

Episode 95

Wed, 10/21 1:00PM 52:01

SUMMARY KEYWORDS

gun, brady, griff, people, gun violence, case, jon, gun lobby, important, beretta, industry, dix, courts, law, unconstitutional, lawsuit, kenzo, kris, question, gustafson

SPEAKERS

Griffin Dix, Kelly Sampson, Jon Lowy, Aaryan Rawal, Kris Brown, JJ Janflone



JJ Janflone 00:08

Hey everybody, this is the legal disclaimer where I tell you that the views, thoughts, and opinions shared on this podcast blog solely to our guests and hosts, and not necessarily Brady or Brady's affiliates. Please note this podcast contains discussions of violence that some people may find disturbing. It's okay -- we find it disturbing too. Hey everybody. Welcome back to another live episode of Red, Blue and Brady. Today Kelly and I are joined by Brady president Kris Brown. Team ENOUGH Fairfax member, Aaryan Rawal, survivor and activist Dr. Griffin Dix and Jon Lowy, Chief Counsel and VP of Legal at Brady. Today your panel is together to discuss news that the Superior Court of Pennsylvania has held the federal gun industry protection law, the Protection of the Lawful Commerce and Arms Act, affectionately called PLCAA, is unconstitutional in its entirety -- the first appeals court to do so. What does it mean and where do we go from here? Don't worry, our panelists have the answers. Then in our "unbelievable but" section, Kelly, I talk about how even a firearms expert can cause an unintentional shooting, if not careful. Finally, in our news wrap up, we talked about a AI image used by change the ref, and a call for gun violence prevention in New York City. I am so excited to have you panelists here today. I think we've got such a range of experiences here from survivorship to legal, what I will call "legal eagles," to just longtime activists. So I want to go ahead and hop in and maybe just one by one, we can have everybody introduce themselves?



Jon Lowy 01:56

Sure. My name is Jon Lowy, I'm Vice President of Legal and Chief Counsel at Brady



Kelly Sampson 02:01

Hey everyone. My name is Aaryan, my pronouns are he/him/his. I am a youth advocate in Fairfax County, Virginia, the chapter there for Team ENOUGH Fairfax.



Kris Brown 02:09

Hi, everyone. I'm Kris Brown and I'm the president of Brady.



Griffin Dix 02:14

Griffin Dix, with the Oakland Brady chapter. I'm co-chair of the chapter in Oakland, California.



JJ Janflone 02:21

And it's very exciting that we have, it's weird, it's very rare now anymore that we have an all Brady panel. But it's very exciting to see the mix between people who work at Brady directly and people, well person, who runs Brady, Kris, and then some of our fantastic Team ENOUGH members and chapter members. So it's just it's really great to have all of you here. And I want to start by turning to Jon Lowy, affectionately normally called Lowy by those in-the-know, if you could explain to our listeners, you know, why, why we're here. Why? What is PLCAA, or the Protection of Lawful Commerce in Arms Act? You know, what is it? Why does it matter? Can you give us a law school version of Schoolhouse Rock? Sure.



Jon Lowy 03:02

Well, PLCAA is a federal law, that when George W. Bush was president, it was the NRA's number one agenda item. They could have picked anything they wanted to protect the gun industry, and what they picked was, was PLCAA. And what it does is, it gives the gun industry unique protection from civil liability. So basic negligence law, which requires all of us to use reasonable care in what we do. It applies to all of us, we can all be liable if we're negligent, except if you're a gun company. In many cases, you can get special protection that, again, no person or industry in America has. So it's quite outrageous. It was enacted in 2005 and it remains law; it prevents gun companies from being held liable in many cases, not all cases, we get around at some, there are some exceptions, but a lot of cases.



JJ Janflone 04:05

And I think that that sets up brilliantly why we've all gathered here today for this webinar, which is specifically to discuss, you know, the title of this is "A Major Victory: PLCAA found unconstitutional," something that just happened in the news, a very recent PLCAA decision. And and, Kris, I'm wondering if you could articulate to our audience, you know, what happened in that recent decision?



