

The Supreme Court and Its Ruthless Members

The judicial branch of the United States government was established in 1789 to interpret and apply laws to real situations and determine whether said laws go against the Constitution. Since the establishment of the federal judiciary a little over two hundred years ago, the number of sitting justices has grown from six to nine current members, and Justices are granted the ability to serve on the court until death, which is why news of new inductees is not common. On September 18th, 2020, Justice Ruth Bader Ginsburg passed away from pancreatic cancer at the age of 87, leaving an open seat on the court. A champion of gender equality, Ginsburg's position could have been appointed to a likeminded individual, someone who would honor all the achievements the eighty-seven-year-old Justice had accomplished during her tenure. Supreme Court Justice Amy Coney Barrett was sworn into office on October 26th, 2020, eight days before the presidential election, to fill Justice Ginsburg's empty seat. Justice Barrett's conservative views on controversial topics and her difficulty in separating them from her decisions for cases may reset the legacy of Justice Ginsburg's efforts and put the historical reputation of the Supreme Court at stake.

In order to fully understand the integral role Justice Ginsburg played in representing marginalized groups, knowledge of her most notable rulings is needed. Among the most disputed Supreme Court cases involving Justice Ginsburg are ones that focus on equality and bodily autonomy. Justice Barrett, a Catholic, has made statements in the past that negate the present rulings on cases such as *Roe versus Wade* and *Obergefell versus Hodges*. She has been known to use her faith to influence her decisions in court proceedings, which is against the oath she was required to take before being sworn into her position on the court. Originalism, the theory by which judges interpret the Constitution in the way it was understood at the time of its ratification,

is included in Justice Barrett's legal philosophy (Aspegren, 2020). This theory has been known to be outdated and may negatively impact significant court cases and their rulings. Her combined ideals of Catholicism and Originalism are likely to spur up contention in future cases.

The landmark case that granted same-sex couples the right to marry, *Obergefell versus Hodges*, was dominated by Justice Ginsburg's outspokenness during the trial proceedings. Ginsburg delineated on the absurdity of having a regressive attitude, alluding to John Bursch, the lawyer representing the states opposing same-sex marriage, and the two justices who wondered whether overturning marital tradition was within the realm of Supreme Court power. As Justice Ginsburg noted during the proceeding, a 70-year-old heterosexual couple would be allowed to marry when clearly, they could not procreate together, which derided the procreation debate for homosexuals. Same-sex marriage was legalized by a ruling of 5-4. Amy Coney Barrett declined to comment when asked about her stance on the topic in recent discussions but has given lectures in the past to "Alliance Defending Freedom," a southern anti-LGBTQ hate group, in support of their mission (Aspegren, 2020). In addition, Justice Barrett is a member of a conservative Catholic group that believes sexual relations should only happen between heterosexual married couples. This problematic behavior and archaic way of thinking can potentially lead to disagreements in and out of the courtroom relating to allowing a Justice to serve with public knowledge of their extreme views opposing a monumental court case.

Another prominent case affected by Justice Ginsburg's input was *Whole Woman's Health versus Hellerstedt*, an extension of the *Roe versus Wade* ruling on abortion rights. Texas's H.B. 2 bill imposed strict restrictions and requirements on abortion providers, and the justices struck this down with a 5-3 vote. Ginsburg wrote that the restrictive bill would only stop *safe* abortions from happening, but the procedures would still happen. Amy Coney Barrett's credibility was

challenged when she signed off on an advertisement in 2006 referring to the abortion rights decision as “barbaric” and failed to disclose that announcement in the documents submitted to the Senate prior to her confirmation hearing (Kirchgaessner, 2020). Despite her potentially questionable past, the vast majority of right-wing members idolize the new Justice.

In a poll conducted by Siena College about the support or opposition of Justice Barrett’s nomination, 44% of the respondents said they supported her nomination, whereas 42% opposed it. The remaining 14% did not have an opinion (Siena College Research Institute, 2020). This is not a major difference in percentages, which exemplifies how divided the nation is on the induction of the new Supreme Court Justice. Respondents that saw her nomination as a positive were mainly Republicans as well as a small percentage of Independents. Justice Barrett is certainly qualified on paper for the position she is currently in, with an education background at Rhodes College and the University of Notre Dame (University of Notre Dame, 2020).

