

AFJ NOMINEE REPORT

AMY CONEY BARRETT



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INTRODUCTION

On May 8, 2017, President [Trump nominated](#) Amy Coney Barrett to the Seventh Circuit Court of Appeals for the [seat](#) held by Judge John T. Anderson. Judge Anderson took senior status from the court on February 18, 2015. On October 31, 2017, Barrett was confirmed by a [55-43](#) vote in the Senate.

Since that time, Trump has [added](#) Barrett to his short list of potential nominees to the Supreme Court. Trump has again and again reminded us that he will only put justices on the Supreme Court who pass his [litmus test](#) of overturning or gutting *Roe v. Wade*. Trump said [overturning Roe](#) “will happen automatically . . . because I am putting pro-life justices on the court.”¹ President Trump has also explicitly stated he was looking for judicial nominees who are hostile to the Affordable Care Act. Trump [said](#), “my judicial appointments will do the right thing unlike Bush’s appointee John Roberts on ObamaCare.”

Following the [retirement announcement](#) of Justice Anthony Kennedy, Trump [reportedly](#) interviewed Barrett, among several other short-list candidates, for the seat. Alliance for Justice has updated this report accordingly.

Barrett’s record before her confirmation to the Seventh Circuit is extremely troubling. Barrett has said that judges

should not be bound by *stare decisis*, the doctrine that requires judges to follow well-settled law.

Furthermore, 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 abortion care.

It is notable that prior to Barrett’s nomination to the Seventh Circuit, President Obama [nominated](#) Myra Selby to fill the same seat. Selby is a former Indiana Supreme Court Justice who spent most of her career at the law firm Ice Miller in Indianapolis. Prior to her nomination, Selby was a highly regarded expert in health care law, earning a [spot](#) on the Best Lawyers in America, Health law list for seven consecutive years. 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.”² However, Republican Senator Daniel Coats did not [return](#) his blue slip, and Selby did not even receive a hearing. Selby would have been the first African American on the Seventh Circuit from Indiana, had the Senate acted on her nomination.

Meanwhile, since her confirmation to the Seventh Circuit, Barrett has already joined a number of troubling decisions. Barrett [sided against](#) an African-American worker whose employer, according to the Chief Judge of the Seventh Circuit, appeared to have established a “separate-but-equal” policy of segregating their employees by race.³ Barrett [joined](#) a ruling siding against the Army Corps of Engineers’ efforts to protect wetlands in Illinois under the Clean Water Act. Like other Trump nominees, she has shown an inclination to rule in favor of the rights of the wealthy and powerful over the rights of all; in other cases, Barrett ruled to [dismiss](#) claims by workers who were denied access to justice and ruled to [uphold](#) a denial of benefits.

Alliance for Justice strongly opposes the consideration of Barrett for a seat on the U.S. Supreme Court.

BIOGRAPHY

Amy Coney Barrett [received](#) her B.A. from Rhodes College and her J.D. from Notre Dame Law School, graduating in 1997.⁴ She then clerked for Judge Laurence Silberman on the D.C. Circuit and for Supreme Court Justice Antonin Scalia. She spent two years in private practice with Miller, Cassidy, Larroca & Lewin and its successor, Baker Botts L.L.P.

In her [paperwork](#) provided to the Senate Judiciary Committee for her Seventh Circuit nomination, Barrett notes that she represented George W. Bush in *Bush v. Gore*. Barrett explained that her work on the case was through Baker Botts, 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. She then joined the faculty at George Washington University School of Law as a John M. Olin Fellow. Barrett was a professor at Notre Dame from 2002 to 2017.

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.⁵ She also published work on the [Suspension Clause](#), on the [supervisory power](#) of the Supreme Court over the inferior courts, and on [statutory canons](#) of interpretation. Barrett has argued for an extremely broad application of originalism.

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. While she conceded that there have been numerous election-year confirmations, she also said “I don’t

think it establishes a rule for either side.” Barrett said the election-year nomination of Anthony Kennedy was different from that of Garland, and “the reality is that we live in a different time . . . as we all know confirmation hearings have gotten far more contentious, and so I just don’t think we live in the same kind of time.”⁶ She concluded, “in sum, the president has the power to nominate and the Senate has the power to act or not.”⁷

Barrett is currently a member of The Federalist Society.⁸ She was also a member of the University of Notre Dame’s Faculty for Life group from 2010 to November 2016.⁹

REPRODUCTIVE RIGHTS

Trump has made clear on numerous occasions that he will only put justices on the Supreme Court who pass his [litmus test](#) of overturning or gutting *Roe v. Wade*. Trump has said that [overturning *Roe*](#) “will happen automatically . . . because I am putting pro-life justices on the court.”¹⁰ Barrett’s presence on Trump’s short list confirms that she will be the reliable vote to overturn or gut *Roe v. Wade*.

