



October 16, 2020

The Honorable Lindsey Graham
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein,

On behalf of Everytown for Gun Safety, America's largest gun violence prevention organization, I write to express our strong opposition to the nomination of Judge Amy Coney Barrett to serve as an Associate Justice on the Supreme Court of the United States.

Judge Barrett's record demonstrates an extreme and dangerous view of the Second Amendment, which is inconsistent with both the judicial mainstream and the historical scope of the right. Judge Barrett's confirmation to the Supreme Court could have catastrophic consequences for public safety and the ability of the federal, state, and local governments to enact common sense, evidence-based laws to address America's horrific gun violence crisis.

The deep concerns we have about Judge Barrett and gun safety stem largely from a dissenting opinion she authored last year in a case called *Kanter v. Barr*. In *Kanter*, an individual convicted of felony mail fraud, who had stolen hundreds of thousands of taxpayer dollars, been sentenced to more than a year in prison, and ordered to pay a \$50,000 criminal penalty (and had to repay the federal government more than \$27 million in a related civil settlement), 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 this Second Amendment challenge, noting that "Kanter was convicted of a serious federal felony for conduct broadly understood to be criminal" and finding—based, in part, on supporting empirical studies and statistical evidence—"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 conservative colleagues, and taking an approach that no federal court of appeals has adopted, Judge Barrett determined that barring non-violent felons—even those convicted of serious felonies like *Kanter*—from possessing guns violates the Second Amendment. This runs contrary to the Supreme Court's admonition in *District of Columbia v. Heller* that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." In reaching the conclusion, Judge Barrett adopted a dangerous and largely historical Second Amendment analysis, focusing on what she found to be the absence of analogous laws during the Founding period. Notably, she dismissed the studies and statistics relied on by the majority—which showed that "prohibiting even nonviolent felons like *Kanter* from possessing firearms is substantially related to [the government's]

interest in preventing gun violence”—as “entirely unhelpful.” And, by demanding an overly individualized analysis of Kanter’s Second Amendment claim, she also discounted the important role that democratically-elected legislatures properly have in enacting common sense gun safety laws to address the modern gun violence public health crisis.

Indeed, Judge Barrett said that prohibiting a person convicted of a serious felony 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 judges and justices with the most extreme Second Amendment views.

Judge Barrett’s history-focused approach to the Second Amendment is akin to that advocated for by Justice Brett Kavanaugh and other opponents of strong gun safety laws. It takes no account of public safety, the devastation of gun violence on our communities, or the efficacy of gun laws, and it is contrary to the decisions of every federal court of appeals to consider the issue. If this approach prevails at the Supreme Court, it could call into question a wide range of important, evidence-based, and overwhelmingly popular gun safety measures, including bedrock laws like background checks on all gun sales, red flag laws, concealed carry licensing, and even measures to disarm domestic abusers.

Judge Barrett’s views on the Second Amendment would strip the American people of the power to legislate to protect themselves from gun violence. An America with Judge Barrett on the Supreme Court would be a much more dangerous place. We strongly oppose and urge the Committee to reject this nomination to the Supreme Court.

Respectfully submitted,

John Feinblatt
President, Everytown for Gun Safety Action Fund