Experience as a lawyer, professor of law at the Notre Dame Law School, and serving as a US circuit judge on the Supreme Court of Appeals for the Seventh Circuit make Justice Barrett a suitable candidate for filling the late Justice Ginsburg’s seat. A fresh perspective, especially from a younger woman, may benefit the court in the future.

Many Republicans are opposed to the Affordable Care Act passed in 2010 by Democratic President Barack Obama, and affiliate member Justice Barrett agrees with them. As a poll conducted by KFF author Ashley Kirzinger shows, 58% of Republicans would like to see the Affordable Care Act overturned, yet a different poll revealed that 79% want to keep the protections covered under the ACA for people with pre-existing conditions (Kirzinger, 2020). By adding another Republican justice to the Supreme Court, it is almost guaranteed that the ACA will be amended, if not entirely overturned. This political party does not want donations from the

government and insists that doing away with most of the provisions under this act would benefit every American. Amy Coney Barrett's extreme conservative views are admired by her Republican colleagues and when a study was done of her votes in every case she participated in, her decisions were in line with Republican opinions. Since Justice Barrett has compiled a uniformly conservative voting record, she is one of the more reliable right-wing justices and will therefore move the court slightly further to the right (Bokat-Lindell, 2020). By having a firm right-wing court, compromise will be more difficult to come by, but will improve the likelihood of Republican-backed views being supported in case decisions.

Not long after Justice Ginsburg's passing, President Trump announced his nomination of Justice Barrett for her replacement and was eager for Barrett to be seated prior to the November 3rd election. Trump wanted a justice to rule in his favor if the election would be disputed, and his statements revealed a conflict of interest as pointed out by Senate Democrats. As a result, they called on Justice Barrett to faithfully recuse herself from any presidential election case, with which she failed to respond to.

For a justice to be elected to the Supreme Court, the President must nominate someone for the vacancy and the Senate votes (with a simple majority) to confirm the nominee. Despite this being a constitutional practice, many American citizens agree that appointing a new justice should be included in their voting power (Zeisberg, 2009). Guidelines in the Constitution about the specifics of judicial nominations are vague and leave room for interpretation. As such, it is not required that a nominee be questioned before the decision is made, which results in a difficulty in establishing a threshold for universal nominee requirements. In addition, regardless of the public opinion on an issue, the Supreme Court justices have discretion about which specific issues they would like to discuss (Baird, 2007). Since Justice Barrett prefers to remain

removed from the controversial discussions outside the courtroom, it is possible she, along with the other justices, will choose to refrain from discussing topics she has been questioned about in the past. On the other hand, this provision could allow Justice Barrett to decide to only listen to cases regarding these controversial topics she does not want to publicly take a stance on, leaving open the possibility of her dropping a bombshell on the country that cannot be prepared for.

The American people have been confident in the Supreme Court and trust this branch of the government the most. More recently though, faith in the Supreme Court has been dwindling. A Gallup poll given earlier this year supports this notion with the evidence that American support has dropped from 50% to 40% in the last two decades (Gallup, 2020). With the confirmation of Justice Barrett, the opposite of her predecessor, support for the judicial system will falter even more. As President Trump's third Supreme Court nominee, Justice Barrett has made the court the most conservative it has been in over seventy years. With a 6-3 conservative majority, this group has the power it needs to remodel the legal system in a way that benefits their beliefs and morals. Historically, potential justices brand themselves as neutral arbiters of law who make their decisions above the political fray during their confirmation hearings. Since they are unelected officials who are given the opportunity to serve on the most powerful court in the country for a lifetime, it is crucial the justices retain that demeanor after their ascension to the court. Justice Barrett's reputation will certainly be challenged while she serves to reinforce the idea that all the justices are impartial.

The Supreme Court works diligently to maintain a reputation as an apolitical branch of the government, but countless Americans have become convinced that the right-wing justices are political actors, lowering confidence in the court system even further. Justice Barrett's record of disagreeing with abortion rights and the Affordable Care Act, among other prior court decisions,

invite left-wing supporters to portray her as an authoritative figure who will overturn precedents she disagrees with rather than being a respectful and neutral jurist. This notion is not as exaggerated as one may think. President Trump has explicitly stated that he wished to appoint a justice that favors his views and Justice Barrett has ruled in favor of said views in the past, including cases on immigration policies and expansive gun rights. With a Democratic president currently holding office, there is no telling what the future of the Supreme Court will entail with another active conservative Justice.

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