

Episode 96-- SCOTUS, Gun Violence Prevention, and What it Al...

Mon, 11/23 12:59PM 49:35

SUMMARY KEYWORDS

brady, court, gun violence, barrett, people, cases, justice, gun violence prevention, question, kris, vote, supreme court, jon, stephan, gun, law, important, second amendment, sean, issues

SPEAKERS

Jon Lowy, All, Stephan Abrams, Kelly Sampson, Sean Lev, Kris Brown, JJ Janflone



JJ Janflone 00:09

Hey everybody, this is the legal disclaimer where I tell you that the views, thoughts, and opinions shared on this podcast belong 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 Red, Blue, and Brady. In this one, I am I'm super excited, because this is almost like two podcasts in one. So when we first originally filmed this, it was the the day before justice Amy Coney Barrett was officially declared to be taking a spot on the Supreme Court. So in this original live event, which you can still find on the Brady Facebook page, we were talking about, you know, you know what her tenure as justice might mean. And so even though she has since been confirmed, I think this is still really important to talk about -- because obviously she is going to be on the court -- presumably for quite a long time. So to talk about what her presence is a justice means, I'm joined by some really phenomenal people today. Obviously, of course, my co hostess with the mostess, Kelly Sampson, who is Legal Counsel at Brady, Director of Racial Justice initiatives. We also have Jon Lowy, who's Senior Counsel and VP of Brady Legal. We have Stephan Abrams, who's an executive council member for Team enough. And of course, Kris Brown, the president of Brady, but also I kind of want to pivot now to Sean Lev, who is in the position of being the only non-Brady person on this panel, who is of Democracy Forward. And so Sean, I'd love to start with you, aan you tell us a little bit about yourself,

and your organization?

S

Sean Lev 01:52

Sure. Thank you so much, JJ. So I'm the Legal Director of Democracy Forward, for more than three years now, Democracy Forward has been building the administration accountable when it acts unlawfully, and exposing corruption and illegality by the administration. We do that across the board, not in any one policy area. We tend to focus somewhat on things that might slip between the cracks otherwise, but that affect real people. So we've done every, we've had, we bring litigation, that is, among other things, had Ken Cuccinelli's appointment as Acting Director of the Customs and Immigration Service found illegal. We have ensured that millions of dollars were restored to the teen pregnancy prevention program, we have overturned regulations that would have significantly weakened school lunch nutrition standards, we have ensured that the administration regulate E-cigarettes, and that's just a few of the many, many things that we've worked on. So I'm happy to be here and, proud to be among all these Brady folks.



JJ Janflone 02:49

Well, and I'm so happy that you were able to join us. I think some of the work that your organization does is amazing, and I think you're really going to be able to provide a lot of background and a lot of rich detail for some of the things that we're going to be discussing today. And so my first question is to Jon Lowy -- you do not have to sing your answer, but you will get bonus points for it, if you manage to do so, which is you know -- what's happened today? We saw a decision, but so what's happened today in terms of the SCOTUS confirmation hearings, with Amy Coney Barrett?

J

Jon Lowy 03:19

Well, you'll be thankful that I'm not gonna sing my answer, that'll be my gift to everyone. Well, what happened today was that the Senate Judiciary Committee approved of Amy Barrett's nomination, to basically send it to the full Senate, the Democrats on the committee did not show up to boycott it as a sham/ illegitimate process, and the next step is, probably on Monday, the full Senate will vote to confirm her, and unless a few Republicans have, you know, revelations and huge changes of heart over the weekend, she will be confirmed, early next week.

K

Kelly Sampson 03:59

And kind of continuing down, just laying the groundwork, Sean, I'm wondering if you could talk a little bit about what role the Supreme Court plays in our democracy, and why does it even matter who the justice is if, you know, they're supposed to be impartial? Why would it even matter who a justice is, or who appoints them?



