



## Judge Merrick Garland Doesn't Appear to Be Friendly To Second Amendment Rights

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Judge Merrick Garland may be sold as a moderate, though he's quite liberal when it comes to Second Amendment rights. As Carrie Severino of the *Judicial Crisis Network* wrote in *National Review*, Garland seems to be hostile to gun owners' rights and had supported the legality of gun registries:

Back in 2007, Judge Garland voted to undo a D.C. Circuit court decision striking down one of the most restrictive gun laws in the nation. The liberal District of Columbia government had passed a ban on individual handgun possession, which even prohibited guns kept in one's own house for self-defense. A three-judge panel struck down the ban, but Judge Garland wanted to reconsider that ruling. He voted with Judge David Tatel, one of the most liberal judges on that court. As Dave Kopel observed at the time, the "[t]he Tatel and Garland votes were no surprise, since they had earlier signaled their strong hostility to gun owner rights" in a previous case. Had Garland and Tatel won that vote, there's a good chance that the Supreme Court wouldn't have had a chance to protect the individual right to bear arms for several more years.

Moreover, in the case mentioned earlier, Garland voted with Tatel to uphold an illegal Clinton-era regulation that created an improvised gun registration requirement. Congress prohibited federal gun registration mandates back in 1968, but as Kopel explained, the Clinton Administration had been "retaining for six months the records of lawful gun buyers from the National Instant Check System." By storing these records, the federal government was creating an informal gun registry that violated the 1968 law. Worse still, the Clinton program even violated the 1994 law that had created the NICS system in the first place. Congress directly forbade the government from retaining background check records for law-abiding citizens.

It should come as no surprise that the National Rifle Association opposes his nomination to the Supreme Court. In a statement released by the organization, executive director Chris Cox said:

"With Justice Scalia's tragic passing, there is no longer a majority of support among the justices for the fundamental, individual right to own a firearm for self-defense. Four justices believe law-abiding Americans have that right – and four justices do not. President Obama has nothing but contempt for the Second Amendment and law-abiding gun owners."

"Obama has already nominated two Supreme Court justices who oppose the right to own firearms and there is absolutely no reason to think he has changed his approach this time. In fact, a basic analysis of Merrick Garland's judicial record shows that he does not respect our fundamental, individual right to keep and bear arms for self-defense. Therefore, the National Rifle Association, on behalf of our five million members and tens of millions of supporters across the country, strongly opposes the nomination of Merrick Garland for the U.S. Supreme Court."

The NRA's Institute for Legislative Action (NRA-ILA) noted that Garland is probably the most anti-gun nominee in recent memory, reiterating some of Severino's points that he's consistently voted against Second Amendment freedoms; yes, of course, he thinks that a so-called assault weapons ban is constitutional. They warned, as many have in the past, that if the landmark *D.C. v Heller* decision is overturned, it's the end of the Second Amendment.

Once that occurs, the government has an avenue to initiate gun bans and conduct possible confiscatory operations similar to that of Australia. The Second Amendment is one of our oldest civil rights, and it's perfectly sane for that to be a litmus test for judicial nominations and consideration at the ballot box. I, for one, will never support a pro-gun control candidate, whether they're Democrat or Republican. Yet, while Garland is a disaster on gun rights, he's also handed down decisions that have irked liberals as well, as Trevor Burns at the *Cato Institute* noted in *Time*:

...[I]n 2003 in *al Odah v. United States*, in a decision that riled liberals, Garland agreed with a three-judge panel that federal district courts lack jurisdiction to hear habeas corpus claims of prisoners in Guantanamo Bay. The Supreme Court later overturned that decision by a vote of 6-3 in *Rasul v. Bush*. Garland's vote in the case, however, seems to have been determined by an honest reading of then-existing Supreme Court precedent. If he had a burning desire to give Guantanamo detainees a day in court, then it was overcome by his neutral application of the law.

Furthermore, Garland hasn't been as friendly to the rights of criminal defendants as many liberals would want. Conservatives may find solace in this, but libertarians who are committed to the protection of criminal defendants' rights should be wary. Garland has rarely voted for criminals who are appealing their convictions. Again, however, and underscoring his reputation for neutrality, it seems that Garland has consistently applied the law to these cases rather than act out of a fervent desire to help or hurt criminal defendants.

Now, Burns does add that Garland isn't good on gun rights, and he's certainly not reliable if such a case were brought before the Court. Nevertheless, he could be the best Republicans have to deal with in order to avoid a left wing jurist occupying Scalia's vacancy in the ever increasing likelihood that Hillary wins the presidency. Republicans should have a secondary protocol should that occur. Guy mentioned this dilemma earlier today. I referenced the pickle Senate Republicans could find themselves in a few times concerning the speculation that Attorney General Loretta Lynch or Nevada Republican Gov. Brian Sandoval could be nominated. There are a lot of key issues at stake, besides gun rights, that could be facing the Supreme Court; the most immediate cases being Texas' abortion law and the legality of the Obama administration's energy regulations (i.e. Clean Power Plan). Sen. Mitch McConnell took to the Senate floor to say that this nomination is nothing more than a way for the president to politicize the process in the hopes of energizing Democrats for the upcoming election. So, there really isn't any reason for the GOP to change their tune... for now:

Republicans best bet is to play naked politics: the Supreme Court is too important to do otherwise. Read the polls and watch the Republican nomination process. If Trump emerges from the convention as the nominee, and the polls still show that he will take a shellacking from Clinton, then Garland should be confirmed. If something crazy happens, and there are many crazy things that could happen, then it could be cause to delay the nomination until after the election.

Some Republicans will keep saying "let the people decide," but if there's one thing we've learned this election year, it's that "the people" are terrifying.

If Clinton looks inevitable, the GOP might have to roll the dice on Garland because Clinton's nominees are going to be equally terrifying.