



National Law Journal Symposium on Possible Questions for Judge Amy Coney Barrett's Confirmation Hearings

The National Law Journal asked several legal commentators to suggest questions for the president's Supreme Court nominee.

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The National Law Journal has posted [a symposium](#) in which eight legal commentators from across the political spectrum each suggest a question to be asked at Judge Amy Coney Barrett's Supreme Court confirmation hearings next week (free registration required to access). The contributors include co-blogger Jonathan Adler and myself, among others. Here is my proposed question:

One of the most important legal issues of our time is whether constitutional constraints that apply to other exercises of government power should also apply with the same force to immigration restrictions. The text and original meaning of the Constitution make no distinction between constitutional standards that apply to immigration and those that apply to other policies. Yet courts often read such distinctions into the Constitution, nonetheless. Do you believe immigration policy should be subject to the same level of judicial review as other federal policies, or should it get little or no scrutiny? Why?

Jonathan's question also strikes me as well worth asking:

"Judge Barrett, in your academic writing on the importance of precedent, you wrote that judges must 'take account of reliance interests' in order to avoid unnecessarily 'upsetting institutional investment' in prior precedents or disrupting continuity. Can you explain what sorts of reliance interests would justify adhering to an erroneous constitutional precedent, and how you, as a justice, would seek to balance the demands of your oath to the constitution and the need for stability and continuity in the law?"

Other contributors include David Lat (founder of Above the Law), Elizabeth Wydra (Constitutional Accountability Center), Kate Shaw (Cardozo Law School), and Ilya Shapiro (Cato Institute), among others. I should perhaps note that Ilya Shapiro, who I often get confused with, is in fact different person from me. If you have trouble telling us apart, read my [handy guide to avoiding #IlyaConfusion](#).

I expect Judge Barrett may well try to sidestep difficult questions, especially those that touch on controversial issues. Most recent SCOTUS nominees have adopted that strategy in order to minimize the chance of saying something that might hurt their confirmation chances. But the purpose of asking these types of questions is not just to get the nominee's response, but also to highlight the importance of the issue for the many people likely to watch the hearings.

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