Oct 13, 2020

Amy Coney Barrett Senate Confirmation Hearing Day 2 Transcript

Day 2 of the Supreme Court confirmation hearing of Amy Coney Barrett took place before the Senate on October 13. Barrett answered questions about Roe v. Wade, the Affordable Care Act, gun regulation, and more. Read the transcript of the full hearing with Barrett’s testimony here.

Chairman Lindsey Graham: ([01:43](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=103.091))  
[crosstalk 00:01:43] … 30 minute period today, then come back Wednesday and finish up. Then we’ll go on about our business. So I will try, I’ll make sure I stay within 30 minutes for sure, and if I can shorten it up, I will. So let’s get to it. You can start the clock. So you can relax a bit here, judge, and take your mask off. So yesterday we had a lot of the discussion about the Affordable Health Care Act. What I’m going to try to do very briefly this morning is to demonstrate the difference between politics and judging. All of my colleagues on the other side had very emotional pleas about Obamacare, charts of people with pre-existing conditions. I want to give you my side of the story about Obamacare.

Chairman Lindsey Graham: ([02:31](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=151.78))  
Now, this is Lindsey Graham, the Senator from South Carolina talking. This is not a question directed at you. From my point of view, Obamacare has been a disaster for the state of South Carolina. All of you over there want to impose Obamacare on South Carolina. We don’t want it. We want something better. We want something different. You know what we want in South Carolina? South Carolina care, not Obamacare. Now, why do we want that? Under the Affordable Care Act, three states get 35% of the money, folks. Can you name them? I’ll help you. California, New York, and Massachusetts. They are 22% of the population. Senator Feinstein’s from California, Nancy Pelosi’s from California. Chuck Schumer, the leader of the Democratic Senate is from New York, and Massachusetts is Elizabeth Warren. Now, why do they get 35% of the money when they are only 22% of the population? That’s the way they designed the law. The more you spend, the more you get.

Chairman Lindsey Graham: ([03:37](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=217.86))  
What does it mean for the people of South Carolina? If you had a per patient formula, where you got the same amount from the federal government to the state whether you lived in Charleston, Columbia, or San Francisco or New York City, if you leveled that out, it’d be almost a billion dollars more for us in South Carolina. So to my friends over there, we’re going to fight back. We want our money. If you’re going to have money allocated for Obamacare, we’re not going to sit back and quietly let you give 35% of it to three states. What else has happened in South Carolina? Four rural hospitals have closed because the revenue streams are uncertain. 30% increase in premiums in South Carolina for those on Obamacare. I was on Obamacare for a few years before I got on track here. My premiums went up 300%. My coverage was almost non-existent. A $6,000 deductible.

Chairman Lindsey Graham: ([04:40](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=280.55))  
So I want a better deal, and that’s a political fight. I’m in a campaign at home. If it were up to me, we would block grant this money, send it back to the states in a more fair allocation, and we would require pre-existing conditions to be covered as part of the block grant. We want sick people covered. But I got an idea. I think South Carolina may be able to deal with diabetes better and different than California. If you want good outcomes in medicine you need innovation, and the best way to get innovation is to allow people to try different things to get better outcomes. So the debate on healthcare is consolidating all the power in Washington, have some bureaucrat you’ll never meet running this program versus having it centered in the state where you live. Under my proposal, South Carolina would get almost a billion dollars more. The state of South Carolina would be in charge of administering Obamacare. They couldn’t build football stadiums with the money. They have to spend it on healthcare. They’d have to cover pre-existing conditions.

Chairman Lindsey Graham: ([05:47](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=347.6))  
But, as a patient in South Carolina, you would have a voice you don’t have today. If you didn’t like what was happening to you on the healthcare front, you could go to local officials and complain, and the people you’re complaining to live in your state. They send their family to the same hospital as you go. That’s a structural difference. That’s got nothing to do with this hearing. It’s got everything to do with politics. We on this side, do not. And the difference between analyzing a lawsuit and having a political argument is fundamentally different, and I hope to be able to demonstrate that over the course of the day. And I hope that my colleagues on this side of the aisle will not feel shy about telling my colleagues on the other side of the aisle why we think we have a better idea on healthcare. Now, the bottom line here, judge, you said yesterday something that struck me and I want the American people to understand what you meant.

