

wp *Senate confirms Barrett to Supreme Court, cementing its conservative majority*

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A bitterly divided Senate confirmed Amy Coney Barrett as the 115th justice to the Supreme Court on Monday, elevating just the fifth woman to the court in its 231-year history and one who further cements its conservative shift — a legacy that will last even if Republicans lose power in next week’s elections.

The vote was 52 to 48 for Barrett, President Trump’s third nominee to the Supreme Court. The 48-year-old jurist solidifies a judicial legacy for the White House and Senate Republicans that also includes dozens of younger and more ideologically conservative judges on the federal appeals courts. An acolyte of the late Justice Antonin Scalia, Barrett is certain to diverge dramatically from the woman she succeeds: Justice Ruth Bader Ginsburg, who died Sept. 18 and was for decades an enduring icon for liberals.

The battle to confirm Barrett — whose installation occurred as more than 60 million people had already cast their ballots for president — also plunged a Senate already bruised by years of tit-for-tat skirmishes in the judicial wars into deeper partisan acrimony. Incensed Democrats charged Republicans with hypocrisy for blocking President Barack Obama’s Supreme Court nominee for eight months in 2016 and repeatedly pointed out that no justice has been confirmed this close to a presidential election.

“The American people will never forget this blatant act of bad faith. They will never forget your complete disregard for their voices, for the people standing in line right now voting their choice, not your choice,” Senate Minority Leader Charles E. Schumer (D-N.Y.) said shortly before the vote.

But Republicans asserted their raw power, muscling Barrett's nomination through in just over four weeks and with no bipartisan support — the first time that has occurred for a Supreme Court nominee in generations and a reflection of the politicized atmosphere around judicial fights.

"The reason we were able to do what we did in 2016, 2018 and 2020 is because we had the majority," Senate Majority Leader Mitch McConnell (R-Ky.) said moments after Schumer. "No rules were broken whatsoever. So all of these outlandish claims are utterly absurd, and the louder they scream, the more inaccurate they are."

In an outdoor ceremony at the White House an hour later, Justice Clarence Thomas administered the constitutional oath to Barrett, with Trump and several Republican senators looking on.

Barrett, who faced repeated questions at her confirmation hearings about Trump's preferred outcome for court rulings, delivered brief remarks on judicial independence in an unusual move for a new justice.

"A judge declares independence not only from Congress and the president, but also from the private beliefs that might otherwise move her. . . . My fellow Americans, even though we judges don't face elections, we still work for you," she said.

Supreme Court justices take two oaths — one to protect and uphold the Constitution, and another about judicial conduct. Chief Justice John G. Roberts Jr. will administer the judicial oath in a private ceremony at the court on Tuesday.

Barrett solidifies a 6-to-3 conservative majority on the court and will be in a position to immediately hear contentious cases on elections and health care. A centerpiece of the Democrats' strategy against Barrett was the pending case on the fate of the Affordable Care Act, set for oral arguments at the Supreme Court on Nov. 10. The Trump administration and Republican attorneys general argue that the entire 2010 health-care law and its protections for millions of Americans with preexisting medical conditions should be invalidated.

From the moment Barrett was nominated, one Democratic senator after another warned that the judge, who sits on the U.S. Court of Appeals for the 7th Circuit, would pose a significant threat to the Affordable Care Act, having critically written about legal reasonings that had previously rescued it.

"It's becoming clear that we have a binary choice: We can have the Affordable Care Act, or we can have Amy Coney Barrett on the Supreme Court," Sen. Edward J. Markey (D-Mass.) said. "We can have the ACA or we can have the ACB, but we can't have both."

*Barrett assiduously declined to hint at how she would rule on that case, *California v. Texas*, as well as evaluate existing Supreme Court precedents on abortion, gay rights and use of contraceptives.*

She attempted to differentiate herself from her mentor, Scalia, and, despite her personal and well-documented opposition to abortion, told senators that she would not abide by the "law of Amy," but rather that of the American people.

She also came under pressure from Democratic senators to recuse herself from any election-related challenges involving the president who nominated her, but Barrett declined to do so, instead promising that she will be an independent jurist.

“I certainly hope that all members of the committee have more confidence in my integrity than to think that I would allow myself to be used as a pawn to decide this election for the American people,” Barrett told senators during her confirmation hearing.

Her repeated pledges of independence did not satisfy Democrats.

“You deserve a Supreme Court nominee who will speak truth to power or at least acknowledge when basic precedent exists, even if it’s inconvenient to the president who nominated her,” said Sen. Amy Klobuchar (D-Minn.), a member of the Senate Judiciary Committee.

