

# THE WEEK

## The GOP civil war over the Supreme Court

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The aging sclerotic elephant of the Republican Party has two tusks. One is for business, large and small, for muddled suburban prejudices and lower taxes, for the Koch brothers and the Cato Institute; the other is given over to those consumed by sincere (if frequently misguided) reaction, opposition to same-sex marriage, drugs, liberal intolerance of religion, and, above all, abortion.

It is not the case that each of these sub-parties rejects the fundamental tenets of the other (though abandoning or at least ignoring the yucky causes looks increasingly like a goer for blue-state Republican hopefuls); rather, they disagree about the fundamental importance of each. It is a question, above all, of priorities.

These tactical disagreements between the two groups have come to a head over the question of whom President Trump should appoint to replace outgoing Supreme Court Justice Anthony Kennedy. Each side has thrown its weight behind a candidate: the Chamber of Commerce types behind Bret Kavanaugh, an appeals court judge in Maryland and veteran of Kenneth Starr's independent counsel investigation; the social conservatives behind Amy Coney Barrett, a federal judge and longtime professor at the University of Notre Dame Law School. As NPR reported recently, the rival camps have been engaged in a campaign of defamation, leaking, and open vitriol.

What is most remarkable is not the combat itself but what it reveals about the intensity of the two sides' disagreement. While it would be going too far to say that Kavanaugh is just as likely to rule to overturn *Roe v. Wade* as Barrett would be, there is very little in the former's record to suggest that he is hostile to the pro-life cause. Indeed, he dissented last year in a case involving a woman in the custody of immigration authorities who sought an abortion. But he is better known for his willingness to overturn federal regulations, especially those involving environmental protections. On paper there need not be any essential tension between these two tendencies in the same man. But somehow both sides seem to think there is.

Likewise, donor-class sputtering about the potential difficulties of confirming Barrett seems absurd. Democrats will not miss the opportunity to throw a fit about Trump's judicial appointment no matter who it is. In any case, it doesn't matter. The Republicans need only 50 votes to confirm Kennedy's successor, and they will have them even if Sen. Susan Collins (Maine), who voted to confirm Barrett to the Seventh Circuit Court of Appeals last year, decides to perform an awkward about-face. As many as three red-state Democrats are likely to cave, and there is always Vice President Mike Pence's tie-breaker vote. The only way to make sense of the cosmopolitan GOP's opposition to Barrett is to assume that they think anyone so beloved of knuckle-dragging but, alas, electorally necessary pro-lifers must have half a heart for the poor, something that could cost them down the line.

The real interest here is not the airing of these grievances, but the chance to see which side Trump is more eager to please. His willingness to outsource not only the choice but very largely the process of confirming Neil Gorsuch to the originalist Federalist Society last year suggests that while he does not himself much care who ends up on the Court, he would very much like to placate at least one side of the party he has usurped. It is worth pointing out that he hasn't got much to lose by selling out social conservatives, who cannot exactly run into the open arms of Nancy Pelosi if the president decides not to give them the justice they prefer. If it really is the case that Barrett's interview with Trump went badly, there is a good chance he might shore up his reputation with the socially moderate party establishment by picking their man.

But then again, who knows? Casting the Trumpian runes is a fool's errand. Months ago I was almost certain that he would change his mind about the so-called "trade war," which seems to be continuing apace. I felt comfortable making that assertion in part because he had already shown himself willing to back away from other mainstays of his 2016 platform — leaving Social Security and Medicare alone, for example. It turns out that there is no universally applicable hermeneutic here. Assuming that Trump will screw over his base every time or that he will deliver for them regardless of what his advisers tell him gets you nowhere. The present occupant of 1600 Pennsylvania Ave. is too unpredictable.

It is possible that by the time you read this column, rumors of Trump's choice will have already leaked. Don't be surprised if he does something daft, like nominate someone who did not appear on his published list of candidates — his sister, for example. Still, I think it is more likely that he sticks with Barrett. Here is a chance to secure the loyalty of many social conservatives forever. His private conduct might appear iniquitous, his rhetoric vile, his economic policies misguided — but he will be the man who tipped the balance against *Roe*.

The establishment types can be bought in a hundred other ways, but there are millions of other people who vote for Republicans cycle after cycle solely because they dream of a Justice Barrett. That's too good an opportunity for a fellow businessman like the president to pass up.