



DPCC

DEMOCRATIC POLICY & COMMUNICATIONS COMMITTEE
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CAPTURED COURTS
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WHAT'S AT STAKE: GUN SAFETY

How a Corrupted Organization Has
Radically Transformed the Second
Amendment

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Justice Ruth Bader Ginsburg



Throughout her career, Justice Ruth Bader Ginsburg worked tirelessly to bend the arc of the moral universe towards justice. As a litigator and co-founder of the Women's Rights Project of the American Civil Liberties Union, she pushed the Supreme Court to recognize that the 14th Amendment forbade sex discrimination. When she joined first the D.C. Circuit and then the Supreme Court, she was known for building consensus among judges across the political spectrum. Ginsburg joined a landmark dissent *District of Columbia v. Heller*, a Second Amendment case in which the Court held that the "militia" clause does not limit the operative clause of the Amendment. Her *Heller* dissent argued that the Second Amendment does not

[Supreme Court of the United States](#)

extend an unlimited right to possess guns for the purpose of self-defense.

In *U.S. v. Lopez*, Justice Ginsburg joined a dissent to defend Congress's power to regulate gun possession in school zones as within the scope of Commerce Clause authority. She had said her view of the Second Amendment was one based on history, explaining: "When we no longer need people to keep muskets in their home, then the Second Amendment has no function . . . I view the Second Amendment as rooted in the time totally allied to the need to support a militia . . . the Second Amendment is outdated in the sense that its function has become obsolete."

Justice Ginsburg's death puts common-sense gun regulations at risk. Little more than an hour after Ginsburg's passing, Mitch McConnell announced that the Senate would vote on Trump's nominee for her replacement. For Senate Republicans, it hardly matters whom Trump has selected. The wealthy special interests that fund the Republican Party have made sure that whomever President Trump nominates will be a reliable vote for the NRA and parties seeking to roll back gun safety laws. Justice Ginsburg's legacy is at risk, and with it the safety of millions of Americans for generations to come.



WHAT'S AT STAKE: GUN SAFETY

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- The National Rifle Association (NRA) has poured millions of dollars into capturing the courts to achieve what it cannot through the political process.
- While the NRA claims to be a membership organization, it receives significant financial support from gun manufacturers and dark-money interests that are also behind efforts to rig the rules of our democracy, undermine workers' rights and the labor movement, and take away health care for millions of Americans.
- It now appears the NRA may have violated campaign finance laws and the terms of its own charitable tax-exempt status, lavishing gifts and travel on its leadership.

Introduction

Thirty-eight thousand Americans die from gun violence every year – an average of 100 per day.¹ Rates of gun violence are increasing across the country.² Mass shootings have become more deadly.³ In the face of this crisis, Americans overwhelmingly support gun safety legislation.⁴ Yet America still has the weakest gun laws and the most guns – 393 million – of any comparable nation.⁵

This is no accident. Republicans, captive to the gun lobby, have made congressional action on gun safety all but impossible.⁶ And when the gun lobby loses at the ballot box, it turns to the courts to strike down sensible gun safety laws passed by state and local governments.

America has the weakest gun laws and the most guns—393 million—of any comparable nation.

This is no accident.

CAPTURED COURTS

As the gun safety advocacy group Giffords detailed in its recent report, [*Gun Safety Under Threat: How Extremist Judges Are Undermining Gun Laws*](#), the gun lobby, led by the NRA, has advocated for decades an extreme interpretation of the Second Amendment that is unmoored from fact or law. This radical view of the Second Amendment has nothing to do with the text of the Constitution, the intent of our

founders, or centuries of American history.⁷ Giffords also documents how the Trump Administration has appointed extremist judges vetted and selected precisely because of their views on the Second Amendment and other priorities of the Republican Party.⁸ These “extremist judges have thrown established legal precedent and the progress of the gun safety movement into jeopardy, threatening the safety of all Americans.”⁹

In this report, Senate Democrats build off the excellent work of Giffords to focus on the hub of this Second Amendment enterprise: the NRA.

The NRA at Work: *N.Y. Rifle & Pistol Association v. City of New York*

The Supreme Court’s Second Amendment jurisprudence over the past decade illustrates how the NRA, with its allies in the right-wing legal movement, pushes its agenda in the courts. In the late 2000s, roughly 220 years after the Bill of Rights was adopted, the Court first unearthed an “individual” right to bear arms in *District of Columbia v. Heller*¹⁰ and *McDonald*

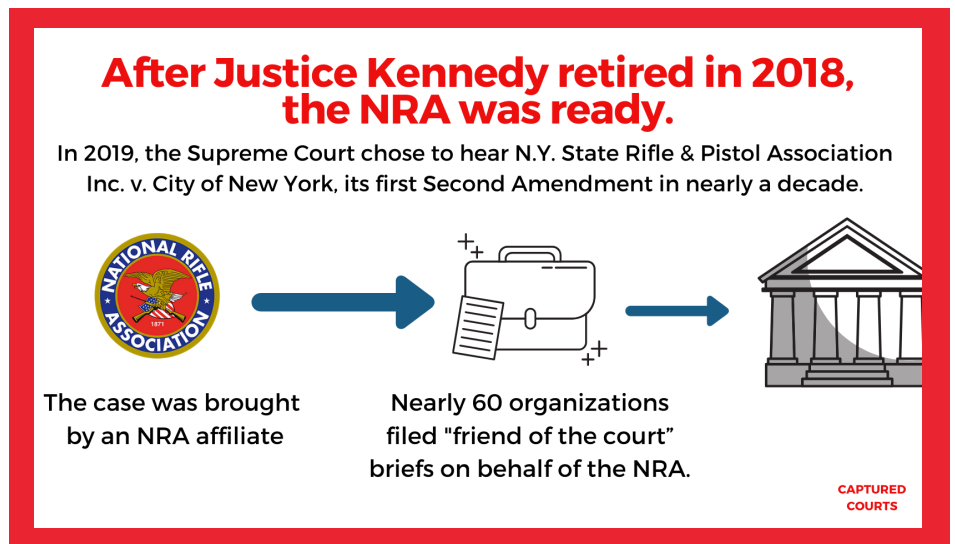
38 thousand Americans die from gun violence every year—an average of 100 per day



