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Research in Greater Depth: The Debate over Supreme Court Nominee Amy Coney Barrett

Instructions: Read the following news article excerpts and poll data and complete the “Source Analysis” handout.

Excerpts of News Articles

Source 1

BBC: “Amy Coney Barrett: Trump nominee testifies in Supreme Court hearing” October 12, 2020 <<https://www.bbc.com/news/world-us-canada-54500556>>

US Supreme Court nominee Amy Coney Barrett has said she is “honoured and humbled” to be President Trump’s pick for a place in the top court during a tense Senate confirmation hearing.

The 48-year-old conservative jurist vowed to judge legal cases impartially.

But her selection so close to the 3 November presidential election has sparked a fierce political battle.

The panel’s Republican chairman has predicted a “contentious week” of questioning ahead.

Judge Barrett’s approval would cement a 6-3 conservative majority on the nine-member court, altering the ideological balance of the court for potentially decades to come.

Mr. Trump picked Judge Barrett to replace liberal Justice Ruth Bader Ginsburg, who died last month aged 87.

“I have been nominated to fill Justice Ginsburg’s seat, but no one will ever take her place,” Mrs. Barrett told senators in her opening statement on Monday. “I will be forever grateful for the path she marked and the life she led.”

However, conservative views and decisions from the bench she has delivered as a judge on the Seventh Circuit Court of Appeals—of which much can be seen as opposing to the philosophy of the late Justice Ginsburg—will be heavily scrutinised by Democrats who oppose her confirmation.

The Republicans—who currently hold a slim majority in the US Senate, the body that confirms Supreme Court judges—are trying to complete the process before Mr. Trump takes on Democratic rival Joe Biden in the election.

The court’s nine justices serve lifetime appointments, and their rulings can shape public policy on everything from gun and voting rights to abortion and campaign finance....

What were the opening exchanges?

Republicans praised Mrs. Barrett and defended the legitimacy of confirming the judge, despite arguments from Democrats that the hearings should wait until after the election.

Lindsey Graham, the Republican committee chairman, said the judge belonged “in a category of excellence, something the country should be proud of”.

However, the top Democrat Dianne Feinstein argued that Mrs. Barrett’s appointment could pose a direct threat to Obamacare, a public health insurance scheme the Trump administration is attempting to challenge before the Supreme Court.

“Simply put, I do not think we should be moving forward on this nomination,” Senator Feinstein said, calling for the hearings to be delayed until after the election.

Senator Kamala Harris, the 2020 Democratic vice-presidential nominee, echoed her colleagues, focusing her criticism of Mrs. Barrett’s nomination on the potential that she could overturn Obamacare.

Judge Barrett’s nomination puts “in jeopardy” Justice Ginsburg’s “legacy and the rights she fought so hard to protect,” Ms. Harris said.

“By replacing Justice Ruth Bader Ginsburg with someone who will undo her legacy, President

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Trump is attempting to roll back Americans' rights for decades to come," she said. "Every American must understand that with this nomination, equal justice under law is at stake..."

What's the confirmation process?

Mrs. Barrett will face questions from members of the Judiciary committee in hearings that will last through the week. After the hearings end, any committee member can require an additional week before the formal panel vote on whether to present the nomination for confirmation before the full Senate. It is not clear if the members will be able to vote remotely.

If she passes the committee, the full Senate will vote to confirm or reject Judge Barrett's nomination.

Republicans already appear to have the 51 votes needed to get Judge Barrett confirmed.

Senate majority leader Mitch McConnell has vowed to hold a confirmation vote before the presidential election.

Barring a surprise, Democrats seem to have few options to prevent her from gliding through the Senate to the Supreme Court bench.

Why is Judge Barrett's nomination so controversial?

Since Ginsburg's death from cancer on 18 September, Republican senators have been accused of hypocrisy for pressing ahead with a Supreme Court nomination during an election year.

In 2016, Mr. McConnell refused to hold hearings for Democratic President Barack Obama's nominee for the court, Merrick Garland.

The nomination, which came 237 days before the election, was successfully blocked because Republicans held the Senate and argued the decision should be made outside of an election year.

This time around, Mr. McConnell has lauded Judge Barrett's nomination.

Democrats say the Republicans should stand by their earlier position and let voters decide. However, Republicans counter that the Democrats have also changed their stance since 2016.

Mr. Biden has called Mr. Trump's efforts to appoint a justice an "abuse of power".