Sean Lev 04:16

Great questions. So first, Supreme Court has a number of roles. But I think fundamentally, it is the last word on what federal law means, right. So it's the last word on whether something is constitutional, what the Second Amendment allows or does not allow -- something I know you guys would be particularly concerned about -- but the entire constitution Bill of Rights, and it's the last word on federal statutes, and regulations, and what they mean, and what they permit. So on all those things, across the board, from the Affordable Care Act, to Second Amendment, as we discussed, to immigration, to election disputes, on all those things as to questions of federal law, the Supreme Court is going to be the last word. Now, why does it matter? It's a great question. I think all justices, I think, strive I assume, strive to be impartial, I have no reason to believe that any of them are corrupt. But you have to remember the cases the Supreme Court takes are the hardest cases, right They take fewer than 100 cases a year, and they don't get to the Supreme Court, because most people agree on them, they get there because they're difficult cases that many people may disagree on (In almost all cases, there's some exceptions, very few cases, that the court has to take, but in general, it takes cases because the the lower courts, the Court that supervises, have disagreed, or because the issue is so important and complicated. And on those cases, people of good faith can disagree, and I think they disagree for a variety of reasons. But sometimes they disagree because of the methodology that they use to try to look at issues. So one thing you've probably heard, some of you may have heard a lot if you've been following the news about Judge Barrett, and over the past few years, and whether other judicial nominees as well, is the notion of originalism. You know, when you interpret the Constitution, allegedly you do it, the way that the founder, the words of the Constitution were understood to mean at the time that they were approved by the states, and the Constitution was adopted, and what people of that era would understand those words to mean. So not all justices do that, and I don't think all justices who purport to be originalists would do it the same way. There are varieties of that, and could talk a little more later. But so there variety of reasons why people may disagree, but it doesn't necessarily mean that they're acting in bad faith, they may come from different perspectives, and have different views of the role of the judiciary.



JJ Janflone 06:36

No, I think that's really important to sort of tease out, because I know that that's something this idea of that judges are people, but that they are supposed to be impartial. I think a lot of folks are sort of struggling with and acknowledging. I want to maybe pivot to Kris and talk a little bit about this process, in particular, why organizations like Brady, and many, many others, as Lowy even mentioned, have pointed out that this process in particular, was a little bit problematic. But maybe even both before we hit that, I'm wondering, Sean, if you could explain even the process of getting someone nominated for the Supreme Court.

S

Sean Lev 07:12

So under the Constitution, the President nominates with the advice and consent of the Senate. So it's the President's prerogative to nominate someone. That doesn't mean that the Senate has to act, as we know in 2016 the Senate did not act on a nominee from President Obama, Judge Garland from the DC Circuit. And then the rules of the Senate currently, as I understand it, requires a majority vote, at one point, to get past a filibuster, you had to have more than 60, but that's no longer the rule. So they ultimately need to get a vote of 50 senators, plus the Vice President who would pass, who would break a tie. And I believe that's, that's what Jon is suggesting, I think, will happen on Monday. Well, the vote will happen. I have no, I have no crystal ball as to what will happen, nor do I, nor am I expressing a view on it.



JJ Janflone 08:02

I don't think anyone can really do predictions anymore for anything happening. But so so Kris, I'm wondering, maybe then if you could articulate, what are some of the issues then that different orgs have said that they have, around this particular process, as it played out now, here in 2020?

K

Kris Brown 08:18

Sure, JJ, and thank you so much for putting this together. And thank you so much for Sean, all that you're doing and the important work. We're at a pivotal moment in our nation's history. And ultimately, we have an election that's happening now, where I think the latest count is 30 million people have cast their ballots, and there is no election that I can think of, in my lifetime, that has been as critical or as important. And from our perspective, I don't have to speculate on other organizations, but I know what they think I know what Brady thinks in particular, which is that there should be no confirmation until inauguration. This is basic democracy work right now. And the McConnell Rule, so-called I mean, he

threw it out-the-door, but the reason we don't have a justice nominated by President Barack Obama to the Supreme Court, Merrick Garland, and it's hard to find someone who would have been a better jurist, and, frankly, more even-handed in his approach as a jurist, not really being on either side of either a conservative or liberal agenda, than Merrick Garland. But at the time that was put forward, it was early, early in 2016. And Mitch McConnell said, "No, I'm not going to move forward with this because it's an election year, and I think the next president should decide." That rule did not apply again, he forgot about it. Of course, Lindsey Graham is on record stating himself, that you could hold it against him, and his words against him, if he were to confirm another Supreme Court nominee during an election year, or when an election was ongoing, to be more precise about his point. An election is ongoing. He has clearly reversed that. So from a democracy standpoint, we have material concerns about it. Obviously, as an organization that cares very much about reducing the epidemic of gun violence in this country, we care about the substance too, lets make no mistake about that. And from our standpoint, we don't have someone in Amy Coney Barrett, who's been on the bench for a very long time. She's been on the bench for a pretty short time. But when you do your resume for the court -- and let's be clear, she's been doing that resume since she's been appointed the federal judiciary, as many do -- she's been clear about signaling where she wants to go on any number of issues. And on the Second Amendment, she's very clear and beyond even her mentor, the person she clerked for Justice Antonin Scalia, in her decision in *Kanter v. Barr*, which she put as one of the top opinions that she recommended that the Senate Judiciary Committee review. She took an approach to examining the appropriate balancing of rights, with respect to the Second Amendment and individuals and public safety, and basically put out the window an examination of the public safety interest that courts have been doing, for as long as we've had gun laws, since the 1934 first gun law that was enacted. And that is deeply concerning to us. It's something that I know many senators did attempt to probe with her. We don't have any good answers in the testimony she gave before the Senate Judiciary. That doesn't distinguish us from many other questions she was asked, where she just said, "I can't apply these facts to the law," including about whether climate change is real or not. But we do have her own words, and we do have her own reasoning, and she has said, as Sean said earlier, she's an originalist. Well, I'm a lawyer too. And and I'll just say this, I'm not being highfalutin, or lawyerly when I say the originalist notion that she seems to embrace, is ignoring the last 250 years of experience that we have in America, and that seems to be something across the board. There's no way, when you're looking at the validity, the veracity or the constitutionality of things like an assault weapons ban, the Brady background check system itself, permitting systems across the states, that you shouldn't ask the question, "Are these laws in the public interest? Do they promote public safety?" Nowhere in *Kanter*, Amy Barrett's dissent, will you see that question asked. She basically takes us back in time, to a world in which the most dangerous thing that you could find was a musket, in which

