

# Townhall

## Amy Coney Barrett Could End Years of Gun Rights Gridlock Within the Judiciary

October 05, 2020

Matt Vespa

Soon-to-be-Justice Amy Coney Barrett could be the vote that breaks the gridlock. For years, gun rights cases have fallen short regarding oral arguments before the Supreme Court. That is a good and bad thing. The decision in *DC v. Heller* said there is an individual right to gun ownership unconnected to a militia within federal enclaves in 2008. In 2010, that ruling was expanded to the states in *McDonald v. Chicago*. Now, there's the long battle regarding carry rights and the 'justifiable need' clauses that dot blue states. The provision is ridiculous. The 'may issue' regime is arbitrary and unconstitutional. In short, you must present police with a reason for you to have a carry permit, which usually requires a detailing a history of death threats or threats of violence against the applicant. And yes, these authorities take their sweet ass time and they can reject you outright—no reason offered. In New Jersey, one of the worst anti-gun states in the country, you need a permit to merely begin the process of buying a firearm. This has led to tragic results for those who need immediate protection.

Two cases were filed in 2013, *Wollard v. Gallagher* and *Drake v. Jerejian*, from Maryland and New Jersey respectively, both sought petitions for certiorari that were rejected by the Roberts Court. According to SCOTUSblog, the Jerejian case was especially critical as it also asked if there was a right to carry handguns outside the home for protection on top of zeroing in on the "justifiable need" nonsense:

Whether the Second Amendment secures a right to carry handguns outside the home for self-defense; and (2) whether state officials violate the Second Amendment by requiring that individuals wishing to exercise their right to carry a handgun for self-defense first prove a "justifiable need" for doing so.

And no, the Obergefell decision on gay marriage does not apply to national reciprocity on carry rights. The National Rifle Association's lobbying arm issued a warning back in 2015, noting that SCOTUS has "not yet ruled squarely on the question of whether the Second Amendment protects the right to carry a loaded handgun in public, and if it does, whether states must recognize each other's permits."

Jerejian would have brought us closer to that answer. Alas, the Supreme Court refused to hear arguments. Justice Clarence Thomas has gone on record to note his frustration over the Court's stalling on this issue.

Judge Barrett might be able to end the dry spell regarding Second Amendment cases, as Chief Justice John Roberts, the new leader of the SCOTUS' liberal wing with the passing of Ruth Bader Ginsburg, will be rendered irrelevant upon her confirmation. Stephen Gutowski has more (via [Washington Free Beacon](#)):

Legal scholars say Amy Coney Barrett's judicial philosophy could settle legal stalemates and disagreements that have seen lower federal courts deliver a variety of rulings on gun rights.

[...]

Gun-rights advocates have complained for years that lower courts have improperly upheld restrictions on assault weapons and magazines, as well as gun registration requirements, despite the Supreme Court's landmark Heller ruling, which struck down Washington, D.C.'s handgun ban in 2008. The Court expanded that ruling from state to local gun-control measures in 2010, but has only taken one other Second Amendment case since that time, leaving lower courts free to interpret gun-rights protections.

Barrett's application of the "text, history, and tradition" doctrine, as well as her public comments noting the lack of recent Supreme Court gun cases—which four of the five Republican-appointed members of the Court have complained about publicly—indicate that the Court may finally begin settling open questions about gun rights, according to Cato Institute legal scholar Walter Olson.

"I'd say if you applaud that approach, you have much to look forward to in a Justice Barrett," Olson said. "Lower courts that want to take gun law off in other directions will need to be aware that their decisions will have to get past a review by a whole gauntlet of informed originalist justices."

And that gauntlet will usually leave Moms Demand and other anti-gun groups crying while curled up in a ball.