INTRODUCTION

On February 18, 2015, Judge John Tinder of Indiana took senior status from the U.S. Court of Appeals for the Seventh Circuit. After Senator Daniel Coats did not return the blue slip for President Obama’s nominee to the court, Myra Selby, on May 8, 2017, President Trump nominated Amy Coney Barrett, a professor at the Notre Dame Law School, to fill the vacancy.1 Alliance for Justice opposes Barrett’s nomination.

Stunningly, Barrett has asserted that judges should not follow the law or the Constitution when it conflicts with their personal religious beliefs. In fact, Barrett has said that judges should be free to put their personal views ahead of their judicial oath to faithfully follow the law. This position is antithetical to the fair and impartial functioning of the federal judiciary. Moreover, Barrett has said that judges should not be bound by stare decisis, the doctrine that requires them to follow well-settled law. Barrett’s extreme view on stare decisis threatens the very foundation of our common law tradition.

Further, it would be hard to overstate the degree to which Barrett’s academic work has been tailored to dismantle Roe v. Wade. Indeed, her belief that a judge can refuse to neutrally apply well-settled law seems to be born of her staunch opposition to a woman’s right to choose whether to have an abortion.

Moreover, Barrett has very limited litigation experience. Based on her disclosures to the Senate Judiciary Committee, she has never been first chair for a trial and has never argued an appeal.2 Barrett has never even served as counsel of record in an appellate case.3 In addition, her limited legal practice has been highly partisan. For example, she served as an attorney for George W. Bush during Bush v. Gore.

As noted, prior to Barrett’s nomination, President Obama had nominated Myra Selby to fill the same seat.4 Selby is a former Indiana Supreme Court Justice who spent most of her career at the law firm Ice Miller in Indianapolis.5 Prior to her nomination, Selby was a highly regarded expert in health care law, earning a spot on the Best Lawyers in America, Health Care law list for seven consecutive years.6 Senator Joe Donnelly praised Selby’s nomination, saying that she would be a “strong addition to the Seventh Circuit bench” and that she “has been a trailblazer, as the first woman and first African-American to serve on the Indiana Supreme Court and the first African-American partner in a major Indianapolis law firm.”7 Senator Coats did not return his blue slip, and Selby did not even receive a hearing.8 Selby would have been the first African American on the Seventh Circuit from Indiana, had the Senate acted on her nomination.

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3 Id.
5 Id.
Amy Coney Barrett received her B.A. from Rhodes College and her J.D. from Notre Dame Law School, graduating in 1997. She then clerked for Judge Laurence Silberman on the D.C. Circuit and for Supreme Court Justice Antonin Scalia. After two years in private practice with Miller, Cassidy, Larroca & Lewin and its successor, Baker Botts, she joined the faculty at George Washington University School of Law as a John M. Olin Fellow. After her fellowship, she became an Assistant Professor of Law at Notre Dame in 2002, became an Associate Professor of Law in 2006, and was granted tenure in 2008. She became a full Professor of Law in 2010 and currently holds the Diane and M.O. Miller, II Research Chair in Law.

Barrett’s scholarship includes a number of articles criticizing stare decisis and the sources of judicial authority to craft federal common law of procedure and supporting originalism. Moreover, in a 1998 law review article, Barrett argued that federal judges who are faithful to Catholic teaching should recuse themselves from capital cases because they are morally precluded from considering or imposing the death penalty. She also has published on the Suspension Clause and statutory canons of interpretation.

Barrett is currently a member of The Federalist Society. She was also a member of the University of Notre Dame’s Faculty for Life group from 2010 to November 2016.

Barrett’s academic writings demonstrate that she is a strict textualist and a firm originalist. Barrett has argued for an extremely broad application of originalism. For example, she has suggested that the administrative state is unconstitutional and the Fourteenth Amendment is illegitimate:

Because the kinds of procedural outs that permit originalism and deep-seated error to coexist, in courts are not as readily apparent in the legislative context, the originalist legislator might have to face questions that an originalist justice can escape—such as the constitutionality of the administrative state or the legitimacy of the Fourteenth Amendment.

