

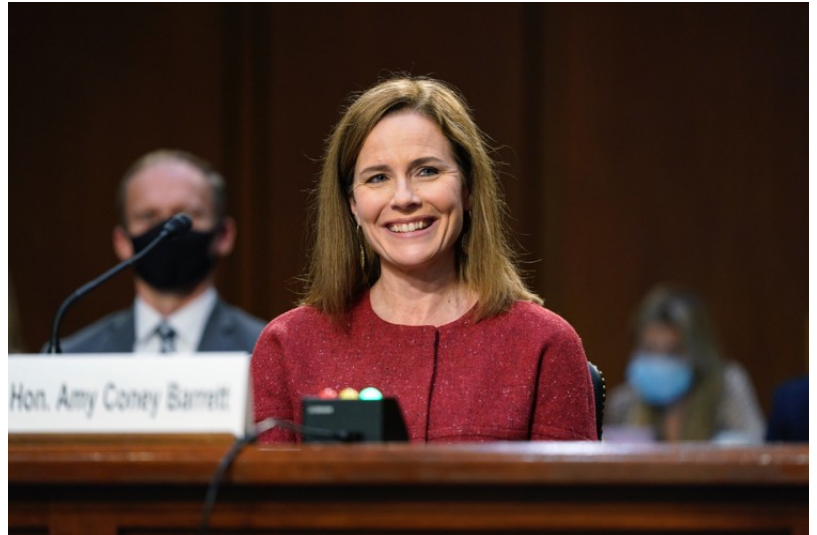


Written by [C. Mitchell Shaw](#) on October 13, 2020

First Day of Barrett Confirmation Hearings: Dems on Offensive

On Monday, Supreme Court nominee Amy Coney Barrett began the grueling process of Senate confirmation. In what has been expected to be a contentious, partisan series of hearings, day one was no surprise. Republicans and Democrats chose sides based on party lines and dug their heels in. For her part, Barrett held her own in a process that — while brutal — will likely end in her taking her seat on the Supreme Court.

In fact, Senator Lindsey Graham (R-S.C.) — who serves as chairman of the committee — opened the first day of hearings with, “the hearing to confirm Judge Amy Coney Barrett to the Supreme Court,” rather than saying it was a hearing to consider her qualifications. Graham added that the hearing was “probably not about persuading each other unless something really dramatic happens.” He went on to predict that “all the Republicans will vote yes, all the Democrats will vote no.”



AP Images

And since Republicans hold the majority, it is all but a foregone conclusion that Barrett will be confirmed to fill the seat left vacant by the death of Justice Ruth Bader Ginsburg.

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Cognizant of the fact that her religion (Barrett is described as an Orthodox Catholic) and her conservative affiliations (among other things, Barrett served under Justice Antonin Scalia and was known as one of his favorite clerks) would be used by Democrats to paint a picture of her as a conservative activist judge, Barrett began with a statement. She said, “Courts have a vital responsibility to enforce the rule of law, which is critical to a free society. But courts are not designed to solve every problem or right every wrong in our public life.”

Barrett went on to address the constitutional principle of separation of powers so often eschewed by activist judges who legislate from the bench. Barrett said, “The policy decisions and value judgments of government must be made by the political branches elected by and accountable to the people. The public should not expect courts to do so, and courts should not try.”

In this, Barrett is perfectly correct. The Constitution — in Article I, section 1 — makes that point glaringly obvious to anyone with a fifth-grade reading comprehension level. It says, “All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” Since “all” leaves nothing out, neither the president nor the



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courts have any “legislative powers” at all. Period.

Once the opening statements were made and the hearing actually got underway, things followed the expected course: Democrats attacked Barrett’s nomination as an unprecedented power grab by a mad president who should have waited until after the election to nominate anyone.

Senator Dianne Feinstein (D-Calif.), the top Democrat on the committee, addressed Graham, saying, “We are now just 22 days from the election, Mr. Chairman. Voting is underway in 40 states” and yet, “Senate Republicans are pressing forward, full speed ahead, to consolidate the court that will carry their policies forward with, I hope, some review for the will of the American people.”

Furthermore, Barrett’s religious beliefs and conservative values were trotted out as evidence that she would seek to single-handedly overturn ObamaCare, invalidate *Roe v. Wade*, and side with the president in any legal disputes arising from the November 3 election.

And while no Democrat mentioned Barrett’s Catholic faith in Monday’s hearings, they certainly did so in 2017, when she faced confirmation for her nomination for a seat on an appeals court. So, rather than wait for Democrats to use that attack, Republicans on the committee preempted that by declaring it out of bounds. Senator Ben Sasse (R-Neb.) — who describes himself as “someone who is self-consciously a Christian” — said, “This committee is not in the business of deciding which religious beliefs are good, which are bad, and which religious beliefs are weird.” He went on to say, “This committee is not in the business of deciding whether ‘the dogma lives loudly’ within someone,” — a direct quote from [Feinstein’s remarks during that 2017 confirmation hearing when Barrett was all but put on trial for her religion](#).

Senator Joni Ernst (R-Iowa) addressed Barrett directly, saying, “What your political opponents want to paint you as is a TV or cartoon version of a religious radical, a so-called handmaid that feeds into all of the ridiculous stereotypes they have set out to lambaste people of faith in America. And that is wrong.”

As to the issue of the pending election, Feinstein is correct that voting is underway in 40 states. But that is not only irrelevant, it is also the direct result of what President Trump has called a “scam” being perpetrated by Democrats. Early voting, mail-in voting, and other election tricks by Democrats have cast a murky light on the outcome of an election that has not even been counted yet. Given that fact, President Trump has said, “I think this will end up in the Supreme Court.” He also said that he wanted to fill the vacancy left by Ginsburg because the justices will likely need to “look at the ballots” to determine whether there is voter fraud.

That seems reasonable — to everyone except Democrats. Senator Richard Blumenthal (D-Conn.) said, “Your participation, let me be blunt, in any case involving Donald Trump’s election, would immediately do explosive and enduring harm to the court’s legitimacy and to your own credibility,” adding, “You must recuse yourself. The American people are angry and for good reason. It is a break the glass moment.”

Of course, that idea is ridiculous. First, it assumes a political motivation in a justice’s decision — something Democrats can’t seem to imagine not happening. Second, since the court is purposefully odd-numbered, a tie is impossible. If Barrett were to recuse herself, a tie could be a realistic outcome. Imagine a stalemate decision by the Supreme Court on the election of the president. That would indeed do “explosive and enduring harm to the court’s legitimacy.” And it would leave America in a dark place where some other method of deciding the outcome of the election would have to be invented. That



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would not end well.

The days ahead will likely be more of the same and worse. Democrats — who know they lack the votes to prevent confirmation — will continue their political posturing, while Republicans will continue to expose those tactics to the light of truth and logic. In the end, Barrett will almost certainly take her seat on the Supreme Court. And if the election results wind up in the court, she is unlikely to recuse herself.



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