Moreover, Barrett has espoused a number of positions that combine to create a clear picture of the grounds on

which she would attack a woman’s right to reproductive health care, including criticisms of the *Roe v. Wade* decision and her views on *stare decisis*.

Since her confirmation to the Seventh Circuit, Barrett has already joined an opinion that would have upheld an Indiana law placing restrictions on post-abortion practices, finding against Planned Parenthood in [Planned Parenthood of Indiana and Kentucky, Inc. v. Commissioner of the Indiana State Dept of Health](#), No. 17-3163 (7th Cir. 2018).

I. ROE V. WADE

Barrett has been [critical](#) of *Roe*. In one article, it was reported that Barrett [stated](#) that the “framework of *Roe* essentially permitted abortion on demand, and *Roe* recognizes no state interest in the life of a fetus.”¹¹ Another article [reported](#) on Barrett’s remarks as follows:

By creating through judicial fiat a framework of abortion on demand in a political environment that was already liberalizing abortion regulations state-by-state, she said, the court’s concurrent rulings in *Roe* and *Doe v. Bolton* “ignited a national controversy.”

II. ACCESS TO CONTRACEPTION AND REPRODUCTIVE HEALTH CARE

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 to inform their employees directly 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."¹² The letter went on to say that the contraceptive coverage requirement was "a grave violation of religious freedom and cannot stand."¹³

III. BARRETT'S VIEWS ON STARE DECISIS

Further evidence that Barrett will erode basic constitutional protections for women is found in her repeated

expressions of skepticism regarding *stare decisis*, the doctrine that requires courts to follow precedent.

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 abortion care, stating: "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."¹⁴

Barrett has said that a judge need not adhere to precedent that she believes is wrongly decided, [noting](#) that: "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."¹⁵

Barrett even has [suggested](#) that *stare decisis* violates the Due Process Clause.¹⁶ She argued that "rigid application" of *stare decisis* "unconstitutionally deprives a litigant of the right to a hearing on the merits of her claim."¹⁷

Barrett [argues](#) that "soft *stare decisis*" is perhaps a more desirable alternative to the inflexible *stare decisis* that she believes the courts currently apply. She

notes that, “[s]oft stare decisis helps the Court navigate controversial areas by leaving space for reargument despite the default setting of continuity.”¹⁸

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, but they 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.”¹⁹

Even Justice Clarence Thomas once commented on *stare decisis* as follows:

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.²⁰

More evidence of Barrett’s views can be found in her [discussion of](#) “superprecedents,” or cases that have gained such widespread support in society that they should not be revisited.²¹ 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 \(1883\)](#).²² 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.

Barrett has also [criticized](#) statutory *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.”²³ Barrett continues,

Refusing to revisit statutory 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.²⁴

Overall, Barrett’s 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 abortion care. Alliance for Justice is concerned that Barrett would be a rubber stamp for efforts to roll back women's access to reproductive health care.

THE AFFORDABLE CARE ACT

The Trump Administration is trying to use our federal courts to deprive millions of Americans of health insurance coverage. In addition to [attacking](#) the law that ensures companies cannot deny coverage to people with preexisting conditions, Trump himself explicitly stated he was looking for nominees who are hostile to the Affordable Care Act. Trump [said](#) “my judicial appointments will do the right thing unlike Bush’s appointee John Roberts on ObamaCare.”

Barrett has been critical of the Affordable Care Act (“ACA”), which has helped millions of Americans secure health insurance coverage. Barrett [criticized](#) 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.²⁵

Barrett explained that Chief Justice Roberts’s approach in *NFIB v. Sebelius* “expresse[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.”²⁶

In [King v. Burwell](#), 135 S. Ct. 2480 (2015) the Supreme Court, in a 6-3 decision, again affirmed the constitutionality of the ACA under challenge. Barrett stated in a public appearance that the dissent had the better of the legal argument.²⁷

RACIAL DISCRIMINATION

In an era in which several Trump judicial nominees have [refused](#) to confirm that

the landmark *Brown v. Board of Education* case was correctly decided, Barrett's recent actions in the area of racial equity are notable. As a Seventh Circuit judge, she [sided](#) against an African-American worker whose employer transferred him to another store through an alleged practice of segregating employees by race.

In [EEOC v. Autozone](#), 875 F.3d 860 (7th Cir. 2017), the Equal Employment Opportunity Commission (EEOC) claimed that Autozone had a practice of segregating employees by race, when it allegedly assigned African-American employees to stores in African-American neighborhoods, and Hispanic employees to Hispanic neighborhoods.