He has so far refused to comment on whether the Democrats would attempt to add seats to the Supreme Court—dubbed "court packing"—if he won the presidential election.

Source 2

CNN: "Barrett declines to commit to recusing herself from a Trump election case" by Joan Biskupic, October 13, 2020 <<https://www.cnn.com/2020/10/09/politics/barrett-recuse-presidential-election/index.html>>

Judge Amy Coney Barrett on Tuesday eluded efforts by Democratic lawmakers to commit to recusing [excusing] herself from any Supreme Court election dispute between President Donald Trump and former Vice President Joe Biden.

With controversies over state ballot practices escalating and the possibility of a replay of the 2000 Bush v. Gore ordeal [the contested 2000 presidential election] in the air, the topic has featured heavily in her Senate Judiciary Committee nomination hearing.

In an exchange with Democratic Sen. Patrick Leahy, Barrett said: "I commit to you to fully and faithfully applying the law of recusal. And part of

the law is to consider any appearance questions. And I will apply the factors that other justices have before me in determining whether the circumstances require my recusal or not. But I can't offer a legal conclusion right now about the outcome of the decision I would reach."

Trump has pointed to the November 3 election as a reason for seeking swift Senate confirmation of Barrett, a federal appeals court judge who would be his third appointee to the nine-member bench. The Republican incumbent has said he believes the Supreme Court could ultimately decide whether he is the victor over Biden.

"I think this will end up at the Supreme Court,"

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Trump said about the possibility of an intractable ballot controversy. “And I think it’s very important that we have nine justices.”

In a recent CNN poll, more than half (56%) of the Americans surveyed said they think Barrett should recuse herself from cases on the presidential election; 34% said the opposite. Opinions divided largely by party: 82% of Democrats; 53% of independents and 32% of Republicans said Barrett should promise to recuse herself from cases about the election.

Supreme Court practice leaves it to individual justices to decide when to recuse themselves from cases. In her recent questionnaire to the Senate Judiciary Committee, Barrett noted that federal ethics law covering lower court judges is not binding on the Supreme Court but said she would look to it, as other justices have.

The law requires judges to disqualify themselves when their “impartiality might reasonably be questioned.” Rarely do Supreme Court justices

sit out cases and typically only when they have a financial stake or family connection to the dispute.

As Democrats have pounded away at a possible conflict of interest for a Justice Barrett, law professors are divided on the issue.

“I agree that justices can sit in cases that are of great consequence to the appointing president,” New York University law professor Stephen Gillers told CNN, but added: “That’s not this situation. Here, Barrett would be asked to decide whether Trump will keep his job after Trump gave Barrett her job just weeks earlier while publicly anticipating her vote in his favor.”

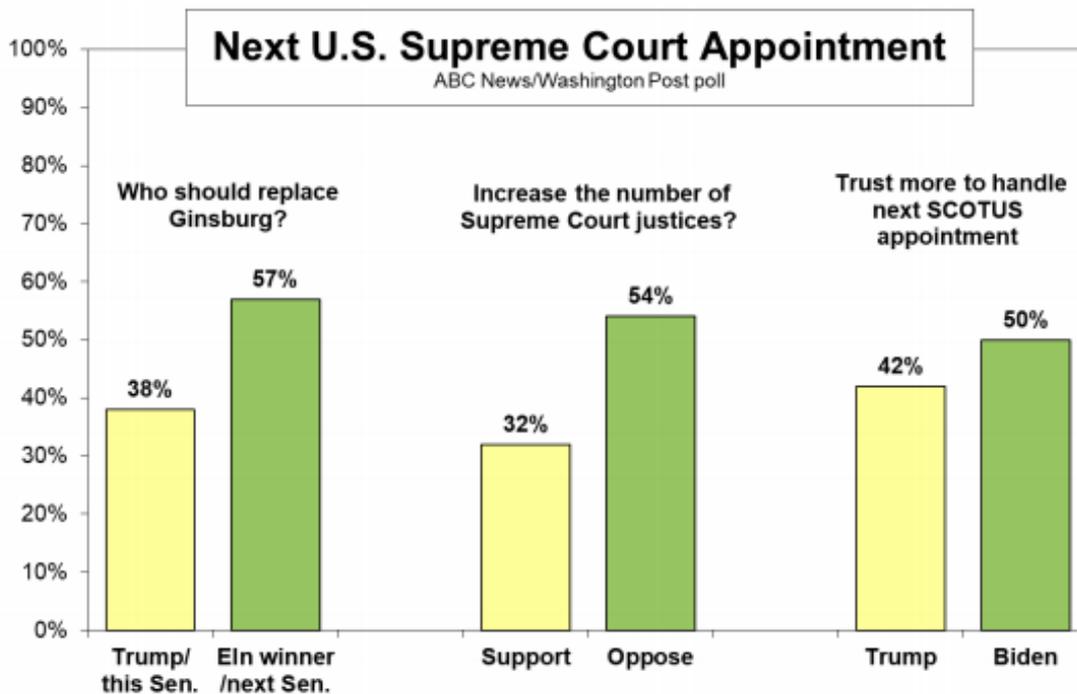
But Ross Garber, who teaches at Tulane Law School, is of the opposite mind, saying Barrett need not recuse herself because she would already have lifetime tenure and “no stake at all in the outcome of the election.” Garber added, “I’d go so far as to say she has a duty to sit and hear any elections cases that come before her.”...

