



Office of the President
Brandon S. Combs

Saturday, September 26, 2020

The Honorable Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Charles Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey Graham
Chairman
Senate Judiciary Committee
290 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Diane Feinstein
Ranking Member
Senate Judiciary Committee
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Majority Leader McConnell, Minority Leader Schumer, Judiciary Committee Chairman Graham, and Ranking Member Feinstein:

I write you today on behalf of the Firearms Policy Coalition (FPC), its members, and its supporters to urge the confirmation of Judge Amy Coney Barrett to the United States Supreme Court.

FPC is a leading nonpartisan, nonprofit civil rights organization that serves to defend the United States Constitution and the People's rights, privileges, and immunities deeply rooted in this nation's history and tradition—especially the inalienable, fundamental, and individual right to keep and bear arms. FPC defends and advances individual liberty and freedom through litigation and legal action, issue advocacy, research, education, outreach, and other programs.

1. The proper role of our federal courts must be restored with Supreme Court jurists who believe that the branches of government are coequal.

The Third Branch of government is not a lesser one. But too often, and particularly of late, it acts that way. The Supreme Court's first and foremost duty is to interpret and enforce the text of the Constitution, thus protecting the people's liberties. Deference to the political branches is only appropriate when those branches comply with the Constitution as it is written.

Our Constitution cannot be amended by the Court; precedents are not constitutional amendments, and even strong social reliance interests must not prevail over the text and original public meaning of our national charter. Otherwise,

the structure of our system will be shattered. Brute force will prevail over our fundamental order, and the fabric of our society will unravel into mob rule, with policies set by popular whim and agenda-driven outrage “news” cycles, without the guiding principles of the Constitution.

The Court is not merely “calling balls and strikes” when it enlarges the home plate for government pitchers. Rather, the Court should look to the Constitution’s text as the exclusive rules for all parties—and have the integrity to make the calls that our national charter compels.

The Supreme Court and its jurists must vigorously protect fundamental rights—including the right to bear arms and freedom of speech. Most importantly, the Court must restore and enforce the Constitution’s limits on government, the separation of powers, and prioritize the liberty of the People above the federal and state governments’ administrative conveniences by fulfilling its duty as an equal branch of our government.

2. The Supreme Court must be made up of jurists with the legal and moral fortitude to make clear that the Constitution’s text as it was originally understood must prevail.

FPC believes that the proper mode of analysis for constitutional challenges is to look to the Constitution’s text, using history, tradition, and other indicia of original public meaning [only] as necessary to clarify the meaning and scope of such text. Simply put, any law violating the original understanding of the text should be declared categorically invalid and enjoined.

A notable example of such is found in *District of Columbia v. Heller*, 554 U.S. 570 (2008), in which the Supreme Court used the Second Amendment’s text to form its analysis, because the Constitution’s text provides the test that must be applied: “A well regulated Militia, being necessary to the security of a free State, *the right of the people to keep and bear Arms, shall not be infringed.*” (Emphasis added.)

Natural rights—those our Constitution enshrines as ‘negative’ rights against government interference, including those protected under the First, Second, Fourth, Fifth, and Fourteenth Amendments—are not divided into lesser and greater categories. They are not properly subjected to interest-balancing tests, nor should deference be given to purported governmental interests, because our great Constitution “is the very *product* of an interest-balancing by the people.” 554 U.S. at 635.

Indeed, “[t]he very enumeration of” these rights “takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis” whether they are “*really worth* insisting upon.” *Id.* at 634 (emphasis in original). To be sure, “[a] constitutional guarantee subject to future judges’

assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad.” *Id.* at 634–35.

Our Constitution and those who have ratified it into its current form have already done the categorizing and interest-balancing, and, in the case of the fundamental, individual right to keep and bear arms, those rights “shall not be infringed.” It is inappropriate and unconstitutional for judges to provide the government with perpetual rewrites of the Constitution and our Bill of Rights through “two-step” tests and compounding opportunities for interest-balancing, deference, and ultimately decide cases based on the policy preferences of judges legislating from the bench.

3. The Supreme Court must be composed of jurists with the courage to grant certiorari in important constitutional cases and restore our Founders’ intended system of liberty and limited government.

“[G]overnments are instituted among men as a means of securing the individual rights of each and every person, and the effective protection of these rights is the end against which such governments are to be judged. . . . The political theory announced in the Declaration of Independence can be summed up in a single sentence: First come rights, and then comes government.” Randy E. Barnett, *HARVARD JOURNAL OF LAW & PUBLIC POLICY*, Vol. 42, Issue 1, 25–26.

It is of paramount importance that federal judges and Supreme Court justices apply appropriate methodology in constitutional cases. And it is equally important that the Court have deep and unwavering courage, sufficient to grant certiorari in pressing constitutional concerns and issue clear, decisive opinions consistent with our Constitution’s text.

But since *McDonald v. City of Chicago*, the Supreme Court has time and time again shown that Americans who value liberty and freedom need a stronger majority with the courage to take on important cases and issue decisions consistent with the text of the Constitution.

Recent history shows the Roberts Court has especially lacked such courage with regard to Second Amendment rights. *See Silvester v. Becerra*, 138 S. Ct. 945 (2018) (Thomas J., dissenting from denial of certiorari) (“If a lower court treated another right so cavalierly, I have little doubt that this Court would intervene. But as evidenced by our continued inaction in this area, the Second Amendment is a disfavored right in this Court.”).

It is time for that to change.

* * *

As you well know, our great nation and Constitution are at an unprecedented crossroads. Violent terrorists, radical agitators, and anti-American anarchists are burning our cities, attacking innocent people, and holding our friends and families hostage to their ever-growing demands to move America towards an authoritarian socialistic state that prioritizes their preferred social policies and collectivism over individual liberty and limited government.

On the other hand, FPC and our members and supporters wish to participate as productive members of our society—and be left alone, not unlike our Founders.

Our American system of ordered liberty cannot survive unless the Supreme Court has a strong constitutionalist majority who will do what the Constitution's text and liberty compel.

The People require and deserve Supreme Court justices with a deep moral conviction to aggressively and unwaveringly defend the Constitution and our liberty in every instance through strict adherence to the text itself, even and especially when the government must lose.

For all of these reasons, we respectfully urge the Senate to confirm Judge Amy Coney Barrett to the United States Supreme Court.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brandon Combs', written over a horizontal line.

Brandon Combs
President
Firearms Policy Coalition

cc: President Donald J. Trump
Members of the U.S Senate