all gun sales are completed without background checks?

- The Brady Bill requires background checks to determine if prospective buyers are prohibited and has stopped 2 million purchase attempts by prohibited individuals. But the law only requires checks for sales by licensed gun dealers. Approximately 40% of guns are purchased from unlicensed sellers who are not required to perform the checks.



**Did you know...** that it is legal under federal law to buy and possess assault weapons and assault clips that can fire dozens of rounds without reloading?



- The Federal Assault Weapons Act banned the sale of new assault weapons and new ammunition magazines containing more than 10 rounds, known as assault clips. However, the Act was allowed to expire in 2004 despite support from over 70% of Americans.

**Did you know...** that it is legal under federal law to buy .50 caliber sniper rifles that have a range of over 4 miles and can pierce airplanes?

- These military weapons are not only legal, but are only subject to the minimal federal laws governing the sale of hunting rifles and shotguns.

**Did you know...** that people on the terrorist watch list, many of whom are deemed too dangerous to fly on commercial airlines, can still buy guns, even from licensed gun dealers?

- Federal law does not consider known or suspected terrorists to be prohibited purchasers. This loophole has armed several individuals on the terrorist watch list, including many who are also on the "No Fly" list. Over 1,000 guns were sold to individuals on the terrorist watch list from February 2004 through December 2010.

*Tell us what you'd like to learn more about by emailing us at [DidYouKnow@bradymail.org](mailto:DidYouKnow@bradymail.org). We'll cover as many topics as we can in future installments of 'Did You Know?'*

## 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:

\$1,000    \$500    \$250    \$100    \$50    \$25    Other \$ \_\_\_\_\_

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Please make your check payable to Brady Center to Prevent Gun Violence and mail in enclosed envelope to:

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