CAPTURED COURTS

v. City of Chicago, Illinois.¹¹ These decisions were premised upon dubious historical research and legal theories that were funded and propagated by the NRA itself. From 1888, when law review articles were first indexed, to 1959, not a single academic article argued that the Second Amendment protected an individual's right to bear arms.¹² In order to create the façade of a historical record, the NRA began funneling millions of dollars to conservative historians and legal scholars to churn out academic papers arguing, despite the factual record, that the Founders intended the Second Amendment to protect individuals' rights to gun ownership.¹³ This theory was so specious that former Chief Justice Warren Burger called it "one of the greatest pieces of fraud, I repeat the word fraud, on the American public."¹⁴

The NRA finally found a receptive bench under Chief Justice Roberts. While *Heller* and *McDonald* completely reimaged the meaning of the Second Amendment, the decisions did allow for some gun safety regulations.¹⁵ After *Heller* and *McDonald*, the Court went silent, giving lower courts an opportunity to implement Heller's newly recognized right and its endorsement of a variety of gun-safety measures. The Court's recognition that the Second Amendment did not fully preclude any gun safety laws spurred the NRA to push the Trump Administration to nominate judges and justices with even more extreme Second Amendment views, who would be receptive to the NRA's extreme arguments in cases challenging these laws. Some in the conservative legal community believed that Justice Kennedy was the reason the Court never took any Second Amendment cases after *McDonald* in 2010.¹⁶



After Justice Kennedy retired in 2018, the NRA was ready. In 2019, the Supreme Court chose to hear *N.Y. State Rifle & Pistol Association Inc. v. City of New York*,¹⁷ its first Second Amendment case in nearly a decade. The case was a challenge to gun safety laws in New York City. It was brought by an NRA affiliate, which argued that the city's proposed restrictions on transporting a licensed firearm out of one's home were unconstitutional. Nearly sixty organizations filed amicus curiae ("friend of the court") briefs with the Court echoing the NRA's demand that the Court strike down the restrictions.¹⁸ At least eight amici were other affiliates of the NRA.¹⁹ At least six amici

reported receiving funding from foundations and other (often anonymously funded) sources in the dark-money conservative-aligned donor network that regularly funds ideological litigants and amici before the Court.²⁰

Confident that with Justice Kennedy gone the “logjam had been cleared,”²¹ the gun lobby laid its cards on the table. Even after New York City and New York State changed the regulations at issue, making the lawsuit moot, the gun lobby pressed for a decision. “The project this Court began in *Heller* and *McDonald* cannot end with those precedents,”²² argued the petitioners, hoping that a ruling from the Court in this case would help the gun lobby attack regulations across the country.

Five Senate Democrats also filed an amicus brief in the *N.Y. State Rifle* case, documenting what was known about the money behind the gun lobby’s “project,” warning that the court risked its reputation for impartiality if it continued to hear a case that was moot.²³

Within three days of the brief being filed, the right-wing echo chamber – from Rush Limbaugh to the Wall Street Journal editorial page – began to howl.²⁴ Senate Republicans sent a letter to the Supreme Court encouraging it not to be “cowed.”²⁵ According to data from the Federal Election Commission, the NRA has spent at least \$55 million on political expenditures supporting Senate Republicans since 2010.²⁶ As discussed below, it appears the NRA is so cozy with Senate Republicans that some use the NRA’s media consultants on their own campaigns.



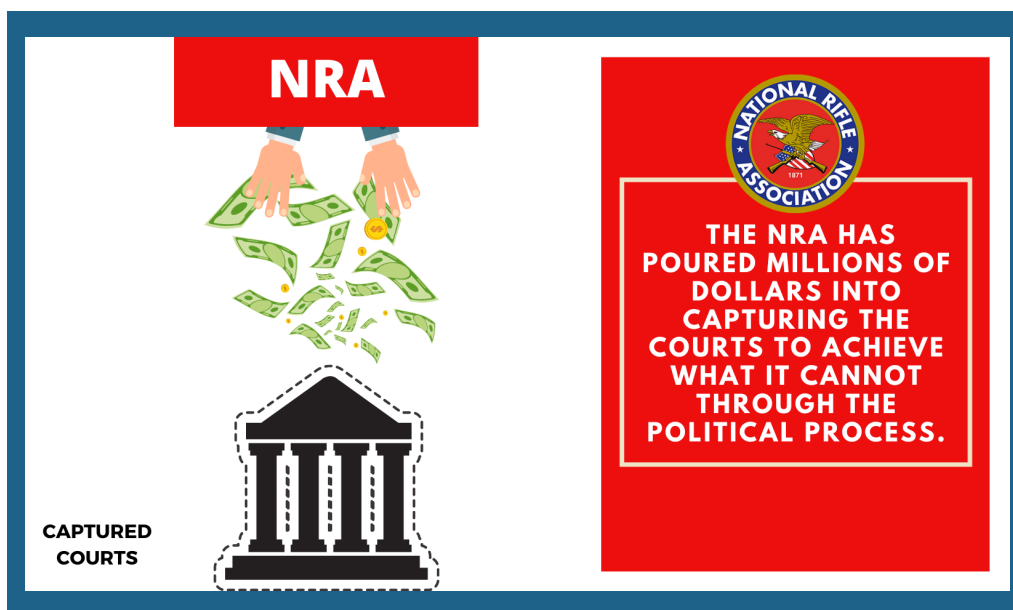
In the decision, Chief Justice Roberts and Justice Kavanaugh joined the Court’s liberals in dismissing the case as moot. The caterwauling resumed in a Wall Street Journal editorial that said the Court had “cowered to Senate Democratic threats.”²⁷ In dissent, Justice Alito, joined by Justices Thomas and Gorsuch, pointed specifically to Senate Democrats’ brief as a reason why they found the Court’s mootness decision regrettable, and one that, in their view, “should not be countenanced.”²⁸

