

ALLIANCE FOR JUSTICE SNAPSHOT

*Trump's Supreme Court Shortlist:*  
**Amy Coney Barrett**



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# Amy Coney Barrett

*Amy Coney Barrett, currently a judge on the U.S. Court of Appeals for the Seventh Circuit, is on President Trump's shortlist for the Supreme Court. Alliance for Justice strongly opposes the consideration of Barrett for a seat on the U.S. Supreme Court.*

## Access to Healthcare

Trump has explicitly stated he will nominate judges who are hostile to the Affordable Care Act (ACA). Trump [said](#) "My judicial appointments will do the right thing unlike Bush's appointee John Roberts on ObamaCare." Barrett is on record arguing courts should invalidate the law. She [criticized](#) Chief Justice John Roberts for his decision to uphold Congress's authority to enact large portions of the ACA. According to Barrett, "Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute." She also [wrote](#) favorably of the dissent in *King v. Burwell*, where the Court affirmed tax credits for millions of families. Particularly as the Supreme Court is considering a challenge to the ACA, her confirmation would threaten the health of millions of people.

## 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." Barrett meets this test. She called *Roe v. Wade* a "judicial fiat" and [stated](#) that the "framework of *Roe* essentially permitted abortion on demand, and *Roe* recognizes no state interest in the life of a fetus." She has also been extremely [critical](#) of *stare decisis*, the doctrine that requires judges to follow well-settled law, which has been central in ensuring women's access to reproductive care.

Additionally, leadership from several anti-choice activist groups have expressed their support for Barrett's consideration for a seat on the Supreme Court. The president of [Americans United for Life](#) is "confident that if appointed to the Supreme Court, Judge Barrett would prove herself a trusted caretaker of the Constitutional protections extended to every human person in America,

including human lives in the womb.” Similarly, leadership from the [Susan B. Anthony List](#) said that Barrett’s confirmation to the Seventh Circuit was “a victory for the pro-life movement as well as for the fundamental freedom of all Americans to live out their faith in the public square.” And [Carrie Severino](#), president of the Judicial Crisis Network called Barrett, “one of President Trump’s many well-qualified, impressive, experienced judicial nominees who will apply the rule of law fairly.”

On the Seventh Circuit, Barrett [voted](#) to rehear a case that enjoined an Indiana law that, the majority found, limited the right to an abortion pre-viability, despite clear Supreme Court precedent that “a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.” In another case, Barrett indicated her desire to overturn Supreme Court precedent permitting states and localities to regulate the ability of protestors to block access to an abortion.

Barrett also would have [allowed](#) an Indiana law that required that parents be notified before an abortion for anyone under the age of eighteen and prevented medical providers from informing teenage patients of abortion options in other states. After the Seventh Circuit blocked the law before it went into effect, Barrett joined a dissent arguing that doing so was “a judicial act of extraordinary gravity.”

Barrett has similarly fought against access to contraception. She signed a [letter](#) criticizing the ACA’s requirement that employers provide contraceptive coverage as part of their employer-sponsored health insurance plans.

## Civil Rights

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 actions in the area of racial equity are deeply concerning. 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*, the EEOC claimed that Autozone had a practice of segregating employees by race when it 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. In dissent, Chief Judge Diane Wood described Barrett’s position as permitting a “separate-but-equal arrangement.”

Barrett has also [made](#) it easier for students who are held accountable for

sexual assault to sue their schools for sex discrimination. She suggested that a school's commitment to taking sexual misconduct seriously is evidence of sex discrimination against men.

In a [speech](#), Barrett questioned Obergefell, suggesting that courts shouldn't decide the issue of marriage equality, but rather leave it up to the states – an argument widely used to give states a license to sanction discrimination. Moreover, she argues that transgender people (referring to transgender women as “physiological males who identify as female”) do not deserve protections from discrimination under federal law, claiming “it seems to strain the text of the statute” to say that federal law “demands it.”

## Protections for the Wealthy and Powerful Over the Rights of All

On the Seventh Circuit, Barrett has consistently ruled in favor of the wealthy and powerful over the rights of everyday people.

Barrett ruled [against](#) a 58-year-old man who was passed over for a job in favor of a younger applicant with less experience because of a company policy requiring applicants to have less than seven years of experience. Barrett and the majority, which included three other Trump appointees, held that the “disparate impact” provision of the Age Discrimination in Employment Act *only* applies to current employees, and not job applicants. In dissent, Judge Easterbrook explained how the majority had twisted the words of the statute in a manner he called “baffling.”

