Episode 192-- Gun Violence and the Dating Partner Loophole

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SPEAKERS

Rachel Graber, JJ Janflone, Kelly Sampson



JJ Janflone 00:09

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Kelly Sampson 00:38

Hey, everybody, welcome back to another episode of Red, Blue and Brady. I'm Kelly, one of your hosts.



JJ Janflone 00:43

And I'm JJ, another one of your hosts.



Kelly Sampson 00:46

Yeah. And today, we are so excited to share a really important conversation with you all about an issue that many people would consider or treat as hush hush. But as you'll hear today, it really affects us all.



JJ Janflone 01:00

Yes, 100% Kelly, and that topic is intimate partner violence. To do so we are joined by the fantastic Rachel Graber. who is the Director of Public Policv at the National Coalition Against

Domestic Violence, Rachel joined us to discuss everything from you know, the role of firearms and intimate partner violence to what new legislation that's just passed means in terms of doing things like closing or partially closing, we get into it with the dating partner loophole.

Rachel Graber 01:28

Hi my name's Rachel Graber, I am the Director of Public Policy at the National Coalition Against Domestic Violence, NCADV. We're actually the oldest national domestic violence grassroots organization in the country. We are a membership organization, representing direct service providers to domestic violence programs, and similar organizations, and then victims and survivors directly.

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JJ Janflone 01:53

And as we joined together today to sort of talk about policy, a whole lot of stuff has happened. June has been the longest month on record of 2022. I'm gonna go ahead and say that now very formally, we're here to talk about so many things. But I want to start off with a term that I think has recently I think, for a lot of folks entered into their awareness, which is like the idea of this quote, unquote, boyfriend loophole. And I wonder if you can explain to our audience, you know, what the boyfriend loophole was, and now even with this, this bipartisan gun bill that's passed, what remains of that loophole?

Rachel Graber 02:30

Yes, absolutely. You know, I frequently use the term dating loophole instead of a boyfriend loophole in the acknowledgement that while in intimate partner violence situations, it's usually a male abuser and a female victim. Domestic Violence spans all genders, and all also relationship types. So back in 1994, in the original Violence Against Women Act, Congress included a provision called what we call the domestic violence protective order prohibited or the protective order prohibited are in the Federal Firearms code under the VDPAU per prohibit, or respondents to final protective orders that were issued after hearing it which the respondent had the opportunity to appear were prohibited from possessing firearms for the duration of that protective border. So that's the first part of the domestic violence perimeters. The second part of the domestic violence prohibited is those were added in 1996, in what is called the Lautenberg Amendment, and the Lautenberg Amendment said that if you are convicted of a misdemeanor crime of domestic violence that has as an element, physical force or threat with a deadly weapon, if there are certain due process protections met, then you are prohibited from possessing a firearm. And what we know is that in intimate partner violence situations, what you're usually looking at is actually felony level violence, that if this violence had been committed against a stranger or an acquaintance, it would be charged and as a felony, but in domestic violence cases, so many times these are pled down to misdemeanors, for a variety of reasons, including these usually happened behind closed doors, and very frequently, for a lot of really good reasons. Survivors are not willing to testify. And they're the only they're the only witness besides the perpetrator. And and also, honestly, because we as a society, don't take violence against intimate partners as seriously as we take violence against strangers. So you have things like strangulation, threats with firearms, these things that are, you know, potentially life threatening, that are really minimized. And so people, you know, people think,

