



Judge Amy Coney Barrett, The Second Amendment, and the Supreme Court

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In his nominations of Justice Neil Gorsuch and Justice Brett Kavanaugh to the U.S. Supreme Court, President Donald Trump selected nominees with a dangerously expansive view of the Second Amendment. Announcing his expanded short list for future nominees earlier this month, he highlighted the Second Amendment twice while describing his selection criteria. And with his choice of Judge Amy Coney Barrett, the president has once again nominated for the country's highest court a judge with views on gun rights far outside the judicial mainstream, making a selection who, if confirmed, would likely vote in ways that could put many gun laws at risk.

Kanter v. Barr

In 2019, Judge Barrett wrote [a dissenting opinion](#) in *Kanter v. Barr*, a case in which an individual convicted of felony mail fraud, who had stolen hundreds of thousand of taxpayer dollars and had been sentenced to more than a year in prison, argued that it was unconstitutional to apply to him the federal and state laws prohibiting people convicted of felonies from possessing firearms. The two Republican-appointed judges in the majority rejected his Second Amendment challenge, noting that “Kanter was convicted of a serious federal felony” and “that the felon dispossession statutes are substantially related to the important government objective of keeping firearms away from those convicted of serious crimes.”

Disagreeing with her Reagan-appointed colleagues, and taking an approach that no federal court of appeals has adopted, **Judge Barrett determined in her dissent that barring non-violent felons — even serious felons like Kanter — from possessing guns violates the Second Amendment. In reaching this conclusion, she adopted a dangerous and largely historical Second Amendment analysis, focusing on what she found to be the absence of analogous laws during the Founding Era. Judge Barrett even went so far as to say that prohibiting a serious felon like Kanter from possessing firearms would be “treat[ing] the Second Amendment as a ‘second-class right’” — echoing language regularly invoked by both the gun lobby and the Supreme Court’s most extreme Second Amendment Justices.**

Judge Barrett also went out of her way to weigh in on a 14th Century English law, the Statute of Northampton, which has played a central role in litigation challenging restrictions on the carrying of firearms in public. Judge Barrett characterized the English law as limited to “those who carried arms with intent ‘to terrorize their neighbors,’” a characterization that gun-lobby extremists have relied on in support of their argument that essentially all regulation on the public carry of guns violates the Second Amendment. Judge Barrett’s adoption of that characterization in her dissent suggests that she may share this same dangerous view.

Just over two months after *Kanter* was decided, Judge Barrett discussed her dissent and her reasoning in an [interview](#) at a private conservative college in Michigan. In that discussion, she emphasized the importance of founding-era history to her Second Amendment analysis and described herself as an originalist. Prominent conservative commentators likewise [reacted](#) to the *Kanter* dissent as showing that Judge Barrett is a “champion of originalism” and [noted](#) her “masterful application of the constitutional

methodology of originalism." An originalist approach to the Second Amendment, like that already endorsed by Justice Kavanaugh and other conservative, Trump-appointed judges, could put new gun laws in particular — like red flag laws and background checks on all gun sales — at risk.

Second Amendment Issues at Stake in Upcoming Supreme Court Terms

Facing a gun safety movement achieving historic wins from the ballot box to state houses to city councils, the gun lobby has increasingly turned to the courts in its efforts to undo life-saving gun laws. These efforts have overwhelmingly failed: Federal appeals courts have upheld almost every gun law challenged since the Supreme Court's landmark ruling in *District of Columbia v. Heller*. When the Supreme Court ruled in its first major gun case in almost a decade earlier this year, it denied the NRA a ruling on the merits. Weeks later, the Court announced it would not hear any of the other gun cases in which opponents of gun laws had petitioned for high court review.

With Justice Ruth Bader Ginsburg's seat on the court now open, the NRA and its allies see a chance to stack the court with a pivotal additional vote against gun safety laws. Among the first issues that could come before the Supreme Court in upcoming terms are **laws regulating the carrying of guns in public, prohibitions on assault weapons and large-capacity magazines, laws restricting the purchase and possession of guns by young people, and laws prohibiting possession by domestic abusers and others with dangerous histories**. A new Supreme Court majority could also conceivably change **the standard of review** in Second Amendment cases, a development that could put nearly every gun law at risk.

An Everytown memo detailing each of these issues is available [here](#).