

October 22, 2020

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Chuck Schumer
Democratic Leader
U.S. Senate
Washington, DC 20510

Dear Leader McConnell and Leader Schumer:

Giffords urges you to reject the nomination of Judge Amy Coney Barrett to serve as an Associate Justice on the United States Supreme Court. Judge Barrett's extreme and dangerous views on gun policy and the Second Amendment compel us to warn this committee about the existential threat to long standing gun laws that Judge Barrett's nomination poses.

Judge Barrett's nomination is the latest in a substantial shift toward judicial extremism during the Trump administration, and nowhere is that extremism more evident than on the issue of gun safety and the Second Amendment. Judge Barrett's views place her dangerously outside of the mainstream, and if she is confirmed to the Supreme Court, it would sign over our future to far-right, NRA-approved interpretations of the Second Amendment.

In the one Second Amendment case she has presided over since joining the U.S. Court of Appeals for the Seventh Circuit, Judge Barrett took the position that it is unconstitutional to prohibit all people from possessing guns after a felony conviction.¹ No federal appeals court has ever agreed with Judge Barrett's view or otherwise limited the government's ability to restrict gun possession after conviction of a crime serious enough to be classified as a felony. Her vote to strike down even this law, which is widely accepted as constitutional in all applications, makes Judge Barrett highly likely to strike down other gun safety laws on the books—no matter how many previous judges and courts have upheld them.

Judge Barrett's position is particularly radical because it conflicts with the Supreme Court's explicit recognition in *District of Columbia v. Heller* that it is constitutional for the government to prohibit gun possession by people convicted of felonies.² The Heller decision was authored by the late originalist Justice Antonin Scalia and joined by Chief Justice Roberts, as well as Justices Kennedy, Thomas, and Alito. Judge Barrett's opinion, in addition to going far beyond the position endorsed by Scalia and current conservative members of the Court, is also much more extreme than decisions issued by dozens of judges appointed by past Republican presidents. Giffords Law Center's research shows that over 110 district and circuit court judges appointed by Republican presidents have upheld the bedrock federal law³ that Judge Barrett would invalidate on a case-by-case basis.

¹ See *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting)

² See *District of Columbia v. Heller*, 554 U.S. 570 (2008)

³ 18 U.S. Code § 922(g)(1)

Judge Barrett reached this anomalous result by classifying gun possession by people convicted of felonies as a “core” right protected by the Second Amendment,⁴ contrasting the Second Amendment with voting rights and other rights she believes are subject to more limits after a criminal conviction.⁵ Judge Barrett then claimed that the laws restricting gun possession after serious criminal convictions pose a “severe burden” on the ability of those convicted of crimes to use firearms for self-defense.⁶ Judge Barrett’s unlimited view of self-defense rights as superseding public safety, and privileged over other rights, is straight from the NRA’s playbook. Her opinion gives judicial endorsement to gun lobby efforts to pad their profits by completely eliminating the laws that ensure firearm rights are exercised responsibly and by law-abiding people.

Gun lobby challenges to gun safety laws are appearing in federal courts with increasing frequency. Recently, the Ninth Circuit heard oral argument in *Rupp v. Becerra*, an NRA-backed challenge to California’s decades-old law prohibiting the possession of military-style assault rifles. The challengers presented a [series of extreme arguments](#), including dismissing states’ interest in addressing the scourge of public mass shootings, falsely claiming such shootings are “anomalous events,” and maintaining that Supreme Court precedent doesn’t allow courts to even *consider* “the criminal misuse” of firearms when restricting what guns “law-abiding citizens” may possess. Judge Barrett has [previously expressed alignment](#) with similar ideology on the Second Amendment and other extreme positions taken by appointees of Donald Trump. Over the summer, the Supreme Court ruled on its first Second Amendment case in a decade, *New York State Rifle & Pistol Association v. City of New York*, declaring the case moot. However, at least four justices expressed an interest and desire to take on more cases examining state laws related to the Second Amendment, such as *Rupp v. Becerra*. If Judge Barrett joins their ranks on the Supreme Court, the possibility of commonsense, life-saving gun safety laws being overturned increases significantly.

Despite ample opportunities to clarify the troubling views expressed in her *Kanter* dissent during last week’s hearing in your committee, Judge Barrett instead doubled down on a willingness to disregard established precedent and potentially strike down gun safety laws. Judge Barrett’s presence on the Supreme Court should put all Americans who care about gun safety on high alert. At a time when our nation’s gun violence crisis has intensified,⁷ we must do all we can to protect every single gun safety measure we depend on to keep our communities safe, starting with rejecting the dangerous ideology of Judge Amy Coney Barrett and rejecting her nomination to serve on the Supreme Court.

Signed,

Adam Skaggs
Chief Counsel & Policy Director

⁴ *Kanter*, 919 F.3d at 465.

⁵ *Id.* at 462-63.

⁶ *Id.* at 465.

⁷ Lopez, German. 2020. “The rise in the murders in the US, explained.” *Vox*, September 28, 2020. <https://www.vox.com/2020/8/3/21334149/murders-crime-shootings-protests-riots-trump-biden>