Oh, if it's a misdemeanor, it's not that bad. And in the context of domestic violence, that's not the case. misdemeanor crimes and domestic violence are really serious. As they're not even charged very frequently until they get to a really high level. So these were really important advances in protecting victims of gender based violence, and particularly in protecting victims of domestic violence, but they are limited in their in their application. So the protective order prohibit or that only applies to current or former spouses current or former cohabitants if people who share childhood common the misdemeanor or prohibit or misdemeanor crime, domestic violence prohibit or that applies to current and former spouses or former co habitants people share childhood common parents guardians, and then people similarly situated as spouses, parents, guardians, you know, recognizing that people who commit serious violence against children also, you know, are pose a danger to others and should not have firearms. But as you see, there's, there's a really big gap in there, that if you're married, then you're covered. But if you are dating and you don't live together, you don't have a child in common, the abuser can still have a gun. And we know that dating violence is not any less serious than domestic violence, it has the same same level of violence, more people are actually killed every year by dating partners than by spouses, and you have all of those same elements of power and control. So it's really a very, like, arbitrary distinction. Is there a legal tie or not? Right? Is there a legal tie, either by marriage or by a child sharing a child or having a shared residence, and most intimate partner violence does happen in dating relationships, not in spousal relationships. So this is what we call the dating loophole, if you're married, you're protected. If you're dating, you're not. And there's really no justification. For that difference. If you look at the patterns of behavior, if you look at the level of danger, and if you look at the actual behaviors at hand. So for decades, we have been trying to close that loophole, to extend the same protections to dating partners that are extended to spouses. And in 2006, Congress data add dating partners to the Violence Against Women Act throughout all the grant programs. So the only difference, and it's also been added to FIPS. As isn't the only difference in federal law and the way that federal law treats dating partners and spouses in this criminal space. And in, in the domestic violence space, in general, is, you know, it is in the firearms code that is just a relic of a time gone by when people didn't recognize the danger of these dating partners posed to their victims and to their communities. And so we have been fighting for a really long time to just add dating partners to the existing parameters. We're not creating new parameters. We're just saying, if your abuser whether or not you're married, you pose a danger. You shouldn't have a gun.



💽 JJ Janflone 08:09

Well, I wonder if you can break down for us, you know, what's different now that the Safer Communities Act has been passed?

Rachel Graber 08:16

So this law, it does not close the dating loophole that you know, we've seen that reported a lot in the media, we have been trying to correct that. It narrows the dating loophole, it shrinks the dating loophole, it doesn't eliminate the dating loophole. What it does is it adds dating relationships to the misdemeanor crime of domestic violence. So this does not impact the protective order prohibited at all. A an individual who is a dating partner and found by a court to pose an imminent threat, an immediate threat to their dating partner can still under federal law, have guns, even after this bill passes, which is an ongoing concern. There actually isn't any repository or database that allows us to know how many protective orders are issued, every year, how many protective orders are active. That's just not available information. But anecdotally, we know that there are far far, far more protective orders out there than people who have been convicted of a misdemeanor crime of domestic violence. So this is a really important first step. But it's only a first step. It's not it's not the the final, you know, end end all be all. It also has a new provision that applies only to dating partners that would restore the user's firearms after five years, if they don't reoffend. I will say this is not something that we were delighted to see. We recognize that it was the price of doing business. It's not necessarily good policy, but it was good politics and was necessary to get this you know, the necessary concession to get this over the finish line. And it was just something that we we had to accept at the end of the day, you know, or to at least take a step forward. But, you know, it is an important first step, and it is a recognition by Congress, that dating abusers are no less dangerous than spousal abusers. And they should not have access to deadly weapons with which they can harm their victims in their communities.

Kelly Sampson 10:22

And picking up on what you just said about domestic abusers, an intimate partner harming not only the person that they're in a relationship with, but also communities. Could you unpack what that looks like? What does it look like for this violence spillover? Because often there's a myth that it's a private matter. But we know that's not the case. And so I would love to hear a little bit more about what the true scope of some of this violence looks.