Kris Brown 04:28

Well, I think John is in a better position to articulate what happened in that decision, because we've been looking at various efforts in the litigation realm since PLCAA was passed. You know, ostensibly, when you talk to yeah, members of the NRA people like Wayne LaPierre, what they'll say is, PLCAA was necessary to protect the gun industry from litigation that would have completely bankrupted the gun industry. That's not true. It's one of the only product immunity, or product liability immunity laws, that ostensibly, purported by Congress to provide very broad immunity to the gun industry. There is no other industry in American life today that has a law that attempts to shield it from liability for basic kinds of issues related to their products. And the case that Jon will talk about in just a second, I think the important thing because Jon is not someone, as we know Lowy very well, who's going to toot his own horn. But when you're looking at litigation, and you're looking at a law like PLCAA, that's attempting to provide such broad immunity to the industry, you have to think about what kind of case you're going to bring, and how you can really attack the underpinnings of that case to really demonstrate to courts the negative impact on public policy, and American life, and basic justice, that's rendered as a result of the law. And it took a long time to figure out what kind of case to bring forward. Ultimately, the Gustafson case is that case, and obviously, we know that Pennsylvania court got it right. But I'll leave it to Jon to give the particulars and detail how it is that we came to bring that case, and hopefully some of the wonderful statements made by the court about PLCAA in that case Jon.



Jon Lowy 06:39

Sure. So Thanks, Kris. So as Kris said, you know, we at Brady have tried to challenge PLCAA for a number of years. And what we decided was a case like the Gustafson case was a perfect vehicle for that. And that case involves a tragic, sort of, situation, and Griffin Dix we'll talk about that in more detail. But it was a J.R. Gustafson was a 13 year old boy. He was at a friend's house, friend was also about the same age. That friend had a gun which was unloaded, it did not have a magazine, ammunition magazine, in the gun. So he thought it was completely unloaded, pointed at a J.R. and pulled the trigger. There was

around in the chamber which he did not know about and it killed JR. And there are safety features such as a magazine disconnect safety, which has been around for over 100 years, that would prevent a gun from firing in that sort of situation. Any other industry would be required to put in that sort of safety device. The gun industry is not required, because they are exempt from product safety oversight, under an exception to the Consumer Product Safety Act. But they should be subject to civil liability lawsuit. Yet what happened, we brought a lawsuit on behalf of Gustafson against the gun manufacturer, saying they should have put in the safety feature, and it was dismissed, because the trial judge said PLCAA provides immunity to this gun company. And we appealed it what the appellate court said was, maybe PLCAA does bar this case but Constitution does not allow Congress to prevent Pennsylvania courts from providing civil justice to the Gustafson's or people like them. And the reason it's unconstitutional, this gets a little wonky, is the 10th amendment, which ironically, I mean, 10th Amendment basically protects states right state sovereignty. Ironically, the 10th amendment was used by gun lobby challenges to the Brady Law, and also to gun-free zone, Gun-Free School Zones Act. But in this case, what the court held correctly, we believe, is that what PLCAA does is it basically says to states like Pennsylvania, you can't use your courts to give civil justice to victims of gun violence. But if you want to you can use your legislature and provide civil justice that way. And the federal, government under our Constitution, does not have the authority to tell states what branch of government they use to make laws or to apply their civil justice system, and therefore, it's unconstitutional. So, as the court said, PLCAA is repugnant to the Constitution of the United States and is of no force in effect.

K

Kelly Sampson 09:48

I just want to pivot a moment to Dr. Dix or, if you prefer Griff, just let me know. Because you lost your son Kenzo in 1994. And I was wondering, if you're comfortable, if you could tell us first, what was he like? What kind of person was he? And then if you could also share with us what happened to your son that year?

G

Griffin Dix 10:09

Okay. Kenzo was fifteen in 1994. He was a wonderful, joyful kid, freshman in high school, on the basketball team and a good student. Lots of fun. It's, it's very difficult to describe all of the joy he brought to us, you know, every day. Just, he was right on track for any, we discovered, actually, some writing he had done for an English class after he died, that said, it was his 10 year plan. And he said, well, I like taking care of people. Maybe I'll be a doctor, but actually, I don't like treating illnesses, that is a little weird. But and maybe animals, I like animals a lot. This and that and the other. He was, he liked writing poetry and he was just lots of fun. So what happened? One Sunday, he went over to a friend's