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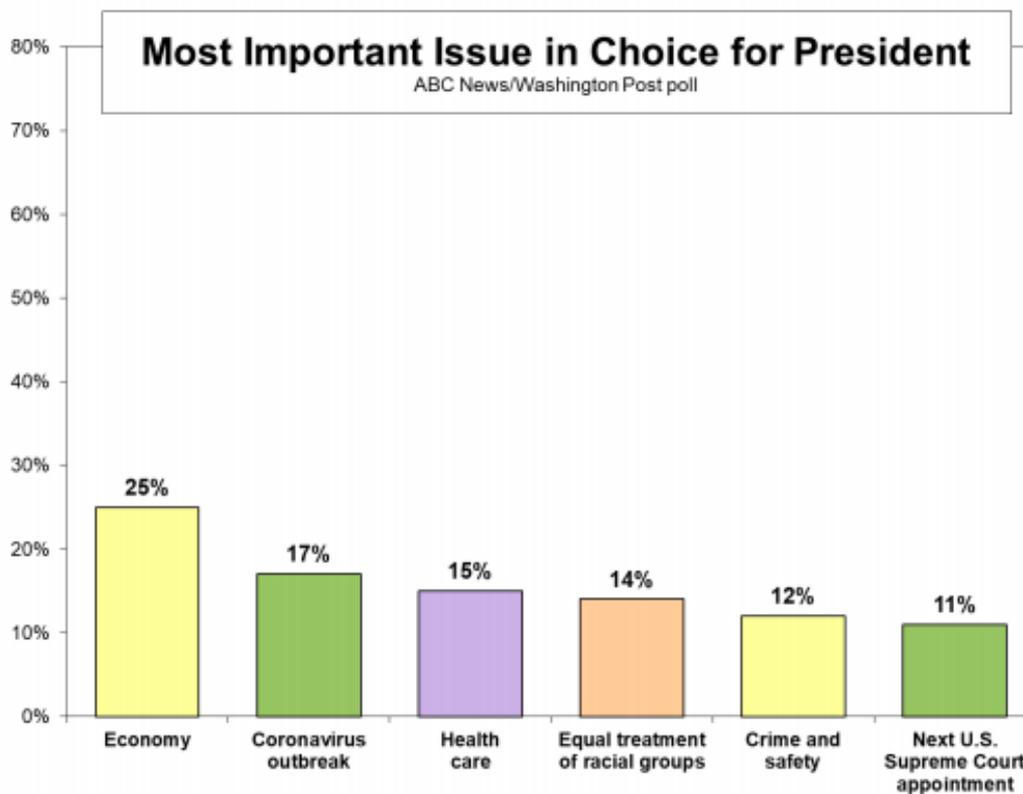
Polling Data

Poll 1

ABC News/Washington Post, September 25, 2020 <<https://www.langerresearch.com/wp-content/uploads/1217a1TheSupremeCourt.pdf>>



Note: "Trump/this Sen." = Trump and this Senate; "Eln winner/next Sen." = Election winner and next Senate



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Poll 2

CNN, October 1-4, 2020 <<http://cdn.cnn.com/cnn/2020/images/10/07/rel12c.-.scotus,.aca.pdf>>

Q14. Do you think Barrett should or should not promise to recuse herself from any cases which could affect the outcome of this year's presidential election?

	Should promise to recuse herself	Should not promise to recuse herself	No opinion
October 1-4, 2020	56%	34%	10%