Rachel Graber 10:46

like. Yeah, you know, I was actually this morning, reading an article, it was just it was such a tragic article about, there was a woman in Atlanta, who went to pick up her small child from daycare. And while she was there, her ex boyfriend showed up and was threatening the daycare workers with a firearm, the daycare worker was standing in between him and the victim and the child and saying, You need to leave, you need to leave, you need to leave, we won't call the police, please just leave, please don't hurt anybody. And at the end of the day, he ended up taking the victim and the child out into the woods, the daycare worker could hear her begging, hear her screaming, and he shot and killed the victim. While she was holding her child, the child was covered with her, her blood and her flesh. And you know, it all happened right there. And he very easily could have killed the daycare worker, he was threatened to kill a daycare worker, he was threatened to kill all of the children there in that daycare center, if the victim didn't go with him. And we know that about 20% of victims of intimate partner homicides are people other than the immediate victim. So that is very, very frequently includes children. At NCTDV, we have this project called remember my name, and you know, we memorialize people who are killed by by abusive partners or domestic abusers. And we have a poster every year and it is always so heartbreaking to see the name of an adult's the name of children underneath them, and it has the ages and it has the adult, you know, name of the adult 40, and then all the children zero, two, five, 12, 13. It, it's just domestic abusers, they will do anything to hurt their victim. And that means hurting the people close to the victim. Because we know that you know, parents would do anything for their kids, parents, in this case, will will take a bullet for their kids. And the easiest way to exert power control and to cause the most damage possible to a parent is to murder their kids. We also know that about two thirds of mass shootings are committed by people who have some sort of history of of either domestic

violence, or they target a partner or a family member in that in the mass shootings. So domestic violence is not a private matter. Domestic violence is a societal matter. And it fills, you know, it spills over into the community so so commonly.



JJ Janflone 13:50

I really appreciate that you brought up essentially the story of what happened to Makayla Montgomery in Georgia, because I think obviously it's horrific, and so I want to give space to her and her family. But I think it just it shows how this intimate partner violence, how very quickly and how horrifically it spills out.



Rachel Graber 14:09

And, you know, I mean, just from a truly practical standpoint, domestic violence causes a lot of economic damage that we all as a society have to offset. So it isn't, I think people people say is a private matter because it happens behind closed doors, most of the time, but it's actually a collective issue, not a private issue. And that's what we have, you know, and that's one of the big things that VAWA one of its primary focuses from the beginning was to make this a collective responsibility responding to domestic violence or collective responsibility, not just oh, well the individual who is being abused, you know, should take steps to to protect themselves, you know, it's all of our responsibility to to protect people from violence.



JJ Janflone 15:06

I wonder if we can talk about one of the things that is in this bipartisan bill, which was the idea of, you know, spreading awareness and ability to do extreme risk protection laws or red flag laws? Do you think that that will help in any way, you know, maybe to curb some violence? Or do you think it just it's all going to shake out based on sort of how that implementation happens?

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Rachel Graber 15:27

Well, I would say two things. And I'm sure you've probably heard me say this before, that, generally, extreme risk protective orders are not appropriate in domestic violence situations for a couple of reasons. One being that they don't offer relief, other than relief from gun violence. So domestic violence protective orders, we're talking about things like staying away, we're talking about things like division of assets or child custody, and providing a holistic, civil legal response to the needs of the survivor. That includes the abusers access to firearms, but isn't limited to it. We also know that survivors of domestic violence, it's so important that they be in control of their legal options, because they know when it's safe for them to go to a court. And they know when maybe actually it would put them in greater danger to go to a court. So having somebody outside a third party, initiating court action to disarm an abuser could cause escalation that the survivor isn't aware of, isn't prepared for, and it actually could put the survivor in greater danger. And then the other thing, of course, is that domestic violence protective orders do have under federal law, Full Faith and Credit across state lines. So every state theoretically is required to enforce domestic violence, protective orders from every other

