



## Barrett joins court as battles over Pennsylvania election laws intensify

**The new justice could play an important role in how the swing state handles the election**

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President of the judicial crisis network Carrie Severino discusses the senate vote on Amy Coney Barrett's confirmation tonight on 'Fox & Friends.'

The addition of Justice Amy Coney Barrett to the Supreme Court restores the judicial body to its nine-person roster at a time when legal battles over state voting laws rage on just days before a presidential election.

Republicans fighting a decision by the state supreme court in Pennsylvania are hoping that Barrett's presence on the court will restore state laws that they believe protect the integrity of the election.

One such case has already been addressed by the high court, resulting in a 4-4 split that left in place the state court's order that extended Pennsylvania's deadline for receiving ballots and allowed ballots to be counted even if they were not clearly postmarked by Election Day. The Pennsylvania GOP is intervening in the case and wants the Supreme Court to decide the case on the merits as soon as possible.

"The U.S. Supreme Court has repeatedly warned that courts should not make last-minute changes to election-administration rules and has described changes 'weeks' before an election as too late," Pennsylvania Republicans stated in their petition for certiorari, citing the 2006 case of *Purcell v. Gonzalez*.

That argument is one of the ones put forth by Justice Brett Kavanaugh when the Supreme Court reinstated a requirement that South Carolina residents get a witness to sign their mail-in ballots.

While the Supreme Court did not explain their decision, Kavanaugh, writing only for himself, said he agreed with it for two reasons, one of them being the *Purcell* argument. His other reason was that it is not for a court to second-guess the lawmakers' decision to retain the witness requirement during the pandemic.

The Pennsylvania case does not involve federal courts, which could be why the Supreme Court ruled differently in that case. Ilya Shapiro, director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute, noted that the Supreme Court has often deferred to the state court systems in these cases.

It remains to be seen exactly how Barrett's presence on the bench will impact the case.

"She doesn't have election law cases in her record," Shapiro told Fox News, although he noted that her judicial philosophy could indicate that she would "enforce the letter of the law." In this case, following the law on the books would mean overturning the state supreme court's ruling.

This is what exactly what Republicans are hoping they will get with Barrett on the bench.

"The American people deserve a fully-staffed court of nine.' Those are Joe Biden's words, and we agree, particularly in a crucial election year. The courts are largely agreeing with the RNC on the merits of these cases, and even courts that lean more liberal have been rejecting many of the Democrats' baseless arguments and attempts to overhaul election laws," Republican National Committee national press secretary Mandi Merritt said in a statement to Fox News. "We encourage all courts to simply apply the law as written without giving in to political considerations, and will continue to fight for commonsense election integrity laws."

In the meantime, it is unclear if the Supreme Court will agree to hear the case, and if they do, if Barrett will participate. The Luzerne County Board of Elections filed a motion for Barrett to recuse herself from the case.

"This recusal is compelled since Justice Barrett's 'impartiality might reasonably be questioned,'" the motion said, citing "the circumstances of her nomination and confirmation."

Barrett discussed recusal during her confirmation hearing. She discussed how such decisions are made following consultation with the other eight justices, and that if she is required to recuse from a case she will.