Chairman Lindsey Graham: ([06:45](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=405.55))  
You said you’re an originalist. Is that true?

Amy Coney Barrett: ([06:47](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=407.78))  
Yes.

Chairman Lindsey Graham: ([06:48](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=408.88))  
What does that mean, in English? Pass the button. I mean, we all love Senator Lee, but in English.

Amy Coney Barrett: ([07:00](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=420.83))  
In English. Okay. So in English that means that I interpret the Constitution as a law, that I interpret its text as text, and I understand it to have the meaning that it had at the time people ratified it. So that meaning doesn’t change over time and it’s not up to me to update it or infuse my own policy views into it.

Chairman Lindsey Graham: ([07:22](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=442.18))  
So in other words, you’re bound by the people who wrote it at the time they wrote it. That keeps you from substituting your judgment for theirs. Is that correct?

Amy Coney Barrett: ([07:29](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=449.58))  
Yeah.

Chairman Lindsey Graham: ([07:30](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=450.15))  
All right. Justice Scalia. He was an originalist, right?

Amy Coney Barrett: ([07:34](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=454.04))  
Yes, he was.

Chairman Lindsey Graham: ([07:34](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=454.72))  
People say that you’re a female Scalia. What would you say?

Amy Coney Barrett: ([07:38](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=458.31))  
I would say that justice Scalia was obviously a mentor, and as I said when I accepted the President’s nomination, that his philosophy is mine too. He was a very eloquent defender of originalism, And that was also true of textualism, which is the way that I approach statutes and their interpretation. And similarly to what I just said about originalism, for textualism, the judge approaches the text as it was written with the meaning it had at the time and doesn’t infuse our own meaning into it. But I want to be careful to say that if I’m confirmed, you would not be getting Justice Scalia. You would be getting Justice Barrett. And that’s so because originalists don’t always agree and neither do textualist. Justices Scalia and Thomas disagreed often enough that my friend, Judge Melissa Parr, teaches a class called Scalia Versus Thomas. It’s not a mechanical exercise.

Chairman Lindsey Graham: ([08:38](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=518.26))  
Well, I’ll wait till the movie comes out. So the bottom line for me is there’s a narrative building in this country, and again, you can stand down, this is just me speaking for me. Justice Ginsburg was an iconic figure in American history, just not the law. She was a trailblazer. She fought for better conditions for women throughout society. She was unashamedly progressive in her personal thought. She was devout to her faith. She worked for the ACLU. She was proudly pro-choice personally. But all of us on this side, apparently when they voted, accepted that she was highly qualified. What I want the American people to know. I think it’s okay to be religiously conservative, I think is okay to be personally pro-choice, I think is okay to live your life in a traditional Catholic fashion, and you’d still be qualified for the Supreme Court. So all the young conservative women out there, this hearing to me is about a place for you.

Chairman Lindsey Graham: ([09:40](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=580.38))  
I hope when this is all over that there’ll be a place for you at the table. There’ll be a spot for you at the Supreme Court like there was for judge Ginsburg. And to President Trump, I don’t know if you’re listening or not, by picking Judge Barrett you have publicly said you find value in all of these characteristics. But beyond anything else you find Judge Barrett to be highly qualified. I would say you’re one of the greatest picks President Trump could have made, and from the conservative side of the aisle, you’re one of the most qualified people of your generation. Let’s talk about Brown vs. Board of Education, because I know Senator Blumenthal will. I’m going to talk about that. You said in writings, it was a super precedent. What did you mean?

Amy Coney Barrett: ([10:28](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=628.68))  
Well, in my writings, so as a professor, I talked about the doctrine of Stare Decisis, and super precedent is not a doctrinal term that comes from the Supreme Court and I think maybe in political conversation or in newspapers, people use it different ways. But in my writing, I was using a framework that’s been articulated by other scholars. And in that context, super precedent means precedent that is so well established that it would be unthinkable that it would ever be overruled. And there are about six cases on this list that other scholars have identified.

