

***THE CASE AGAINST THE
NOMINATION OF AMY
CONEY BARRETT TO THE
SUPREME COURT OF THE
UNITED STATES***



BRADY
UNITED AGAINST GUN VIOLENCE

INTRODUCTION

Today, President Trump announced Amy Coney Barrett as the nominee to replace Justice Ruth Bader Ginsburg on the Supreme Court. The stakes are extraordinary, and Brady calls on the Senate to delay any hearings or votes for a new Justice until after the Presidential inauguration. Otherwise, American lives and democracy itself could be on the line.

Despite blocking the confirmation of Merrick Garland in 2016, Senate Majority Leader Mitch McConnell has stated unequivocally that he will proceed with the confirmation of President Trump's nominee. This nomination comes just 38 days before the American people go to the polls to determine the next President and the Senate majority — and as of September 24, residents of eight states are already voting. Contrary to the precedent he set in 2016 alongside his Republican majority, Senator McConnell has decided to fill this Supreme Court with all haste. Meanwhile, for the duration of the 116th Congress, Leader McConnell has refused to allow mere debate on hundreds of bills passed by duly elected members of the House, including [H.R. 8 to expand Brady Background Checks](#), a policy supported by over [90% of Americans](#) and yet remains languishing on his desk for nearly two years.

The next Justice may well decide Americans' most fundamental rights, including the right to enact strong gun laws to protect their communities, laws to preserve and expand healthcare access, and laws to advance racial and social justice. In a few short weeks, it should be the American people that decide who will nominate Justice Ruth Bader Ginsburg's replacement. In fact, the "McConnell Rule," which requires a moratorium on Supreme Court nominations considered by the Senate in an election year, demands it. A [solid majority](#) of Americans [want](#) the winner of the November election to nominate the next Justice. As Senator McConnell [stated](#) in 2016, "the nomination should be made by the president the people elect in the election that's underway right now."

The dishonest process facilitating President Trump in filling a third Supreme Court seat is especially troubling because the stakes are so high. According to [a statistical model that analyzes the ideological leanings of the three branches of government](#), "If the Senate were to confirm a Trump nominee, the court would become more conservative than it has been since 1950 — both more conservative than previous courts, and potentially as far away ideologically from the elected branches of government as it has been in a long time." In 2016, Judge Amy Coney Barrett herself noted in discussing reasons to deny President Obama's nominee a vote months before an election, that, by replacing the conservative Justice Scalia with a Democratic appointee, President Obama's nominee would signify a significant ideological shift. This Trump appointment now represents an even greater shift in the ideological makeup of the Court. An increasingly conservative Court poses a tremendous risk to a nation facing urgent issues, including gun violence, which kills tens of thousands each year. The more extreme gun rights members of the Supreme Court [have explicitly stated](#) that they want to consider the Second Amendment's scope and the constitutionality of gun regulations in a near term, making the next nominee likely to rule on such a case.

ABOUT THE NOMINEE

There remains much unknown about Amy Coney Barrett, including whether she will serve to further the will of President Trump and the gun lobby on issues regarding the Second Amendment and gun rights, or whether she will follow longstanding jurisprudence recognizing that strong gun laws are constitutional. However, there is reason for serious concern: when President Trump called a meeting in 2017 to discuss nominees to replace Merrick Garland's nomination, [Wayne LaPierre](#) was invited to sit directly next to the President and approve the choice. The fact that Republican leadership stated that they have the votes to approve the nominee before anyone was named suggests that they have been assured that the nominee will support an extremist gun rights agenda, creating skepticism that the nominee will express open-mindedness in evaluating strong gun laws that Americans have passed to prevent gun violence.

