

THOMAS HARDIMAN ON GUNS

Highlights:

- Thomas Hardiman issued extreme right-wing judicial decisions on guns.
 - Hardiman argued against a New Jersey law requiring those applying for handgun permits to justify the need for a gun.
 - Hardiman ruled against a federal firearm ban for felons.
 - Hardiman ruled that a man who committed a nonviolent crime could not be legally prevented from owning a firearm.

Hardiman Issued Extreme Right-Wing Judicial Decisions On Guns

HARDIMAN ARGUED AGAINST A NEW JERSEY LAW REQUIRING THOSE APPLYING FOR HANDGUN PERMITS TO JUSTIFY THE NEED FOR A GUN

Hardiman Dissented In A Case That Upheld A New Jersey Prohibition On Carrying Handguns In Public. According to Reuters, “In a 2013 case, Thomas Hardiman, another federal appeals court judge, dissented when the majority on his court upheld a New Jersey law regulating the possession of handguns in public. Hardiman endorsed a broad reading of Second Amendment gun rights that would protect carrying weapons outside the home for self-defense.” [Reuters, [5/19/16](#)]

- **Hardiman Wrote In His Dissent That New Jersey’s Law Could Not Stand In The Face Of A Second Amendment Challenge, Even Though The Supreme Court Allowed The Majority Decision To Stand.** According to the Los Angeles Times, “Hardiman wrote a 40-page dissent, arguing the high court and Justice Scalia described the 2nd Amendment as protecting a right to ‘self-defense.’ Because ‘the need for self-defense naturally exists outside and inside the home, I would hold the 2nd Amendment applies outside the home,’ he wrote in *Drake vs. Filko*. In passing its law, ‘New Jersey has decided that fewer handguns legally carried in public means less crime,’ he wrote. ‘It is obvious that the justifiable need requirement functions as a rationing system designed to limit the number of handguns carried in New Jersey,’ he said, but it cannot stand in the face of a 2nd Amendment challenge. The law survived an appeal to the Supreme Court, however. The justices without comment turned down a petition in 2014 asking them to review the 3rd Circuit’s decision.” [Los Angeles Times, [1/27/17](#)]
- **Hardiman: States Had “Considerable Latitude To Regulate The Exercise” To Minimize The Risk Of Second Amendment Rights But Could Not “Reduce The Danger By Curtailing The Right Itself.”** According to Time, “Those who drafted and ratified the Second Amendment were undoubtedly aware that the right they were establishing carried a risk of misuse, and States have considerable latitude to regulate the exercise of the right in ways that will minimize that risk,’ Hardiman wrote in his dissent. ‘But States may not seek to reduce the danger by curtailing the right itself.’” [Time, [1/26/17](#)]

HARDIMAN RULED AGAINST A FEDERAL FIREARM BAN FOR FELONS

2016: Hardiman Ruled People Who Had Been Convicted Of Corruption Of A Minor And Carrying A Handgun Without A License, Respectively, Were Still Protected Under The Second Amendment Because They Were Not “Dangerous Persons.” According to SCOTUSblog, “Although he rejected a Second Amendment challenge to the general constitutionality of the federal law barring felons from possessing firearms, last year he concurred in a pair of challenges to the law by two men who had been convicted of corruption of a minor and carrying a handgun without a license, respectively. Hardiman agreed with the would-be gun owners that, at least as applied to them, the federal law violates the Constitution. He explained that ‘the threshold question in a Second Amendment challenge is one of scope: whether the Second Amendment protects the person, the weapon, or the activity in the first place. This,’ he continued, ‘requires an inquiry into ‘text and history.’” Based on that inquiry, he concluded that ‘the most cogent principle that can be drawn from traditional limitations on the right to keep and bear arms is that dangerous persons likely to use firearms for illicit purposes were not understood to be

protected by the Second Amendment’ – a category into which the individuals in this case, in his view, did not fall.” [SCOTUSblog, [1/23/17](#)]

HARDIMAN RULED THAT A MAN WHO COMMITTED A NONVIOLENT CRIME COULD NOT BE LEGALLY PREVENTED FROM OWNING A FIREARM

As Part Of The Third Circuit Federal Appeals Court, Hardiman Ruled That A Man Who Committed A Nonviolent Crime Could Not Be Legally Prevented From Owning A Firearm. According to the New York Times, “A federal appeals court ruled on Tuesday that a man who committed a nonviolent crime cannot be legally prevented from owning a firearm — a potential setback to gun regulations spurred by a Supreme Court ruling last year that vastly expanded the right to bear arms. In an 11-to-4 ruling, the U.S. Court of Appeals for the Third Circuit in Philadelphia overturned court decisions against Bryan Range, a Pennsylvania resident who had sued the state after being blocked from buying a shotgun over a conviction for lying on a benefits application in the 1990s. [...] In a majority opinion, Judge Thomas M. Hardiman repeatedly cited the Supreme Court ruling last June, written by Justice Clarence Thomas, in which the majority established a new standard that dictated that gun laws conform to ‘historical tradition’ dating to the 18th and 19th centuries.” [New York Times, [6/6/23](#)]

Hardiman’s Opinion Rejected The Idea That Only “Law-Abiding, Responsible Citizens” Could Own Guns.

According to the New York Times, “In sum, we reject the government’s contention that only ‘law-abiding, responsible citizens’ are counted among ‘the people’ protected by the Second Amendment,” wrote Judge Hardiman, a George W. Bush appointee who was on President Donald J. Trump’s short list to serve on the Supreme Court after the death of Justice Antonin Scalia in 2016.” [New York Times, [6/6/23](#)]

Hardiman’s Ruling Stood Against The Supreme Court’s Writing In Heller, Which Ruled That Prohibitions On The Possession Of Firearms By Felons Could Remain In Place

In Heller, The U.S. Supreme Court Said “Nothing In Our Opinion Should Be Taken To Cast Doubt On The Longstanding Prohibitions On The Possession Of Firearms By Felons.” According to Reason, “‘Nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons,’ the Supreme Court said in Heller.” [Reason, [6/7/23](#)]

Hardiman Noted That Federal Laws Restricting Gun Rights Based On Criminal Convictions Were Passed More Than 170 Years After The Second Amendment’s Ratification. According to Reason, “‘Nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons,’ the Supreme Court said in Heller. But Hardiman notes that federal laws restricting gun rights based on criminal convictions are of relatively recent vintage, and the earliest version, the Federal Firearms Act of 1938, ‘applied only to violent criminals.’ In 1961, Congress expanded the ban to cover nonviolent crimes punishable by more than a year in prison. ‘We are confident that a law passed in 1961—some 170 years after the Second Amendment’s ratification and nearly a century after the Fourteenth Amendment’s ratification—falls well short of ‘longstanding’ for purposes of demarcating the scope of a constitutional right,’ Hardiman says.” [Reason, [6/7/23](#)]