Where has Amy Coney Barrett stood on important cases?

Barrett has participated in cases ranging from abortion to immigration to due process

Tyler Olson

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Amy Coney Barrett, a judge on the U.S. Court of Appeals of the 7th Circuit, is reportedly one of the top contenders for President Trump's nomination to the seat vacated by the death of late Supreme Court Justice Ruth Bader Ginsburg.

Ginsburg was the face of the liberal bloc on the Supreme Court, meaning that an appointment by Trump and confirmation by the Republican-controlled Senate could potentially significantly shift the ideological balance of the court for years. Barrett's record, including cases she's ruled on during her time as an appeals judge and her scholarship as a law professor at Notre Dame, are set to be intensely scrutinized by the media and the Senate Judiciary Committee should Trump choose her.

Carrie Severino, the president of the conservative Judicial Crisis Network, said that Barrett and the other women on the Trump shortlist may disagree with Ginsburg on the issues, but have the intellectual firepower to fill in for the late legal luminary.

"These are really impressive women," Severino said. "They're worthy of following in her footsteps."

Those on the left, however, have said they worry that Barrett would undo precedents like Roe v. Wade and impose her faith on others.

Here are a handful of the notable stances Barrett has taken that might indicate the effect she could have on the Supreme Court's jurisprudence.

Gun rights

Perhaps the most high-profile opinion Barrett has written is a dissent in Kanter v. Barr, a case that upheld a Wisconsin law taking gun rights away from non-violent felons. The majority opinion was written by Judges Joel Flaum and Kenneth Ripple, who were appointed by President Ronald Reagan.

"History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns," Barrett wrote. "But that power extends only to people who are *dangerous*."

She added: "[W]hile both Wisconsin and the United States have an unquestionably strong interest in protecting the public from gun violence, they have failed to show, by either logic or

data ... that disarming Kanter substantially advances that interest. On this record, holding that the ban is constitutional as applied to Kanter does not 'put[] the government through its paces' ... but instead treats the Second Amendment as a 'second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'"

Severino lauded the dissent as "bold" and said preserving rights for felons, especially nonviolent ones like the individual at issue in Kanter v. Barr, is something that both sides should be able to get behind.

Eliot Mincberg, a senior fellow at the liberal group People for the American Way, called Barrett's record on this case and others "extremely troubling in a number of respects," specifically noting that the judges in the Kanter v. Barr majority were appointed by a Republican.

Due Process

Barrett wrote the majority opinion in the case Doe v. Purdue, a due process and Title IX challenge by a Purdue University student who had been accused of sexual assault, which led to the student losing his Navy ROTC scholarship.

The students in the case were identified as John Doe and Jane Doe to preserve their anonymity. Jane alleged that John had woken her up while they were sleeping together by groping her over her clothes and admitted to her that he had "digitally penetrated" her while she was asleep on a different occasion. John denied all the accusations to the school.

According to Barrett's opinion, Purdue then allegedly wrote a report that "falsely claimed that [John] had confessed to Jane's allegations;" refused to let John see evidence in the case; did not allow him to present witnesses; did not let him cross-examine Jane; and later "found him guilty by a preponderance of the evidence of sexual violence."

The case was dismissed by a lower court, and Barrett was considering whether the claims on their face merited such a quick dismissal or whether the appeals court should order a closer look at the proceedings.

Barrett said, "Purdue’s process fell short of what even a high school must provide to a student facing a days-long suspension," meaning John's 14th Amendment due process claim was legitimate. She further found that it was plausible Purdue had violated Title IX, the federal law the prevents sexual discrimination in education. She said that she was not determining the final outcome of the case and "the factfinder might not buy the inferences that [John is] selling" that the school disbelieved him because of his sex. "But his claim should have made it past the pleading stage."

Ilya Shapiro of the libertarian Cato Institute, who is the publisher of "Cato Supreme Court Review," said the opinion shows Barrett "takes seriously the kangaroo courts that a lot of universities set up now in dealing with various kinds of complaints."

Criminal Law

In the case Rainsberger v. Benner, Barrett authored an opinion in which she denied qualified immunity -- a protection for government officials from being sued for judgment calls they make on the job -- for a police officer who was alleged to have submitted a document "riddled with lies

and undercut by the omission of exculpatory evidence" that led to a man being put in jail for two months.

Qualified immunity has been a hot topic in recent months as police come under increasing scrutiny for alleged misdeeds on the job, whether that be police brutality or lying on documents as Benner was accused of. Sen. Mike Braun, R-Ind., briefly pushed a bill to scale back qualified immunity for police earlier this summer -- an idea that was widely supported by Democrats.

And 5th Circuit Court of Appeals Judge Don Willett, another member of Trump's Supreme Court list but who is not under serious consideration for the current vacancy, famously wrote in a 2018 opinion that "To some observers, qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior—no matter how palpably unreasonable."

"It would be flatly inconsistent with [the justification for qualified immunity] to imagine a competent officer considering the question whether a lie helpful to demonstrating probable cause is so helpful that he should not tell it," Barrett said in denying Benner qualified immunity. "That is neither a reasonable question to ask nor a reasonable mistake to make."

"The unlawfulness of using deliberately falsified allegations to establish probable cause could not be clearer," Barrett continued.

In other cases, many of which were outlined by Reason, Barrett has held that just because a woman answers the door to a man's apartment in a bathrobe does not mean she has the authority to consent to a search of his apartment; that just because a tipster said they saw someone with a gun did not mean police could search a car near the area of the anonymous call; that the "good faith" exception to the rule barring unconstitutionally-obtained evidence from being used at trial could apply to an online child porn case; and dissented from a case in which she said it appeared an Indiana state court had improperly suppressed evidence favorable to a defendant, but she did not want to overturn the decision because "I can't say... [it] was 'so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.'"