states, which is not the case for extreme risk protective orders, there isn't that same kind of full faith and credit requirement in federal statute. States do have reciprocity agreements, and there are things happening in the background checks. But as far as like actual legal authority to possess that, that doesn't always cross state lines. That being said, there are cases, you know, something that immediately comes to mind is, let's say, there's a partner who, you know, when they are sober, they're totally fine. And they are not violent at all. But when they get drunk, maybe they have a tendency to make them threats, and we would go around. And that would be a situation in which a domestic house protective order might not be appropriate. Because, you know, the respondent doesn't necessarily need to stay away from the victim, maybe the victim wants to continue that relationship. But they're sort of but but there are certain circumstances in which they shouldn't have gotten, you know, I think I think it's a really important first step, just having having this grant program that can be used to support the implementation of extreme risk protective orders, particularly because, you know, there are, I think there are implementation challenges with extreme risk protective orders that are similar to those in domestic violence situations. So for example, there needs to be a process when the, you know, the person subject to an ERPO, when that's adjudicated for them to, you know, relinquish their firearms, and to sort of, you know, certify that they've done that, and to follow up afterwards to make sure that they still don't have firearms. And some of those same processes, in best practices should be used with intimate partner violence as well, and domestic abusers who are prohibited from having firearms. So I think some of those processes and implementation that develop would be useful to have, you know, to to cross pollinate. But you know, we also know that if someone poses a threat to someone else, and they have been found by a court to do so, if it is a generalized threat, then then it's also important for the safety of the people around them, that they don't have firearms, while ERPOs are not usually directly responsive to domestic violence, it's important to have as many tools in the toolbox as possible.

Kelly Sampson 18:58

One of the things you know, I'd love to get your opinion on is turning a little bit from the bill to the Supreme Court just issued an opinion in Bruen which will make it easier for people to get guns and carry those guns in public and make it harder for states to regulate public carrying. And I would love to know, are there implication for domestic violence or intimate partner violence, even thinking about people carrying around shelters or preventing victims from gaining access to some of these direct services? Just love to know kind of what are some of the things that we should be thinking about as we reckon with the fallout from this opinion?

Rachel Graber 19:39

Yeah, I will tell you that when I was reading it yesterday, and I was feeling like physically ill reading this the, you know, I think, honestly, I feel in some ways that while we took one step forward with this big guns package moving through Congress, we took two steps back, or even like 10 steps back with this ruling in Bruin since since 2008. And the Heller decision that found an individual right to have a firearm in the home for self protection, courts have have used a two step process when they were assessing firearm firearm laws. One was the you know, if there was a historical precedent, but there was also a second consideration that courts were using. And that is, is there a compelling reason, government reason for these laws, you know, so maybe something that wasn't in the 1700s, or back in merry old England in the 1200s in

medieval England, but there was compelling government interest, that was still part of the consideration, and what Bruen, the ruling of Bruen did was take out that second piece. So it doesn't matter how important a gun law is anymore, or how many lives it will save, or, you know, the impact that it has on society. If from the court's opinion, it is not rooted in American or pre American English history. It's not constitutional. And I'm going to just say, right out, domestic violence was not a crime across the United States until the 1920s. It wasn't a federal crime. Interestingly, domestic violence wasn't a federal crime until VAWA, in 1994. So there is a lot of American history and English history before that, that domestic violence is totally fine. Right? It was accepted culturally, it was accepted legally, there was no, you know, and there was no, there were no sanctions for beating your wife. And so rooting something just in the historicity really has the potential to undermine any laws restricting abusers, access to firearms, you know, so I, it's really scary, I'm just gonna say that it is really scary to think that all of these people who have been found by courts to abuse the person that they're supposed to love, right, the person they claim to love the person, they claim to adore the person, they claim that they support, and instead, are betraying them and harming them and physically and mentally and emotionally torturing them. And that because that was okay, 300 years ago, they might be able to legally possess firearms, even after a court adjudication that's really scary. And I honestly, it speaks to what are our values? What do we believe? And who are we as a country? Because I really do you feel like the ruling in Bruen was a betrayal of deeply held American values. And we did submit an amicus brief NCTDV Did on behalf of a larger group of organizations in the domestic violence field, specifically highlighting the impact that a broad ruling could have on on victims and survivors. I will be honest, that I think we all given the makeup of the Supreme Court expected a ruling against New York's laws, but they could have ruled narrowly they could have just said like this was good cause exception, you need to be more broad in your definition of good cause they could have done that and still spoken directly to the facts of the case. And instead, they were basically like, we're going to just decimate the entire, you know, legal structure that allows firearms restrictions to to exist and to operate. You know, I we I think I thought we were prepared for worst case scenario. And I think, you know, we were prepared to see things that would undermine state permitting laws. But it this feels by removing that compelling government interest part, it feels like it was worse than we had ever thought could come out of it.

