

9/30/20

FFRF Report on Judge Amy Coney Barrett

Judge Amy Coney Barrett's nomination to the Supreme Court initiates the final stage of a Christian Nationalist takeover of the high court. If Barrett is confirmed, the Supreme Court will have a supermajority committed to undoing so many of our hard-won rights. At 48 years old, Barrett could plague the high court for more than four decades. Our secular republic might not withstand such sustained zealotry.

It is essential that Americans stand up and oppose the confirmation of this illegitimate, Christian Nationalist nominee.

The Freedom From Religion Foundation strongly urges its supporters to repeatedly call both of their senators' offices to demand that they oppose Barrett's confirmation. We have to fight. And if Barrett is confirmed in spite of our efforts, the fight isn't over, it simply changes to fighting for substantial reforms to the federal judiciary, which will be necessary to protect the constitutional separation between state and church and so many of our other cherished rights.

Barrett is supremely unqualified, and her nomination is illegitimate.

Barrett has little or no trial experience, has never argued an appellate case, and has only been a judge since Nov. 10, 2017, or less than three years at the point President Trump announced her high court nomination. By any measure, she is too inexperienced and green for the Supreme Court, which should consist of America's top judges, not ideologues with no courtroom and little judicial experience.

Barrett's nomination *during* a presidential election is [unprecedented](#), and ramming through a confirmation vote would mark Barrett's position with a permanent asterisk and delegitimize the entire court.

Senators who care about the legitimacy of the Supreme Court, and the will of the American people, should refuse to participate in any confirmation process prior to the 2021 inauguration. Their constituents must demand nothing less.

Barrett's short tenure on the 7th Circuit confirms that she is a religious ideologue and judicial activist.

Barrett's short time on the bench has been marked not only by bad decisions, but decisions that, predictably, align more with Catholic dogma than precedent, the law, and the Constitution.

Barrett is hostile to reproductive justice and the right to safe abortion access.

Barrett, a Roman Catholic, has "[recounted](#) the Catholic Church's teaching that 'abortion is always immoral.'" Barrett [believes](#) that women should not be permitted to obtain an abortion even in cases of severe fetal abnormality. Even if a judge finds that a pregnant minor is mature enough to exercise her right to choose to terminate the pregnancy, Barrett [believes](#) that the minors' parents must be told. When more experienced judges struck down an Indiana law requiring that abortion providers cremate or bury fetal remains, Barrett [dissented](#) and would have intervened to save the bizarre and irrational statute.

Barrett joined dissenting opinions in these cases that go against judicial precedent.

Barrett was not guided by the law, but by her religious belief.

Barret wants to strip health care from millions of Americans.

Barret has [expressed her view](#) that the Supreme Court should have struck down the Affordable Care Act in its entirety, which immediately would strip health care from Americans (a view she has not publicly repudiated even in the middle of a pandemic). Combined with her hostility to women's health care, Barrett's vision of the law is shown to be supremely cruel, a total betrayal of Ruth Bader Ginsburg's ethos. People will die and families will go financially and emotionally bankrupt under Barrett's medieval jurisprudence.

Confirming her preference for religion over public health, Barrett approved on [Sept. 3](#) an exemption for large religious gatherings to an otherwise broad, neutral order banning gatherings because of the pandemic.

This is deeply alarming in the middle of a lethal pandemic — and the Supreme Court is set to hear arguments on yet another challenge to the Affordable Care Act, this one brought by the Trump administration. Predictions are that a quarter million Americans will have died of COVID by the time the court hears the case.

Barrett supports Christian Nationalist efforts against immigration.

The xenophobia, racism, and bigotry of Christian Nationalism is well known, and then-Attorney General Jeff Sessions justified throwing children in cages at the southern border by citing the Christian bible, Romans 13. Barrett is on board with this bigotry, [refusing](#) to halt the deportation of an immigrant who faced torture at home.

Barrett opposes giving First Amendment litigants their day in court.

Barrett has also committed to making sure that meritorious litigants never see the inside of a courtroom by [denying standing](#). FFRF is sorely familiar with this judicial maneuver to avoid ruling on clear constitutional violations. This legal fiction, espoused by some justices on the Supreme Court and Barrett, means that some clear-cut First Amendment violations are unenforceable because the "proper" plaintiff does not and cannot exist.

Barrett has no respect for precedent.

A crucial trait of Supreme Court justices is respect for precedent. Our legal system functions properly and predictably and our constitutional protections because justices do not regularly revisit and undo decisions except in the most extreme and urgent circumstances.

Just before joining the 7th Circuit, Barrett published a [law review article](#) that discussed an FFRF Supreme Court case and celebrated the fact that the court refused to hear FFRF's challenge of a clear constitutional violation even though the court's prior cases suggested that it could. In Barrett's view, the court should have overruled the previous case entirely so that taxpayers could never challenge even the most obvious Establishment Clause violations.