Chairman Lindsey Graham: ([11:03](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=663.97))  
Let’s talk about Brown and talk about why it would be unthinkable. First, let’s talk about, what’s the process that would lead to it being overruled? What would have to happen?

Amy Coney Barrett: ([11:15](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=675.29))  
For Brown to be overruled, you would have to have Congress or some state or local government impose segregation again, [crosstalk 00:11:25].

Chairman Lindsey Graham: ([11:25](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=685.1))  
Okay, let’s stop right there. If you want to make yourself famous, by the end of the day, you can say, “We want to go back to segregation,” I promise you, you’ll be on every cable TV channel in America. I doubt if you’ll go very far, but the point we’re trying to make here is the court just can’t wake up and say, “Let’s revisit Brown.” It has to be a case in controversy, is that right?

Amy Coney Barrett: ([11:46](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=706.2))  
Yes, that’s right.

Chairman Lindsey Graham: ([11:47](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=707.09))  
So before a Brown decision, you could review Brown, somebody out there would have to be dumb enough to pass a law saying, “Let’s go back to segregated schools.” Is that fair to say?

Amy Coney Barrett: ([11:57](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=717.57))  
That is fair to say.

Chairman Lindsey Graham: ([11:58](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=718.58))  
Do you see that happening anytime soon?

Amy Coney Barrett: ([12:00](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=720.45))  
I do not see that happening anytime soon.

Chairman Lindsey Graham: ([12:02](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=722.35))  
Yeah, I don’t either. So let’s talk about the process in general. There’s the Heller case. What’s that about?

Amy Coney Barrett: ([12:09](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=729.95))  
The Heller case is a case decided by the Supreme court, which held that the Second Amendment protects an individual right to bear arms.

Chairman Lindsey Graham: ([12:18](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=738.64))  
Okay. Now, my friends on the left, some of them have a problem with Heller. They may try to challenge the construct of Heller. If a state or local government passed a law in defiance of Heller, what would happen?

Amy Coney Barrett: ([12:30](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=750.56))  
In defiance of Heller?

Chairman Lindsey Graham: ([12:31](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=751.68))  
Or that was challenging the construct of Heller?

Amy Coney Barrett: ([12:34](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=754.5))  
That challenge, the construct of Heller, if it was brought in a lower court, Heller binds. I mean, lower courts always have to follow a Supreme Court precedent.

Chairman Lindsey Graham: ([12:44](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=764.77))  
And if the Supreme Court wanted to revisit Heller, what would they do?

Amy Coney Barrett: ([12:50](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=770.62))  
If someone challenged Heller below, because a state or local government passed a law contradicting Heller, the Supreme Court would have to take that case once it was appealed all the way up. So the Court would have to decide, “Yes, we want to overrule Heller and we have enough votes to grant cert,” and then do so.

Chairman Lindsey Graham: ([13:07](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=787.21))  
So that’s the way the process works?

Amy Coney Barrett: ([13:09](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=789.4))  
Yes, it would start because there was a law. Then there was a lawsuit. Then there was an appeal. And then the court granted cert, and then the court decided the case.

Chairman Lindsey Graham: ([13:17](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=797.14))  
Is that true no matter what the issue is? Whether it’s gun, abortion, healthcare, campaign finance, does that process hold true for everything?

Amy Coney Barrett: ([13:26](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=806.37))  
Yes. Judges can’t just wake up one day and say, ” I have an agenda. I like guns. I hate guns. I like abortion. I hate abortion,” and walk in like a royal queen and impose their will on the world. You have to wait for cases and controversies, which is the language of the Constitution, to wind their way through the process.

Chairman Lindsey Graham: ([13:46](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=826.02))  
All right. Well, Senator Sasse gave us a good civics lesson. I hope that’s the basic lesson in law here. So if a state said, “I don’t think you should have over six bullets,” and somebody believed that violated the Second Amendment, there would be a lawsuit and the same process would work, right?