Even as the Court dismissed *N.Y. State Rifle*, however, the right-wing Justices signaled they were eager to take up the gun lobby’s project in the near future. In dissent,

Justices Alito, Thomas, and Gorsuch made clear that they thought New York City's regulation violated the Second Amendment. While Justice Kavanaugh concurred with the Court's decision, he wrote separately that he "share[d] Justice Alito's concern that some federal and state courts may not be properly applying" the Supreme Court's decision recognizing an individual's right to gun ownership and that "the Court should address that issue soon."²⁹

A Closer Look at the NRA

From litigation to judicial lobbying to direct political spending, the NRA employs multiple interlocking strategies to advance its interests.



The NRA was founded in 1871. For its first century of existence, its primary concerns were hunting, firearms education, and, ironically, gun safety. That changed in 1977, when activist board members seized control of the group and transformed it into an advocacy organization that pushed for extreme

and unlimited rights for gun owners.³⁰ And, although the NRA used to be a bipartisan campaign contributor,³¹ it increasingly sided with Republican candidates – and has been rewarded with extreme legislation and court appointments.³²

Today, the NRA and its affiliates engage in a sustained legal and political campaign of deceit, fearmongering, and disinformation in opposition to any gun safety measures, no matter how commonsense or popular. Directly engaging in litigation is only one aspect of this strategy. The NRA filed an amicus brief in the *Heller* case and was a litigant in *Chicago*, and regularly files amicus briefs in lower court cases. In addition to filing its own briefs, the NRA has funded a battalion of shell organizations with a veneer of independence to amplify its message at the Supreme Court. NRA dollars are behind amicus briefs filed by several purportedly independent groups that routinely support the NRA's extreme position in gun cases, including the National African American Gun Association, the Pink Pistols, Academics for the Second Amendment, and Commonwealth Second Amendment, Inc., who all filed briefs in *N.Y. State Rifle*.³³

But the NRA isn't content to just argue its case in court. It has actively worked to make sure more judges and justices who hear its arguments are inclined to rule in its favor.

In May, Senate Democrats documented in *Captured Courts* the quarter-of-a-billion-dollar dark-money enterprise dedicated to capturing our federal courts for right-wing and corporate special interests.³⁴ The NRA – working in lockstep with other dark-money funded organizations – has promoted a steady stream of activist judges for the federal bench. At the center of this network is Leonard Leo, co-chairman of the Federalist Society.

Before Justices Gorsuch and Kavanaugh were appointed, every conservative

The NRA Is a Corrupt Organization

Recent reports, lawsuits, and investigations have revealed that the NRA is mired in corruption and perhaps even illegal conduct. The lawsuits and reports allege:

- PERSONAL PIGGYBANK**
Top NRA officials used the organization's coffers as a personal piggybank to fund extravagant lifestyles and settle personal debts.
- RAIDING FUNDS**
The NRA raided the funds of its tax-exempt non-profit Foundation "to plug holes caused by its own poor management." (District of Columbia v. NRA)
- RUSSIAN INTERFERENCE**
The NRA may have facilitated illegal Russian interference in the 2016 election.
- ILLEGAL COORDINATION**
The NRA may have illegally coordinated with the Trump campaign and Republican congressional campaigns.

CAPTURED COURTS

Supreme Court justice recognized the constitutionality of gun safety laws and that the Second Amendment did not confer unlimited rights to gun owners.³⁵ The NRA spent millions, in coordination with Leo's network, to support President Trump's two Supreme Court nominees, who they hoped would take an even more extreme

view of the Second Amendment.

