



# Revisiting Supreme Court Nominee Amy Coney Barrett's Notable Rulings

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Judge Amy Coney Barrett is expected to face a tense confirmation hearing later this month. Her experience as a judge and her opinions and votes during her short tenure on the 7th U.S. Circuit Court of Appeals are likely to be placed under a microscope and questioned as part of the confirmation fight.

If Barrett is confirmed, she would be considered as one with the least courtroom experience—with only three years experience as a federal judge—but one whose record and personal qualities endear her to conservatives and some libertarians.

“I think she’s an epitome of what a jurist should be,” Thomas Brejcha, president and founder of the conservative pro-Life law firm Thomas More Society, told The Epoch Times. “She is not a person who simply goes along with her political inclinations.”

“She is a person who believes that in her judicial role, she must follow the law as she interprets it. ... There is a sense of judicial self-restraint and discipline that I think speaks very well of her conservative nature,” he added.

Liberals, on the other hand, are likely to continue to oppose her ascension to the bench while strongly expressing concern over the future of abortion and the Affordable Care Act, also known as Obamacare.

“Amy Coney Barrett is a threat to our reproductive rights and health care. Nominating Barrett is an insult to [Ruth Bader Ginsburg]’s legacy and everything she spent her life fighting for. This is the people’s court, the people’s seat,” the Planned Parenthood Action Fund said [in a statement on Twitter](#).

While on the bench of the 7th Circuit Court, Barrett participated in some noteworthy and possibly controversial cases ranging in due process and abortion. Here is a look at some of her notable opinions and votes.

## Abortion

Barrett has grappled with some abortion regulation cases while on the 7th Circuit bench and cast votes that signaled opposition to rulings that struck down abortion-related restrictions.

In 2018, Barrett voted to rehear a case en banc—to have the three-judge panel decision reviewed by the full court—involving an Indiana law that required fetal remains to be buried or cremated after an abortion. The trial and appeals court judges found that the law violated the Constitution. Ultimately, Barrett was outnumbered and the 7th Circuit ruled to deny the rehearing and reinstated an original opinion that blocked the law from being enforced.

At the time, she joined in a dissenting opinion authored by Judge Frank Easterbrook. The dissent addressed another portion of the law that had been struck down but was not at issue in the rehearing proceedings, which Easterbrook described as the “the eugenics statute.” That portion of the law bans abortions for sex, race, and disability reasons.

Easterbrook argued that the Supreme Court had never ruled on such a law and would be the only authority to rule on the issue.

“Using abortion to promote eugenic goals is morally and prudentially debatable on grounds different from those that underlay the statutes [Planned Parenthood v.] Casey considered,” the dissent reads ([pdf](#)). “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 Supreme Court later reinstated the Indiana law on the disposal of fetal remains.

In 2019, Barrett voted to rehear a ruling by a three-judge 7th Circuit panel that upheld a challenge to another Indiana abortion law. That state measure would require the parents of a girl under 18 seeking an abortion be notified, even in situations when she had already asked a court to give consent instead of her parents.

The 7th circuit eventually denied the hearing. Barrett joined a dissent for denying the rehearing authored by Judge Michael Kanne, who said, “Preventing a state statute from taking effect is a judicial act of extraordinary gravity in our federal structure.”

Also in 2019, Barrett joined an opinion on a First Amendment case involving a Chicago ordinance that barred pro-life sidewalk counselors from approaching and talking to women who entered an abortion clinic, also known as the “bubble zone” law. That ordinance was modeled after a Colorado law that was upheld by the Supreme Court in a case, *Hill v. Colorado*, in 2000. Judge Diane Sykes wrote in the opinion that the appeals court had no choice but to follow the top court’s precedent.

“The road the plaintiffs urge is not open to us in our hierarchical system. Chicago’s bubble-zone ordinance is materially identical to—indeed, is narrower than—the law upheld in *Hill v. Colorado*,” she wrote. “While the Supreme Court has deeply unsettled *Hill v. Colorado*, it has not overruled the decision. So it remains binding on us. The plaintiffs must seek relief in the High Court.”

Thomas More Society was one of the law firms that represented the challengers in the Chicago case. Brejcha noted that although Skyes, who was joined by Barrett, found that subsequent cases had shaken the foundations of *Hill v. Colorado*, as a circuit court they did not have the authority to overrule the Supreme Court precedent.

He said this demonstrates Barrett’s judicial discipline and self-restraint as a jurist. “Her methodology is very limited and disciplined,” Brejcha said.

Ilya Shapiro, the director of the Robert A. Levy Center for Constitutional Studies at the libertarian Cato Institute, told *The Epoch Times* that Barrett’s votes and opinions in the abortion regulation cases show that she might not necessarily vote to overturn *Roe v. Wade*. Instead, what they show is that she would take each regulation as it comes and best apply the government standards, he added.

The Supreme Court in Washington on March 10, 2020. (Samira Bouaou/The Epoch Times)

## Due Process

Barrett authored the majority opinion in a due process case brought by a male Purdue University student who had been accused of sexual improprieties. As a result of the accusation, the male student, who was referred to as John Doe, was suspended from the school which then led to his expulsion from the Navy ROTC program and loss of his scholarship. He had maintained his innocence during the allegations.

John sued school officials claiming that the school's discipline process was deficient. He argued that the school had violated his due process rights under the Fourteenth Amendment of the U.S. Constitution and Title IX by imposing a punishment based on gender bias. Title IX is a federal law that protects people from discrimination based on sex in education programs.

The university, in a report, allegedly "falsely claimed that [John] had confessed to Jane's allegations" and had left out information about Jane's emotional state from John's testimony, according to Barrett's opinion. The female student was referred to Jane Doe in the case.