As with her religion guiding judicial decisions rather than the law, Barrett's willingness to ignore or overturn precedent is part of a clear pattern. In 2003, she wrote another [law review article](#) on the topic, arguing that Supreme Court justices ought to disregard precedent that conflicts with their own constitutional interpretation.

An ideologue with no respect for precedent is dangerous. If confirmed, Barrett will not hesitate to substitute long-settled law for whatever she thinks will best advance her personal religious beliefs.

Barrett has a pattern of stating that her religious beliefs trump her oath of office.

Through a consistent pattern of writings, statements, and speaking engagements, Barrett has painted a clear picture of her role as a judge: She is a "Catholic judge," (not

just a judge who is also Catholic) who uses her position and power to “build the Kingdom of God.” She has been clear about this from her first law review article in 1998, through her tenure at Notre Dame, up to and including her time on the bench.

Barrett wrote that Catholic judges must recuse themselves in capital punishment and abortion cases because of their religious beliefs, but herself has refused to do so.

Barrett believes that Catholic judges must not take any action that conflicts with the dogma of the Catholic Church. In such circumstances, she reasoned in **a 1998 article she co-authored about the conflict of Catholic dogma and the law**, the Catholic judge must recuse herself. But since becoming a judge, Barrett has not taken her own advice and instead has simply ruled in accordance with her religious beliefs regardless of the facts or the law before her.

Barrett **wrote that** abortion and capital crime cases can put “Catholic judges in a bind. They are obliged by oath, professional commitment and the demands of citizenship to enforce the death penalty. They are also obliged to adhere to their church’s teaching on moral matters.”

The article was couched in terms of judges recusing themselves from death penalty cases. But a closer reading reveals that the mindset would give it a broader application: “a more precise statement of the church’s teaching requires a few qualifications. The prohibitions against abortion and euthanasia (properly defined) are absolute; those against war and capital punishment are not.”

In this article, Barrett criticized Supreme Court Justice William Brennan’s response, during his 1957 confirmation hearings, to a question about keeping matters of faith separate from matters of law. Brennan gave an excellent answer, the only answer a federal official should give:

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.

Barrett and her co-author attacked this exemplary answer: “We do not defend this position as the proper response for a Catholic judge to take with respect to abortion or the death penalty.” Instead of upholding her secular oath, when such a conflict arises Barrett recommended that judges should “conform their own behavior to the [Catholic] Church’s standard.” When invited to repudiate this statement at her confirmation hearing in 2017, Barrett declined to do so.

Instead, Barrett told the Senate Judiciary Committee that the article’s conclusion was that Catholic judges must recuse themselves from **such cases**. Barrett **assured the committee** that she would recuse herself if she was unable to apply the law but, tellingly, stated that she “cannot think of any cases or category of cases” in which she would feel the need to recuse herself for this reason.

Combined with her consistent statements showing her commitment to using her position as a lawyer and judge to advance her religious beliefs, Barrett’s statement that she had no intention to recuse herself from these issues revealed her true intent: to advance her dogmatic religious beliefs from the bench at every opportunity. Her short tenure on the 7th Circuit proves this to be true.

Barrett signed letters supporting Catholic Church dogma on marriage, divorce, LGBTQ rights, abortion — and more.

In 2015, Barrett [signed a letter](#) from “Catholic women” to the “Synod Fathers in Christ,” in which the women “wish to express our love for Pope Francis, our fidelity to and gratitude for the doctrines of the Catholic Church, and our confidence in the Synod of Bishops as it strives to strengthen the Church’s evangelizing mission.”

According to *The Guardian*, Barrett “signed a full-page newspaper advertisement sponsored by St Joseph County Right to Life, an extreme anti-choice group.” The [letter](#) espoused extreme unscientific and anti-abortion beliefs, including that life begins at fertilization and that discarding unused IVF embryos ought to be criminalized. Both Barrett and her husband signed the letter, which began, “We, the following citizens of Michiana, oppose abortion on demand and defend the right to life from fertilization to natural death. Please continue to pray to end abortion.” Alarmingly, the letter also said, “It’s time to put an end to the barbaric legacy of *Roe v. Wade* and restore laws that protect the lives of unborn children.”

The content of the letter is only one concern. Barrett did not disclose her affiliation with St Joseph County Right to Life in her formal answers to the Senate Judiciary Committee questionnaire for either her nomination to the Seventh Circuit or the Supreme Court. The breakneck rush to nominate and confirm Barrett are problematic for this very reason: it prevents a thorough vetting. Perhaps that is the point.