THE HONORABLE AMY CONEY BARRETT

[Amy Coney Barrett](#) is a 48-year-old judge currently serving on the U.S. Court of Appeals for the 7th Circuit. Prior to her 2017 appointment, Barrett had not served in the judiciary. Barrett appears to view the Second Amendment as an expansive, individualized “fundamental right.”¹ She has signaled a willingness to evaluate the constitutionality of firearm laws under the most demanding level of scrutiny,² which would put almost all such laws at risk of being struck down. For example, even though Justice Scalia's opinion in *Heller*, which vastly expanded the Second Amendment right, approved of bans on individuals previously convicted on felony charges from possessing guns as “presumptively lawful,”³ Judge Barrett dissented from a finding in *Kanter v. Barr (Kanter)* that such a ban was constitutional when applied to an individual with a non-violent felony conviction.⁴ This dissent is particularly striking due to the fact that the two Republican-appointed justices in the majority and the overwhelming consensus of federal courts have rejected constitutional challenges to the ban.⁵ Such an openness to narrowly construe the limitations that Justice Scalia's majority opinion placed on the Second Amendment in *District of Columbia v. Heller* may lead to further imperiling firearms laws that have been treated as presumptively lawful since *Heller*.⁶ The American people deserve assurance that Judge Barrett would uphold our longstanding authority to enact, through our representatives, strong laws to protect our communities from gun violence.

Another gun-related opinion raises questions about whether Judge Barrett appreciates the realities of the criminal firearms market and gun violence in America. While the Supreme Court has recognized that prohibited possessors and other bad actors intent on committing violence are likely to seek to evade Brady background checks and obtain guns through illegal “straw purchases,”⁷ Judge Barrett found that it was unreasonable for a lower court to infer that a gun thief should have known that persons interested in buying trafficked guns were likely to be prohibited possessors and/or use guns in criminal acts of violence.⁸ Courts have routinely accepted that such practices *do* subject the initial seller to liability in numerous cases brought by Brady Legal because the intervening actions of both “straw purchasers” in reselling guns and the ultimate shooters in inflicting harm are a foreseeable consequence of the initial sellers' negligent and/or unlawful misconduct simply by virtue of the fact that a clear “straw purchase” occurred.⁹ Judges must understand the real world consequences of their decisions — including the realities of the criminal gun market that causes much of the gun violence in America. Americans must be

assured that Judge Barrett appreciates the realities of firearms trafficking and how it foreseeably contributes to gun violence.

Judge Barrett's interpretation of the Second Amendment appears to be one of the most extreme and expansive conceptions of gun rights. It is also in conflict with the consensus of most American jurisprudence: for example, the majority in *Kanter* noted that "only one federal court of appeals has [agreed with Barrett and] upheld an as-applied Second Amendment challenge to § 922(g)" while multiple courts have refused to consider, or considered but rejected, such challenges.¹⁰

Another cause for concern is what standard of review Judge Barrett will apply to gun laws. The standard of review often determines whether or not a law is upheld. For example, the highest standard, "strict scrutiny," is often called "fatal in fact" — meaning that when it is applied, the law being considered is generally struck down. While the *Kanter* majority, like most courts that have reviewed gun laws since *Heller*, applied a form of intermediate scrutiny to the constitutional challenge to § 922(g),¹¹ Judge Barrett applied something that appears more akin to strict scrutiny.¹² Most judges have recognized that strict scrutiny inappropriately deprives Americans of their longstanding authority to enact, through their representatives, strong gun laws, by allowing judges to second guess and potentially overrule legislative determinations about public safety. Judge Barrett's embrace of strict scrutiny could lead to striking down numerous gun violence prevention policies that are favored by most Americans, including, for example, Extreme Risk Protection Order ("ERPO") laws, assault weapon bans, and the expansion of Brady background checks.

In 2016, Judge Barrett made some comments that appeared to offer some support for denying a hearing or vote on Obama's nomination of Merrick Garland. Judge Barrett saw the potential for a dramatic change in the court as a key factor in justifying the refusal to move forward with the process of confirming Merrick Garland in an election year. She explained that replacing Justice Scalia, who she described as "the staunchest conservative on the court...with someone who could dramatically flip the balance of power of the court," during an election year is, "not a lateral move." The circumstances of the current vacancy on the court will shift that balance even further, yet by accepting this nomination, it seems that her opinion has changed now that her future and that of the Republican party are at stake.

THE LEGAL LANDSCAPE FOR GUN VIOLENCE PREVENTION LAWS

To understand how Trump’s appointee could threaten gun violence prevention laws, even those that have long passed constitutional muster, it is important to understand: (1) how *Heller* changed the legal landscape around the Second Amendment; (2) the consistent history, both pre-and post-*Heller*, of courts upholding gun violence prevention laws; and (3) the implications of a new Supreme Court jurist willing to jettison the significant limitations acknowledged by *Heller* on the right conferred by the Second Amendment.