Barrett also has criticized jurists who, in her opinion, have not strictly applied the text of a statute they are interpreting. For example, Barrett was highly critical of Chief Justice John Roberts’s opinion in NFIB v. Sebelius, 567 U.S. 519 (2012), which upheld major portions of the Affordable Care Act, calling it an example of a jurist distorting statutory text to achieve a desired result.

Barrett also has argued that the Supreme
Court lacks the supervisory power to prescribe rules of procedure and evidence for inferior courts,\textsuperscript{22} despite the common assumption of all courts and most commentators to the contrary.\textsuperscript{23} Indeed, Chief Justice Rehnquist wrote that “[t]he law in this area is clear. This Court has supervisory authority over the federal courts, and we may use the authority to prescribe rules of evidence and procedure that are binding in those tribunals.” \textit{Dickerson v. United States}, 530 U.S. 428, 437 (2000). If the Supreme Court lacks supervisory power, it may, for example, lack the power to prescribe binding rules of adjudication on the lower federal courts, such as its holdings on issue and claim preclusion, or the appropriate methods of statutory interpretation. Barrett has argued that creation of uniform rules of procedure is ultimately in the hands of Congress, not the courts.\textsuperscript{24}

\textbf{II. REPRODUCTIVE RIGHTS}

It appears Barrett has avoided definitive public statements that \textit{Roe v. Wade} should be overturned. But she has espoused a number of positions and philosophies which combine to create a clear picture of the grounds on which she would attack a woman’s right to choose whether to have an abortion, including the astonishing view that judges should place their religious beliefs ahead of the Constitution when carrying out their duties.


\textsuperscript{25} See Questionnaire, supra note 2, at 6; ND UFL Constitution, UNIVERSITY OF NOTRE DAME, UNIVERSITY FACULTY FOR LIFE, http://ufl.nd.edu/about-ufl/constitution/ (last visited July 18, 2017).

\textsuperscript{26} Letter from Catholic women, to Synod Fathers (Oct. 1, 2015), available at https://eppc.org/synodletter/.

\textbf{Opposes Access to Contraception and Reproductive Health Care}

Up until very recently, Barrett was a member of the University of Notre Dame’s Faculty for Life group, which describes itself as organized to promote research, dialogue, and publication by faculty, administration, and staff who respect the sacred value of human life from its inception to natural death in the spirit embodied in Evangelium Vitae and Caritas in Veritate and are committed to the legal and societal recognition of the value of all human life.\textsuperscript{25}

Further, in 2015, Barrett signed a letter to the Synod Fathers in Christ “giv[ing] witness” to “the Church’s teachings—on the dignity of the human person and the value of human life from conception to natural death.”\textsuperscript{26}

Also relevant, Barrett signed a letter authored by The Becket Fund criticizing the Affordable Care Act’s requirement that employers provide contraceptive coverage as part of their employer-sponsored health insurance plans. The letter objected to the Obama Administration’s accommodation for religiously-affiliated employers that allowed them to avoid having directly to inform their employees about contraceptive coverage. The letter called the Obama Administration “morally obtuse” for suggesting “that this is a meaningful
accommodation of religious liberty because the insurance company will be the one to inform the employee that she is entitled to the embryo-destroying ‘five day after pill’ pursuant to the insurance contract purchased by the religious employer.”

The letter went on to say that the contraceptive coverage requirement was “a grave violation of religious freedom and cannot stand. It is an insult to the intelligence of Catholics, Protestants, Eastern Orthodox Christians, Jews, Muslims, and other people of faith and conscience to imagine that they will accept an assault on their religious liberty if only it is covered up by a cheap accounting trick.”