The letter expressed Barrett’s views, in barely coded language, on a number of topics that are likely to come before the Supreme Court: “We give witness that the Church’s teachings — on the dignity of the human person and the value of human life from conception to natural death; on the meaning of human sexuality, the significance of sexual difference and the complementarity of men and women; on openness to life and the gift of motherhood; and on marriage and family founded on the indissoluble commitment of a man and a woman.” In other words, Barrett has publicly pledged to support Catholic teachings against death with dignity legislation, against contraception and abortion, against LGBTQ rights and marriage equality and even against divorce. Barrett and other signers indicated they “enthusiastically commit our distinctive insights and gifts, and our fervent prayers, in service to the Church’s evangelizing mission.” When that mission conflicts with her duties as a judge, it’s clear from her public statements where Barrett’s allegiance would lie.

Barrett wants to use the law to “build the Kingdom of God.”

For Barrett, her “legal career is but a means to an end ... and that end is building the Kingdom of God.” This wasn’t an off-the-cuff remark; she said it at the [Notre Dame Law School commencement](#) in 2006. This was the message she wanted new lawyers to carry into the profession — use your position to create a Kingdom of God.

She began by telling the students that their Catholic mission made them different: “So what then, does it mean to be a different kind of lawyer? The implications of our Catholic mission for your legal education are many.”

She didn’t want to explore all those implications, just one:

And that is this: that you will always keep in mind that your legal career is but a means to an end, and as Father Jenkins told you this morning, that end is building the Kingdom of God. You know the same law, are charged with maintaining the same ethical standards, and will be entering the same kinds of legal jobs as your peers across the

country. But if you can keep in mind that your fundamental purpose in life is not to be a lawyer, but to know, love and serve God, you truly will be a different kind of lawyer. Some commenters have shrugged off this “Kingdom of God” language, saying that it doesn’t really mean a religious takeover of the secular. But the official magazine for Barrett’s cult-ish group, People of Praise, says differently. Within weeks of her nomination to the 7th Circuit, the magazine ran an excerpt by a People of Praise acolyte at the National Catholic Charismatic Renewal Conference at Notre Dame [that reads](#): **God is really interested not just in men’s souls but also in their whole life, work and enterprise. He wants all of it transformed into his kingdom. This means that what we often see as secular or worldly — jobs, career, economic programs, public and private education, health services, criminal justice and the courts, local, national, international politics and economics, questions of war, peace and justice, radio, TV, music and art — all are meant to be transformed into the Kingdom of God in the Earth.**

Lately, it has run pieces called “[Building the Kingdom](#)” and “[Begging for the Kingdom](#).” (Note: After FFRF spoke to ABC News, and ABC published a story referring to these stories and the magazine, all editions were pulled from the People of Praise website.)

Barrett has had allegiance to a “cult”-ish Charismatic Catholic group.

Barrett joined **People of Praise**, a “Charismatic Christian parachurch organization” that former members call “[a cult](#).” The group was founded in South Bend, Ind., where Barrett was a professor. The religious group [teaches that](#) “A married woman is expected always to reflect the fact that she is under her husband’s authority ... This goes beyond an acknowledgment that the husband is ‘head of the home’ or head of the family; he is, in fact, her personal pastoral head. Whatever she does requires at least his tacit approval.”

More alarmingly, People of Praise members also take a loyalty oath, which the group calls a covenant, meaning an unbreakable holy pact with god. [It says](#) “We agree to obey the direction of the Holy Spirit manifested in and through these ministries in full harmony with the church.” It’s unclear if Barrett agreed to this covenant, however, her jurisprudence is guided by the sentiment. That oath could conflict with her judicial oath of office.

The Associated Press reported on People of Praise, explaining: “As part of spiritual meetings, members often relay divine prophecies and are encouraged to pray in tongues, where participants make vocal utterances thought to carry direct teachings and instructions from God. Those utterances are then “interpreted” by senior male leaders and relayed back to the wider group.”

The misogyny of the group is deep. People of Praise teaches that wives must submit to the will of their husbands, but, as an academic who studied the [group wrote](#), “This goes beyond an acknowledgement that the husband is ‘head of the home’ or head of the family; he is, in fact, her personal pastoral head. Whatever she does requires at least his tacit approval.”

Barrett’s affiliation with the People of Praise Christian School

Barrett sat on the board of Trinity School, a school [founded](#) by the People of Praise sect, from 2015 to 2017. The school segregates students based on gender. While Barrett was on the board, the school’s [stated mission](#) was to train students “so that they

might be of use to God in the wise care and governance of his creation and **in the building of his kingdom.**" All **faculty must** "assent . . . to the tenets of the Nicene Creed," "students attend daily morning prayer where faculty members bear witness to their life in Christ" and "every class begins with prayer."

The school's "**cultural statement**" contains the usual anti-LGBTQ propaganda, and, while Barrett was on the board, explicitly condemned "homosexual acts as at odds with Scripture."