no one carried a gun for self-defense. That's not the America any of us know today, and it's deeply concerning that we're moving forward with a nominee who's willing to ignore that, to get to a specific end. That's why the NRA has endorsed her. That's why a lot of other dark money interests have and that is deeply deeply concerning, because this court will shape how laws are enforced in this country for the next, with her on it, 30/40 years. So sorry to be the bearer of bad news, but that's my perspective.

J

Jon Lowy 13:47

If I can just add, maybe even worse news, one thing disturbing about Barrett's Second Amendment decision is she says she has principles like originalism, and she hasn't follow them when they're inconvenient. I mean, she said she follows history. Well, most courts found that history supported the constitutionality of banning felons from having guns. So she sort of wriggle around that. She said she supports the idea that if there's a public safety support for gun law, she would find it constitutional. Well, there was studies that said that the felon ban she was considering had public safety benefits. She wriggled around that she said she supports precedent. Well, Justice Scalia, in the Heller decision said, the ban on felons is presumptively lawful. She wriggled around that, and it was all sort of getting what was most clear about her decision is she wanted to decide, in the way that the gun lobby wants. It was not as, you know, originalist principle or, or really much of any principle.

S

Sean Lev 14:53

If I could, if could take off my Democracy Forward hat for a minute because we don't take positions on nominees and or on Second Amendment jurisprudence in particular, but I have read the decision. And one thing, and this I think echoes something Jon said about the decision, whether you agree with it or not, what's sort of amazing to me was the degree to which he didn't defer. So it was a fairly conservative panel, right. I think there were three Republican judges, appointed by Republican presidents who are moderate-to-conservative judges by reputation, and she dissented. And it's, you know, a detailed opinion that has a lot of originalist discussion of what, in the time of the Framers. But at the end of the day, the reason she found the what she did, is she did not credit the government's evidence, showing that nonviolent felons, and this was an individual who had been found guilty of mail fraud, I believe, Medicare fraud, that nonviolent felons were dangerous, and thus that there was a basis for the government. She agrees that if you're dangerous, the government has a very strong basis to not allow possessions of firearms, but she didn't. At the end of the day, the real the dividing point, I think, between the judges, what was their willingness to credit the showing of danger. I think now, whether you agree or not, that's that that was the basis the ultimate ground for decision is her

failure, her belief that the government had not shown, adequately, that someone was dangerous. And that struck me is unusual in a case like that, that the decision of the legislature that felons across the board, including nonviolent felons would be dangerous, and that they -- which were supported by studies, as Jon said, and one could argue and go back and forth -- but there was evidence supporting it. That was a more aggressive approach, certainly than, other judges who are not necessarily, would not necessarily be ideologically opposite to her on other issues, potentially. Again, speaking only in my personal capacity. One other thing I would say about this is that it demonstrates how originalism as a concept is not necessarily outcome determinative, because all three of the judges, the majority opinion looked at the same historical evidence. This was true in the Heller case, too, right? One can look at historical evidence, and one of the questions is, you know, what conclusions can you draw? And are there actual conclusions that can be drawn from the history? And the evidence was was equivocal. The different, the three judges on that panel, certainly didn't read the historical evidence in the same way, which I think is telling that it's not something that originalism does not mean that you are binding yourself to a necessary result. Well as in math, just because you adopt a certain methodology, you will not necessarily reach, everyone won't reach the same answer.