In an article entitled Catholic Judges in Capital Cases, Barrett also made clear her view that the Catholic Church teaches that “[t]he prohibitions against abortion and euthanasia (properly defined) are absolute; those against war and capital punishment are not.”

Opposes Roe v. Wade

Given “her own conviction that life begins at conception,” it is no surprise that Barrett has criticized Roe v. Wade. She has stated that the Supreme Court “creat[ed] through judicial fiat a framework of abortion on demand” that “ignited a national controversy.” She said that “one of the reasons that [Roe] was controversial was that in the past all cases dealing with the right to privacy drew from consensual situations such as marriage or the use of contraception. Abortion deals with the life of a child so it differs from the earlier case[s] relating to privacy.”

Barrett has explicitly argued that federal judges’ personal religious beliefs override their duty to apply the law. Given that Barrett believes that “life begins at conception” and her statements opposing Roe, questions arise as to whether she will properly enforce Roe and its progeny. Indeed, Barrett herself has strongly implied that she would not.

As the Constitution makes clear, “no religious test shall ever be required as a Qualification to any Office or public Trust under the United States.” And Barrett’s sincerely held religious beliefs, as a Catholic, are not directly relevant to her qualifications to serve on the Seventh Circuit.

What is relevant, however, is Barrett’s express position that a judge, guided by their personal religious beliefs, is not required to apply the Constitution and precedents of the Supreme Court and Courts of Appeals.

In a January 2013 speech, Barrett also made clear her view that “the Constitution does not expressly protect a right to privacy.”

Barrett will be led by her personal beliefs, not the law

In a 1998 law review article, Catholic Judges in Capital Cases, Barrett primarily discussed the teachings of the Catholic Church as they relate to federal judges imposing the death penalty. Barrett wrote that “Catholic judges (if they are faithful

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27 Statement from The Becket Fund, Unacceptable (Feb. 27, 2012), http://www.becketlaw.org/media/unacceptable/.
28 Id.
29 Garvey & Coney, supra note 14, at 307.
31 Id.
33 Amy Coney Barrett, Roe at 40: The Supreme Court, Abortion and the Culture War that Followed, Tocqueville Lecture, notes available at Questionnaire, supra note 2, at Appendix 12(d).
34 U.S. CONST. art. VI.
35 Garvey & Coney, supra note 14, at 304.
to the teaching of their church) are morally precluded from enforcing the death penalty.”36 Barrett explains that an observant Catholic judge cannot impose a jury-recommended death sentence and is directed to recuse herself. She should also recuse herself in cases where the judge sets the sentence, even though the capital crime statutes do not ever require a death sentence, if the judge honestly cannot consider death as a possible sentence:

We said it would be morally improper for a judge who conscientiously opposed capital punishment to suspend judgment and consider it. The proper moral course seems to be to avoid putting oneself in this predicament. The recusal law reaches the same result for its own reasons: if a judge cannot honestly consider death as a possibility, he is ‘prejudiced’ within the meaning of § 455(b)(1) and should recuse himself.37

As for appellate judges, Barrett notes that affirming a capital conviction may also be immoral, because it has the appearance of an endorsement of the death penalty: “Unless he intervenes the defendant will die. And his act of affirming, whatever its legal significance might be, looks a lot like approval of the sentence. Conscientious Catholic judges might have more trouble with cases like these than they would at trial.”38 Accordingly, Barrett says that the possibility of having to affirm a death sentence is a sufficient reason for a Catholic appellate judge to recuse herself from a case: “If one cannot in conscience affirm a death sentence the proper response is to recuse oneself.”39

As noted, Barrett explicitly made clear that the Catholic Church’s “prohibitions against abortion and euthanasia (properly defined) are absolute; those against war and capital punishment are not.”40 Indeed, Barrett states that a Catholic judge should not have to follow her judicial oath to support the Constitution and laws if it conflicts with her moral convictions:

Justice Brennan took a similar position during his confirmation hearings in 1957, when he was asked whether he could abide by his oath in cases where ‘matters of faith and morals’ got mixed with ‘matters of law and justice.’ He said:

Senator, [I took my] oath just as unreservedly as I know you did... And...there isn’t any obligation of our faith superior to that. [In my service on the Court] what shall control me is the oath that I took to support the Constitution and laws of the United States and [I shall] so act upon the cases that come before me for decision that it is that oath and that alone which governs.