house. The boy was 14 years old, and they were up in the boy's bedroom. And without telling Kenzo, the boy decided he would show Kenzo his father's gun. So the boy went down to his father's bedroom to get the gun, the handgun, semiautomatic handgun that the father kept, loaded and unlocked next to his bed, supposedly, for protection. He picked up this Beretta 92 Compact L, took out a magazine that was loaded with bullets, and picked up an empty magazine and walked back up to the bedroom where Kenzo was, walked in the door and slipped in the magazine that had, that was empty, and pulled the trigger expecting, he thought he'd unloaded it and expected the gun to just go "click." And the bullet still hidden in the chamber killed Kenzo. So in our case, a magazine disconnect safety device would not have saved Kenzo's life, really because he had put an empty magazine back in. But we learned later that this boy had been to the shooting range with his father and had fired that particular Beretta, learned a little bit about it, but not enough. So obviously, the boy had made horrible mistakes, but they couldn't hit him. If they had had a prominent chamber loaded indicator, he would have seen it on the day that he walked back up to the bedroom, and he would have seen that there was something sticking up right on the top of their gun, telling him that there was still a bullet in the chamber. So Jon Lowy argued our case, and ultimately, there were three trials. There was jury misconduct, there was a hung jury. But ultimately, we lost the case, but we came very close to winning. And this is before PLCAA was passed. And actually in California, we passed laws setting safety standards for handguns, including a law requiring prominent chamber loading indicators, and magazine disconnect safety devices, thanks to the Brady chapters in California, wonderful volunteer leaders. And the rate of unintentional gun deaths in California and dropped by two thirds -- 66%. So the laws that we're talking about save lots of lives. But we were devastated when we began, when we learned about Kenzo death. And then we began learning about the loopholes in our gun laws, that guns are exempt from Consumer Product Safety, from regulation by the Consumer Product Safety Commission, first of all, and, and that this gun had been designed for military and law enforcement, not for civilians. It didn't have the safety features that civilians need. But it had been sold to civilian households that have kids. And actually the gun industry and had people, "You really need to have your gun stored where it's instantly available." And they kept playing up the need to protect yourself with a gun that's immediately available -- very irresponsible. So it really should have, I mean, you know, lawsuits, civil lawsuits have been used for years to give incentive to manufacturers of products to make their products safer.



Kelly Sampson 15:35

I just wanted to thank you for sharing your son's life with us and sharing your story and also for the courage that you had to work with us in light of that.



Griffin Dix 15:47

Thank you.



JJ Janflone 15:48

I think, Griff, one of the reasons why your words are so powerful is that I think a lot of people hear something like PLCAA, it sounds like a wonky word, right? Or they hear a legal case, or they hear that Brady was involved in a legal case, and it was in a state court or, and especially for someone who's not familiar with the law, it seems like a you know, like a lot of highfalutin nonsense, to be honest. That it's stuff that people are voting on, that it's stuff, it's a court case that went on, as you said, court cases take a long time, there were three versions of them. This PLCAA case seems like it, it might be this really difficult thing for people to grasp. But at the end of the day, these cases exist because people have to go home without their loved ones. These these cases exist because a gun manufacturer didn't do their job correctly or didn't follow safety standards that if, say they were selling dog food, they would have to follow. And as a result, people aren't safe, people aren't able to come home, you lost your son. So I really want to thank you for being here and for being present because I think it really demonstrates that the names in these stories aren't just names or statistics, they're people. So thank you, and thank you so much for sharing Kenzo.



17:01

Over the years, I've seen so many cases that that Jon Lowy has brought, and the Brady legal team has brought, of cases like mine. It's just, they're, they're amazing. To see over and over again, these similar cases brought up and where there's this need to make, you know, especially semiautomatic handguns safer, especially for gun owners, and for anyone else.



JJ Janflone 17:32

Well, on that note, Jon, as someone who, as Griffin said, represented the Dix's, but has represented other families in very similar situations because Brady has represented other families in very similar situations. I'm wondering if you could tell our audience a little bit about what that's like specifically with these PLCAA devoted cases, because I assume that it must be incredibly, in some ways rewarding understandably, because you get to, you work with really great people, but at the same time, so frustrating.

J

Jon Lowy 18:00

So first of all, I should say that just recently, I celebrated my 23rd anniversary with Brady. And I was hired 23 years ago to represent Griff, and his ex wife, Lynn, Kenzo's parents. That was my first case. And, you know, it's frustrating, sure, but it's, it's mostly just extremely inspiring and satisfying to represent people like, like Griff. I mean, I'll use Griff as an example. The only reason he wanted to bring a lawsuit was because he didn't want other families to suffer the way his did. That's the only reason. He said at many times, that even if he could, if Beretta was going to award or give millions of dollars, he would exchange that for them to change the way they make guns, and take nothing, if they just made their guns safer. So it's just extremely gratifying and inspiring to represent Griff and other people like him, like the Gustafson's. And I will say that, you know, these cases, when they go forward, when they're not blocked by law like PLCAA, they can make a huge difference. I mean, Griff mentioned that, that this case, even though we lost ultimately in the court, it changed California law. It also changed the way some guns are made. And what happened in that case is one of the theories was, in addition to the chamber loader indicator that Griff talked about, was we argued that this gun could have been made with a built-in lock. Which would, so you'd have to sort of open the the or unlock the gun with a key or a combination in order to fire it. And if the gun had been made with that, this boy would not have been able to fire it. And during the trial, we had an expert show the gun that he made. And it's basically and it's just his office, with the internal lock. And Beretta, which is a very highfalutin gun Company, sort of made fun of us, and poked holes in it. Well, after the suit, Beretta began putting out some guns with internal locks. And a bunch of other manufacturers began doing the same thing. And the only reason was they knew, even though they they won in this court case, they might not win the next one, or the one after that. It made sense financially for them to start, you know, cleaning up their act. They haven't done it nearly enough, because of PLCAA. They've sort of backtracked, I think, but that shows, you know, the sort of public good that this sort of case can do.