Barrett [overturned](#) a thirty year precedent and ignored case law in nine other circuits to hamper the Federal Trade Commission's ability to pursue restitution, taking away the primary enforcement mechanism to prevent companies from lying to consumers and stealing their money. Between 2016 and 2019, FTC used that authority to recover nearly \$1 billion for consumers. In [Casillas v. Madison Ave. Associates Inc.](#), Barrett also wrote a decision denying consumers the ability to enforce their rights under federal law against abusive debt collection practices.

Barrett ruled [against](#) a woman who experienced bruising and pain as a result of a routine pap smear and sought to recover \$332 in expenses incurred because of the injury. Despite making a claim for “restitution” and including over 60 pages of documents, which included that the doctor had committed malpractice, Barrett ruled — over a dissent from a George H.W. Bush appointee — that the woman's efforts were somehow insufficient to put the federal agency on notice of her claim.

Barrett [ruled](#) against drivers claiming that Grubhub failed to pay them overtime they were entitled to. Despite federal law that exempts transportation workers

engaged in “interstate commerce” from mandatory arbitration agreements, Barrett held the drivers were required to arbitrate their claims. As the drivers’ attorney [noted](#), “Certainly when Congress enacted the [Federal Arbitration Act], it never foresaw that it would be used to stop drivers for a major national delivery company from challenging their employer’s systematic violation of wage laws.”

## Gun Safety

Barrett [dissented](#) from a Seventh Circuit decision holding a federal law restricting felons’ gun rights was constitutional as applied to a felon convicted of mail fraud. The two Reagan appointees in the majority pointed out that Barrett’s position was in conflict with every appellate court that has addressed the issue.

## Criminal Justice

Barrett has repeatedly ruled against the Sixth and Fifth Amendment rights of criminal defendants. In one example, Barrett [dissented](#) from a decision that held that a state trial judge had denied a man his Sixth Amendment right to counsel after the judge ordered the defendant’s lawyer to not participate in a pre-trial hearing while the man was questioned by the judge. The majority determined that this “unprecedented” closed session was a denial of the man’s rights, that a “silenced lawyer” is practically the same as an “absent lawyer,” and that this was “not compatible with the American judicial system.”

Barrett also dissented in a case [denying](#) summary judgment to prison guards who fired their weapons over a crowded prison dining hall during a fight between inmates, striking several inmates with buckshot and causing significant injuries. Barrett relied heavily on an internal prison report to conclude that the guards fired their shots at the ceiling rather than at those who were in the dining hall. As the majority pointed out, that same report concluded that the guards “used an unreasonable amount” of force, and at most was “nothing more than a competing view” of contested facts. Based on the record in the case, the majority explained, Barrett’s view that there was no evidence that the guards “shot into the crowd” was simply “incorrect.”

## Immigration

Barrett consistently rules against immigrants seeking relief from deportation. For example, Barrett cast the deciding vote permitting the [deportation](#) of a lawful resident who resided in the United States for 30 years. As the dissent

noted, the law banishing him may violate equal protection under the Fifth Amendment's Due Process clause.

In another case, Barrett [authored](#) an opinion holding that a Yemeni woman's visa application was properly denied, even though the consular officer's conclusion that she attempted to smuggle two children into the country was lacking evidentiary support. The woman's husband, an American citizen, provided evidence that the children, who passed away while the visa application was pending, were theirs and not fraudulent identities as concluded by the consular officer. Reagan appointed judge Kenneth Ripple strongly dissented. He suggested the consular officer may have operated on a "stereotypical assumption" when concluding the woman was smuggling children. He rebuked Barrett's opinion, writing, "We have the responsibility to ensure that such decisions, when born of laziness, prejudice or bureaucratic inertia, do not stand."

Barrett also wrote a 2-1 opinion [affirming](#) the Bureau of Immigration Appeals rejection of an El Salvadoran's request for protection from deportation under the Convention Against Torture. Gerson Alvarenga-Flores argued that, if sent back to El Salvador, he may be tortured or killed by gangs. The immigration judge who considered the case found Alvarenga-Flores's case not credible. As the dissent noted, the immigration judge who considered the case found Alvarenga-Flores's story not credible because of "trivial" inconsistencies in his description of what happened to him over a three-and-a-half year period. Among other things, the dissent noted an inconsistency about the precise placement of passengers in a car.

In [Cook County v. Wolf](#), Barrett argued in dissent that the Trump administration's "public charge" rule was lawful and should be upheld. The rule would deny immigrants permanent residence if they received any form of public assistance, including Medicaid or food stamps, for more than 12 months in a three-year period, even though Congress has made these benefits available to them.