We do not defend this position as the proper response for a Catholic judge to take with respect to abortion or the death penalty.41

Thus, we can conclude that in Barrett’s view, Catholic judges should not apply the law with respect to the death penalty and abortion. Barrett must be asked whether she intends to recuse herself from cases involving a woman’s right to choose whether to have an abortion.

36 Id. at 305.
37 Id. at 339.
38 Id. at 328–29, 342.
39 Id. at 343.
40 Id. at 307.
41 Id. at 347 (emphasis added).
For example, if a state passed a law that unconstitutionally restricted a woman’s access to abortion, Barrett would be required, as a judge, to invalidate that law. But if she did so, by her own reasoning, her decision to uphold the Constitution would serve as a tacit endorsement of abortion or, at least, would make accessing an abortion easier. Therefore, the act of striking down the law, according to Barrett’s own words, would be an immoral act that a judge following Catholic teachings should avoid.

Accordingly, because Barrett believes that her own personal beliefs trump her obligation to apply the Constitution and the law, it is difficult to see how she would appropriately apply the law in such a case.

**Barrett’s radical views on stare decisis**

As even further evidence that she will erode basic constitutional protections for women, Barrett repeatedly has made clear she does not believe in *stare decisis*, the doctrine that requires courts to follow precedent.

She has said that a judge need not adhere to precedent that she believes is wrongly decided: “I tend to agree with those who say that a justice’s duty is to the Constitution and that it is thus more legitimate for her to enforce her best understanding of the Constitution rather than a precedent she thinks clearly in conflict with it.”

Even Justice Clarence Thomas rejected this reasoning:

> I think overruling a case or reconsidering a case...is a very serious matter. Certainly,...you would have to be of the view that a case is incorrectly decided, but I think

Even that is not adequate. There are some cases that you may not agree with that should not be overruled. *Stare decisis* provides continuity to our system, it provides predictability, and in our process of case-by-case decision making, I think it is a very important and critical concept.

Barrett even has suggested that *stare decisis* violates the Due Process Clause. She argued that “rigid application” of *stare decisis* “unconstitutionally deprives a litigant of the right to a hearing on the merits of her claim.” This argument is odd. *Stare decisis* operates to establish the meaning and proper application of the laws and Constitution. *Stare decisis* does not impact a litigant’s ability to have a court apply settled law to the facts of her case. Uniform and consistent application of the laws and Constitution to unique factual scenarios is a fundamental concept of our judicial system and does not run afoul of the Due Process Clause.

Nor does it appear that Barrett was only talking about the Supreme Court overturning precedent and that she, as a court of appeals judge, would of course be bound by settled case law. Barrett has criticized *stare decisis* at the Circuit level: “Whatever the merits of statutory *stare decisis* in the Supreme Court, the inferior courts have no sound basis for following the Supreme Court’s practice.” Barrett continues,

**Refusing to revisit statutory**


45 Id. at 1013.

interpretations as a means of restraining judicial policymaking may or may not be appropriate in the Supreme Court, which settles the meaning of statutes on behalf of the entire judicial department. But it certainly does not make sense in the courts of appeals, which, by virtue of their position in the judicial hierarchy, have different considerations to take into account when deciding whether to overrule precedent.\(^\text{47}\)

Stare decisis has been central in ensuring women’s access to reproductive care. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), the Supreme Court discussed the importance of stare decisis in upholding a woman’s right to choose whether to have an abortion: “Indeed, the very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable.” \(^\text{Id. at 854.}\)