S

Stephan Abrams 17:41

And just to quickly add on to that, the most problematic thing, adding on to what Sean and Jon are talking about, what are statements about it felons should have guns, is that it's actually already really easy for felons to get a gun. And they can actually assemble them by themselves, in their own garage, and the government will not know that they have that weapon. And that's why her nomination is so troubling is because, if she is such an originalist, she's not going to be on the side of us, when we come to her to talk about things such as ghost guns, 'cause she has that originalist belief. And that is very alarming for us who, we are here to make sure that we are providing safeguards to make sure that the wrong people don't get guns. And it makes us trying to work together in a bipartisan way, as well, even tougher for our youth organizers.

S

Sean Lev 18:29

You know, Stephan, that's, that's a great point. Because, you know, judges, that's an area where judges would usually defer to others. And we really, you know, we're not experts on what makes someone dangerous. That's something for a legislature to decide. And in this instance, I think she, her view, correct or incorrect was, I can decide whether this is sufficient evidence that someone's dangerous. And the majority really did defer to the legislature, and to the evidence the government had produced. And so that was, I think, the key division. I think your point is an excellent, real-world point of the consequences of

that.



Jon Lowy 19:03

And that's what conservatives used to call "judicial activism," which they thought was the worst thing a judge could do, substitute their judgment for the legislature. And that's exactly what she did in this case.



Kelly Sampson 19:16

I want to thank you all for kind of bringing out the connections between some of these very removed methods of constitutional interpretation, like originalism, and the real world impacts on gun violence, because a lot of times those things haven't come through in the hearings. I just want to pick up on something that Stephan pointed to, which is real-world consequences of having different justices on the bench. Because one of the things that we talk a lot about is how gun violence is intersectional, and also linked to a variety of things that are going on in society. It touches on health care and trauma and economic opportunity and things like that. And so I'm wondering if you're at all concerned about Barrett's opinions on other issues, or her potential opinions on other issues like health care or the economy, impacting gun violence and efforts to prevent gun violence.



20:03

I think it was pretty simple. During the hearings when Justice Barrett was asked if it was morally acceptable to separate children from their parents, and she simply couldn't answer, over the fact she claimed it engage her on the Trump administration's border policy. The fact that she couldn't say that, as a human being, you should separate children from their parents, I think speaks volumes of the justice that she will be. Here at Team Enough and Brady -- we realize that gun violence is not a political issue -- it's a human issue, and we have to treat it like one. And having a sense of simply what's right and what's wrong, is extremely important, when you're getting appointed to one of the highest positions in our government. I also would say that, so not only are we fearful of how she will view certain cases, but she will not know that gun violence is a symptom of things such as climate change, racism, poverty, and we saw during this pandemic, upticks in gun crime. And people need to eat, people need to support their families, and a Justice Barrett won't be on the side of someone who, be on the side of cases, when we're talking about food insecurity, and trying to make sure that people are able to pay their rent. She's not going to be a part of the change, and a part of the change we need, especially right now during this pandemic, to be a part of the solution, to making sure that people don't need

to resort to things like gun crime to be able to support their families.

S

Sean Lev 21:18

Kelly, I think Stephan makes an excellent point. You know, at Democracy Forward, we're all about government accountability, right. And then actually, the record of the Supreme Court in cases of the last few years, there's actually been some bright spots in that regard. Right, I mean, the DACA case last year, where the chief justice and other justices including the late Justice Ginsburg, ruled that, you know, the government hadn't gone about it the right way to change the policy. So they couldn't do so yet. On the census case, from the prior year with, you know, the government had or had a rash now, that was essentially pretextual, in the chief justice, again, joined by by mostly Democratic appointed justices, didn't allow them, to do that to tackle the citizenship question case. And there are other cases like that, where, you know, there have been cases, especially where the Chief Justice has been unwilling to defer to what this administration has done, when it hasn't done things in ways that are legally correct and adhere to standards of what's called "reasoned decision making" or are they acting arbitrary and capriciously? And one question I have, and I don't know enough from her, she hasn't done a lot of administrative law cases or cases where you're trying to hold the executive branch accountable. But that, you know, in the Affordable Care Act context and all those things, that's going to be a real question. Are, you know, is the government, in good faith, trying to implement the law that Congress passed? And are they doing it in a rational and reasoned way, that's trying to help people in the way that the statute was intended to? And I think that's an open question, but I think it's an important question that, as you said, cut cuts across a lot of issues that touch on on on your core concern about gun violence.



JJ Janflone 22:58

This question is more directed towards Jon and Kris, but I think is really open to everyone, which is that, something that Jon mentioned, which is you know, in recent years, SCOTUS has denied review of gun cases, only one was considered. And I hate to ask people to forecast but, you know, what does the future possibly hold with Judge Barrett on the court, or possibly even with another justice? You know, where do we see the court moving forward in terms of dealing with gun violence prevention cases or sort of, "gun rights" cases?