John was also not given an opportunity to present witnesses, the panel members had not read the report—indicating that they based their judgment on accusations rather than evidence—and John was unable to address evidence because he had not seen it during the school's discipline program. The school also did not receive a written statement from Jane about the accusations.

He was later found guilty "by a preponderance of the evidence of sexual violence."

The district court dismissed the male student's due process claims, but the appeals court panel disagreed with the ruling and reinstated the lawsuit. The court said John should have been allowed to pursue his claims.

"Purdue's process fell short of what even a high school must provide to a student facing a days-long suspension," Barrett wrote ([pdf](#)) in the case cited as Doe. v. Purdue.

The court also found John's Title IX claims plausible but added that he "may face problems of proof, and the factfinder might not buy the inferences that he's selling."

Shapiro, who is also the publisher of "Cato Supreme Court Review," said this case is important because it shows Barrett places importance on individual rights and due process protections under the Constitution.

## Gun Rights

Barrett indicated her support for gun rights in her dissent in *Kanter v. Barr*, a 2019 case that challenged a federal law that took gun rights away from nonviolent felons. A businessman who had pleaded guilty to mail fraud argued that the law violated his Second Amendment right to bear arms.

The 2–1 majority, both judges who were appointed by Republican President Ronald Reagan, said the federal law and a similar Wisconsin one were constitutional.

In her dissent, Barrett said that since the country's founding, legislatures have taken gun rights away from people who were considered dangerous.

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

She added that while the federal and state governments have a strong interest in protecting the public from gun violence, they had failed to show that the business owner owning a gun would pose a risk.

“The Second Amendment confers an individual right, intimately connected with the natural right of self-defense, and not limited to civic participation,” she said.

Shapiro said the Kanter case is important because “it shows that she takes the text structure and history of the Second Amendment seriously as well as looking at understandings of the bar on felons possessing firearms and looked at what that meant historically.”

“Her dissent was longer than the majority opinion. It’s a very well reasoned scholarly piece of writing,” he said.

### Immigration

Barrett ruled on several immigration cases and sided with the Trump administration for the most part. She dissented from a majority decision that upheld a lower court’s block on the administration “public charge” immigration rule in Illinois. The rule restricted the eligibility of new immigrants who are deemed likely to rely on public assistance.

She did not agree with the challengers characterizing their arguments as a “disagreement with” a “policy choice.” She added, “litigation is not the vehicle for resolving policy disputes.”

Earlier this year, the Supreme Court lifted the injunction upheld by the 7th Circuit Court.

Barrett also authored the majority opinion in another case, cited as Yafai v. Pompeo, where she agreed with a State Department decision to deny a visa to the wife of an American citizen on the ground that she attempted to smuggle two children into the United States, even though the parents said the children had died in an accident. Her application was reconsidered but was denied.

The majority upheld a lower court’s decision to dismiss the case relying on a doctrine known as consular nonreviewability, which prevents courts from reviewing visa decisions made by consular officials abroad.

Barrett also found that the plaintiff did not show that the consular officer acted in bad faith, saying that decision to deny the visa application was facially legitimate and bona fide. She said the officer had asked for additional documents, which “suggests a desire to get it right,” and that the embassy had sent an email to the plaintiff’s lawyer, which “reveals good-faith reasons for rejecting the plaintiffs’ response to the smuggling charge.”

### Criminal

Shapiro said Barrett has shown that she is “not reflexively pro-law enforcement, nor pro-criminal defendants” in the way that she has ruled in criminal-related cases.

She has denied qualified immunity to law enforcement officers who have abused their powers and violated constitutional rights, while in other cases she has ruled for the government against criminal defendants.

“She’s very methodical about how she approaches things,” Shapiro said.

In the case, *Rainsberger v. Benner*, she wrote the majority opinion to deny qualified immunity, a legal protection that shields public officers from civil liability, to a detective who had submitted falsified information for a probable cause affidavit.

“The unlawfulness of using deliberately falsified allegations to establish probable cause could not be clearer,” she wrote in the opinion ([pdf](#)).

In 2019, she vacated a conviction that was obtained in part after Drug Enforcement Agency agents searched a suspect’s apartment. The agents obtained consent to search the apartment from a woman who did not live there.

“Is it reasonable for officers to assume that a woman who answers the door in a bathrobe has authority to consent to a search of a male suspect’s residence?” Barrett wrote for the majority ([pdf](#)).

“The officers could reasonably assume that the woman had spent the night at the apartment, but that’s about as far as a bathrobe could take them. Without more, it was unreasonable for them to conclude that she and the suspect shared access to or control over the property,” she added.

In another 2019 decision, she dissented in a case ([pdf](#)) granting habeas corpus to a criminal defendant who argued that his due process rights were violated because the state withheld evidence favorable to his case.

Barrett said she dissented because the majority opinion “fails to give the Indiana Court of Appeals the deference” required under federal law. She said even though she believes the withholding of evidence constitutes a violation of due process under a 1963 Supreme Court decision, “it was neither contrary to, nor an unreasonable application of, clearly established federal law for the Indiana Court of Appeals to conclude otherwise.”

#### Other Cases

In *Equal Employment Opportunity Commission v. Autozone*, the commission asked the court to review a decision en banc that had ruled for a store, AutoZone, that was using race as a defining characteristic for transferring employees into separate facilities. The federal government had argued that the store violated Title VII of the Civil Rights Act, which makes it unlawful for employers from segregating or classifying employees based on race.

Barrett, who had just taken the bench, [joined four of her colleagues](#) to deny a rehearing of the case. Barrett was not one of the judges that ruled in the appeals case.