

# AWAITING NY CARRY CASE: JUSTICE THOMAS

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As the Supreme Court deliberates *Corlett*, we focus the third article in our continuing series analyzing the views of select high Court jurists upon the Second Amendment jurisprudence of Justice Clarence Thomas. But rather than revisit his erudite concurrences in *Heller* and *McDonald*, we think it more productive to instead summarize certain of his robust dissents in situations wherein the high Court declined to review lower court holdings which apparently disregarded the aforementioned landmarks.

To begin, we remind that *certiorari* is the supreme tribunal's discretionary power to hear only the cases it wishes to hear. A denial of review is usually a quiet affair, and rarely disputed by the filing of a formal dissent. Yet that is precisely what Justice Thomas did, at least four times within the last six years, in cases where the Right to Keep and Bear Arms was in controversy.

One such instance was *Jackson v. City and County of San Francisco*, 576 U.S. \_\_\_ (June 8, 2015), wherein the Ninth Circuit Court of Appeals

reasoned that a local ordinance which required citizens to maintain their legal firearms in an inoperable condition while stored at home did not “severe[ly] burden” their Right to Keep and Bear Arms. Justice Thomas declared that ruling to be “in serious tension with *Heller*” and “the Second Amendment’s core protection of the right of self-defense.” The esteemed Justice argued that certiorari should have been granted “[b]ecause Second Amendment rights are no less protected by our Constitution than other rights enumerated in that document,” adding that the “lower courts, including the ones here, have failed to protect it.”

Most recently, in *Rogers v. Grewal*, 590 U.S. \_\_\_ (June 15, 2020), Justice Thomas roundly criticized the high bench for “simply look[ing] the other way” when New Jersey, alleging a lack of necessity, refused to issue a carry permit to “a law-abiding citizen” who services automated teller machines in high-crime areas. “This Court would almost certainly review the constitutionality of a law requiring citizens to establish a justifiable need

before exercising their free speech rights” or seeking a lawful abortion.

Justice Thomas found it inexplicable that the Supreme Court would decline to review a holding wherein “the fundamental right to bear arms” was subjected to an “onerous burden.” Finding again that the courts below have treated the Right to Keep and Bear Arms in a manner “entirely inconsistent” with the edicts of *Heller* and *McDonald*, Justice Thomas asked with “what other constitutional right would this Court allow such blatant defiance of its precedent?”

The postulations made in these and other dissents by Justice Thomas mirror his concurring opinion in *McDonald*, wherein he reminded that, during Reconstruction, those intent upon denying the newly freed persons full enjoyment of the privileges of American citizenship enacted laws denying them the fundamental Right to Keep and Bear Arms. The esteemed Justice’s unyielding defense of the Second Amendment and its guarantee of personal liberty is sure to emerge when *Corlett* is adjudicated. ■