Abortion

Barrett has been involved with a handful of cases that implicated abortion 7th Circuit. In one 2018 case she dissented from a denial of en banc rehearing -- meaning she wanted the entire court to reexamine a decision by three judges -- after the 7th Circuit ruled unconstitutional an Indiana law banning abortions for reasons relating to the sex, race or potential disability of the fetus. The law also banned fetuses from being disposed of as medical waste.

Barrett joined a dissent by Judge Frank Easterbrook that labeled the ban on abortions for sex, race and disability reasons "the eugenics statute" and argued the Supreme Court had never ruled on such a law so it should not be automatically considered illegitimate.

"None of the Court’s abortion decisions holds that states are powerless to prevent abortions designed to choose the sex, race, and other attributes of children," the dissent read. "Does the Constitution supply a right to evade regulation by choosing a child’s genetic makeup after conception, aborting any fetus whose genes show a likelihood that the child will be short, or

nearsighted, or intellectually average, or lack perfect pitch—or be the 'wrong' sex or race? [Planned Parenthood v.] Casey did not address that question."

For that reason, Easterbrook said, in the opinion Barrett joined, the Supreme Court should weigh in on the "eugenics statute," rather than the circuit court. The dissent also argued that laws on the disposal of fetal remains had been "held valid" elsewhere in the country and that they are reasonable. For that reason, the dissent read, the 7th Circuit could rehear that part of the case and fix its alleged error.

The Supreme Court in an unsigned opinion later sided with Easterbrook, and by extension Barrett, to uphold the Indiana law on the fetal remains but denied to hear the question on the "eugenics statute" because no other circuit court had heard a case on such a law.

Mincberg noted that the Easterbrook opinion foreshadowed an opinion by Justice Clarence Thomas that referenced eugenics repeatedly.

Barrett in another case with the same parties -- Planned Parenthood and the Commissioner of the Indiana State Health Department -- also dissented from a denial of rehearing, this time joining an opinion written by Judge Michael Kanne. The opinion did not significantly address the substance of the case -- a law regarding parental consent and abortion -- but argued that striking down the law before it went into effect is a serious issue that the full court should have decided.

She also heard a First Amendment case on a Chicago law that banned pro-life activists from standing within a certain distance of an abortion clinic to speak with people going into the clinic. The opinion, written by Judge Diane Sykes, noted that the Supreme Court had upheld a similar law previously so the appeals court had no choice but to follow that precedent.

Cato Institute's Shapiro said that abortion backers should not worry about the chance of Roe v. Wade being overturned if Barrett is put on the court.

"She gave a lecture a few years ago at Jacksonville University saying that the core holding or Roe is unlikely to change. And I think that's right," he said of Barratt. "On the current court, I don't see more than one, maybe two votes to overturn Roe and Casey altogether. It's more about regulations and restrictions that are now being struck down ... that with an additional Trump appointee would likely be then upheld."

Mincberg disagrees: "Her pre-judicial comments on Roe v. Wade ... I think it's pretty clear that she would meet the President Trump ... anti-Roe v. Wade litmus test, which particularly when replacing Justice Ginsburg would be harmful to millions of Americans."

Immigration

Barrett has for the most part sided with the Trump administration on immigration cases. In Cook County v. Wolf, a case on the Trump administration's controversial "public charge" rule allowed immigrants who were likely to use welfare to be barred from getting visas, Barrett said the rule was a "policy choice," that should not be resolved in litigation.

In Yafai v. Pompeo, Barrett backed a State Department decision to deny a visa to the wife of an American citizen for allegedly trying to smuggle in children, despite the fact that the parents said

their children had died in a drowning accident. The decision was reconsidered but the wife was still not given a visa.

Barrett said that the fact the denial was reconsidered, under the law and Supreme Court precedent, fulfilled the legal requirements the State Department had to meet. In a decision on whether or not the full court should rehear the case, she said that the State Department was given significant discretion and that the appeals court could not require more evidence than a simple citation of what law the decision was made under.

"[A higher] standard may be desirable but imposing it would be inconsistent with Supreme Court precedent," Barrett wrote. "The Supreme Court has repeatedly held that a citation to a statutory provision suffices to show a legitimate and bona fide reason for denying a visa application. It is free to revisit that precedent, but we are not."

Death Penalty

Barrett spent a long time in academia, primarily as a professor at Notre Dame, which is her alma mater. She co-authored an article called "Catholic Judges in Capital Cases," which examines the competing obligations of Catholics when asked to rule in a death penalty case. It suggested there might be some instances in which a Catholic judge should recuse himself or herself from such proceedings.

"Catholic judges must answer some complex moral and legal questions in deciding whether to sit in death penalty cases. Sometimes (as with direct appeals of death sentences) the right answers are not obvious. But in a system that effectively leaves the decision up to the judge, these are questions that responsible Catholics must consider seriously," she wrote along with John H. Garvey, who is now the president of the Catholic University of America in Washington, D.C.

"Judges cannot -- nor should they try to -- align our legal system with the Church's moral teaching whenever the two diverge," the article says. "They should, however, conform their own behavior to the Church's standard. Perhaps their good example will have some effect."

According to SCOTUSBlog, Barrett said in her 2017 confirmation hearing that she would not completely disqualify herself from all capital cases and that when she clerked for late Justice Antonin Scalia that she assisted him on death penalty cases that came before the court.