Amy Coney Barrett: ([14:03](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=843.52))  
The same process would work. In that case, there would be parties would have to sue the state arguing that, that law was unconstitutional. It would wind its way up, and if it got to the Supreme Court and if the Supreme Court decided to take it, a whole decision making process begins. You hear arguments from litigants on both sides. They write briefs. You talk to clerks as a judge. You talk to your colleagues. Then you write an opinion. Opinions circulate, and you get feedback from your colleagues. So it’s an entire process. It’s not something that a judge or justice would wake up and say, “Oh, we’re hearing this case. I know what my vote is going to be.”

Chairman Lindsey Graham: ([14:46](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=886.06))  
Let’s talk about the two Supreme Court cases regarding abortion. What are the two leading cases in America regarding abortion?

Amy Coney Barrett: ([14:54](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=894.97))  
Well, I think most people think of Roe vs. Wade, and Casey is the case after Roe that preserved Roe’s central holding, but grounded it …

Amy Coney Barrett: ([15:03](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=903.6))  
Roe that preserved Roe’s central holding, but grounded it in a slightly different rationale.

Chairman Lindsey Graham: ([15:05](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=905.61))  
So what is that rationale?

Amy Coney Barrett: ([15:07](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=907.21))  
Rationale is that the state cannot impose an undue burden on a woman’s right to terminate a pregnancy.

Chairman Lindsey Graham: ([15:14](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=914.72))  
Okay. Unlike Brown, there are states challenging on the abortion front. There are states that are going to a fetal heartbeat bill. I have a bill, judge, that would disallow abortion on demand at the 20 weeks, the fifth month of the pregnancy. We’re one of seven nations in the entire world that allow abortion on demand at the fifth month. The construct or my bill is, because the child is capable of feeling pain in the fifth month. Doctors tell us to save the child’s life, you have to provide anesthesia if you operate because they can feel pain. The argument I’m making is if you have to provide anesthesia to save the child’s life, because they can feel pain, it must be a terrible death to be dismembered by an abortion. That’s a theory to protect the unborn at the fifth month. If that litigation comes before you, will you listen to both sides?

Amy Coney Barrett: ([16:12](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=972.68))  
Of course. I’ll do that in every case.

Chairman Lindsey Graham: ([16:13](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=973.14))  
So I think 14 states have already passed a version of what I’ve just described. So there really is a debate in America still, unlike Brown versus Board of Education, about the rights of the unborn. That’s just one example. So if there’s a challenge coming from a state, if a state passes a law, and it goes into court where people say, “This violates Casey,” how do you decide that?

Amy Coney Barrett: ([16:41](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1001.06))  
Well, it would begin in a district court, in a trial court. The trial court would make a record. The parties would litigate and fully develop that record in the trial court. Then it would go up to a court of appeals that would review that record, looking for error. And then, again, it would be the same process. Someone would have to seek certiorari at the Supreme Court. The Supreme Court would have to grant it. And then at that point, it would be the full judicial process. It would be briefs, oral argument, conversations with law clerks in chambers, consultation with colleagues, writing an opinion, really digging down into it. It’s not just a vote. You all do that. You all have a policy, and you cast a vote. The judicial process is different.

Chairman Lindsey Graham: ([17:23](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1043.13))  
Okay. So when it comes to your personal views about this topic, do you own a gun?

Amy Coney Barrett: ([17:33](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1053.06))  
We do own a gun.

Chairman Lindsey Graham: ([17:34](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1054.08))  
Okay. All right. Do you think you could fairly decide a case even though you own a gun?

Amy Coney Barrett: ([17:41](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1061.49))  
Yes.

Chairman Lindsey Graham: ([17:42](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1062.25))  
All right. You’re Catholic.

Amy Coney Barrett: ([17:43](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1063.68))  
I am.

Chairman Lindsey Graham: ([17:44](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1064.85))  
I think we’ve established that. The tenants of your faith mean a lot to you, personally. Is that correct?