K

Kelly Sampson 20:54

And kind of underlying all the things we talked about here, as you mentioned, Jon, that PLCAA was on the gun lobby's wish list. And you know, in the face of the lawsuit, on one hand, they were acting skeptical, but then they got their act together. So really want to turn to Aaryan here, because you and Team ENOUGH more broadly, have really been working to undermine the gun lobby for a while now. And so I'm wondering if you could talk a little bit about what it's like to be fighting against the gun lobby?



Aaryan Rawal 21:21

Yeah, definitely. I think it's first important to emphasize that many of us aren't in this fight because of the gun lobby. Most of us are in this fight, because we have either been personally affected by gun violence, or communities have been targeted by gun violence, because gun violence, does disproportionately affect marginalized communities. And I think there is sometimes this impression that people get that the NRA is our enemy. And that's not what my philosophy is and that's not what our philosophy is within Team ENOUGH. We believe that systemic racism is our enemy and we believe that at the end of the day, gun violence comes from this institutionalized racism. And so our advocacy isn't just about combating the gun lobby, it's about removing these underlying root causes towards gun violence, which really, really just worsen this crisis, and ensure that gun violence is an attack against minority communities across this country. With that said, we do recognize that the gun lobby is complicit in these systemic injustices and that they back many of these horrific policies which lead to the death of Black and Brown people across this country. When we look at the gun lobbies work towards militarizing the police, for example, they have vigorously pursued militarizing a police force, which really should protect us, into something that isn't protecting us and that they've really outsized their weapons and ensured that they are killing many of us. And so our advocacy is really about understanding how the gun lobby can uphold those systems of racism, which unfortunately, dominate the gun violence conversation in America. And it's really about finding ways that we can dismantle those systems. And I think that PLCAA and more specifically, repealing and ruling that PLCAA is unconstitutional, is a critical step towards that. Because at the end of the day, we cannot keep the gun industry accountable for the dangerous and frankly, racist policies, if we cannot pursue civil litigation against them. And so I know that is really a roundabout way of answering the question, we really are focused on that intersection of gun violence and hate, and keeping gun, keeping the gun lobby accountable for that, is incredibly important to actually combating that intersection.



JJ Janflone 23:26

I mean, I think that that's so important to point out. I think that, one I agree with everything you've said. And one of the things that I think is so great is pointing out, I think, to individuals that things are complicated. Things are intersectional, there is not an easy, two second, quick, Twitter answers, anything, I think is really important, especially to remember in the world's political climate, that it is now that these having these conversations like this, even on this panel are really important to breaking down. Because I don't think I can tweet in 140 characters or less what PLCAA is, and why it's important, let alone why rules that particular lobbies want, are allowed to have in the US, over the will of

the American. And with that I'm wondering if we could talk a little bit, to stay with you, about this thread that I'm getting here too, of people getting involved in activism. So for example, Griff, you've been in gun violence prevention since your son was taken. And I was just wondering what it's been like for you to see a decision like this now, after years of fighting to help protect other young people. And then also for you Aaryan what it's like, I mean, because you're not much older than Kenzo was. I mean, I hate to put you on the spot as the youth voice. But as our team ENOUGH member, I'm going to do that to you. So maybe we can start with you, Griff.



24:48

Okay. It seems to me it's a very important step forward to realize PLCAA is unconstitutional. There are many types of arguments you can make it, it's unconstitutional in many ways. And I, you know, I'm not qualified to go into all of them. But one of the ways is it just singles out people who are victims of unsafe firearms or and says "No, you don't get equal rights under the law." Everybody else is supposed to, but you don't. Yeah. That's, that's one problem. And so the federal government is stepping in and saying, wait, you states can't allow state laws or you can't bring lawsuits, you know, civil lawsuits. So, it's very important. And we'll see what happens. Yeah.



Aaryan Rawal 25:53

I really want to echo that. But it is so important to say that PLCAA can't be enforced, and to see that we can actually keep the gun lobby accountable. And to me, I'm, I'm really still shook over it, to be honest. Because I remember, a year ago, we Team ENOUGH was lobbying for the repeal of PLCAA. And in Congress, we were literally told by Republican staffers that this is common sense, that we shouldn't be repealing PLCAA, it doesn't make any sense. But unfortunately, wasn't going to happen because of the political reality around PLCAA and around the gun debate in America. And so it is so heartening to see that we are making progress, but at the same time, I think it is really important to acknowledge that this is just one step of many that we have to take to ending the epidemic in America. Because at the end of the day, PLCAA isn't the cause of combats in America, systemic racism is. And until we actually go in and change our approach to justice in this country, we aren't going to end gun violence. And I, it's really heartening to me to see that made, we've come one step closer there. But the fight certainly isn't finished. And we have a lot more to do, specifically towards racial justice.