Barrett, however, argues that “soft stare decisis” is perhaps a more desirable alternative to the inflexible stare decisis that she believes the courts currently apply.\(^\text{48}\) She explicitly notes that, in areas like abortion, “[s]oft stare decisis helps the Court navigate controversial areas by leaving space for reargument despite the default setting of continuity.” \(^\text{49}\)

In arguing against the robust application of stare decisis, Barrett stated that although stare decisis plays a role in enabling people to conform their conduct to the law, “[r]eliance interests...count far less when precedent clearly exceeds a court’s interpretive authority than they do when precedent, though perhaps not the ideal choice, was nonetheless within the court’s discretion.”\(^\text{50}\) Given that Barrett believes “the Constitution does not expressly protect a right to privacy”\(^\text{51}\) and her opposition to *Roe*, it is clear that Barrett believes that overturning *Roe*—or not properly applying it and its progeny—would not inappropriately interfere with women’s reliance interests.

Moreover, Barrett also has discussed “superprecedents,” or cases that have gained such widespread support in society that they should not be revisited. She lists only seven cases: *Marbury v. Madison*, 5 U.S. 137 (1803), *Martin v. Hunter’s Lessee*, 14 U.S. 304 (1816), *Helvering v. Davis*, 301 U.S. 619 (1937), the *Legal Tender Cases*, 79 U.S. 457 (1870), *Mapp v. Ohio*, 367 U.S. 643 (1961), *Brown v. Board of Education*, 347 U.S. 483 (1954), and the *Civil Rights Cases*, 109 U.S. 3 (1883).\(^\text{52}\) *Roe* is not included in Barrett’s list of “superprecedents,” despite the fact that it was decided over forty years ago, the Supreme Court has repeatedly upheld its fundamental holding, and countless women’s lives have been shaped by its critical protections.

In fact, Barrett explicitly makes clear that *Roe* is the classic example of a case that does not represent a “superprecedent,” because it has not been recognized as settled law by society at large: “The force of so-called superprecedents, however, does not derive from any decision by the Court about the degree of deference they warrant. Indeed, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, shows that the Court is quite incapable of

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\(^{47}\) *Id* at 351–52.  
\(^{48}\) Barrett, *Precedent*, supra note 42, at 1724.  
\(^{49}\) *Id*  
\(^{50}\) Barrett, *Stare Decisis and Due Process*, supra note 44, at 1075.  
\(^{51}\) Barrett, *Roe* at 40, supra note 33.  
transforming precedent into superprecedent by *ipse dixit*.

This position is contrary to the view of, among others, Arlen Specter, former Republican Chairman of the Senate Judiciary Committee. Notably, the ramifications of Barrett’s radical view on *stare decisis*, go beyond women’s reproductive rights. By refusing to follow long-standing precedent on the Seventh Circuit, Barrett could refuse to apply case law that protects labor unions, see *Janus v. AFSCME*, 851 F.3d 746 (7th Cir. 2017) (affirming dismissal of claim against labor union that required non-member employees to pay fees); LGBTQ workers, see *Hively v. Ivy Tech Cmty Coll.*, 853 F.3d 339 (7th Cir. 2017) (holding that discrimination on the basis of sexual orientation was actionable under Title VII); and voters, see *Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016) (striking down Republican redistricting plan in Wisconsin because it constituted an unconstitutional partisan gerrymandering).

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Barrett’s copious writings on reproductive rights and health care are troubling. Barrett has developed a body of academic writing seemingly aimed at eroding the constitutionally-protected right of a woman to choose whether to have an abortion. Moreover, Barrett has expressed her personal opposition to a woman’s right to choose and has argued that federal judges need not and should not leave their personal views behind when they take the bench. In fact, Barrett has encouraged federal judges who are personally opposed to a law to recuse themselves from cases where they would have to apply it. By all accounts, Barrett would be a rubber stamp for efforts to roll back women’s access to reproductive health care.