HELLER’S NARROWLY LIMITED EXPANSION OF THE SECOND AMENDMENT RIGHT AS APPLIED TO INDIVIDUALS

Heller fundamentally changed the scope of the right understood to be encompassed by the Second Amendment by holding, for the first time since our nation’s founding, that the Second Amendment includes an individual right to self-defense divorced from any concept of service in a “militia.”¹³ This represented a radical departure from previous jurisprudence and was built on a selective analysis of historical and legal sources that is highly suspect, as emphasized by the principal dissent.¹⁴ However, *Heller* did not embrace the massive expansion of gun rights that many gun rights advocates appear to believe. The Court only held that “law-abiding, responsible citizens” have a right to a gun in the home for self-defense.¹⁵ Later courts have reaffirmed that *Heller* found the defense of the home to be part of the “core” Second Amendment right.¹⁶

The Court further recognized that the right conferred by the Second Amendment is “not unlimited,” and that the Second Amendment allows for sensible and effective gun laws in keeping with America’s longstanding tradition of gun violence prevention

regulations.¹⁷ *Heller* stated that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”¹⁸ By explicitly listing these (non-exhaustive) examples of “presumptively lawful regulatory measures,”¹⁹ the Court signaled that its ruling should not be a grounds to more broadly attack the nation’s gun violence prevention regime.²⁰

Heller also recognized that “M-16 rifles and the like...may be banned” as “dangerous and unusual weapons,”²¹ and that “the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes.”²² The *Heller* Court also appeared to recognize that limitations on the public carrying of firearms were permissible, stating: “we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*.”²³ This appears to support at least one prior federal court decision that held that the carrying of weapons in public with the intent to intimidate social or political opponents does not enjoy Second (or First) Amendment protection,²⁴ and suggests that the carrying of weapons for purposes of intimidation is not tied to the idea of self-defense endorsed by *Heller*.

COURTS HAVE CONSISTENTLY UPHELD GUN VIOLENCE PREVENTION POLICIES POST-HELLER

Since *Heller*, federal courts have generally recognized the significant limitations the Supreme Court imposed on the right to bear arms when assessing Second Amendment challenges to gun violence prevention laws. As a result, they have, with a few exceptions, such as an extreme outlier opinion by a Trump appointee,²⁵ consistently upheld state and/or federal gun violence prevention legislation.²⁶ When evaluating

these challenges, the courts tend to apply a two-part test: (1) whether the challenged law regulates activity within the scope of the Second Amendment; and (2) if so, whether the government has a compelling enough interest to justify the limitations imposed by the law in the name of that interest.²⁷ The strength of the governmental interest that must be established and the degree of precision with which the challenged regulation is tailored to further that interest scale upwards or downwards depending on “how close the law comes to the core of the Second Amendment right and the severity of the law’s burden on the right.”²⁸ Most courts have applied an intermediate level of scrutiny rather than strict scrutiny when assessing Second Amendment challenges to such laws.²⁹ Brady Legal has filed *amicus curiae* briefs in defense of the constitutionality of challenged regulations in a number of these cases and remains committed to protecting commonsense, life-saving legislation from meritless constitutional challenges.³⁰

THE IMPACT OF AMY CONEY BARRETT’S WILLINGNESS TO ABANDON LIMITATIONS IMPOSED BY HELLER

Perhaps the most pressing concern is that Amy Coney Barrett would be, at the very least, sympathetic to extreme outliers’ views on the Second Amendment right, and would broadly expand that right by rejecting the limitations recognized in *Heller* and subsequent case law. The following is a non-exhaustive list of particular areas of concern that may be imperiled by a Justice’s refusal to accept such limitations.

LIMITATIONS ON PUBLIC CARRY

This new Supreme Court could vastly expand *Heller*’s holding that the Second Amendment protects a right to carry a firearm for self-defense in the home, or not defer to *Heller*’s discussion of impermissible purposes for carrying weapons. If so, the Court could hold that the Second Amendment invalidates limitations on the carrying of firearms in and around certain areas of

great public importance, such as schools and libraries. Furthermore, it could invalidate commonsense restrictions on open and concealed carry, such as “may issue” laws that restrict carrying guns in public in New York, California, and several other states. A broad expansion of a public right to carry could also permit intimidation tactics such as the [armed militia](#) that shut down the legislative session in Michigan this year.