In the lead-up to Justice Gorsuch's 2017 confirmation, the NRA received \$2.6 million in new donations to support Gorsuch's nomination.³⁶ This included a \$950,000 donation in early 2017 from America Engaged, a dark-money shell group that Trump's judicial advisor Leonard Leo leads.³⁷ Soon after, the NRA launched a \$1 million media campaign to support Gorsuch's confirmation.³⁸

The following year, the NRA spent over \$1 million on ads supporting the confirmation of Justice Kavanaugh. The NRA's pro-Kavanaugh ad exclaimed, "Four liberal justices oppose your right to self-defense ... four justices support your right to self-defense. President Trump chose Brett Kavanaugh to break the tie. Your right to self-defense depends on this vote."³⁹ But in fact, Justice Kavanaugh was selected to break a different type of tie: to tip the Court toward an extremist, unlimited vision of the Second Amendment that would roll back previously announced limits on gun rights.⁴⁰ In light of this support for his confirmation, Kavanaugh's loyalty to the NRA and his

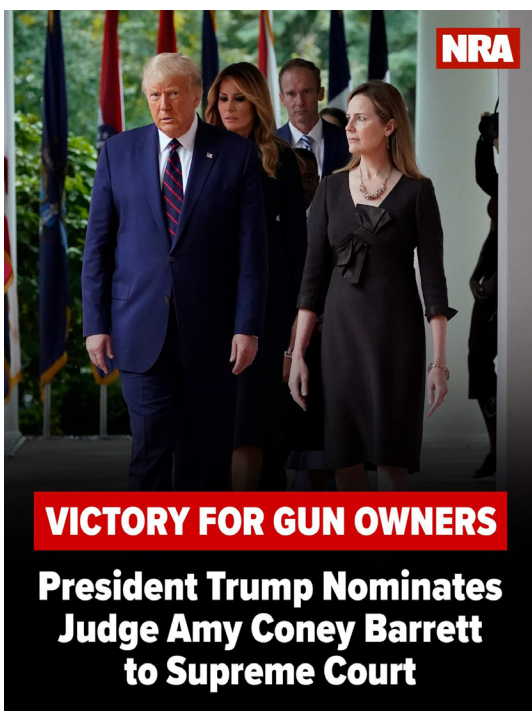
apparent support for the NRA's out-of-the-mainstream Second Amendment arguments in *N.Y. State Rifle* is not surprising.

Similarly, while the NRA has actively supported right-wing political candidates for decades, it went into overdrive in 2016, spending \$100 million to support Donald Trump and Republican candidates who are aligned with the gun lobby.⁴¹ This included



a whopping \$30 million to support the Trump campaign and another \$20 million for six Republican Senate candidates.⁴² No wonder President Trump, Mitch McConnell, and their Republican Senate colleagues are so willing to confirm activist judges who adopt the gun lobby's extreme Second Amendment views.

While the NRA may have been disappointed with *N.Y. State Rifle*, that disappointment was short lived. The NRA was quick to claim "victory" with nomination of Amy Coney Barrett to fill the seat of Justice Ginsburg



Who Is Behind the NRA?

In its amicus brief in the *N.Y. State Rifle*, the NRA described itself as representing "approximately five million members," and as "America's leading provider of firearms, marksmanship and safety training for civilians."⁴³ It maintained that it filed the brief because its members want "to safely and effectively exercise their fundamental right to use a firearm for self-defense."⁴⁴ That's a slanted and incomplete description of the NRA.

While much of the NRA's funding is unreported, the bipartisan group Issue One has investigated public filings and determined that the NRA raised \$2.1 billion in donations from 2010 to 2016.⁴⁵ It turns out the NRA's supposed grassroots campaign for

expanding Second Amendment rights is heavily supported by gun makers and other wealthy corporate special interests.