K

Kris Brown 23:32

Well, you know, the NRA spent somewhere between 50 and 100 million dollars getting

Donald Trump elected in 2016. And it, the reason I say that is because there's a lot of dark money interests that funnel through various sectors, including the NRA. So there are different reports, the minimum is 50 million that was spent. So that would make them the largest nonprofit interest contributor to Donald Trump's campaign. And did they contribute that money for him to be elected to the White House? Well, certainly, there's some limited logic in what they do, I suppose. But beyond that, they knew that he had a role in appointing individuals to the Supreme Court and that was very important to them. And boy, did they get their money's worth, all along the way. I mean, Donald Trump ultimately will have had, with Amy Coney Barrett, a huge role in shaping the court for a long time to come. And it's a radical view of the 2A that comes along with it. So behind the scenes, what's been happening since Heller is again, and again, and again a court with the composition that it had, with Ruth Bader Ginsburg until recently on the court, where there were not enough votes to grant certiorari, so to approve a petition for the court to review a decision from the lower court, around any of the issues that were percolating in the lower courts. It's not, as Jon will expound on in a few minutes, that cases weren't being brought forward. Certainly they were, it's just that the court did not grant cert on those, and that takes four votes. With Amy Coney Barrett on the court, it is very likely, that's not just me, you can read any article that's been written on this, that there are four votes to grant cert. And that means that a number of very, very troubling cases that are percolating in the lower courts, that could potentially undermine basic, basic things, that are public safety imperatives. I say that on behalf of Brady, because that includes elements of the Brady background check system. It includes assault weapons ban, it includes concealed carry permits, it includes open carry of guns, basically, the whole web of public safety laws that we have been able to pass in state, after state, after state even when Congress has not acted. Certainly -- absolutely 100% -- those are at risk. The only question is not if, it's just when. And so that's why we're following this very closely. Jon could probably talk in a little bit more detail about what that looks like in the picture, and details of our concerns.



Jon Lowy 26:22

Yeah, sure. And Kris, you laid it out, you know, the Heller decision, which was the landmark decision that put gun laws at risk of Second Amendment challenge, was the first case to hold that the Second Amendment protects a constitutional right to arms, outside of the well regulated militia reference in Second Amendment. But all Heller did was strike down a broad ban that the District of Columbia had preventing people from having guns in the home. And then two years later, Supreme Court held in McDonald that that applied to the States, again, that just involved a broad ban of guns in the home, there are very few gun laws like that around the country. So it didn't have that broad effect on gun laws. So the court has not considered any of these other issues, whether there's a right to carry guns in

public spaces, whether these, you know, armed intimidating groups that we're seeing in that, you know, basically took over the Capitol and Michigan and, and we're now hearing about them and polling places and at Black Lives Matter Protests. Do they have a constitutional right to carry their assault weapons, basically, wherever they want, so that nobody can stop them? That argument is going to be made. And supreme court may decide -- yes, they have a constitutional right -- nobody can stop them, until they maybe brandish their gun and aim it at someone else. Which, by the way, is too late to do anything to stop them. And of course, if they're there to intimidate protesters and voters and others, it's too late. If you just let them do that, and Supreme Court could well again decide that. It could decide that there's a constitutional right to military-style assault weapons, and strike down laws in California and many other states that prohibit them. And there are many other laws that are at risk. And you know, what the appointment of Barrett does, is it moves the center of the court extremely far right. And we were already at a position where, you know, with Ruth Bader Ginsburg, if you wanted to win a case from our side, you needed to get most likely Chief Justice Roberts, to join. He is a very conservative justice, but he was the, he was viewed as the likely swing vote. Now, if Barrett joins the court, you need, not only do you need Chief Justice Roberts, but then you need either Thomas or one of the three Trump appointees and/or Alito, and that sort of makes it, you know, moves everything to the right, makes it much more difficult. So, you know, there's a great risk that gun laws will be struck down. I'm not gonna say all doom and gloom. I'm not saying it's a certainty, but there is certainly a great risk. And

K

Kelly Sampson 29:22

Just for listeners, who if you aren't familiar, I know we talked about it a lot in the podcast. But just in case, if you're not familiar with Heller, that's the case where the court said that the Second Amendment protects an individual right to keep a handgun in the home for self defense. And so all of the cases that Kris and Jon and Sean have talked about with these other measures, they're open questions right now. And one other thing is Kris mentioned, dark money and if you go to our Facebook page, there's a whole panel on that, that Kris took part in, where you can learn more about dark money and how it relates to all sorts of issues including gun violence. And so I want to, kind of, continue talking down the track of the real world implications of having a possible Justice Barrett on the court, and turn to Stephan. Obviously, everyone can chime in on this. But Stephan, I want to turn to you in particular about voting access and voting rights, because Team Enough, part of the Voting Access Saves Lives campaign. And we've talked a lot at Brady about how voting rights connects, ultimately to saving people's lives because it gives Americans the right to get the gun violence prevention measures that we all want. And so there's been a lot of concern about Barrett's comments on Shelby County v. Holder and voting rights in general. And so I'm wondering if you're at all concerned about voting rights, in a

possible Justice Barrett on the court going into the election?