ASSAULT WEAPONS/LARGE CAPACITY MAGAZINE (“LCM”) BANS

Assault weapon and LCM bans have traditionally been upheld as constitutional.³¹ However, Justice Kavanaugh, while on the D.C. Circuit, took the view that assault weapons were constitutionally protected, and a recent, radical decision by a Trump-appointed jurist in *Duncan v. Becerra*, struck down California’s LCM ban, while largely ignoring *Heller*’s discussion of the propriety of limitations on “dangerous and unusual weapons.”³² These opinions may represent the future of how the Supreme Court would approach such regulations should Amy Coney Barrett be appointed to the bench.

EXTREME RISK LAWS

As states across the country have enacted extreme risk laws, including several signed by Republican governors, gun rights extremists have argued that they deprive individuals of their Second Amendment right without due process, even if they require a credible showing of imminent danger. If Trump successfully appoints a jurist ideologically similar to his past two choices, holding a view contrary to the majority of federal courts that the Second Amendment right is even more expansive than what was found in *Heller*, any extreme risk law would likely face extreme hostility by the Court.

THE IMPACT OF THIS NOMINATION ON GUN VIOLENCE AND RACIAL JUSTICE

The Supreme Court has the power to not only

invalidate gun violence prevention laws, but also to establish a confrontational interpretation of the Second Amendment that empowers vigilantes, white supremacists, and insurrectionists. And the Supreme Court will, of course, review far more than just firearms-related laws. The Court will have the power to prevent access to health care, the voting booth, the lecture hall, and the public square. It will have the power to curtail reproductive and disability rights, as well as environmental, racial, and economic justice. These issues, important on their own, also dovetail with efforts to prevent gun violence, because gun violence and social inequality go hand-in-hand. This would put all Americans at risk, but be especially harmful for those disproportionately impacted by gun homicide, namely [Black](#), [Latinx](#), and [Native Americans](#). With a new Court, these communities may see even more gun deaths. For example, Daniel Kim of Northeastern University found that “an increase in average levels of intergenerational social mobility... was linked to a 25% decrease in neighborhood gun homicide rates... Meanwhile, higher levels of [public welfare spending](#) were related to a 14% lower neighborhood homicide rate, while the rich-poor gap was related to an 8% higher neighborhood homicide rate.” Put differently, policies that promote social justice and upward mobility reduce gun violence, and there is reason to believe that those policies could be at risk if Trump successfully installs Amy Coney Barrett to the Court. This would drastically and unfairly undercut policies and programs that address root causes of gun violence in the most impacted communities, which tend to be communities of color.

WHY GUN VIOLENCE PREVENTION LAWS AND POLICIES ARE SO IMPORTANT

American gun violence is an epidemic. Every year almost [40,000 people](#) will die from gun violence in America. That’s over [100 people who are shot and killed](#) in the United states every day. That’s one life lost to a gun every 14 minutes. Daily, people

are killed or injured, survivors suffer trauma, Black and Brown communities are exploited and left in a cycle of violence and poverty, and children face the omnipresent risk of gun violence.

Gun violence is not singular: it is domestic violence, threats of violence, mass killings, chronic community violence, self-harm, hate crimes, police violence, unintentional shootings, witness and survivor trauma, and escalated incidents of violence. Similarly, the laws and policies that reduce and prevent gun violence are varied and multifaceted, but they are known, understood, constitutional, and they save lives every single day.

These are just some of the life saving measures:

BRADY BACKGROUND CHECKS

Brady background checks are the bedrock foundation upon which all other gun laws stand. In 2019 alone, the FBI processed over [28 million Brady background checks](#). These checks keep guns out of the hands of prohibited purchasers including domestic abusers, those suffering from mental health issues, and those convicted of violent felonies. Since the Brady Bill was signed into law, the National Instant Criminal Background Check System has prevented [over 3.5 million](#) unlawful transactions, with an average of over [528 prohibited persons being denied every day](#) between 2011 and 2015. The system also supports licensing and permitting laws that are effective in reducing gun violence and have been [linked](#) to reduced gun homicide, suicide, and trafficking. Gun homicide rates have been [cut in half](#) in the years since the Brady Law was passed and all other gun-related crimes dropped substantially as well: assaults, robberies and sex crimes [were 75% lower in 2011 than in 1993](#). And, [90% of the American public supports conducting a background check](#) on every gun sale.

