

EPOCH TIMES

GOP, Democrats Draw Battle Lines During Judge Barrett's Supreme Court Confirmation Hearing

October 12, 2020

Janita Kan

Senate Republicans and Democrats opened the first day of Supreme Court nominee Amy Coney Barrett's confirmation hearing drawing clear battle lines. Republicans touted the judge's credentials, while Democrats presented her as a threat to America's health care.

The hearing on Oct. 12, which was held against a backdrop of protests outside the hearing and the Supreme Court, is the first of a four-day process as part of a timeline set by Senate Republicans to confirm President Donald Trump's third Supreme Court nominee before the election. Questioning of the nominee will occur over the course of Oct. 13 and 14, and will be followed by testimony from outside witnesses.

Senate Judiciary Committee Chairman Lindsey Graham (R-S.C.) kicked off the hearing with an opening statement asserting that despite its proximity to the election, there was nothing "unconstitutional" about holding the process at this time.

"This is a vacancy that has occurred through a tragic loss of a great woman, and we're gonna fill that vacancy with another great woman," Graham said. "The bottom line here is that the Senate is doing its duty."

While acknowledging the likely contentious nature of the hearings, Graham made a plea to his colleagues for civility: "Let's make it respectful, let's make it challenging, let's remember the world is watching," he said.

Republicans and Democrats on the committee established their positions through their opening statements. Democrats are unified in building a case that Barrett wouldn't hesitate to overturn the Affordable Care Act (ACA), also known as Obamacare. Although the judge hasn't indicated that she would overturn the law, Democrats say her opinion in a 2017 comment published in a law journal shows her hostility toward the Obama-era health care law.

In that piece, Barrett argued that Chief Justice John Roberts in the case *National Federation of Independent Business v. Sebelius*, which upheld the ACA, had "pushed the Affordable Care Act beyond its plausible meaning to save the statute." She said that if Roberts had treated the "individual mandate," a provision that imposed a penalty on those without health insurance, as it was described in the legislation, the law would have been invalidated.

"Chief Justice Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute. He construed the penalty imposed on those without health insurance as a tax, which permitted him to sustain the statute as a valid exercise of the taxing power," Barrett

wrote ([pdf](#)) at the time. “Had he treated the payment as the statute did—as a penalty—he would have had to invalidate the statute as lying beyond Congress’s commerce power.”

Moreover, Democrats are claiming that President Donald Trump had nominated jurists who would carry out his agenda to terminate Obamacare, which he has criticized. Trump wrote on [Twitter](#) in 2015 that his “judicial appointments will do the right thing unlike Bush’s appointee John Roberts on ObamaCare.”

“Health care coverage for millions of Americans is at stake with this nomination,” Senate Judiciary Committee ranking member Dianne Feinstein (D-Calif.) said during her opening statement. “If Judge Barrett is confirmed, Americans stand to lose the benefits that the ACA provides.”

The issue of health care is in the spotlight due to the pandemic as well as the upcoming oral arguments of a case challenging the ACA in the Supreme Court. Barrett could be confirmed in time to join the Supreme Court to hear oral arguments on Nov. 10 in the case that seeks to invalidate the ACA.

On the other hand, Senate Republicans, who are trying to push forward with Barrett’s confirmation, defended the judge from their colleagues’ claims and accused the Democrats of turning the Supreme Court into another political arm of government.

Sen. Chuck Grassley (R-Iowa), who spoke after Feinstein, said his colleagues’ claim that “Barrett’s confirmation would be the demise of the Affordable Care Act and the protections for preexisting conditions” was “outrageous.”

“As a mother of seven, Judge Barrett clearly understands the importance of health care,” Grassley said. “Democrats and their allies shouldn’t claim to know how any judge would rule in any particular case.”

Meanwhile, Sen. Mike Lee (R-Utah) criticized the Democrats’ “tactics of creating fear and uncertainty and doubt,” saying that this has “allowed for the politicization of the one branch of the federal government that is not political.”

Roger Pilon, Cato Institute’s B. Kenneth Simon chair in constitutional studies, told The Epoch Times’ sister media NTD that he thinks Democrats are treating the Supreme Court as another political branch of government by turning to it when they can’t achieve what they want in the legislative branch.

“That runs absolutely contrary to what our system of government is all about,” Pilon said, explaining that courts only address controversies that are brought before it and apply the law to decide those cases.

“That is what is being challenged by the Democrats. It is a fundamental attack upon our system of government that is designed to ensure the freedom of the American people under the rule of law,” he said.

Pilon added that the Senate Democrats on the committee are also using the opportunity of the election to talk about health care and appeal to voters' emotions.

“They are seizing on this fear in order to influence people as they vote over the next couple of weeks in order to ensure that the Democrats win; it’s a raw appeal to emotion. And it fundamentally undercuts the American understanding of our system of government.”

Similarly, GianCarlo Canaparo, a legal fellow at the conservative Heritage Foundation, argued that Democrats’ claims that Barrett would overturn the ACA are baseless.

“This claim that Amy Coney Barrett will reverse the Affordable Care Act is not based on anything, [there’s] no evidence she will,” Canaparo told NTD.

Some Senate Republicans also warned their colleagues on the other side of the aisle against inappropriate criticism and questioning of Barrett’s Catholic faith, which was a focus in her 2017 confirmation hearing. Following the hearing, Senate Democrats confirmed to reporters that they wouldn’t apply any unconstitutional religious tests against Barrett.

Barrett, 48, was one of the last to speak during the hearing. As a judge who is inspired by late Justice Antonin Scalia’s judicial approach, Barrett vowed that she would interpret laws “as they were written,” while adding that policy decisions should be left to lawmakers.

“Courts are not designed to solve every problem or right every wrong in our public life. The policy decisions and value judgments of government must be made by the political branches elected by and accountable to the people,” Barrett said.

She ended her remarks by pledging “to faithfully and impartially discharge my duties to the American people” as a Supreme Court justice.