Cases involving private conservative Christian schools is a favorite vehicle for legal attacks on the separation of state and church. Last term, the Supreme Court decided that religious parents can demand taxpayer funds to send their children to just such a school in the **Espinoza** case. The court **also held** last term that religious schools could fire any employee on the pretext that that employee has religious duties. In 2017, while Barrett was on this board, the Supreme Court decided the infamous **Trinity Lutheran** case, which began this trend of privileging religious schools and which Barrett will likely extend given her open refusal to recuse in cases in which she might be biased.

There have been questions about whether groups like it inspired Margaret Atwood's dystopian novel *The Handmaid's Tale*, but whatever the case may be, People of Praise's official magazine, described Barrett's own mother, Linda, as a "**handmaid**" in 2005.

Barrett thinks the government can impose prayer on public school students

Barrett is opposed to state-church separation even in our public schools. Nearly 30 years ago the Supreme Court held in a landmark decision that public schools cannot impose religion on students during graduation ceremonies. Barrett **praised** Justice Scalia's dissent in that case, saying that he was honoring "a competing form of precedent: the history and traditions of the American people."

Barrett trained with the notorious hate group Alliance Defending Freedom.

The Alliance Defending Freedom (ADF) is a massive far-right Christian law firm with an annual budget surpassing \$50 million. The ADF has been designated a "**hate group**" by the Southern Poverty Law Center, but that label understates the vast damage ADF has done and continues to do. ADF is virulently anti-abortion, anti-LGBTQ and supports every instance of Christians **discriminating in the name of their religion**. ADF has reportedly advocated for the recriminalization of homosexuality and for sterilizing transgender individuals. ADF organizes an annual event called "**Pulpit Freedom Sunday**," that encourages church leaders to violate the law by endorsing political candidates from the pulpit, thereby not only mixing religion and politics but also promoting more dark money involvement in political races.

Barrett trained students at ADF's Blackstone Legal Fellowship summer program, in lectures that **ADF describes** as being "designed to confront conventional wisdom in legal education" while "promoting a robust view of universal truths." Decoded, that means that Barrett was inculcating the Christian Nationalist distortions of the law and Constitution, such as a First Amendment right for religiously motivated discrimination, that ADF is known for.

At Barrett's 2017 confirmation hearing, senators asked why she agreed to give paid lectures for ADF. Barrett implausibly claimed that she did not know that Blackstone was affiliated with ADF at the time she accepted the offer, and even less plausibly claimed that she did not know that ADF was a hate group with a history of fighting for **religiously**

based discrimination, even though she was able to name, from memory, a recent Supreme Court brief that ADF had co-authored.

Barrett partnered with a right-wing law firm to challenge the Affordable Care Act.

In 2012, Barrett signed a letter with the Becket Fund challenging several aspects of the Affordable Care Act under the guise of “religious liberty.” Barrett is willing to jeopardize health care for millions of Americans, and the Supreme Court will decide the fate of the ACA this term.

In particular, the letter asserts that it violates the religious liberty of businesses to fill out a one-page form in order to avoid paying for their employees’ reproductive health care. The law already bends over backwards to accommodate religious employers—at the expense of women’s health — and Barrett still sees this as an affront to her belief that religion trumps the law.

Barrett clerked for Justice Scalia and sees herself as the same kind of “originalist” judge. Other self-proclaimed originalists on the court include Kavanaugh and Thomas. Originalism is intellectually bankrupt judicial activism masquerading as a legal philosophy—it’s mere window dressing for a conservative ideology.

Conclusion: Barrett wants to uphold Catholic dogma, but the Supreme Court upholds our godless, secular Constitution.

The issue with Barrett’s letters, law review articles, speeches, her membership in a Handmaid’s Tale-type order, and her affiliation with several Christian Nationalist legal outfits is that, individually and taken together, these point toward a clear belief. Barrett believes that Catholic lawyers are on a religious mission, to serve her god and build that god’s kingdom. Her few cases on the 7th Circuit confirm all of these concerns: She willingly ignores precedent to reach results that conflict with the law and Constitution but conform to her personal religious beliefs. This conflicts with the oath Supreme Court justices must take to uphold the Constitution.

FFRF firmly supports the foundational constitutional principle in Article 6, Section 3 barring any religious test for public office. Our objection is not to Barrett’s Catholicism, but to her publicly expressed views indicating she will not side with our Constitution when it conflicts with her personal religious beliefs. Giving Barrett’s misguided judicial outlook a place on the Supreme Court would have far-reaching effects on a woman’s right to choose, the right to die, the death penalty, gay marriage and other LGBTQ rights, the collision of Catholic health care and our secular law, and more.

Barrett would need to recuse herself in all these cases, as she herself explained in writing. At her 2017 hearing, she indicated that she would not recuse herself from cases on these issues and during her time on the bench, she hasn’t. Amy Coney Barrett is unfit for any federal judgeship and absolutely is unfit to serve on the Supreme Court.