LAWS THAT PREVENT THE PROLIFERATION OF ILLEGAL FIREARMS IN COMMUNITIES OF COLOR

Gun trafficking has dire consequences, particularly for Americans in Black and Brown communities. Laws that prevent the trafficking of firearms into disproportionately impacted communities across the country are key to reduce gun violence. While nationally the majority of gun deaths are suicides, the opposite is true for communities of color: homicides account for [58% of Hispanic gun deaths, and 82% of Black gun deaths](#). Despite comprising only [13%](#) of the U.S. population, Black Americans represent [over 58%](#) of all gun homicide victims and are over [11 times](#) more likely than white Americans to die by gun homicide. The gun homicide rate for Hispanic victims is also [more than double](#) that of white victims. Black children and teens are [14 times](#) more likely than white children and teens to die by gun homicide.

In 2017, [57%](#) of Black adults said they knew someone who has been shot, compared with 43% of whites. This is horrific in and of itself, but more so because gun violence has ubiquitous consequences. The pervasive nature of gun violence produces collective trauma, and communities burdened by fear and pervasive shootings cannot prioritize quality of life and invest in collective spaces.³³ [Research](#) shows that impacted communities also bear societal costs such as depressed property values and home ownership, a reduction in new businesses, a lack of economic or career opportunities, and a lack of access to healthcare, healthy food, and social opportunities.

Many critical laws have been enacted that are aimed at reducing gun trafficking and the devastation it causes in Black and Brown communities. These include laws that [require waiting periods](#) before buying a gun, laws that [cap the number of handguns](#) an individual can acquire per month, and laws that require [reporting for lost and stolen guns](#).

BAN OR REGULATIONS ON ASSAULT WEAPONS AND LARGE CAPACITY MAGAZINES

Assault weapons are firearms designed for offensive use, intended to kill the most people in the shortest

period of time. They are weapons of war and should not be in places of peace — they have no place on America’s streets. The AR-15 was chosen as the platform for the military’s assault rifles because it can shoot through [both sides of a standard issue Army helmet at 300 yards](#). AR-15 bullets typically leave the barrel of the gun [three times](#) faster than a typical handgun bullet, damaging tissue as they travel and causing catastrophic internal bleeding. The risks are exacerbated when a gun is paired with a large capacity magazine that can hold 20, 30, or even 100 rounds, allowing a shooter to fire in quick succession without needing to pause to reload. The list of mass shooting events involving assault weapons and LCMs is devastatingly long and includes shooting in Newtown, Connecticut, [26 children and their educators](#) were killed; in Aurora, Colorado, [12 movie-goers were killed](#) and 58 more were wounded; in Las Vegas, Nevada, [60 people were killed](#) and nearly 900 were injured; in El Paso, Texas, [22 people were killed](#) and 24 more were injured; and in Dayton, Ohio, a shooter [killed nine](#) and injured 27 more in less than *25 seconds*.

During the decade that the [1994 Assault Weapons Ban was in effect](#), gun massacres fell by 37%, and the number of people dying from gun massacres fell by 43%. In the decade after the ban expired, there was a [183% increase in massacres and 239% increase in fatalities](#). A review of mass shootings between 2009 and 2015 found that in shootings where assault weapons or large capacity magazines are used, [155% more people are shot and 47% more die](#) compared to those without such weapons and ammunition.

EXTREME RISK LAWS

Extreme risk laws (sometimes called “red flag laws” or “ERPOs”) allow for individuals who are a risk to themselves or others to be temporarily separated from firearms by a court of law, without criminal charges or a permanent prohibition. Nineteen states and Washington, D.C. have enacted [versions](#) of extreme risk laws. ERPOs are particularly suited to preventing suicide: a study of Connecticut’s ERPO law found

that nearly half of all ERPOs resulted in individuals receiving treatment, and that [for every 10-20 orders a suicide was prevented](#). Indiana’s ERPO law was associated with a [7.5% reduction](#) in firearm suicides in the ten years following its enactment. These studies demonstrate how ERPOs are an effective and unique tool that can and should be used to prevent tragedies before they happen. Nationally, large [majorities of adults support](#) the key elements of extreme risk protection policies.