JJ Janflone 26:56

Yeah, unfortunately, that's why this was the name of this podcast, particular podcast was just "a" victory, not all of the victories, but I have faith. I have faith we can get there.



Kelly Sampson 27:05

I want to turn to Griff and Kris for a moment, because we talked a lot about the implications of PLCAA. But I was wondering if you could talk a little bit about why the gun industry isn't pushed, like other industries, to improve their products. I mean, if a car comes out, and it's faulty, and people sue, they're all, they're always competing to be safer, right. And it sounds like when it comes to guns, there's just stagnation. So I'm wondering if you could talk a little bit about why gun manufacturers are able to just continue to make unsafe products.



27:37

It's, it's a mystery, really. I mean, there's another part of our own lawsuit, which had to do with a manual that came with this Beretta. And it would have been extremely easy for Beretta to indicate much more clearly the dangers of unsafe storage. And to indicate that this gun had a little tiny thing, they call it the chamber loaded indicator, that was really designed for police to feel in the dark. And it didn't work. It's the, the extractor is the little thing that pulls out an empty cartridge casing after the bullet has been fired. And, you know, it didn't work, even for highly trained police, to feel that there was still a bullet in the chamber when this thing stuck out just slightly more. We don't need to go into that. But even that was not clearly mentioned in this manual. And you could put a tag on the trigger of the gun saying "this is dangerous," you know, "store it safely," this and that and the other, lots of things they could do. And when gun makers started building the kind of chamber loaded indicator that we had had a person design to show in as a prototype in our trials. And the gun industry has experts, that said "Oh, no, that'll blow up." They, they work just fine. And then they had a little engraving on it. They said "loaded when up" and a little red flag showed whenever there was a bullet in the chamber and save lots of lives. It's so simple. I mean, it's not a difficult design. So why didn't they do that more earlier? It's very mysterious.



Jon Lowy 29:39

Yeah. If I could jump in, Griff, there was something that I think shows why they don't make their product safer. And it was actually came out, in the trial of your case, where Beretta did not put certain safety features like magazine disconnect safety into their guns. And then they once got a contract from the Canadian Mounted Police, right and the Canadian

Mounties said, we want this safety device in our guns. And I forgot how much the contract was, a million dollars or more, and they put in the safety device. And if, when they knew that children were dying because they didn't put the safety device in, that didn't move them an inch it still was cheaper to sell the gun without safety feature. When they made money from the Canadian Mounties, they put the safety feature on a dime, they put it in. So is this all about money and that's the danger of PLCAA because PLCAA insulates them from accountability. And the whole one of the major points of civil litigation is that it puts a price on socially dangerous conduct. And it's, so when you engage in conduct like don't put in safety features, and the Griffin Dix's and the Kenzo Dix's and the J.R. Gustafson's of the world, pay for that decision. If you make the company begin to pay for that decision, and pay money to the Dix's or the Gustafson's, then they'll change their behavior. And that's why civil litigation is so important. And that's why PLCAA shielding from accountability, the gun industry, enables them to get away with this extremely destructive conduct.

K

Kris Brown 31:20

I think what Jon and Griff are both saying is so important. If I could just amplify a few of these points, I think it's important for everyone to understand what Jon is describing, in terms of at least the gun dealer or the gun manufacturer conduct here. And the Royal Canadian Police and being able to put these kinds of safety features in. Any manufacturer of any product in the United States, acting today, has to make these same kinds of choices. What Jon is describing, in terms of the litigation landscape, is often the reason they do, right. When you're in law school, you study case, after case, after case, of tort actions, right? These are civil liability suits that are brought on behalf of consumers against major companies, in order to seek remedy for some kind of harm that has happened. That is the essence of our entire litigation system. And what Congress said, at the behest of the NRA, years ago with PLCAA, is we're going to except the gun industry, from basically all civil litigation. What Jon and his team have done, since then, is poke major holes in that immunity. But it still exists. And what it stops is the kind of innovation that Jon and Griff are talking about. That's why most of the companies have not done that. Even though we already know outside of the United States, there are guns for sale, there are actually even smart guns, those are guns that have certain trigger identification mechanisms, where only the rightful owner of that gun is able to shoot the gun. And if you look at the history of smart gun technology and the consumer market for smart guns, there's a huge potential consumer market. What's not happening is the sale of smart guns in the United States, because in the few examples where that has happened, the gun manufacturers have successfully shut that down. And it's because they don't want to invest more in these kinds of features. They would rather sell more product, with less investment. And that's why the gun industry has put almost 0 dollars into research and