Barrett’s qualifications — two federal clerkships, including with Scalia, a lengthy tenure as a law professor at the University of Notre Dame and three years as a federal appeals court judge — were not questioned by her opponents. She also came to the national spotlight with a compelling personal story as a mother of seven children, including two adopted from Haiti.

“She is an unparalleled nominee and will be a dazzling originalist on the Supreme Court,” said Sen. Ben Sasse (R-Neb.), one of Barrett’s most ardent defenders.

“Democrats didn’t lay a glove on Judge Barrett in her confirmation hearings and I think she ran circles around politicians who want to outsource lawmaking to unelected judges.”

Sen. Josh Hawley (R-Mo.) said of Barrett: “This is the most openly pro-life judicial nominee to the Supreme Court in my lifetime.”

If Barrett follows the pattern of her colleagues, she will get to work immediately. The court resumes oral arguments next Monday, and two of its biggest cases of the term are scheduled, including the challenge to the health-care law.

While the rest of the country is still counting votes Nov. 4, the court will take up a legal fight from Philadelphia, where city officials ended a contract with Catholic Social Services to provide foster care services because the agency said it would not accept applications from married same-sex couples. A lower court has agreed the city can enforce its anti-discrimination policy, which protects sexual orientation.

A broad ruling could decide when religious organizations deserve exemptions from anti-discrimination laws that the groups say would cause them to violate deeply held beliefs, such as what constitutes a marriage.

But Barrett will have work to do before then. The court will meet in private conference Friday — most likely by teleconference — to review cases that could still be added to this term’s docket.

And there are four emergency requests pending at the court — three involving election procedures in the battleground states of Wisconsin, North Carolina and Pennsylvania, plus a request from Trump that the court temporarily stop a subpoena from Manhattan District Attorney Cyrus R. Vance Jr. (D) seeking the president's private financial records.

McConnell marshaled support from all but two of his Republican senators to proceed with Barrett before the Nov. 3 election. The duo opposed to doing so were Sens. Susan Collins (Maine) and Lisa Murkowski (Alaska), although Murkowski supported Barrett in the final confirmation vote on the merits. And Collins stressed that her "no" vote was meant to register her disagreement with confirming her amid a presidential campaign, not any conclusion about Barrett's qualifications.

Murkowski, who with Collins is one of the only two GOP senators who support access to abortion, said that based on her conversation with Barrett and her testimony before the committee, she doesn't believe the newest justice would vote to overturn Roe v. Wade, the landmark 1973 decision that legalized the procedure.

With only Republicans supporting her confirmation, Barrett is the first Supreme Court justice since Edwin Stanton in 1869 to be confirmed without bipartisan support, according to a review of Senate voting data by the [National Journal](#). Even Sen. Joe Manchin III (D-W.Va.), who backed now-Justice Brett M. Kavanaugh in 2018 and Barrett for her circuit court seat three years ago, did not support her.

There were other factors that made the circumstances of Barrett's confirmation unique, including the ongoing coronavirus pandemic — meaning a nomination that would've normally drawn large throngs of protests to the Capitol instead operated in a literally sanitized sphere.

Monday's White House ceremony gives a fitting bookend to her nomination, as Trump hosted a similar Rose Garden event on Sept. 26 to unveil Barrett as his pick, a ceremony which later was deemed a super-spreader event. Numerous attendees were later diagnosed with covid-19, the disease caused by the coronavirus, including the president and first lady Melania Trump, two GOP senators and the president of the University of Notre Dame.

Most in attendance Monday night wore masks.

Vice President Pence, who said on Saturday that he wouldn't miss Barrett's confirmation vote "for the world," instead stayed away from his initial plans to preside over the Senate on Monday evening amid a fresh outbreak of covid-19 among his staff, including some of his closest aides. Democrats urged Pence not to come to the Capitol on Monday, and Schumer advised his ranks to limit time in the chamber because of the virus.

Barrett has also played a significant role in the 2020 campaigns for both the presidency and the Senate, with most GOP senators in competitive races latching onto the confirmation fight to energize conservative voters. Democratic challengers, meanwhile, have assailed Republicans for charging ahead with a lifetime appointment to the Supreme Court at the expense of a relief bill for millions of Americans suffering from the health and economic impact of the pandemic.

The Barrett confirmation has also fueled an internal Democratic debate over the issue of expanding the court, with the party's presidential nominee, Joe Biden, under significant pressure from the party base to embrace a plan to increase the number of seats on the Supreme Court if he wins the White House.

Few elected Democratic officials have definitively supported the idea ahead of the closely contested elections for both the White House and the Senate. Biden has said he would appoint a bipartisan commission to propose changes to the Supreme Court and federal judiciary,

Robert Barnes contributed to this report.