### III. POLITICAL VIEWS

Throughout her career, Barrett has been involved in or outspoken on several political issues. Although Barrett has had very little litigation experience, in her paperwork for the Senate Judiciary Committee, Barrett lists that she represented George W. Bush in *Bush v. Gore*. Barrett explained that her work on the case was through her employer at the time, Baker Botts, L.L.P., and that she worked on location in Florida doing research and providing briefing assistance. Barrett said that she worked with a partner at the firm as the case was working its way through the Florida courts.

Barrett also has been critical of the Affordable Care Act (“ACA”), which has helped millions of Americans secure health insurance coverage. Barrett attacked Chief Justice John Roberts for his decision in *NFIB v. Sebelius*, 567 U.S. 519 (2012), which upheld Congress’s authority to enact large portions of the ACA:

Chief Justice Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute. He construed the penalty imposed on those without health insurance as a tax, which permitted him to sustain the statute as a valid exercise of the taxing power; had he treated the payment as the statute did—as a penalty—he would have had to invalidate the statute as lying beyond Congress’s commerce power.

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53 Id. at 1735.
55 Questionnaire, supra note 2, at 28.
56 Id.
57 Id.
58 Barrett, Countering, supra note 20, at 80.
Barrett explained that Chief Justice Roberts’s approach in *NFIB v. Sebelius* “expressed[d] a commitment to judicial restraint by creatively interpreting ostensibly clear statutory text” and that “its approach is at odds with the statutory textualism to which most originalists subscribe.”59 And for a textualist, as Barrett describes herself, “it is illegitimate for the Court to distort either the Constitution or a statute to achieve what it deems a preferable result.”60

In a 2016 interview with CBS, Barrett largely defended what would become the actions of the GOP Senate in refusing to act on President Obama’s nominee to the Supreme Court, Merrick Garland.61 While she conceded that there have been numerous election year confirmations and said there was “no rule for either side,” Barrett said the election-year nomination of Anthony Kennedy was different from that of Garland, because the Bork nomination had failed and “the reality is that we live in a different time...as we all know confirmations have gotten far more contentious, I just don’t think we live in the same kind of time.”62 She concluded, “in sum, the president has the power to nominate and the Senate has the power to act or not.”63

### IV. CRIMINAL JUSTICE

While Barrett’s scholarship has not focused on criminal justice, she has made some troubling statements about criminal justice reform and the rights of people accused of committing crimes. In a law review article discussing canons of constitutional interpretation, Barrett said that “[t]he *Miranda* doctrine, which inevitably excludes from evidence even some confessions freely given, is an example” of “the court’s choice to overenforce a constitutional norm by developing prophylactic doctrines that go beyond constitutional meaning.”64 Of course, the *Miranda* doctrine protects people from coercive police tactics aimed at forcing incriminating statements in violation of the Fifth Amendment. Even Chief Justice William Rehnquist upheld the *Miranda* doctrine as being necessary in an age of “modern custodial police interrogation” that “by its very nature, isolates and pressures the individual” and where “the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements.”

*Dickerson v. United States*, 530 U.S. 428, 434–35 (2000). Eroding or eliminating the *Miranda* doctrine, as Barrett seemingly wants to do, would loosen restrictions on police interrogation and expose the most vulnerable members of society to coercive police tactics.

