



## Ruling That the Second Amendment Is a Second-class Right Faces Dissent

The [ruling](#) by the U.S. Circuit Court of Appeals last week not only perfectly exposed the damage Obama appointees have done to precious constitutional rights but also showed how Trump appointees are already laboring to repair that damage.

President Obama appointed 329 people to federal judgeships during his eight-year administration, including one Patty Shwartz, who wrote the majority opinion in a Second Amendment lawsuit upholding New Jersey's ban on magazines holding more than 10 rounds.

She wrote:

Today we address whether one of New Jersey's responses to the rise in active and mass shooting incidents in the United States — a law that limits the amount of ammunition that may be held in a single firearm magazine to no more than ten rounds — violates the Second Amendment, the Fifth Amendment's Takings Clause, and the Fourteenth Amendment's Equal Protection Clause. We conclude that it does not.

Dissenting in the case was a freshly minted circuit court judge nominated by President Trump: Stephanos Bibas (shown). Bibas is a brilliant legal mind who is not only the 15th-most-cited law professor by the Supreme Court, the U.S. Court of Appeals, and numerous state high courts, but also the fifth-most-cited professor of criminal law and procedure by professors teaching in law schools around the country.

Bibas assumed office on November 20, 2017 and chose the case the *Association of New Jersey Rifle and Pistol Clubs, Inc. v. the Attorney General of the State of New Jersey* to take Shwartz to task over her frivolous treatment of the Second Amendment as a second-class right not entitled to a full and robust defense against anti-gun outfits such as Everytown for Gun Safety, which defended New Jersey's attorney general in the case.

Bibas opened his dissent declaring that "the Second Amendment is an equal part of the Bill of Rights. We must treat the right to keep and bear arms like other enumerated rights, as the Supreme Court insisted in *Heller*. We may not water it down and balance it away based on our [your] own sense of wise policy."

For 19 pages he not only provided a defense of the Second Amendment that obliterated Schwartz's opinion but prepared the case for appeal to the Supreme Court. In essence, Bibas did the Supreme Court's homework on the case, should the high court decide to review it on appeal. Here are just a few of the salient points Bibas made in his extirpation of the majority opinion in the New Jersey case:

The Second Amendment provides a right to "keep and bear Arms." U.S. Const. amend. II.





Written by [Bob Adelman](#) on December 10, 2018

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[Emphasis added.] It protects possessing arms, not just firing them. So the majority misses a key part of the Second Amendment. The analysis cannot turn on how many bullets are fired....

New Jersey has not met its burden to overcome intermediate scrutiny [the state must prove the ban serves an “important” public interest], let alone strict scrutiny [the state must prove the ban serves a “compelling” public interest]. True, the government has a compelling interest in reducing the harm from mass shootings. No one disputes that. But New Jersey has failed to show how the ban advances its interest....

The majority’s concerns are understandable. Guns kill people. States should be able to experiment with reasonable gun laws to promote public safety. And they need not wait for mass shootings before acting. The government’s and the majority’s position may thus be wise policy. But that is not for us to decide. The Second Amendment is an equal part of the Bill of Rights. And the Supreme Court has repeatedly told us not to treat it differently.

In this specific case Bibas was in the minority. But he has done his homework. He was one of the judges on the Federalist Society’s approved list of constitutionalists for the president to consider and is now tasked with correcting the majority when they go astray. As Trump’s appointees permeate the fabric of American jurisprudence, they will increasingly take on the task of bringing the U.S. ship of state back to its original moorings.

Image of Stephanos Bibas: [Screenshot of C-SPAN video](#)

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