Kelly Sampson 24:20

If you're comfortable or you'd like to I'm wondering, too, for people who care about protecting people from intimate partner violence, and also knowing that reproductive coercion can be an aspect of intimate partner violence. Also, knowing that pregnancy can be something that keeps people from being able to leave an intimate partner violence situation. I'm wondering, is there something that should we be thinking or aware of the possible ways that on one hand ruling, a ruling that could invalidate gun laws and also a ruling that makes it harder to have reproductive freedom? What are the implications there for domestic violence and intimate partner violence.

Rachel Graber 25:03

Yeah. Well, I am just going to tell you it wasw, I think JJ said that this was the longest June on record, this week has been just that was a double whammy. This week has just been catastrophic in terms of of the Supreme Court. You know, Roe v. Wade, which had been the underpinning of women's reproductive rights for decades, is no longer the law of the land and it

overturned Roe v. Wade. We know there are dozens of states that either have some sort of automatic trigger, that when Roe v Wade was overturned, a law prohibiting abortion in that state immediately took effect and many other states, where they, they are poised to to pass really bad laws now that now that Roe v. Wade, has been overturned. You know, we all saw this coming. I think there was that week, a couple of months ago. But we all hoped that maybe somebody would rethink their their ruling, and no differently than they did. But I do also want to note, and this does, in ways go back to your original question that in his concurrence, Justice Thomas also wrote, there are other Supreme Court cases that we're based on some of the premises of Roe v. Wade, including the court case is the founder right to access contraception to legally have anal sex and and for gay marriage. So you know, and he said, Now that we have overturned Roe v Wade, we also need to reconsider these other cases. And so talking about reproductive coercion, obviously, any thing that would limit a woman's access, first of all, to contraception at all, without the permission of a partner, again, that is I mean, that's I mean, turning women's bodies into the property of the partner, that the partner gets to decide what the woman does with her body and with her uterus. And and I guess I should not be saying woman, because there are, of course, people who are not cisgender woman who can get pregnant, so people who can get pregnant people with uteruses, I just default to saying woman, because I've said it for so long, but I am educating myself and trying to do better. And so you know, we know that it's very common for domestic abusers to intentionally impregnate their partner against their will to sabotage their contraception, because it allows them again, it's part of this power, a course of control. And it often keeps survivors trapped in relationships, a because there is a general sense that a child is better off with two parents, whether that's true or not, in these cases, I would probably challenge but there is a societal pressure, that if there's a child, that, that the relationship needs to be maintained, and family members and friends will pressure survivors to stay in the relationship for the sake of the child, it expensive to be pregnant, it is expensive to have a child and often a pregnancy can interfere with the pregnant person's ability to work. And so it increases that economic dependence. And then once the child is born, it further strengthens that economic dependence. And you know, very often we know that abusers will undermine a person's employment, destroy their jobs, and deny them access to household funds. And then after, if there is a shared child, then that creates an irrevocable legal bond between two people, right, because if people are married and then divorced, there is no remaining legal bond. If people are dating, and then they separate, there's no remaining legal bond. But if there's a child in common, the person who provided the sperm has legal rights, and can use that child both as a way to to exert power and control, including these very commonly in custody cases where it's not like the person who provided the sperm really wants to spend time with the child. What it really is, is they want to take the child away from the other partner to punish and to exert power and control and there will always be some sort of legal connection between those the two parties as a result, also, you know, there was a new research a couple of months ago that found that homicide It is actually the leading cause of death among pregnant women. And we know that I mean, if you that pregnancy is very dangerous. We know that throughout the ages. And we also know that in the United States, we have one of the highest rates of maternal mortality in the developed world, and that it's also falls more heavily on historically marginalized communities, particularly black women have much, much higher rates of maternal mortality that are not attributable to underlying generalized health concerns, but are really nothing. I mean, they are nothing more and nothing less than the physical, mortal manifestations of societal and systemic racism.