In a 2008 blog post on PrawsBlawg, Barrett discussed the United States Sentencing Commission’s amendment to the sentencing guidelines aimed at correcting the sentencing disparity between powder and crack cocaine.65 The Sentencing Commission had made the changes retroactive, meaning that inmates already sentenced were eligible for a sentence reduction. Barrett noted that this was the first amendment that the Sentencing Commission had made retroactive and that it was likely to affect 20,000 inmates.66 Barrett said that while she was not an expert in criminal law, she saw “a host of issues that arise with the retroactivity

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59 Id. at 84.
60 Id.
62 Id.
63 Id.
66 Id.
of these amendments.”67 Barrett suggested that the retroactive amendment would put significant strain on “the courts, prosecutors, probation departments, and marshals” and would lead to confusion about which issues could be relitigated at resentencing.68

Barrett’s post is problematic for two reasons. First, in opining on a topic she admitted she was not an expert on, she failed to even address the large amount of “persuasive” testimony heard and considered by the Sentencing Commission that “the administrative burdens” of retroactivity “are manageable.”69

Second, while Barrett’s post addressed process concerns, she completely ignored the underlying injustice that had been imposed on communities of color for decades. The Anti-Drug Abuse Act of 1986 originally set out a 100:1 ratio sentencing scheme for offenses involving crack versus powder cocaine.70

[B]ecause the majority of people arrested for crack offenses are African American, the 100:1 ratio resulted in vast racial disparities in the average length of sentences for comparable offenses. On average, under the 100:1 regime, African Americans served virtually as much time in prison for non-violent drug offenses as whites did for violent offenses.71

Indeed, Congress took further steps to correct the disparity by passing the bipartisan Fair Sentencing Act in 2010.72

V. DETAINEE RIGHTS

Barrett authored an article criticizing the Supreme Court’s decision in Boumediene v. Bush, 553 U.S. 723 (2008), which held that foreign citizens detained at Guantanamo Bay could file habeas corpus petitions in federal court challenging their detention. Barrett said that the decision was “contrary to precedent and unsupported by the Constitution’s text.”73 Barrett argued that “the Boumediene Court conceded that the historical record fails to establish that courts had ever entertained habeas petitions filed by noncitizens held in other countries. The dissenters, who maintained that the Suspension Clause did not override Congress’s choice to deny federal jurisdiction, had the better of the argument.”74

As a more general matter, Barrett has argued that most historical statutes suspending the writ of habeas corpus have delegated too much authority to the Executive insofar as they have permitted the President to decide whether, when, where, and for how long to exercise emergency power.75 She concludes that “while the Suspension Clause does not prohibit Congress from giving the President some responsibility for the suspension decision, it does require Congress to decide the most significant constitutional predicates for itself: that an invasion or rebellion has occurred and that protecting the public safety may require the exercise of emergency power.”76

At the same time, she allows that while

67 Id.
68 Id.
72 Id.
74 Id.
76 Id. at 251.
Congress cannot authorize the President to suspend the writ, it “can render suspension an automatic consequence of the President’s determination that the conditions for the statute’s effectiveness exist.”

CONCLUSION

Barrett holds views that are genuinely antithetical to our system of democracy and that would, if carried to their logical conclusion, devastate the American justice system.

She has built her career on promoting academic theories that would undermine a woman’s right to choose whether to have an abortion. She has criticized the Supreme Court for expanding the Due Process Clause’s privacy protection to encompass a woman’s right to choose and she has argued that judges do not have to follow precedent, particularly in situations where they believe the underlying case was wrongly decided. Aside from reproductive rights, Barrett’s position on *stare decisis* would threaten to undermine the very stability of our common law tradition and could destroy key protections. Moreover, Barrett has championed originalism and a strict form of textualism that are incompatible with the advancement of civil rights for African Americans, women’s rights, and rights for LGBTQ Americans.

Perhaps most troubling, Barrett has argued that a judge does not have an obligation to faithfully apply the Constitution or laws when she personally disagrees with them. Instead, Barrett believes that a judge should recuse herself from cases where she is morally opposed to the outcome. This position is at odds with the very essence of the oath that judges take to administer justice faithfully and impartially as required by the laws of the United States.

In her years as an academic, Barrett has proven herself bent on undermining critical protections enshrined in our Constitution. Accordingly, Alliance for Justice opposes her nomination to the Seventh Circuit.

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77 Id. at 251.