Amy Coney Barrett: ([17:51](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1071.25))  
That is true.

Chairman Lindsey Graham: ([17:51](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1071.67))  
You’ve chosen to raise your family in the Catholic faith. Is that correct?

Amy Coney Barrett: ([17:55](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1075.55))  
That’s true.

Chairman Lindsey Graham: ([17:56](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1076.5))  
Can you set aside whatever Catholic beliefs you have regarding any issue before you?

Amy Coney Barrett: ([18:02](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1082.14))  
I can. I have done that in my time on the Seventh Circuit. If I stay on the Seventh Circuit, I’ll continue to do that. If I’m confirmed to the Supreme Court, I will do that still.

Chairman Lindsey Graham: ([18:10](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1090.96))  
And I would dare say that there are personal views on the Supreme Court, and nobody questions whether our liberal friends can set aside their beliefs. There’s no reason to question yours, in my view. So the bottom line here is that there’s a process. You fill in the blanks, whether it’s about guns and Heller, abortion rights. Let’s go to Citizens United. To my good friend, Senator Whitehouse, me and you are going to come closer and closer about regulating money. Because I don’t know what’s going on out there, but I can tell you there’s a lot of money being raised in this campaign. I’d like to know where the hell some of it’s coming from. But that’s not your problem. Citizens United says what?

Amy Coney Barrett: ([18:57](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1137.22))  
Citizen United extends the protection of the first amendment to corporations who are engaged in political speech.

Chairman Lindsey Graham: ([19:03](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1143.65))  
So if Congress wanted to revisit that and somebody challenged it under Citizens United, that Congress went too far, what would you do? How would the process work?

Amy Coney Barrett: ([19:14](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1154.96))  
Well, it’d be the same process I’ve been describing. First, somebody would have to challenge that law in a case, somebody, presumably, who wanted to spend the money on a political campaign. It would wind its way up, and judges would decide it after briefs, and oral argument, and consultation with colleagues, and the process of opinion writing.

Chairman Lindsey Graham: ([19:33](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1173.69))  
Okay. Same-sex marriage. What’s the case that established same-sex marriage as the law of the land?

Amy Coney Barrett: ([19:40](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1180.58))  
Obergefell.

Chairman Lindsey Graham: ([19:41](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1181.87))  
Okay. If there was a state who tried to outlaw same-sex marriage, and there’s litigation, would it follow the same process?

Amy Coney Barrett: ([19:51](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1191.64))  
Well, it would. And one thing I’ve neglected to say before that’s occurring to me now, is that not only would someone have to challenge that statute. If they outlawed same-sex marriage, there’d have to be a case challenging it. And for the Supreme Court to take it up, you’d have to have lower courts going along and saying, “We’re going to flout Obergefell.” And the most likely result would be that lower courts, who are bound by Obergefell, would shut such a lawsuit down. And it wouldn’t make its way up to the Supreme Court. But if it did, it would be the same process I’ve described.

Chairman Lindsey Graham: ([20:26](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1226.1))  
Well, let’s turn now to Senator Hawley’s favorite topic, substantive due process. As a legal theory, what am I talking about? Can you explain it for the country? Because if you can’t, we’re in trouble. I think I’ll have a hard time doing it.

Amy Coney Barrett: ([20:41](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1241.16))  
So both the 14th and 5th Amendments protect life, or provide that the state cannot take life, liberty, or property without due process of law. And that sounds like a procedural guarantee, but in Supreme Court precedent, it has a substantive component. And so the substantive due process clause says that there are some liberties, some rights that people possess, that the state can’t take away or can’t take away without a really good reason. So the right to use birth control, the right to an abortion, are examples of rights protected by substantive due process.

Chairman Lindsey Graham: ([21:14](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1274.65))  
These are judicially created rights, not found in the document called the Constitution. Is that correct?

Amy Coney Barrett: ([21:19](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1279.98))  
Well, the Supreme Court has grounded them in the Constitution, although they’re not-

Chairman Lindsey Graham: ([21:23](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1283.23))  
But they’re not written.