🛐 JJ Janflone 30:48

Well, and sort of, I mean, I think that this kind of pivots us into, you know, what do we what,

how do we make this better? Is there a way to close the loophole fully? Is there a way to prevent intimate partner violence? You know, I guess? It's a very big question, but I guess it's just how do we continue this fight? Even though at the moment, we're sort of in a neverending story we're in? We're in the fog of despair. Yes, at the moment, how do we get out of that?

Rachel Graber 31:16

Well, I'm going to try to lift myself up from the bottom of despair. Yeah, and hopefully, you're with me, I mean, we will just keep fighting, the good fight, we will keep pushing for dating partners to be included in the mystery in the protective order prohibit or VAWA is coming up, you know, if the protective order prohibitor was in VAWA in the first place, it makes sense that that would be the place to close it, whereas the misdemeanor perimeter was not in VAWA and has been closed, not in VAWA. So you know, we will, we will keep pushing to add dating partners to the protective order prohibitor. Also, we encourage everybody to if your state doesn't have a good law, we encourage state level advocacy, because sometimes you can do a lot more at the state level than you can at the federal level, you know, we will continue pushing for federal funds, and for states and local governments to implement, develop and implement policies and protocols to make sure of users actually relinquish their firearms, when they're prohibited from having them and that there's follow up to make sure they don't get new ones. You know, we also know that providing services and safe place to go for survivors can make a huge difference, both in their safety and in their, in their recovery and in their healing. And that includes, you know, things like trusting survivors, and just giving them what they need, and sometimes all they need as \$500. But things like direct cash assistance to survivors to meet their own needs, you know, that's something that really is becoming, getting getting a lot of traction, and shows a lot of promise. And then, you know, I think we also just need to keep pushing our friends, our family, our colleagues, our acquaintances to recognize that domestic violence is a serious issue, not to minimize it, not to laugh it off, help people be prepared to, you know, intervene if a survivor wants them to intervene, and also not intervene if a survivor says, Please don't intervene, because that could put the survivor in greater danger. And, you know, I think we need to constantly be pushing for a change in our values as a society to say that domestic violence is unacceptable. And that includes not just hitting and punching and strangulation of physical violence, but also includes, you know, emotional abuse, psychological abuse, abuse of courts, and just pretty much we have to dismantle the patriarchy. That's a that's a pretty good, good summary, let's dismantle the patriarchy together.



JJ Janflone 33:58

That's what we all want. So thank you so so much, Rachel, for coming on. And of course, links with how to find more of Rachel's work and the National Association Against Domestic Violence to see, you know, their amicus brief and everything that they're doing will be linked in the description of this episode.



JJ Janflone 34:17

What I keep circling back to is is how, you know, Rachel brought up so many things that you know, you think, you know, right, there are terms that we use, or there are laws that we sort of reference and we think we know how they work, but actually, when you when you start to dig

into them, there's so much that I think most folks don't actually know and so many important things to learn. So I know that I personally am just like, there's just I gotta do more research.

Kelly Sampson 34:40

Yeah, I'm with you. There were so many areas where I either learn something new or unlearn something that I thought that I knew, but one thing that, you know, we talked about coming into this conversation that I will take away after is that guns and IPV and guns and DV do not mix and result in more deaths and more injury and more devastation. And so, you know, we got to after this bill, which partially closed this loophole, we got to keep going and we got to close it all the way.



JJ Janflone 35:17

Hey, want to share with the podcast? Let's just now 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, Kelly and I are standing by.

Kelly Sampson 35:31

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