

# Bloomberg

## Republicans hopeful that Amy Coney Barrett will overturn Roe vs Wade

*However, and despite the majority of Americans wanting the landmark abortion rights law upheld, with a country and White House in turmoil, they have to get the judge confirmed first*

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Washington — Republicans are on the cusp of fulfilling a decades-long campaign to install a US Supreme Court majority that might overturn abortion rights. But their battle cry has been muted as the GOP moves to confirm President Donald Trump's high court nominee with the election already underway.

Republicans view the quick confirmation of judge Amy Coney Barrett as an energiser for their party's base heading into the election on November 3. But it also risks motivating the wide swathe of voters who back abortion rights against Republicans in a year where the party is struggling to keep its Senate majority.

Barrett enters Monday's Senate judiciary committee hearings with the clearest anti-abortion record of any nominee in decades. She signed a 2006 advertisement opposing abortion and wrote in 1998 that the procedure is "always immoral". In a handful of opportunities while on the federal appeals court bench, Barrett consistently landed on the side of restricting abortion rights.

Yet poll after poll shows a solid majority of the public opposes overturning the 1973 Roe vs Wade ruling that legalised abortion rights nationwide. That includes voters in staunchly Republican states such as Georgia and South Carolina, where Republican senators are running neck and neck with Democratic challengers. At least a half dozen other incumbent Republican senators also are in peril of losing on election day, with Barrett's confirmation suddenly thrust into the campaign.

It may be, with that in mind, that Trump and the GOP have had a light touch on the issue that animates the anti-abortion movement, a stalwart constituency of the GOP.

Trump, in formally introducing her, spoke about Barrett's credentials and background and cited gun rights, religious liberty and public safety as among the important issues that will be coming before the court.

In last week's debate with Democratic nominee Joe Biden, Trump denied Barrett's nomination puts abortion on the ballot on November 3. "You don't know her view on Roe vs Wade," he said. During his 2016 campaign, he vowed that Roe would "automatically" be overturned once he had made enough appointments.

And in Wednesday night's vice presidential debate, Mike Pence declined to answer a question about whether Indiana, where he was once governor, should outlaw abortion if Roe vs Wade were overturned, though later in the debate he reiterated his anti-abortion credentials. "I would never presume how judge Amy Coney Barrett would rule on the Supreme Court of the US, but we'll continue to stand strong for the right to life," he said.

Melissa Murray, a New York University law professor who focuses on reproductive rights and co-hosts the *Strict Scrutiny* podcast about the Supreme Court, said Barrett is "almost tailor-made" for rolling back abortion rights. But instead of an explicit discussion about Roe vs Wade, "there are kind of dog whistles that are being sent, and everyone knows what it's about even if that's not expressed", she said.

Mike Davis, a former top Republican Senate judiciary nominations staffer who founded the Article III Project pushing for Barrett's confirmation, said he thinks a fight over abortion would hurt Democrats in key Senate races.

"I think it would excite Republicans and conservatives in Iowa, Georgia, Kentucky, South Carolina," he said. "It fires up the conservative base more than it fires up Democrats."

The anti-abortion base of the Republican Party has repeatedly been disappointed by the Supreme Court picks of past GOP presidents and has increasingly been demanding clear conservative bona fides for nominees.

Three Republican appointees — justices Sandra Day O'Connor, Anthony Kennedy and David Souter — cast the pivotal votes to reaffirm Roe in the 1992 Planned Parenthood vs Casey ruling.

### **Court rulings**

In the court's most recent term, Republican-appointed chief justice John Roberts joined with the court's liberal wing to strike down a Louisiana law that would have required abortion-clinic doctors to get privileges at a local hospital. Though Roberts indicated he would give states broad latitude to impose other types of restrictions, he said he was bound by a 2016 Supreme Court decision that struck down an almost identical Texas admitting-privileges law.

That ruling helped prompt senator Josh Hawley of Missouri, a former Roberts law clerk, to go to the Senate floor this summer to issue a new bar for Supreme Court justices — no longer would he vote to confirm complete ciphers when it came to Roe. Hawley said he'd only vote for justices who had previously declared that Roe was "wrongly decided".

Even before Barrett's nomination, Hawley said she met his test.

Representative Doug Collins of Georgia, a Republican running for the Senate seat occupied by appointed senator Kelly Loeffler, a fellow Republican, explicitly cited the goal of toppling Roe in his endorsement of Barrett.

"For the first time in 47 years, we have the opportunity to disavow the plague cast on our country by the jurisprudence of Ruth Bader Ginsburg and other liberal justices and reaffirm the value of life at all stages," he said.

## Safer message

Most Republicans are focusing their messaging on safer ground, accusing Democrats of attacking the mother of seven for her Catholic faith or touting her resumé as a professor and judge, while downplaying the odds that a 6-3 Republican-appointed court would topple Roe.

Senator Todd Young of Indiana, a backer of Barrett and the chair of the national Republican senatorial committee, was one of 39 Republicans who signed an amicus brief asking the Supreme Court to consider overturning Roe. But he said in an interview Republicans are focused on judicial philosophy, not how Barrett would rule. “Republicans don’t support judges based on pledges to overturn or to modify the findings of particular cases,” he said. “We don’t have such a litmus test.”

Barrett has said she has an obligation to follow the law, and it would be wrong for senators to ask her to “pre-judge cases” that might come before her, Young said.

“The messaging about Amy Coney Barrett and the support of her isn’t necessarily results-orientated: ‘This is a solid judge. This is a solid originalist and textualist like Scalia’,” Ilya Shapiro, director of Robert A Levy Centre for Constitutional Studies at libertarian Cato Institute said, referring to the late justice Antonin Scalia.

Shapiro, author of a book on politics and the Supreme Court, said Republicans have become increasingly frustrated with the Roberts court after a series of liberal wins. “A lot of Republicans simply just feel that this is the opportunity to get a solid fifth vote,” he said.

Carol Tobias, the president of the non-profit National Right to Life Committee, said Barrett’s nomination gives her hope that Roe will be overturned. “I have always believed that day would come,” she said in an interview. “We can’t say what Amy Coney Barrett would do, but the fact that she’s going to interpret the constitution according to its text gives us hope.”