Amy Coney Barrett: ([21:24](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1284.25))  
They’re not expressed.

Chairman Lindsey Graham: ([21:25](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1285.33))  
Okay. So is it fair to say there’s a great debate in the law about how far this should go and what limits should apply, if any?

Amy Coney Barrett: ([21:34](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1294.13))  
That’s fair to say. There’s also a lot of debate in Supreme Court opinions. I’m not aware of anybody proposing to throw it over entirely, but there’s certainly a debate about how to define these rights and how far it should go.

Chairman Lindsey Graham: ([21:45](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1305.62))  
Well, let’s just say that you’re in the camp, or anybody’s in the camp, that substantive due process, as a legal concept, is unbounded. It basically makes the Constitution no more certain than the five people interpreting it at any given time in the country. Whatever rights they think you have, you get. Whatever rights they want to take away from you, they can. It’s a pretty nebulous legal concept. That’s sort of my view of it. I’m not imposing my views on yours. But then there’s a thing called precedent. Let’s say you didn’t like a case decided under substantive due process, you thought the whole concept was Constitutionally an era. How does precedent play?

Amy Coney Barrett: ([22:29](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1349.57))  
So precedent is the principle that cases that have been decided by the Court, before this one lands on the docket, are presumptively controlling. And so precedent comes from a concept called stare decisis, which is a shorthand for longer Latin phrase that means, stand by the thing decided and do not disturb the calm. So precedent is a principle that you’re not going to overrule something without good reason, or royal up the law, without justification for doing so.

Chairman Lindsey Graham: ([22:59](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1379.44))  
So you could say the underlying analysis that led to any case, just case X, “I reject that analysis, but I will now apply precedent to whether or not it should be reversed.” Is that what you’re telling us?

Amy Coney Barrett: ([23:14](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1394.94))  
That is, but the precedent itself-

Chairman Lindsey Graham: ([23:16](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1396.97))  
What are the factors would a judge look at in terms of overruling a precedent?

Amy Coney Barrett: ([23:21](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1401.81))  
Well, of course, the inquiry begins because there’s been some argument that the precedent was wrong. But that’s not enough to justify an overruling. You also consider-

Chairman Lindsey Graham: ([23:31](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1411.37))  
You could say, structurally, this case shouldn’t… Constitutionally, it was wrongly decided. But that doesn’t end the debate. Is that correct?

Amy Coney Barrett: ([23:37](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1417.75))  
No. That’s right. You have to look at reliance interests. You have to look whether the law or the facts-

Chairman Lindsey Graham: ([23:42](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1422.08))  
Let’s stop right quick. Reliance interest by who?

Amy Coney Barrett: ([23:45](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1425.27))  
Reliance interest by those who have relied on the precedent.

Chairman Lindsey Graham: ([23:49](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1429.17))  
The people of the the United States.

Amy Coney Barrett: ([23:50](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1430.28))  
People of the United States who have ordered their affairs around it.

Chairman Lindsey Graham: ([23:52](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1432.81))  
So the Heller case, people have relied upon the Second Amendment be an individual right. Is that correct?

Amy Coney Barrett: ([23:59](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1439.5))  
Precedent, yeah. Presumably so. People have-

Chairman Lindsey Graham: ([24:01](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1441.89))  
Well, then abortion would be the right to have abortion. That’d be a reliance factor, right?

Amy Coney Barrett: ([24:08](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1448.61))  
The court in Casey spent a lot of time describing the reliance of people on the right to an abortion.

Chairman Lindsey Graham: ([24:13](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1453.91))  
So what I want the public to know is that if you overrule a precedent of the Court, even if you think it was wrongly decided, there’s a list of things you have to look at before you actually overrule the case. Is that a fair way of saying it?

Amy Coney Barrett: ([24:29](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1469.64))  
It’s a fair way of saying it.

Chairman Lindsey Graham: ([24:30](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1470.47))  
Would you apply those factors if you ever found yourself in a position where you wanted to consider overruling in a precedent?

Amy Coney Barrett: ([24:37](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1477.52))  
Absolutely.