development, R&D. For most companies out there operating in the United States of America, their R&D budget is big. Why is that? Because they need to innovate. They understand that's the essence of survival. What Congress has done with PLCAA is create a disincentive for the gun industry, on that side of the equation. And at the same time, they have precluded other kinds of basic regulation of this industry, for example, through the Consumer Product Safety Commission. So on both sides of the coin, the National Rifle Association has historically, successfully blocked the ability of consumers to change this industry to protect the public safety. That is un-American, and that is what we think should be changed.



34:28

One thing we haven't mentioned is sort of the scope of the problem, several problems here. One is that there are between 450 and 500 unintentional gun deaths every year now. And since the CDC began counting them there have been more unintentional gun deaths than Americans died in wars. So those deaths mount up. But, many of the, when someone dies, or when someone is shot, you know, unintentionally, often, the gun is not named. Many of those people don't die. They are, they're non fatally injured, huge numbers of those people. And they suffer enormously, their medical bills are enormous. And we should not forget them, so

K

Kris Brown 35:28

I think that's a really important point Griff. And I'm so glad that you raised that. You know, 8 kids are unintentionally killed or injured every single day, by "family fire," that's the improper storage of gun and in the home. And of those eight, seven of them are injured, but live with the consequences of those injuries for the rest of their lives. I think that's a really important point as we consider the overall costs, not just to families, to individuals, to families, but our society, of treating individuals who have lifelong sometimes grievous injuries that impact them for the rest of their lives as a result of those injuries. And I just have to put in a plug for one thing, because we did a report on this a Brady several years ago, the shooting costs report. Without the Affordable Care Act, and the additional coverage that provides, nearly two thirds of all individuals today, who are victims of gun violence receive their medical care as a result of the Affordable Care Act. So any efforts to undermine that or remove the protections of the ACA mean not that those individuals won't be treated in an emergency setting, because they will. It's just taxpayers will pay for that, because ultimately, we do. But those people who are shot and injured through no fault of their own will have no additional coverage for the kinds of treatment that allow them to live some semblance of a normal life, that is not a benefit to them. It's not an individual benefit to their communities. And it's certainly not a societal benefit. We need

to internalize that when we're thinking about both the impact on individuals of these kinds of shootings, their families, and the availability of affordable and meaningful health insurance to cover those victims.



JJ Janflone 37:30

And so I think as we start to wrap up, I just want to really sort of address an audience question that I get every time we discuss PLCAA, which, surprisingly, is actually quite a lot, which is, is this something where, you know, is this essentially saying that if I use a shampoo, and it makes my hair fall out, I'm entitled to sue, but if I use a gun, and it misfires and, you know, blows up in my hand, I can't sue the gun manufacturing, you the gun manufacturer, you know, like, how did that happen?



Jon Lowy 38:03

Literally, a gun dealer, if he sold a tuna fish sandwich to his customer, and it was spoiled, and it caused food poisoning, there's no question that gun dealer could be sued. There are many cases I could tell you about where a gun dealer would negligently sell or supply a gun to someone, to a gun trafficker, or just someone else who's dangerous. In some of those cases they would have immunity. Exact same person. And it happened because the gun industry had enough clout in the US Senate to get it passed. I do not think they have that clout today. And so I'm very hopeful about you know, Team ENOUGH and Brady and others lobbying to, to repeal PLCAA if it's not completely struck down in the courts, but that's, it certainly did have that clout in 2005.



38:57

You know, a gun dealer, sold assault weapons, advertising that they were fingerprint resistant, to the the guy who murdered many people in the 101 California street shooting of a law firm that he thought he had been, you know, done wrong by, which led to the what's now the Giffords Law Center.



Kelly Sampson 39:26

I'm just going to chime in on that last question, too, about being able to sue the shampoo manufacturer but not the gun manufacturer. And one thing that's kind of been implicit in this conversation, but I just want to make explicit, is that there are exceptions to PLCAA. So it's not that it would prevent you from bringing any case ever, and that's why we have the record of cases that we have. It's just that it makes it so much harder, and puts a

barrier in your way. And as we all sort of talked about, litigation can be very expensive. It can be very emotional. It can be very taxing, and so what PLCAA has been able to do is disincentivize attorneys and clients from wanting to take that risk and bring those cases. And that has an overall effect. Because there are industries like the automobile industry, the tobacco industry, where there's people all over because the roads a little bit smoother. And Jon has been really good about knocking down those barriers all over, but they still exist. And so it still is, it is a barrier, but it's not a complete, it's not a complete bar. And that's why Jon's been working so hard to find those places and attack it. And in the time that we have, I want to ask a question to everybody on the panel, which is, where do we go from here? So obviously, the case that we're talking about said that PLCAA was unconstitutional, but there's a possibility that will be appealed. So what do we do to continue to push towards getting PLCAA ultimately repealed? And what can listeners who are really concerned about all the things that we talked about today, do to get involved?

