

# Brady act and constitutional law

Law



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How guns and firearms are sold and owned in the United States of America has changed as both firearms and the outlook of the general public about gun ownership by private individuals developed and changed over time. From the very first time firearms were introduced to the public to the use of firearms for a variety of reasons other than as a weapon to kill or maim another human being intentionally, laws and regulations state-wide as well as national has been put into action so that the problems arising from poor gun control can be addressed.

There are several laws in effect in the United States today which directly affect the selling and ownership of guns. One of these laws is the Brady Handgun Control Act, a law which was campaigned for and was inspired by the vision and dedication of Ms. Sarah Brady, wife of the deceased James Brady. Sarah Brady campaigned for the creation of law that would make gun sale and purchase a process that erases the chances that guns fall into the wrong hands. Sarah lost her husband after James was killed during an assassination attempt against former US president Ronald Reagan.

The Brady Act was passed, but it has many critics coming from different sides. Some praise the initiative especially those who believe that one of the serious issues that law makers and law enforcement units should address is firearms and violence. " The Brady Act was passed in response to what Congress describes as an ' epidemic of gun violence... ' Whether or not the evaluation reflected in the enactment of the Brady Act is correct as to the extent of the danger and the efficacy of the legislation, the congressional decision surely warrants more respect that it is accorded in today's unprecedented decision (Kommers, Finn, Jacobsohn, 2004, p.

270). " The constitutional law implications of the Brady Act – The enactment into law of the Brady Handgun Control Act (previously the Brady Handgun Control Bill) created many after effects. The immediate constitutional implication of the Brady Act is the changing of what can be considered as the legal process of owning a gun. Prior to the Brady Act, there are no laws that require the screening of individuals who want to purchase a firearm.

But because of the Brady Act, suppliers, dealers and sellers of firearms who are identified by the Brady Act as required by the law to undergo customer screening is now constrained to do so, lest they are subjected to the penalties that go with the violation of the Brady Act. Another noticeable effect of the Brady Act in the constitutional law is the idea of enforcing state laws into the federal system, which some believed as a breach of the sovereignty of the states and a direct violation of the tenth amendment.

The tenth amendment basically guarantees the sovereignty of the states from the perceived blanket and federal rule of rules and laws which are being imposed nationwide. When the Brady Bill was passed and made the Brady Act, local state governments and courts were torn on whether or not the country is guilty of usurping state powers when they introduced the Brady Act and the features of this particular law.

According to the book made by National Research Council titled " Containing the Threat from Illegal Bombings: An Integrated National Strategy for Marking, Tagging, Rendering Inert, and Licensing Explosives and Their Precursors," not all of the states proved to be receptive to the idea of the federal government, and there are some who felt that there are existing problems found in the imposition of the Brady Act in all of the states.

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“ Shortly after the act's passage, local law enforcement officials from around the country filed lawsuits seeking to enjoin its enforcement and to have its interim provisions declared unconstitutional under the Tenth Amendment (National Research Council, 1998, p. 290). ” The response of the different courts that heard out this cry over undue pressure from the federal government was varied. This is because the interpretation and tolerance towards the use and imposition of the Brady Act in every state is also different.

Some states think that the features of the Brady Act are ok. “ The Ninth Circuit Court of Appeals in *Mack v. United States* upheld the constitutionality of the interim provisions, finding in the Brady Act, nothing unusually jarring to our system of federalism (National Research Council, 1998, p. 290). ” But while there are courts who ruled in favor of the Brady Act and its imposition in the state, there were also instances wherein the court ruled in favor of the state government and its rights, “ some courts, like the Fifth Circuit Court of Appeals in *Koog v.*

*United States*, found the interim provisions unconstitutional, explaining that the interim duties effectively commandeer the legislative processes of the States, and in violation of the Tenth Amendment, cross the line from permissible encouragement of a state regulatory response into that constitutionally forbidden territory of coercion of the sovereign States (National Research Council, 1998, p. 290). ” Besides the friction that the Brady Act made with regards to the relationship of the government of the sovereign states and the federal government, the law also appears to have a significant role in how the law makers would create other laws.

The Brady Act acts as precedent for the creation of other laws against other things closely related to firearms, starting with the regulation of explosive products. Facing an age where terrorism is largely defined by the use of bombs and by the presence of chemicals being used for bomb-making, law makers may rethink their position in pending laws that will affect bomb and explosives regulation. " The fate of the Brad Act has obvious implications for any regulations that Congress may devise to control ammonium nitrate or other explosive products (National Research Council, 1998, p. 290).

" There are other effects on law and constitution caused by the Brady Act. For example, the Brady Act provided the plug to close several holes in some existing laws in gun control, like the Federal Gun Control Act of 1968 and acted as a law that supported other judicial efforts to combat violence originating from firearms, like the Federal Violent Crime Control and Law Enforcement Act of 1994. The Brady Act as a law went head on against some of the existing state laws on firearms purchase and selling, and because it was a redundancy, some states did not see fit to use or implement it.

But this does not seem to matter because, according to Siegel, the Brady Act was considered by some as ineffective in achieving what it was designed for.

" When Jen Ludwig and Philip Cook compared two sets of states - thirty-two that installed the Brady Law in 1994 and eighteen states plus the District of Columbia, which already had similar types of laws prior to 1994 - they found that there was no evidence that implementing the Brady Law contributed to a reduction in homicide (Siegel, 2005, pg 49).

" Conclusion - It is easily imaginable how the proponents of the Brady Act only had in mind the undertaking of a noble cause to protect the public. But

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as it turned out, the Brady Bill did not only become a source of confusion and debate concerning constitutional rights of the state government which cannot be breached by federal government, it also proved as a blunt knife when it comes to the effort in cutting down irresponsible firearms sell that leads to violence.

Proponents of the Brady Act were hoping that the rest of the country would embrace it and that the efforts will be validated by its efficacy. But at some point they were wrong because of many things. First, there are already similar laws installed in some states that the Brady Law is just an unnecessary cause of confusion for them. Second, the resulting effort to make the Brady Act a nationwide and blanket law was met with criticisms over the supposed encroachment of federal government illegally on constitutionally protected state government rights.

If the Brady Act proves that it can provide a very sound framework from which new rules will be made from (i. e. the law on the restriction of explosives), then the Brady Act will indirectly make a positive contribution towards efforts which are geared in getting the same results similar to the outcome that the Brady Bill was hoping to achieve. References Kommers, Donald P. , Finn, John E. and Jacobsohn, Gary J.

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