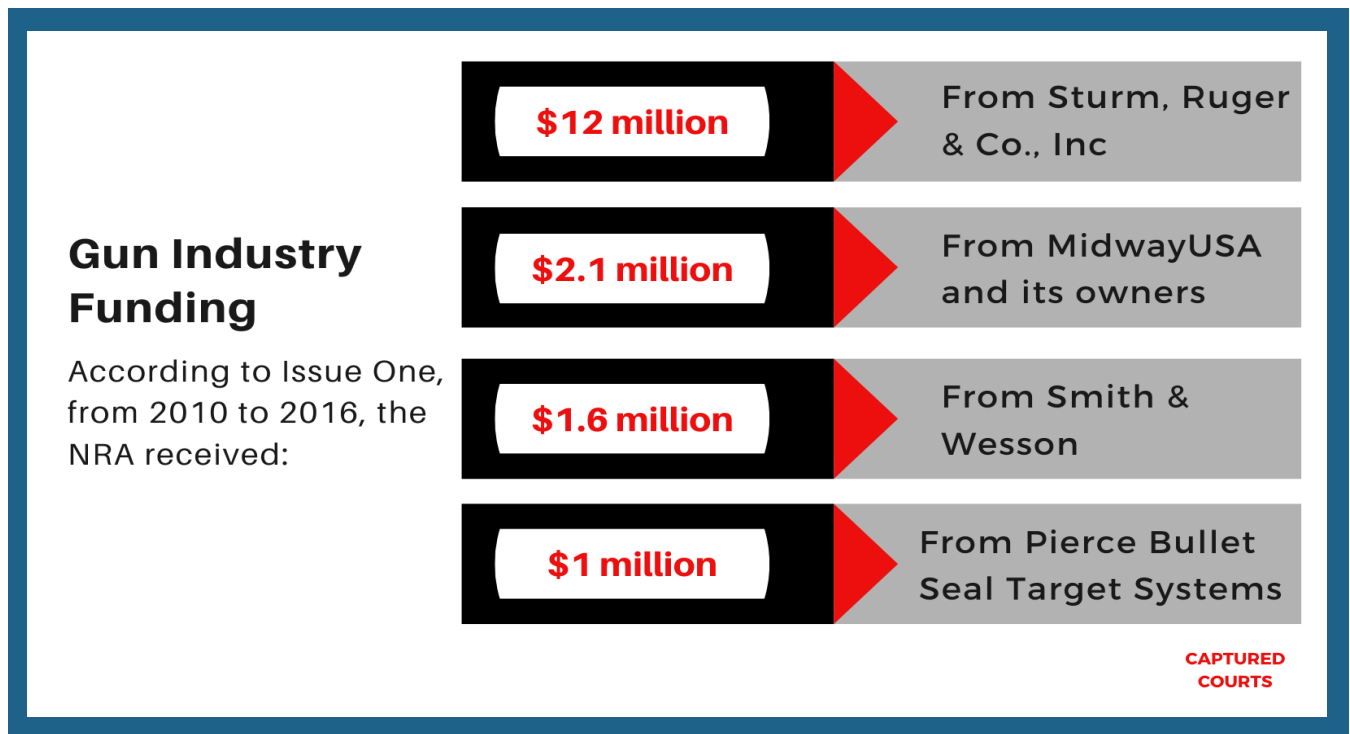
Gun Industry Funding

According to one estimate, the gun industry gave the NRA a total of between \$19.3 and \$60.2 million from 2005 to 2013.⁴⁶ This included funding from eight gun industry “corporate partners,” who the NRA says have contributed “gifts of cash totaling \$1 million or more.”⁴⁷ According to Issue One, from 2010 to 2016, the NRA has received:

- \$12 million from **Sturm, Ruger & Co., Inc.;**
- \$2.1 million from shooting and hunting store **MidwayUSA** and its owners;
- \$1.6 million from **Smith & Wesson;** and
- \$1 million from **Pierce Bullet Seal Target Systems.**⁴⁸

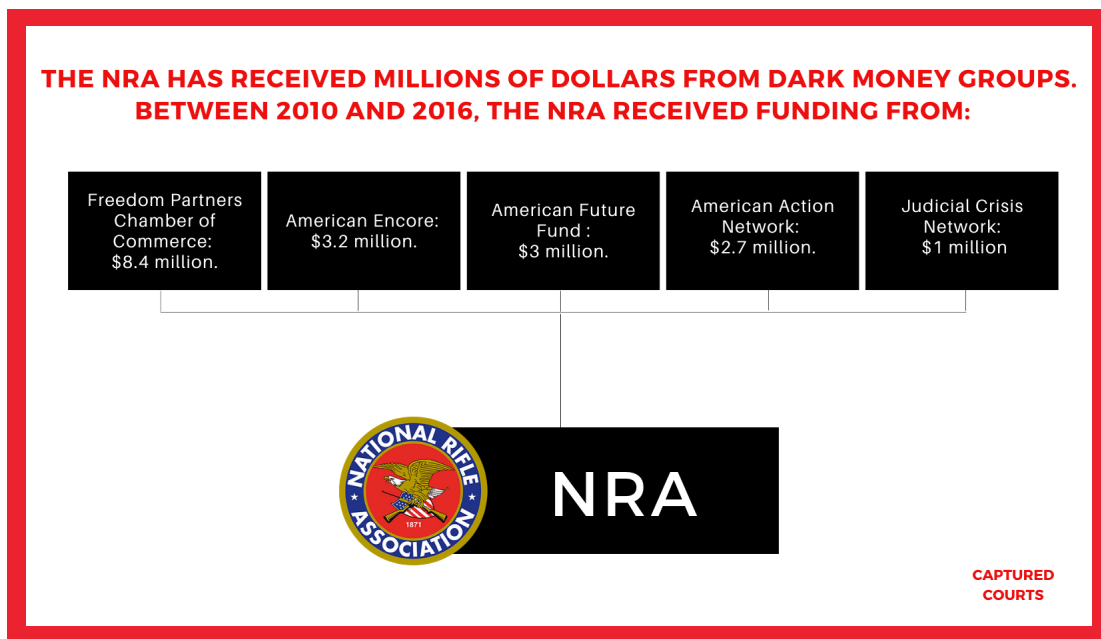
This year, seven firearm industry companies, including SigSauer, KelTec, and Galleryof-Guns.com, all agreed to match contributions to the NRA to support “this year’s massive campaign.”⁴⁹ This might explain why the NRA opposes gun safety legislation that a majority of its members actually support.⁵⁰

Corporate Special Interests Use the NRA to Mask Political Spending



Because the NRA does not have to disclose its donors, it is also a useful conduit for other right-wing special interests, including judicial capture groups. In fact, the NRA has received millions of dollars from dark-money groups that have no apparent connection to gun rights.⁵¹ For example, between 2010 and 2016, the NRA received funding from:

Freedom Partners Chamber of Commerce: \$8.4 million. Founded as part of the Koch network in 2011, Freedom Partners used its status as a 501(c)(6) trade association to collect and disburse hundreds of millions of dollars of untraceable funds to right-wing groups. It disbanded in 2019.⁵²



American Encore (formerly Center to Protect Patient Rights): \$3.2 million. Established by an Arizona-based Koch operative, this entity received millions of dollars from Freedom Partners and other dark-money groups, passing that money through to other organizations and campaigns against state-level ballot initiatives. A California elections agency once described this group’s activities as “campaign money laundering,” issuing a large fine for violating of state disclosure laws.⁵³

American Future Fund (an American Encore Affiliate): \$3 million. Founded in Iowa in 2007, and funded by the Koch network through at least 2016,⁵⁴ American Future Fund is a 501(c)(4) “social welfare” group that has raised and spent tens of millions of dollars to promote a variety of causes, including the repeal of the Affordable Care Act. Along with what’s now American Encore, it was fined by the Federal Election Commission for breaking disclosure rules in 2016.