Stephan Abrams 30:44

Yeah, I mean, with that case, states already now don't have to preclear new voting laws, and especially in places like Florida, that is extremely damaging. I mean, the sad reality is a lot of these, there's going to be a lot of GVP candidates that don't get elected, because of this case. And for us to elect a GVP majority in the Senate and the house, is so hard for us, and we have to go the extra mile because of voter suppression. There are so many disenfranchised voters out there, who would typically vote our way as well, because the majority of American people are on the side of that we need to do something about the epidemic of gun violence in our country. However, the anti GVP minority has done a really good job to suppress voter turnout. And I think the perfect example of it is, I think of it as like, two kids in school. It's one kid who never studies and always gets A's, and the other kid who has to study really hard and get extra help, just to get the same grade. And I think this election, despite our circumstances, we've done a really good job on getting people excited about this election and getting people ready to vote for gun violence prevention candidates. However, there's a lot of things that we still can't do without being able to get through to the courts and being able to pass new voting reform. And there's especially, it's especially affecting Black and Brown communities right now. And it's, we're not going to see the change, we want to see unless we're able to either find a way that the Supreme Court will cooperate with us, or in a reality where this nomination did not go through, and we're able to find a way to get Biden to nominate someone to the Supreme Court. But I don't want a forecast. I mean, things still, and it's not looking very likely. But I think it's important to realize that the young people want voting reform and they want things such as term limits. And even there's been a lot of discussions on court expansion, and I think a lot of those things are very possible, in the next few years, because of the court obstructionism by the anti-GVP minority.



JJ Janflone 32:33

You know, what does and I want to open this up to all of you, you know, what would another conservative member of SCOTUS actually mean? You know, could there actually be positives? Like let's not be doom and gloom about this for GVP purposes? Say a court that's receptive to the position that Brady has had, that others have had on on say things like PLCAA, or the CDA, or is just a conservative Supreme Court period, just inherently dangerous to gun violence prevention work? So I know that might be a bit of an unfair question.

J

Jon Lowy 33:02

Let me jump in. Things may not be as bad as we're saying, and in fact, I think they probably won't be as bad as we feel right now. You know, concretely, I mean, you mentioned PLCAA/CDA. What that means is, those are two laws that have prevented some gun violence victims from seeking justice in the courts, against gun companies or online websites that facilitate illegal gun sales. And we at Brady have argued, one of our arguments has been, that those laws violate principles of federalism, they deprive states of their authority. And one court in Pennsylvania recently, one of our cases held that PLCAA, the federal gun industry protection law is unconstitutional, as a violation of the 10th Amendment's principles of federalism. And those sorts of arguments should be appealing to conservative justices. So if Amy Barrett and others are principled, and not just driven by what end result they want, they would decide in our favor, and they would hold that this federal gun industry protection laws unconstitutional. They would find that the Communications Decency Act is a lot, does not protect companies like Armslist.com from facilitating gun sales, and they can be held liable in court. So those are potential positive aspects. And also even Barrett, I mean, we've certainly cast the worst case scenario, but justices can change when they're on the court. And that's not just Barrett, but it's it's Alito, as well, potentially, and perhaps others. And Barrett said that if there's a showing of that, then a gun law has a public safety impact, it's constitutional, essentially. She didn't follow that in the case before her but, you know, maybe she would follow it for other laws. Justice Alito has a law enforcement background as a prosecutor, he should be attracted to gun violence prevention measures that are important to law enforcement. So I'm not predicting that. But there's, you know, it certainly may be that the results are more positive, and there may be court expansion, in which case there may be a new president that's able to nominate more justices.

