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Is Amy Coney Barrett Trump's Backup Plan?

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The controversial circuit court judge has been depicted by progressive groups as an existential threat to LGBT rights and abortion access, beholden to conservative interests, a threat to American life as we know it if appointed to the Supreme Court.

And *her* name? Amy Coney Barrett.

If the attack lines sound familiar, it's because they are the same fears expressed about Brett Kavanaugh, who for now remains President Donald Trump's nominee for the highest court of the land despite sexual assault allegations stemming from a drunken high school night in 1982. The coming days will determine whether Kavanaugh's nomination survives. But if he is forced to bow out, then the new nominee will likely be Barrett, a former Notre Dame law professor who was only just confirmed to the 7th Circuit Court of Appeals after a contentious hearing last October.

Be careful what you wish for, Democrats.

“THE CONCLUSION ONE DRAWS IS THAT THE DOGMA LIVES LOUDLY WITHIN YOU.”

-SEN. DIANNE FEINSTEIN, D-CALIF., TO AMY CONEY BARRETT

Unlike Kavanaugh, Barrett, 46, has no White House records and less than a year of court writings for senators to scrutinize, only law review articles and public comments. Based on what we know of her record, “I can't think of an area of law where she would vote differently than Kavanaugh on high-profile issues,” says Ilya Shaprio, a senior fellow in constitutional studies at the libertarian Cato Institute. But there is one key difference: a less consistent respect for legal precedents, aka *stare decisis*.

Barrett argued in a 2013 Texas Law Review article that because of the way Supreme Courts had been weaponized by ideological interests from both parties, “a more relaxed form of constitutional *stare decisis* is both inevitable and probably desirable.”

“I tend to agree with those who say that a justice's duty is to the Constitution and that it is thus more legitimate for her to enforce her best understanding of the Constitution rather than a precedent she thinks is clearly in conflict with it,” Barrett wrote. That should be much scarier to

the abortion rights crowd than Kavanaugh's past mild, criticisms of the landmark 1973 decision legalizing abortion from a constitutional standpoint.

Still, NARAL Pro-Choice America warned that a vote for either potential justice would be “a vote to gut *Roe v. Wade*, criminalize abortion, and punish women,” in an email blast to supporters this summer. And then there are the political ramifications as the midterms loom. “Having it as a live issue could certainly bring out Trump voters who otherwise might be complacent,” Shapiro adds.

This is the culture fight the right wanted all along, and which Trump initially dodged when he nominated Kavanaugh, a (seemingly) safe Ivy League, Washington, D.C., cookie-cutter elite to the bench. In Barrett, conservatives get a populist woman, an outside-the-Beltway Notre Dame Law grad who also attended Rhodes College and clerked for Justice Antonin Scalia, a conservative hero. A longtime member of the Federalist Society, the Catholic Barrett has seven children, including two adopted from Haiti, and was a member of People of Praise, a charismatic Christian group that critics accuse of being cultish. Among their criticisms: the fact that until the last few years, female members were called “handmaids” of the Lord, a term taken from a biblical reference to Mary, mother of Jesus. The community teaches that husbands are the head of the household, reinforcing gender norms that aren't all that uncommon in many spiritual settings.

As it turns out, the same senator who played a major role in possibly scuttling Kavanaugh's nomination helped boost Barrett. Dianne Feinstein of California, the top Democrat on the Senate Judiciary Committee, received the much-discussed letter from Christine Blasey Ford, the Palo Alto University clinical psychology professor who has accused Kavanaugh of sexual assault.

Feinstein also was the one who, during Barrett's 7th Circuit Court confirmation hearing almost exactly a year ago, shot the law professor into a new stratosphere of conservative fame after questioning her faith. “The conclusion one draws is that the dogma lives loudly within you,” Feinstein told Barrett, “and that's of concern when you come to big issues that large numbers of people have fought for for years in this country.”

That same hearing saw Barrett say she wouldn't let her personal views, particularly the fact that she is against abortion and capital punishment, dictate decisions from the bench, believing it wasn't “lawful for a judge to impose personal opinions, from whatever source they derive, upon the law.” Whether or not the concern from Feinstein was warranted, the questioning turned Barrett into a martyr for many on the religious right — and could help elevate her to another showdown with Feinstein soon.