K

Kris Brown 41:02

I'll chime in first, and then everyone else can chime in as well. So obviously, please support Brady, Jon and his legal team have been fighting in the courts for 30 years. And one of our chief objectives is to have PLCAA overturned. Obviously, the case we're talking about is a significant victory in that journey. But we could not do that without support of folks like you. So please go to our website, amplify the importance of this, support our work, and also understand that, you know, the courts are a really important component for us. I think Kelly, really well said, we've poked a lot of holes in PLCAA. So we're continuing to do that. We also want it ruled unconstitutional. That's one front. The other is legislative. And that's why this election is really important, who sits on our Supreme Court is very important. We're very concerned about the process that's taking place right now. We don't think that it's a fair process. And ultimately, regardless of who's put on, but certainly, if it is, Amy Comey Barrett, based on what we see of her, we're very concerned about how a court, ultimately, might rule on many cases. And so we want to be very, very clear with you that there is a path forward, both in the courts, and we're advancing that, but also legislatively with through the work of Team ENOUGH and Bradym to overturn PLCAA is a major priority in the next Congress. And so you can find out more information about what we're doing on all of these things at our website, BradyUnited.org.

G

Griffin Dix 42:43

I would second that completely. Jon Lowy has put together a whole network of lawyers who work pro bono for victims of gun violence when they can find a lawsuit that they can bring, despite PLCAA. And it's very helpful to push the boundaries and that lawsuit is an example of pushing the boundaries and being successful. And Adam, Representative

Adam Schiff has a law, a bill, a federal bill to overturn PLCAA at the federal level. So yeah, we should all support him.



Jon Lowy 43:25

And I'd add to that for one, reach out to us at Brady if you think there's a potential lawsuit against the gun industry and we will give free advice and consider taking the case or finding a lawyer who who would. If you, whether it's an unintentional shooting or a criminal shooting, where you wonder "how did this shooter get his hands on a gun?" Often it's because someone in the gun industry did something wrong, and there may be a lawsuit there. And then, you know, get involved like you know, Griff has for decades, but you don't have to be personally affected. I mean, somebody great said and I'm forgetting who it was that that you know, we we can't have, we won't, can't have a true change until those who are not affected care as much as those who are affected. And I think that's true for all of us. So everyone should just step up, and a good way to start is to connect with Brady, connect with Team ENOUGB and get to work.



JJ Janflone 44:30

And as always, all of those resources will be linked to in the descriptor of the, of the podcasts and of this live. We always do that. But I do, if I can highlight really quickly since, if we can maybe just give like little snaps for for for Lowy and Kelly, and the rest of the legal team. Because I am, the amount of work that legal does and puts forth, the number of people that they represent, and I'm still -- it's floors me. And I'm still shocked that more people don't realize the immense amount of pro bono work that Brady Legal does for survivors of gun violence. So I want to, I want to recognize that and I also want to thank you again, Griff, for coming on and telling us about your son, particularly on your birthday.



Jon Lowy 45:11

Can I can I say briefly a story which tells you who Griff Dix is, is the day after Kenzo was killed, the first thing that Griff did with Lynn, was to go to the house of the boy who shot and killed Kenzo. To ask him, how is he doing? Was he okay? That tells you all you need to know about Griff.



45:35

That poor boy, you can't imagine what he went through. He made a horrible mistake, but it was the design of a gun, as well as his mistake. You know, 14 year old boys make

mistakes sometimes. It's up to adults to see that they don't end in someone's death. So we all have to step up, as you say.



Kris Brown 45:59

Well Griff, thank you for everything that you've done, not only in working with Jon to try to bring about reform, but in all of the work that you've done, and Brady, leading the charge in California, you and several others, who unfortunately, like you, are joined by having lost children and loved ones to gun violence. It's still just an incredible inspiration that you have dedicated your lives to ensure that that never happens to anyone else. And I think John's remarks about you are just so moving. There are almost no words for it. But we owe you a huge debt of gratitude. And thank you so much for your work to save lives. You've made a real, real difference.



Griffin Dix 46:46

Thank you. And now we're joined by many young people who are doing great work.



Kris Brown 46:53

True inspiration, the torch has been passed.