A three judge panel of the Seventh Circuit denied the EEOC's claim that Autozone's practice violated Title VII of the Civil Rights Act. The Seventh Circuit then considered whether to rehear the case en banc. Barrett joined the majority of the Seventh Circuit in denying a petition for rehearing en banc, effectively siding with the employer. Chief Judge Diane Wood, one of three [dissenting](#) judges, noted that this decision meant that the company's "separate-but-equal arrangement" was permissible despite Congress's intent in passing the Civil Rights Act of 1964 to eliminate such blatant racism.²⁸ Judge Wood [began](#):

This case presents a straightforward question under

Title VII of the Civil Rights Act of 1964: Does a business's policy of segregating employees and intentionally assigning members of different races to different stores "tend to deprive any individual of employment opportunities" on the basis of race? The panel answered this question "not necessarily." I cannot agree with that conclusion.²⁹

Judge Wood [explained](#) her view of the panel decision, which Barrett and a majority of the Seventh Circuit let stand, as follows: "this separate-but-equal arrangement is permissible under Title VII so long as the 'separate' facilities really are 'equal' . . . That conclusion, in my view, is contrary to the position that the Supreme Court has taken in analogous equal protection cases as far back as *Brown v. Board of Education*" (internal citations omitted).³⁰

CRIMINAL JUSTICE

On the Seventh Circuit, Barrett dissented from a decision that held that a state trial judge had denied a man his Sixth Amendment right to counsel after the man was questioned by the judge during a pre-trial hearing, while his attorney was prohibited from

participating. [Schmidt v. Foster](#), 891 F.3d 302 (7th Cir. 2018). The Seventh Circuit majority determined that this “unprecedented” closed session was a denial of the man’s rights, and “not compatible with the American judicial system.”³¹

Barrett’s dissent found that the majority was mistaken in overturning the state conviction because there was no Supreme Court case directly on point. Despite her acknowledgment that “[p]erhaps the right to counsel should extend to a hearing like the one the judge conducted in Schmidt’s case,” Barrett still would have allowed the potential violation of the defendant’s constitutional rights to go unresolved by a federal court.³²

In a 2008 blog post on PrawfsBlawg, Barrett [discussed](#) the United States Sentencing Commission’s amendment to the sentencing guidelines aimed at correcting the sentencing disparity between powder and crack cocaine offenses. 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.³³ Barrett said that while she was not an expert in criminal law, she

saw “a host of issues that arise with the retroactivity of these amendments.”³⁴ Barrett suggested that the retroactive amendment would raise practical concerns about the increased workload on “courts, prosecutors, probation departments, and marshals” and leave open questions about which issues could be relitigated at resentencing.³⁵

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 and history.”³⁶ 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.”³⁷

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.³⁸ 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.”³⁹ At the same time, she allows that while 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.”⁴⁰

WORKERS’ RIGHTS

On the bench, Barrett has already ruled against access to justice for workers. In [Webb v. Financial Industry Regulatory Authority](#), 889 F.3d 853 (7th Cir. 2018), Barrett dismissed federal claims by two workers who alleged that they had been subjected

to a broken arbitration system after they sued their former employer. Barrett dismissed the federal claims for lack of jurisdiction, but Judge Kenneth Ripple, a Reagan appointee, dissented, finding, “I cannot agree that we know to a ‘legal certainty,’ that [the workers] cannot recover the damages that they allege,” sufficient for jurisdiction in a federal court.⁴¹

Judge Ripple continued, saying of Barrett’s decision, that by “taking a guess on the content of state law, it denies the defendants their rightful federal forum. In doing so, it effectively chides the district court for having followed the established law of the circuit and tells future district courts to ignore [the court’s precedent] and to follow its example today of becoming bogged down in reading ‘tea leaves’ on the content of state law.”⁴²

CONCLUSION

Barrett’s inclusion on Trump’s short list demonstrates that she has passed his key [litmus test](#). She has been identified as someone who will overturn and gut *Roe v. Wade*, as well as someone who has a willingness to [dismantle](#) the Affordable Care Act. As a law professor, Barrett promoted legal theories that would undermine a woman’s right to abortion care and the access of millions of Americans to health insurance. On the bench, she

has continued to show hostility to reproductive rights, access to justice, due process, and the rights of Americans to be free from discrimination in the workplace.

Alliance for Justice opposes her consideration for a seat on the U.S. Supreme Court.