American Action Network: \$2.7 million. Co-founded by longtime Republican mega-

donor Fred Malek and former Senator Norm Coleman (R-MN) in 2010, American Action Network is a self-described “action tank” or “think-and-do tank” promoting conservative policy outcomes.⁵⁵ Between 2010 and 2016, it was the 6th-highest spender among all political “independent expenditure” groups (the NRA is 4th).⁵⁶

Judicial Crisis Network: \$1 million. A 501(c)(4) “social welfare” group shielded from donor-disclosure requirements, Judicial Crisis Network has spent tens of millions of dollars opposing President Obama’s Supreme Court nominee Merrick Garland and shepherding through President Trump’s nominees. Most of that money came from just three anonymous mega-donations. JCN has also given over \$38 million to right-wing advocacy groups, including the Republican Attorneys General Association.⁵⁷

At least three of the organizations listed above (Freedom Partners, American Encore, and American Future Fund) are arms of the Koch network, overseen by fossil fuel billionaire Charles Koch. The Koch network, and the partly overlapping State Policy Network, have funded their own cadre of gun lobby amici, including the Cato Institute, the Goldwater Institute, the Institute for Justice, the Wyoming Liberty Group, Judicial Watch, and the Heartland Institute. In some cases, multiple Koch-funded groups file separate amicus briefs, giving Koch network donors multiple opportunities to advance their cause. For example, the Institute for Justice, the Goldwater Institute, the Wyoming Liberty Group, and Heartland Institute each filed separate briefs in *McDonald v. Chicago*. Each is a Koch-funded entity.⁵⁸

The NRA Is a Corrupt Organization

Recent reports, lawsuits, and investigations have revealed that the NRA is mired in corruption and perhaps even illegal conduct. In August, New York Attorney General Letitia James sued the NRA for abuse of its nonprofit tax status.⁵⁹ Her suit states that the NRA demonstrated a “pattern of conducting its business in a persistently fraudulent or illegal manner.”⁶⁰

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THE NRA:

While the NRA claims to be a membership organization, it receives significant financial support from gun manufacturers and other dark money interests that are also behind efforts to rig the rules of our democracy, undermine workers' rights and the labor movement, and take away health care for millions of Americans.

CAPTURED COURTS

The lawsuits and reports allege:

- Top NRA officials used the organization's coffers as a personal piggybank to fund extravagant lifestyles and settle personal debts;⁶¹
- The NRA raided the funds of its tax-exempt nonprofit foundation "to plug holes caused by its own poor management";⁶²
- The NRA may have facilitated illegal Russian interference in the 2016 election;⁶³ and
- The NRA may have illegally coordinated with the Trump campaign and several Republican congressional campaigns in violation of campaign-finance laws.⁶⁴

Grift & Abuse of Nonprofit Status

Laws that govern not-for-profit organizations like the NRA limit how executives can be compensated and how the organization can use its funds. While executives are entitled to fair pay, they may not use the nonprofit organization's money to enrich themselves. Despite being in operation for nearly 150 years, the NRA appears to have forgotten these basic rules. These allegations came to light in suits filed by the New York⁶⁵ and Washington D.C.⁶⁶ attorneys general. According to the New York Attorney General, who is seeking to dissolve the NRA's nonprofit status, NRA Executive Vice President Wayne LaPierre and other NRA executives "violat[ed] numerous state and federal laws" by enriching themselves, their friends, families, and allies to the tune of \$64 million over a period of three years.⁶⁷ The New York Attorney General states that under LaPierre's leadership, NRA executives diverted "millions of dollars away from the charitable mission, imposing substantial reductions in its expenditures for core program services, including gun safety, education, training, member services, and public affairs."⁶⁸

According to other documents and internal NRA communications that have been made public, LaPierre:

- Spent over \$250,000 of the NRA's money at an expensive Beverly Hills clothing boutique;⁶⁹
- Racked up \$100,000 of traveling expenses in just one 10-day stretch;⁷⁰

CAPTURED COURTS

It now appears that the NRA may have violated campaign finance laws & the terms of its own tax-exempt status, lavishing gifts and travel on its leadership.



- Routinely billed the NRA for personal travel on private jets;⁷¹ and
- Sought to have the NRA purchase him and his wife a \$6.5 million mansion in Texas.

⁷²

Other NRA leaders got in on the alleged misconduct. In the words of Joshua Powell, the former second-highest NRA executive, "I felt like Ray Liotta walking into the Copacabana in the movie Goodfellas. That is the seduction of living the life, and it's easy to forget the little guy with his \$45 membership dues who is paying the bill."⁷³

This gift and flouting of charitable laws paints a starkly different picture of the NRA from the member-oriented organization profile it presents to the Court in its amicus filings.

Facilitating Foreign Interference




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- Racked up \$100,000 of traveling expenses in just one 10 day stretch;
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Special Counsel Robert Mueller's report on interference into the 2016 presidential election documented how the Russians sought to help the Trump campaign and hurt the Clinton campaign.⁷⁴ Less well known is that Russian president Vladimir Putin and his operatives saw the NRA as another avenue to influence the election and help Trump.

In 2018, the FBI began an investigation into the NRA to determine if Russian banker and Putin ally Alexander Torshin illegally funneled foreign money into the NRA to be used to influence the 2016 election.⁷⁵ Although Commissioner Ellen Weintraub called the allegations "too serious to ignore,"⁷⁶ Republican commissioners at the Federal Election Commission (FEC) ultimately blocked any further investigation into the NRA's relationship with Russia.

