



Amy Coney Barrett: As Good as Confirmed

Days of contentious hearings and relentless questioning in the confirmation process for Amy Coney Barrett have brought everything full circle. Chairman of the Senate Judiciary Committee Lindsey Graham (R-S.C.) predicted on Monday, the first day of the hearings, that “all the Republicans will vote yes, all the Democrats will vote no,” indicating that with a Republican majority, Barrett’s confirmation was a sure thing. Now, with the questioning of Barrett complete and Democrats unable to stall the vote, all that seems left is the formality of counting those already-decided votes.



Photo of Amy Coney Barrett: AP Images

Throughout the questioning phase of the confirmation hearings, Barrett was grilled on her record as a jurist, her religion (Barrett is a devout Catholic), and her past service as a clerk to Justice Scalia. While Democrats attempted to paint a picture of a zealous, right-wing radical, Barrett managed to acquit herself as a reasonable and qualified jurist. Case in point: The questioning by California Democrat Senator Dianne Feinstein about whether Barrett believes — as Scalia wrote — that *Roe v. Wade* “was wrongly decided and that it can and should be overruled.” Though pressed repeatedly, Barrett refused to give a direct answer. While some saw this as a portent of her weakness on the issue of abortion, she clearly stated her very good reason for refusing to answer, saying, “It would be wrong and a violation of the canons [of law] for me to [answer that question] as a sitting judge.”

This answer is perfectly consistent with Barrett’s remarks in her opening statement about activist judges legislating from the bench. On day one of the hearings, Barrett stated, “Courts have a vital responsibility to enforce the rule of law, which is critical to a free society. But courts are not designed to solve every problem or right every wrong in our public life.” She added, “The policy decisions and value judgments of government must be made by the political branches elected by and accountable to



Written by [C. Mitchell Shaw](#) on October 16, 2020

the people. The public should not expect courts to do so, and courts should not try.”

This ties directly in with her statement that she could set aside her Catholic beliefs when hearing a case. While at first blush it may seem like Barrett is willing to compromise her religious beliefs, that is not the case. Unlike a legislator, who makes law, a judge is not supposed to make law but is instead to decide legal matters based on what the law is, regardless of whether he (or she) agrees with the law. It would be the height of hypocrisy for a conservative to steal a play from the Left and legislate from the bench in direct contradiction of the Constitution. That Barrett has maintained a consistent position on that is commendable.

So would a Justice Barrett decide to overturn *Roe v. Wade*? If she evaluates the Constitution as an originalist, on the basis of the intent of the law-giver, as she has promised to do, then she should not be able to find in the “penumbra” of the Constitution a right to privacy protecting a right to have an abortion, as did a majority of the justices in the court’s January 22, 1973 *Roe v. Wade* decision. And perhaps this is the real reason why the Left is opposed to Barrett’s nomination. That is, they may not fear that she will impose Catholicism from the bench; they may fear instead that she will impose constitutionalism.

Having failed to expose Barrett as a religious zealot and loose cannon, Democrats moved to block the vote for confirmation from moving forward to the full Senate and were quickly outvoted by Republicans who hold the majority. Senator Graham set the vote for the committee for October 22 at 1 p.m. That vote is as good as counted since Republicans are expected to hold a united front.

Senator Mitch McConnell (R-Ky.) — who is majority leader of the Senate — told reporters in Kentucky that Republicans “have the votes” to confirm her, and the Senate would begin considering the nomination on October 23.

Again, since Republicans have the majority in the Senate and Graham’s prediction that “all the Republicans will vote yes, all the Democrats will vote no” has panned out so far and seems likely to continue to do so, Barrett’s confirmation is as close to certain as anything could be. And given that the vote will be as early as late October, President Trump’s hope of having another conservative justice on the Supreme Court before the election is equally almost certain.



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