ENDNOTES

- 1 Sarah McMammon, *What Justice Kennedy's Retirement Means for Abortion Rights*, NPR (June 2018), available at <https://www.npr.org/2018/06/28/624319208/what-justice-kennedy-s-retirement-means-for-abortion-rights>.
- 2 Press Release, Joe Donnelly United States Senator for Indiana, Donnelly Announces President's Nomination of Myra Selby to Fill Vacancy on U.S. Court of Appeals for the Seventh Circuit (Jan. 12, 2016) <https://www.donnelly.senate.gov/newsroom/press/donnelly-announces-presidents-nomination-of-myra-selby-to-fill-vacancy-on-us-court-of-appeals-for-seventh-circuit>.
- 3 *EEOC v. Autozone, Inc.* 875 F.3d 860 (7th Cir. 2017).
- 4 Sen. Comm. on the Judiciary, 115th Cong., Amy Coney Barrett Questionnaire for Judicial Nominees, 1, available at <https://www.afj.org/wp-content/uploads/2018/07/Barrett-Senate-Questionnaire-PUBLIC-OCR.pdf>.
- 5 John H. Garvey & Amy V. Coney, *Catholic Judges in Capital Cases*, 81 MARQ. L. REV. 303, 304-05 (1998), available at http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1523&context=law_faculty_scholarship.
- 6 *Fight over vacant SCOTUS Scalia seat gets ugly*, CBS (Feb. 2016), available at <https://www.cbsnews.com/video/fight-over-vacant-scotus-scalia-seat-gets-ugly/>.
- 7 *Id.*
- 8 Sen. Comm. on the Judiciary, 115th Cong., Amy Coney Barrett Questionnaire for Judicial Nominees, 6, available at <https://www.afj.org/wp-content/uploads/2018/07/Barrett-Senate-Questionnaire-PUBLIC-OCR.pdf>.
- 9 *Id.*
- 10 Sarah McMammon, *What Justice Kennedy's Retirement Means for Abortion Rights*, NPR (June 2018).
- 11 Christian Meyers, *Law professor reflects on landmark case*, THE OBSERVE (Jan. 2013), available at <https://ndsmcobserver.com/2013/01/law-professor-reflects-on-landmark-case/>.
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- 13 *Id.*
- 14 *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 854 (1992).
- 15 Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711, 1728 (2013) https://scholarship.law.nd.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1274&context=law_faculty_scholarship.
- 16 Amy Coney Barrett, *Stare Decisis and Due Process*, 74 U. COLO. L. REV. 1011 (2003), https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1421&context=law_faculty_scholarship.
- 17 *Id.* at 1013.
- 18 Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711, 1724 (2013).
- 19 Amy Coney Barrett, *Stare Decisis and Due Process*, 74 U. COLO. L. REV. 1075 (2003).
- 20 Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States, 102nd Cong. 134-35 (1991), available at <https://www.loc.gov/law/find/nominations/thomas/hearing-pt1.pdf>.
- 21 Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711, 1734 (2013).
- 22 *Id.*
- 23 Amy Coney Barrett, *Statutory Stare Decisis in the Courts of Appeals*, 73 GEO. WASH. L. REV. 318 (2005) https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1794&context=law_faculty_scholarship.
- 24 *Id.* at 351-52.
- 25 Amy Coney Barrett, *Countering the Majoritarian Difficulty*, 32 CONST. COMMENT. 61, 80 (2017) https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2330&context=law_faculty_scholarship.
- 26 *Id.* at 83, 84.
- 27 Amy Barrett, Interview, *SCOTUS Upholds State Health Care Subsidies*, NPR On Point, WBUR (June 25, 2015).
- 28 *EEOC v. Autozone, Inc.* 875 F.3d 860 (7th Cir. 2017).
- 29 *Id.* at 861.
- 30 *Id.*
- 31 *Schmidt v. Foster*, 891 F.3d 302, 311 (7th Cir. 2018).
- 32 *Id.* at 326.
- 33 Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109, 170 (2010) https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1675&context=law_faculty_scholarship.
- 34 *Id.*
- 35 *Id.*
- 36 Amy Barrett, *The Scope of the Suspension Clause*, National Constitution Center's Interactive Constitution, <https://constitutioncenter.org/interactive-constitution/articles/article-i/the-suspension-clause-by-amy-barrett/clause/48>.
- 37 *Id.*
- 38 Amy Coney Barrett, *Suspension and Delegation*, 99 CORNELL L. REV. 251 (2014), <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=4618&context=clr>.
- 39 *Id.* at 251.
- 40 *Id.*
- 41 *Webb v. Financial Industry Regulatory Authority*, 889 F.3d 853, 861 (7th Cir. 2018).
- 42 *Id.* at 864.