In 2019, after an 18-month investigation into the NRA's relationship to Russia, Senate



Finance Committee Ranking Member Ron Wyden issued a report titled, *The NRA and Russia: How a Tax-Exempt Organization Became a Foreign Asset*.⁷⁷ Among other findings, the report revealed new evidence that:

- The NRA sent an official delegation to Moscow in 2015 to demonstrate Torshin's American connections to the Kremlin. This contradicted previous NRA statements that it was an unofficial trip organized by individuals merely interested in fostering gun rights in Russia;
- NRA insiders exchanged access to the American political system for the promise of lucrative personal business opportunities; and
- NRA insiders may have violated U.S. sanctions by meeting with sanctioned Russian government officials and state-linked weapons manufacturers in pursuit of personal business opportunities.⁷⁸

According to a recent report by the Senate Select Committee on Intelligence, NRA leadership participated in creating a pretext to get around sanctions and meet with Dmitry Rogozin, a sanctioned Russian official who had very likely bugged American diplomats and leaked their phone conversations.⁷⁹

In short, Russia sought to use the NRA as a vector to secretly influence American politics, just as the Koch network and other right-wing special interest groups have done for years. Once a dark-money vector is opened, it is by definition impossible to find whose money flows through it.

Illegal Coordination with the Trump Campaign and Republican Candidates

Under campaign finance law, groups like the NRA may not directly "coordinate" election spending with candidates. It appears the NRA has ignored these laws. In 2016, the NRA spent \$50 million purchasing political ads.⁸⁰ According to reports in *Politico*, *Mother Jones*, and *The Trace*, it routed most of that \$50 million through a web of shell companies and fictitious organizations to conceal that the NRA was using the same media firms as the Trump campaign and Republican Senate candidates.⁸¹

For instance, the NRA hired the firm Red Eagle Media Group ("Red Eagle") to place its campaign ads on the air. The Trump campaign used American Media & Advocacy Group ("AMAG") for its ads. Despite the different names, Red Eagle and AMAG are essentially the same firm. They sharing a common office and common employees under the shared name National Media Research, Planning and Placement firm ("National Media"). At least four National Media employees appear as representatives of both the Trump campaign and the NRA on official filings with the Federal Communications Commission. These filings also show that Red Eagle and AMAG often bought ads on the same stations, at around the same times, for the NRA and the



Trump campaign, respectively.⁸²

News reports indicate that the NRA might once again be coordinating with the Trump campaign in the 2020 election.⁸³ According to the Center for Responsive Politics, the Trump campaign has funneled payments through “Harris Sikes Media,” a shell company that has no website or public presence.⁸⁴ All known employees and contacts at Harris Sikes Media are also employed at National Media.

According to Larry Noble, the former general counsel of the FEC, “All evidence points to coordination. It’s hard to understand how you’d have the same person authorizing placements for the NRA and the candidate and [have] it not be coordination.”⁸⁵

What to Expect

In our system of government, courts aren’t supposed to have “projects.” They aren’t supposed to be the target of lobbying campaigns. But that is the reality of what our courts have become, and the money behind these projects and campaigns largely hides behind a cloak of anonymity. With the NRA so close to its long-sought victory, we expect the NRA to redouble its efforts.

After the failed attempt to advance their “project” in *N.Y. State Rifle*, gun rights advocates will keep asking the Supreme Court to review more cases. Indeed, with the nomination of Judge Barrett to the Supreme Court, the NRA is already claiming victory. They will not waste another chance to crush gun safety measures with an extreme reinterpretation of the Second Amendment that disregards historical limits and the interests of public safety.

In the recently concluded 2019-20 term alone, these groups asked the Court to hear ten other Second Amendment challenges to gun safety regulations, including assault weapons prohibitions and requirements of “good cause” to obtain concealed-carry permits.⁸⁶ According to conservative pundits, “the justices had their pick of the litter,” “a slew of excellent cases” that would allow the Court to further expand the Second Amendment.⁸⁷ In many of these cases, the NRA and other dark-money-funded groups filed amicus briefs in support of Supreme Court review.

When the Supreme Court declined to hear all ten of those challenges, the right wing was outraged at “another abdication by the court.”⁸⁸ “[Chief Justice] Roberts cannot be trusted to interpret the Second Amendment as written, or faithfully apply the precedents of the *Heller* and *McDonald* decisions,”⁸⁹ wrote one right-wing commentator, expressing the common sentiment that the right was entitled to a Second Amendment decision striking down additional gun safety laws. Indeed, some reporting indicates that Roberts refused to hear these cases as a calculated political move, in order to avoid a showdown over *Heller* and *McDonald* in our current political

climate.⁹⁰

The challenge for advocates of gun safety doesn't exist only at the Supreme Court. Throughout the federal judiciary, as documented by Giffords, President Trump's nominees are poised to block state and local efforts to make our communities safer.⁹¹ The NRA has invested heavily in getting those judges on the bench. Presumably, they think the money was well spent.

They appear to have a sound basis for their confidence. Some of these judges have already shown their stripes in critical cases addressing commonsense gun violence prevention measures at the state and local levels that ban semi-automatic assault weapons and large-capacity magazines. Even though every circuit court to consider these bans – the D.C. Circuit,⁹² the First Circuit,⁹³ the Second Circuit,⁹⁴ the Third Circuit,⁹⁵ the Fourth Circuit,⁹⁶ the Seventh Circuit,⁹⁷ and the Ninth Circuit⁹⁸ – has held them to be constitutional, there are worrying signs that things will change in the near future.