SAFE STORAGE AND CHILD ACCESS PREVENTION LAWS

“[Family fire](#)” is a shooting involving an improperly stored or misused gun in the home that results in death or injury. Almost [4.6 million minors](#) live in homes with unsecured guns — and 70% of kids know where guns in their home are stored. Additionally, one study showed that [1 in 5 parents](#) who said their child never handled guns without supervision were contradicted by their child’s reports. More than [70% of the guns](#) used in pediatric suicide attempts were stored in their own residence, or the residence of a relative or friend. Every day, [eight](#) children and teens are unintentionally injured or killed by family fire. These tragedies can be prevented: keeping guns locked and unloaded was [found to have a protective effect against unintentional shootings and suicide among youth](#), reducing odds of death by 73%. And, storing ammunition separately from a firearm [reduces the risk of an unintentional shooting among youth by 61%](#). States must be able to implement laws that work to prevent minors’ access to firearms and thereby protect children’s lives.

PUBLIC CARRY LAWS

Given the epidemic of gun violence and its physical and psychological impact on our communities, several states have passed legislation that limits or prohibits the carrying of firearms in public. Right-to-carry (“RTC”) laws — essentially allowing public carry without limits — have [repeatedly been shown](#) to lead to significantly increased rates of crime and gun violence. States with RTC laws experienced aggregate violent crime rates [13-15% higher](#) ten

years after enactment and one study found a “robust association” between RTC laws and higher rates of firearm homicides. These findings make sense: guns in public create unique dangers and the myth that more guns create “less crime” has been proven to be [fundamentally flawed](#). States that want to decrease gun violence by placing conditions on the ability to carry in public — open or concealed — should be able to do so when it is in the will of the constituents.

OTHER GUN VIOLENCE PREVENTION LAWS

There are many other laws that have been enacted on local, state, and federal levels aimed at preventing gun violence. These include, but are not limited to, laws that tackle the availability of [ghost guns](#), that require guns to be equipped with [microstamping](#) technology, and that regulate the gun industry (for example, by requiring gun retailers to implement mechanisms designed to [prevent theft](#) or by requiring a [state license](#) for gun retail operation). Each of these laws is an important tool to end the gun violence epidemic and each was enacted to save lives by legislators elected by the will of the people.

CONCLUSION

The stakes could not be higher for this battle over who should replace Justice Ruth Bader Ginsburg on the Supreme Court. This Court will decide issues of life and death, for the American people, for our democracy, and for our planet. The Court will likely decide whether the American People still have the power to enact strong gun laws to prevent them from being shot, and health care to heal them if they do. The Court may decide whether we as a nation will finally end systemic racism and realize the Framers' words of equality for all. The American people should decide who replaces this pivotal Supreme Court Justice. A new radically conservative Court could deprive Americans of their longstanding rights to decide what laws they want and need to protect their families and communities from gun violence. The Senate must adhere to the McConnell rule precedent they themselves set as recently the Presidential election held only 4 years ago. Americans deserve honesty from those in power. Words matter. Truth matters. The American people and their will matter. Those elected to power owe it to them, maybe now more than ever, to prove these are values our government still upholds because too much is at stake to let politics dismantle the very basis of our democracy.

For these reasons, Brady opposes the nomination of Amy Coney Barrett and calls on the Senate to hold off any hearings or votes for a new Supreme Court Justice until after the Presidential inauguration in January and after the new class of Senators is formally sworn in.