JJ Janflone 46:57

Well, I want to thank you all for coming on. I want to thank our audience for being here with us. And if you're listening to this after it was live, and you have any additional questions for our fantastic panel, Kelly, Jon, Kris, Griffin, Aaryan, let me know and I will forward those questions along. But again, thank you all so much for being here. So Kelly for this week's story, not to not to focus too much on Florida anymore. We're going to New York, upstate New York. Are you excited?



Kelly Sampson 47:29

I am.



JJ Janflone 47:30

Well, an upstate New York's police deputy's gun accidentally discharged in a restaurant and injured two people.

 Kelly Sampson 47:36
Oh that sucks.

 JJ Janflone 47:37
Right. They were about 20 miles north of Syracuse and a restaurant called The Grape and Grog which by the way, I will say, I love that name.

 Kelly Sampson 47:44
Mm hmm.

 JJ Janflone 47:45
The officer was an off duty deputy. The handgun went off while he was seated at a table and then the bullet went through the bottom of his pants. It ricocheted off the floor, it struck a 38 year old woman and a 10 year old girl.

 Kelly Sampson 47:58
Oh no.

 JJ Janflone 48:00
Yeah, so the woman suffered a minor injury to her right foot. The girl was treated for a laceration to her right thigh and elbow.

 Kelly Sampson 48:05
Thank God, I mean, I'm saying not thank God that happened. But I'm glad it was not

 JJ Janflone 48:09
Yeah, no one was seriously injured. They actually, no one even needed to go to the hospital.



Kelly Sampson 48:14

Oh, good, good.



JJ Janflone 48:15

Very minor injuries, police are investigating but evidence does indicate that the discharge was accidental. My question is, is that I want to know it was this a flaw, was this something where the gun sort of went off on its own, did he jostle it? Was it improperly stored? You know, what, what made this quote unquote accidental?



Kelly Sampson 48:34

Yeah. Ah, that's not. Oh, man. You're just trying to have a nice meal with your kid.



JJ Janflone 48:42

Right?



Kelly Sampson 48:44

Y'all I always get to the end of these. And I'm just like, well, what are words? What can I really say?



48:52

I think that's a good way to end "unbelievable but." What are words?



JJ Janflone 48:59

I begin this week's news wrap up by celebrating the work of parents and survivors Patricia and Manuel Oliver their nonprofit, Change the Ref, created an AI image of their son, Joaquin Oliver. Joaquin was killed in the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida. "It's very hard to look at this" Patricia acknowledged in the video before the clip gives way to an impassioned plea from Joaq, Joaquin, nickname, to replace my vote and support, "politicians who care more about people's lives than the gun lobby's money." "People are still getting killed by guns." The reanimated team says in the video, "everyone knows but they don't do anything. I'm tired of waiting for someone to fix it." While pointing out that November's election would have been his first opportunity

to vote, the AI version of Joaquin urges viewers to vote with him in mind insisting "we've got to keep on fighting, and we've got to end this." Meanwhile, in New York, Anthony Jefferson, 39, is also calling for gun violence prevention. Jefferson made national news when a video went viral of him being shot in the thigh while shielding his children, ages six, five, and two, from gunfire at a car dealership. The dramatic surveillance video from September shows Jefferson scooping up his three youngest children, then diving on top of them as three gunman fired shots inside On the Road Automotive, a car dealership in New York City. Jefferson his children were there trying to buy his wife a car for her birthday. As he recovers from the gunshot, Jefferson can't walk. But his biggest concern is how the shooting has affected his children. "My kids they are my heroes. You know, they call me a hero but they are my heroes" he said. More important, he had a message from those who may be encouraged to pick up a gun saying, "Y'all gotta be mindful. Stop the shootings. Just put down the guns. That's it." Are you interested in sharing with the podcast? Listeners can get in touch with us here at Red, Blue and Brady via phone or text message. Simply call or text us at 480-744-3452 with your thoughts, questions, concerns, ideas, whatever! And you know what else you can share? Chocolate. Come join me in eating your 2020 feelings by shopping Hu's Kitchen Chocolate which is free of dairy, gluten, refined sugar, palm oil and cane sugar. My personal favorite are the dark gems. It's a bag bursting with 70% dark chocolate -- paleo style. Click on the link in the description of our episode to help support the show and to buy you or your loved ones some tasty treats. Thanks for listening. As always, Brady's life saving work in Congress, the courts and communities across the country is made possible thanks to you. For more information on Brady or how to get involved in the fight against gun violence, please like and subscribe to the podcast. Get in touch with us at Bradyunited.org or on social [@Bradybuzz](https://twitter.com/Bradybuzz). Be brave and remember, take action not sides.