Amy Coney Barrett


Moments after the announcement of Judge Amy Coney Barrett's nomination to the Supreme Court, the NRA issued a statement praising her record and calling on the Senate to "act swiftly to confirm her."

The best evidence of Judge Barrett's views on the Second Amendment might be her 38-page dissent in *Kanter v. Barr*, a case in which a convicted felon argued that his prior conviction should not have prohibited him from possessing firearms.⁹⁹ The majority found that the government had established that the laws were "substantially related to the important governmental objective of keeping firearms away from those convicted of serious crimes."¹⁰⁰ Judge Barrett, however, concluded the government had not introduced sufficient evidence that "disarming all nonviolent felons" substantially advances the government's interest or that "Kanter himself shows a proclivity for violence."¹⁰¹ Barrett argued that to prevent the Second Amendment from being treated as a "second-class right" (a popular phrase used by other Trump judges in gun control cases), the law was unconstitutional as applied to Kanter.

Given her record and unqualified support from the gun lobby, we can expect Judge Barrett will be a reliable vote to expand the individual rights to bear arms if confirmed to the Supreme Court.



Amy Coney Barrett
[The Federalist Society](#)



In 2018, Judge Stephanos Bibas on the Third Circuit became the first Trump-nominated judge to dissent in such a case.¹⁰² And, in 2020, Judge Kenneth Lee on the Ninth Circuit became the first Trump-nominated judge to rule that a ban on large-capacity magazines violated the Second Amendment, notwithstanding Ninth Circuit precedent.¹⁰³ These dissents from Trump's judges are alarming harbingers of a developing circuit split that will create exactly the kind of case that Justice Kavanaugh has already stated he believes the Supreme Court "should address . . . soon."¹⁰⁴ When exactly "soon" arrives might be an open question, but how the Court will "address" it once it does is all but certain, leaving even the most commonsense and fundamental gun violence prevention efforts at risk.

With the passing of Justice Ginsburg, a new justice might leave the Chief Justice powerless to stop the next Second Amendment case from reaching the Court. There are now at least four justices committed to continuing the NRA's "project." Those four justices alone can vote to have the Court hear another Second Amendment case. They need just one more to join them to establish a constitutional precedent that may last for decades.

If these fears come to fruition, we must not forget that this sea change in Second Amendment law has been brought to us by an organization that receives significant financial support from the firearms industry, is intimately tied into the same right-wing network that also aspires to use the courts to take away Americans' health care and the rights of workers and labor, and is accused of violating the tax code and election laws. The corrupt NRA is a key cog in the right-wing takeover of the federal judiciary.

CAPTURED COURTS OVERVIEW

The GOP's Big-Money Assault on the Constitution, Our Independent Judiciary, and the Rule of Law

In May 2020, DPCC released a report with Senators Schumer and Whitehouse to shed a light on the right-wing takeover of our judicial system. The Trump Administration and Mitch McConnell's Senate Republicans have few significant legislative accomplishments. Instead, they're packing the judiciary with far-right extremist judges. The Senate has confirmed more than 200 new life-tenured federal judges, most of whom were chosen not for their qualifications or experience—which are often lacking—but for their allegiance to Republican political goals.

This court capture has been perpetrated through a complex network of anonymously-funded groups like the Federalist Society and spearheaded by right-wing activists like Leonard Leo. Their web consists of:

1. deep-pocketed, special-interest donors, who provide the money;
2. shell entities, which funnel the money and exploit tax laws to keep donors' identities secret;
3. public relations firms and political operatives who run multi-million-dollar ad campaigns to support and oppose judges and generate press to craft favorable public narratives; and
4. a brain trust of ideological think tanks, academic institutions, and "public interest" law firms, filled with lawyers and professors who generate "intellectual capital"—law review articles, *amicus* briefs, and so on—to advance the donors' interests through the courts.

Senate Democrats' report exposes that web:

- How the "conservative legal movement" has rewritten federal law to favor the rich and powerful with 80 partisan Supreme Court decisions
- How the Federalist Society, Leonard Leo, and special-interest money dominate our courts
- How Mitch McConnell's broken Senate confirmation process helps Republicans and the big-money donors behind them

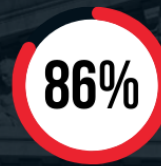
WHAT DOES GOP COURT-PACKING MEAN FOR AMERICA:

- Voters across the country wait in line for hours to vote
- Special interests flood our airways with political ads
- Workers have discrimination cases thrown out of court
- Communities can't regulate gun violence
- Polluters can pollute our air and water without consequence
- Access to healthcare, including protections for pre-existing conditions, remains under attack

BY THE NUMBERS:



AT LEAST \$250 MILLION in dark money is funding Republicans' court capture machine



86% of Donald Trump's nominees to the Supreme Court and influential appellate courts are Federalist Society members



FOR 50 YEARS right-wing donors and paid-for activists built a "conservative legal movement" to deliver for their agenda



80+ PARTISAN 5-4 DECISIONS at the Roberts Supreme Court have delivered wins to the Republican Party and the big corporate interests behind it



NEARLY 90% of the House-passed bills that Mitch McConnell sidelined to confirm partisan judges received bipartisan support

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