S

Sean Lev 35:22

If we take her at her word, and I think we should, you know, speaking only for myself, it seems to me, as a litigator, it puts a high bar on having a very good factual record, what the real world effect of a law is. Now, if communities are passing laws to try to put some limit on gun violence in their in their communities, they're trying to reverse trends, and they have very good evidence that these rules are ones that are necessary, the stronger the record, she you know, she should be respectful of that, given what she said, in her opinion, in the Seventh Circuit. So I do think, and it's always the case that you want to have as strong a record as possible, all the litigators on the call will agree with that. But it does seem like she is someone who, at least from this opinion, would would look carefully at what the evidence is, and may, you know, if you have a record before, you know, hopefully before the legislature, as well as before the courts as to the need for a particular rule, then that's that seems like something she would be more likely to defer to.



Kris Brown 36:30

JJ I'll just add, I agree with, obviously, with what both Jon and Sean have said here, and there's no question that that means there are glimmers of hope here, that we may be able to prognosticate. We'll see if we're right or wrong and we'll certainly move forward with a strategy that helps determine that, because we're not giving up on these cases, and we'll continue to find them. And Jon and his team are making an art form of that, and, and changing law all along the way, and in very important ways. The one thing I'll say, though, is I'll just take my advocate hat and put it on fully here, and my lawyer hat completely aside. There's something really wrong with the idea that we have to hope for the best, and we have to hope that the record of facts, in this particular case, and always remember, we are talking about particular cases that make law for the rest of the country. As Sean already said, these are really complex cases. But ultimately, they boil down to a plaintiff and a defendant of some kind, right? We have an epidemic of gun violence in this country, we lose 40,000 people a year --dead. We have nearly 80,000 more who are injured, there is no other industrialized country on planet earth that suffers this kind of violence, and yet does nothing. The hardest part of that whole thing is, you also can't find an issue in which more Americans are united on the solutions. So the idea that nine individuals, or in this case one, who would tip the balance to review decisions that people, individual Americans are saying, I'm electing you on the basis that you enact these things, to me, as a person, as an American, as a mother, who pre COVID sent her kids to school every day, and the thing I worry about is not 'are they wearing the right clothes or the right sweater,' but 'will they be shot?' Well, there's something deeply troubling about that. And so, I hope that when we consider all of the particularities, the general issue here, equally holds true, which is we want people who deeply believe, at heart, that the role of the court is also to do right in America. And you can apply the law to any set of facts and conclude with an outcome that does right by America, or does horribly wrong. Look at the entire history of the Supreme Court, with decisions that are on both sides of the ledger ex post, and you will find many. I'd rather have someone on the court we're confident we'll do the right thing. RBG was one of those people. Amy Coney Barrett is not, so that's my concern



Stephan Abrams 39:23

And coming from a youth perspective. It's really hard to be optimistic about this when, especially in a year where it feels like everything has gone wrong, and there's no reason why we should trust that anyone will be impartial, actually be on the right side of history when it comes to things like gun violence. Team Enough has numerous programs, across the country, where we're advocating for gun violence prevention legislation, and we've been successful in a lot of these states. But however, it's still really hard even in a state like California. Our, the last bill we passed, only got passed by a couple of votes. And I've

testified on things such as ERPO to safe storage, and the most interesting thing, by the opposition, that I've seen, is that a lot of the times, they know they're going to lose the vote, they know that we have a gun violence prevention majority and that it's going to pass. But they go up and they say, "you know what, I'll see you in court." And if you don't want to see us in court, you guys should vote no, and that's their strongest argument. And I thought that was really bizarre. And the first time I heard that actually started laughing in the middle of a city council hearing, and it's just shocking that the NRA is so powerful that they are basically spending their money wisely, they've really figured out how to abuse the court system. And I think the most important thing about this is that this nomination is a investment return, by that array, from Trump, just as Kris said earlier. They got Trump elected for a reason, because they know that he would appoint people like Barrett to the Supreme Court. And our, the whole point of like, my main argument for young people to get out and vote, it used to be "you have to vote for RBG." And I think it's really sad that she's not with us anymore, and that we can make that argument because we already have, we potentially are having a new supreme court justice. So I think it's important that we also need to focus on what can we do? What can we do to make sure that we are, no matter if it's moral anymore, it doesn't even matter, that the ethical book has been thrown out a long time ago, when Trump was elected. And if we're not looking at how we can change our system to make sure that is more fair and equitable, and we're actually doing things about certain issues, there's definitely, we have to realize there's a problem there. And because I think a lot of people don't vote also, because they think, 'oh, DC doesn't do anything, the DC elite never get anything done.' It's because we can't, it's because we're always running in circles. So I think it's really important that we look at this as kind of being pessimistic, it's important that we realize that we are in a really big fight. And this is, could potentially just be the beginning.

