AWAITING THE SUPREME COURT IN *CORLETT:* THE WORDS OF JUSTICE BARRETT

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For the first time in over a decade, the U.S. Supreme Court has agreed to address the scope of the Second Amendment in a case encaptioned *New York State Rifle & Pistol Association, Inc. v. Corlett* (No. 20-843) *("NYSRPA")* (see www.supremecourt.gov). Yet as an ardent Court watcher and author of *amicus* briefs in several other cases, this writer cautions that making any prognostications at this point would be a fool's errand.

Nevertheless, it is helpful for proponents of the Right to Keep and Bear Arms to be aware of the viewpoints expressed by certain Justices in other Second Amendment controversies. In the first of a series, we commence with an overview of the high Court's newest member, Justice Amy Coney Barrett.

In *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019), Rickey Kanter had been convicted of using the mails to defraud Medicare. While a non-violent offense, it still stripped Kanter of his right to possess a firearm. See 18 U.S.C. § 922(g)(1) (any person convicted of a crime punishable by more than one year imprisonment is forbidden from possessing a firearm). The Seventh Circuit in Chicago rejected Kanter's claim that the federal statute unconstitutionally abridged his Second Amendment rights.

In a thoughtful dissent, then-Circuit Judge Barrett readily conceded that, as a historical matter and common sense, legislatures have long denied the right to keep and bear arms to violent lawbreakers. "But,' she emphasized, "that power extends only to people who are *dangerous*." The future Justice noted that, at the time of the Founding, lawmakers "did not strip felons of the right to bear arms simply because of their status as felons;" rather, penalties were delimited to a denial of "civic rights," such as voting and jury service, and "not to individual rights like the right to possess a gun." Therefore, by failing to distinguish between violent and non-violent offenses, the law's sweeping and permanent abrogation of the Right to Keep and Bear Arms "violates the Second Amendment."

In sum, the dissent declared that the Second Amendment is an individual right, and not subject to a "virtue limitation." Notwithstanding the government's "unquestionably strong interest in protecting the public from gun violence" there is no "logic or data" which justifies permanently disabling a non-violent felon from firearms ownership. And in a powerful conclusion that might well resonate in *NYSRPA*, then-Judge Barrett quoted the landmark *McDonald* case in unequivocally declaring that Seventh Circuit's decision "treats the Second Amendment as a 'second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'"

Admittedly, no one can say if the views of *Judge* Barrett, as expressed in *Kanter*, shall carry over to the deliberations of *Justice* Barrett when *NYSRPA* comes before the supreme tribunal. Nonetheless, when you consider her refusal to treat the Second Amendment as a "second-class right," and her vigorous insistence that the Right to Keep and Bear Arms stands on an equal footing with our other precious liberties, the signs are encouraging. ■