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1. *Kanter v. Barr*, 919 F.3d 437, 464, 468 (7th Cir. 2019) (Barrett, J., dissenting).
 2. See *id.* at 465 (Barrett, J., dissenting).
 3. *District of Columbia v. Heller*, 554 U.S. 570, 626-27 n. 26 (2008).
 4. *Kanter*, 919 F.3d 437, (Barrett, J., dissenting).
 5. Discussed further *infra*.
 6. 554 U.S. 570 (2008).
 7. See *Abramski v. United States*, 573 U.S. 169, 180-181 (2014) (“consider what happens in a *typical* straw purchase. A felon or other person who cannot buy or own a gun still wants to obtain one” and noting that a straw purchase lets the actual buyer evade a background check) (emphasis added). A “straw purchaser” is “a person who buys a gun on someone else’s behalf while falsely claiming that it is for himself” and, thereby, inherently commits a number of violations of federal (and, potentially, state) firearms laws. *Id.* at 171-172.
 8. See *United States v. Moody*, 915 F.3d 425, 430 (7th Cir. Feb. 2019) (Barrett, J.)
 9. See, e.g., *Englund v. World Pawn Exch.*, 2017 Ore. Cir. LEXIS 3, *16 (Jun. 30, 2017) (a “foreseeable outcome arising from . . . violating gun safety laws [or reasonable common law duties of care pertaining to firearms] that were designed to keep firearms out of the hands of dangerous people is that innocent people w[ill] be harmed or worse murdered”).
 10. *Kanter*, 919 F.3d at 442-43.
 11. See *id.* at 448 (“the fit between the challenged regulation and the asserted governmental objective need only be reasonable, not perfect”) (internal quotation omitted).
 12. See *id.* at 465 (Barrett, J. dissenting) (“[s]evere burdens on the core right of armed defense require a very strong public-interest justification and a close means-ends fit”) (internal quotation omitted).
 13. See U.S. Const., amend. II.
 14. 554 U.S. at 637 (Stevens, J. dissenting) (“Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature’s authority to regulate private civilian uses of firearms. Specifically, there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution.”).
 15. See *id.* at 635.
 16. E.g., *Kanter*, 919 F.3d at 441 (“in *District of Columbia v. Heller*, the Supreme Court identified the core of the Second Amendment as the right of law-abiding, responsible citizens to use arms in defense of hearth and home”) (internal quotations omitted).
 17. See *Heller*, 554 U.S. at 626-627 (discussed further *infra*).
 18. *Id.* at 626-27. Brady recognizes the insensitivity and problematic nature of these terms and in our own work uses person-first language.
 19. *Id.* at 626-27 n. 26.
 20. See, e.g., § 922(d), (g) (prohibiting sale to/possession by certain dangerous categories of individuals including felons and those adjudicated as mentally ill).
 21. See *Heller*, 554 U.S. at 627-28 (internal quotations omitted).
 22. *Id.* at 625.
 23. *Id.* at 595.
 24. See *Vietnamese Fishermen’s Ass’n v. Knights of Ku Klux Klan*, 543 F. Supp. 198, 208, 210, 216-17 (S.D. Tex. 1982) (granting injunction against acts of armed intimidation by the KKK).
 25. *Duncan v. Becerra*, 2020 U.S. App. LEXIS 25836, *30 (9th Cir. Aug. 14, 2020) (J. Lee, a Trump appointee, writing for the majority) (striking down California large capacity magazine ban).
 26. E.g., *Kanter*, 919 F.3d 437; *Ass’n of N.J. Rifle & Pistol Clubs v. AG N.J.*, 910 F.3d 106 (3rd Cir. 2018)⁵ (upholding New Jersey’s large capacity magazine ban); *Gould v. Morgan*, 907 F.3d 659 (1st Cir. 2018) (upholding limits on public carry in Massachusetts); *United States v. Skoien*, 614 F.3d 638, 639 (7th Cir. 2010) (upholding categorical ban on domestic violence misdemeanants possessing weapons).
 27. See, e.g., *Kanter*, 919 F.3d at 441.
 28. See *id.*
 29. See *id.* at 448.
 30. This includes, e.g., *Skoien*.
 31. See, e.g., *Ass’n of New Jersey Rifle and Pistol Clubs*, No. 18-3170.
 32. See *Duncan v. Becerra*, 2020 U.S. App. LEXIS 25836 (9th Cir. Aug. 14, 2020)
 33. Thomas Abt, “*Bleeding Out: The Devastating Consequences of Urban Violence- a Bold New Plan For Peace in The Streets*”, Basic Books (2019), Chapters 1-3