K

Kelly Sampson 41:59

Thank you all for just really, kind of, putting the context together. I think it's really important. So what happens next? And this kind of goes to your point, Stephan, about what can we be doing right now in this fight? And what should people do if they're concerned about this confirmation? Where can they get more information? And what can people do if they want to get engaged, they want to take proactive steps to get the sort of, court, but more importantly, the sort of, country that they want to see?

J

Jon Lowy 42:27

main things are, don't give up and keep fighting and stay engaged. You know, I mean, Stephan, I agree that things look dark. But I'll tell you, I've been at Brady for considerably longer than you've been alive. There's a lot of down, a lot of ebbs and flows, and I will tell

you that the American people have never been a more engaged part of gun violence prevention, ever. I know Brady, as an organization. has never been stronger, and had more momentum, than we are at this moment. We've never had politicians as outspoken and enthused to enact the right sort of policies ever in American history. From presidential candidates on down, the NRA has never been weaker, I don't think, ever. And the whole movement of gun violence prevention has never been stronger and as well-funded. So you know, as bad as some things look, that's not going away, in fact, that's only getting better for us. In fact, the electorate is moving our direction on these issues. So, you know, I there's reason for optimism, and specifically to get engaged. I would also say go to our, our website, and, you know, certainly find all the information there to get engaged in any aspect of our work in across Congress, courts and communities.

K

Kris Brown 43:55

Obviously agree with everything that Jon said, and you can find a treasure trove of information about various aspects of this discussion. Podcasts "Red, Blue, and Brady" where we've gone deeper into many of these areas, even bordering potentially on esoterica, unless you want to be educated deeply on things, as I do, then it's not called esoterica. But the way that we, I think, I have tried to go out of our way to bring other subject matter experts on to these kinds of events and podcasts, like Sean really help provide real context and real-world words to understand what's really at stake here. And I guess the only parting thing I would say is oftentimes we leave the judiciary, right, if we think about the executive, the legislative and the judiciary into this heady space where 'well that just happens and what impact does it have.' And I hope that what all of this has brought home and certainly this confirmation process is, well, it's a huge impact. It shapes our nation. And either forward progress, nothing that happened in Roosevelt or Johnson's time, as executives in their functions in the White House, would have gone anywhere I had not the Supreme Court advanced that in material ways, through various cases that actually tried to rip that apart, and set that back, and our nation is what it is today imperfect as it is, because we had members of the court who cared about that there is a litany of cases that go the other way as well, Dred Scott and many others being examples of that. Who's on the court and who's on our courts, the federal and state judiciaries, those who are elected and those who are nominated, usually, because elections matter and other people get to decide, is key. Never don't think that that's part of your decision making, because it will impact you. In fact, this nomination, in material ways, may well impact all of us in really material ways for time to come. Understand that there are groups like Brady out there fighting every day, around these, many others that are active on this, do your diligence, support those groups and get informed and talk to your friends and neighbors about this. This matters just as much as your local elections does, to how you live life, and the quality of your life in America.



Stephan Abrams 46:31

Yeah, I mean, Jon, I really appreciate what you said earlier, I think, no matter what happens, we're going to fight and especially the young people are ready to continue to persevere. We have, our generation is going to be known, as we said before on this call, for our resiliency, that we've been through a lot. It's a lot more than other generations. And we also understand, I think we also have more empathy when it comes to issues like gun violence, and wanting to tackle them head on, this is not the end. This is just the beginning of our generation, being able to have a, have a seat at the table when it comes to these issues. And I'm just really excited to see what happens after this election. Because I know that especially young people, we do not care who we work with, we want to pass gun violence prevention legislation, because we believe that everyone should agree, no matter your political affiliation so.



JJ Janflone 47:23

I want to, I want to thank all of our panelists, I want to plug: go to DemocracyForward.org, go to TeamEnough.org, go to Bradyunited.org learn more, interact more. As always in the description, when this becomes posted as a podcast episode, there will be links to all these organizations. So you don't even need to Google you just have to click the link that I will provide for you. But I, I want to thank our panelists so much for coming on. And I really want to thank our listeners who continue to show up for these events. I know a lot of people at this point I think are probably getting news fatigue or information fatigue. But by showing up, you're continuing to fight for other individuals who aren't able to fight for themselves. So I want to thank our panelists for being here and all of our listeners for being present.



All 48:02

Thank you.



JJ Janflone 48:06

Hey, want to share with the podcast? Listeners can 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! And you know what else is fun chocolate? Come join me in eating your 2020 feelings by shopping HU's Kitchen which is chocolate free of dairy, gluten, refined sugar, palm oil and cane sugar. My personal favorites are called the dark gems. It's a bag bursting with 70% dark chocolate. They're paleo friendly. They're great snacks. Click on the link in the description of our episode to

help support the show and to buy yourself 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.