Chairman Lindsey Graham: ([24:38](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1478.77))  
Okay. Have precedents of the Court been overruled before?

Amy Coney Barrett: ([24:42](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1482.4))  
Yes.

Chairman Lindsey Graham: ([24:43](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1483.04))  
Can you give me an example?

Amy Coney Barrett: ([24:44](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1484.97))  
Brown versus the Board of Education overruled Plessy versus Ferguson to get rid of the separate but equal doctrine.

Chairman Lindsey Graham: ([24:50](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1490.73))  
Okay. So recusal… My colleagues are asking you to recuse yourself from litigation around the Affordable Care Act. What’s the precedent regarding the Affordable Care Act, if any?

Amy Coney Barrett: ([25:06](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1506.45))  
The precedent that might well-

Chairman Lindsey Graham: ([25:08](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1508.82))  
Is there a precedent on this issue?

Amy Coney Barrett: ([25:10](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1510.73))  
There’s not precedent on the issue that’s coming up before the Court. It’s turns on a doctrine called severability, which was not an issue in either of the two big Affordable Care Act cases.

Chairman Lindsey Graham: ([25:24](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1524.17))  
Okay. So the issue that was before the Court was NFIB versus Sebelius. Is that correct?

Amy Coney Barrett: ([25:27](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1527.09))  
That was the first about the Constitutionality of the mandate.

Chairman Lindsey Graham: ([25:30](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1530.66))  
Okay. And I think Congress has zeroed out, what the Court called, attacks. And the real issue now is, does it stand, and can it be severable?

Amy Coney Barrett: ([25:39](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1539.18))  
Right. So the issue now is, now that Congress has zeroed it out, can it be called a tax or is it now a penalty? And then the second issue is, if it is a penalty, can it be just cut out from the statute so that the rest of the statute, including protection for preexisting conditions, stands.

Chairman Lindsey Graham: ([25:56](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1556.52))  
Well, a lot smarter people than me suggest that severability would be a hard challenge for those who are opposing the law. But time will tell. Do you feel like you should recuse yourself from that case because you’re being nominated by President Trump?

Amy Coney Barrett: ([26:11](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1571.06))  
Well, Senator, recusal itself is a legal issue. There’s a statute, 28 USC 455, that governs when judges and justices have to recuse. There’s precedent under that rule. Justice Ginsburg, in explaining the way recusal works, said that, “It’s always up to the individual justice, but it always involves consultation with the colleagues, with the other eight justices.” So that’s not a question that I could answer in the abstract.

Chairman Lindsey Graham: ([26:37](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1597.24))  
If you’re appointed by Obama, that’s no reason to recuse yourself in a case involving Obama policy. Is that correct?

Amy Coney Barrett: ([26:44](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1604))  
Well, that would be a decision for each justice to make.

Chairman Lindsey Graham: ([26:46](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1606.58))  
Right. If a justice had a conflict with a particular policy issue they helped drafted, that would be a consideration. Is that correct?

Amy Coney Barrett: ([26:54](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1614.35))  
That would be a consideration.

Chairman Lindsey Graham: ([26:55](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1615.9))  
Okay. So when it comes to recusing yourself, you’ll do what the Supreme Court requires of every justice?

Amy Coney Barrett: ([27:02](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1622.3))  
I will.

Chairman Lindsey Graham: ([27:05](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1625.04))  
Okay. Thank you very much. How’s it feel to be nominated for the Supreme Court of the United States?

Amy Coney Barrett: ([27:13](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1633.83))  
Well, Senator, I’ve tried to be on a media blackout for the sake of my mental health. But you can’t keep yourself walled off from everything. And I’m aware of the lot of the characatures that are floating around. So I think what I would like to say in response to that question is that, look, I’ve made distinct choices. I’ve decided to pursue a career and have a large family. I have a multi-racial family. Our faith is important to us. All of those things are true, but they are my choices. And in my personal interactions with people… I have a life brimming with people who’ve made different choices. And I’ve never tried, in my personal life, to impose my choices on them. And the same is true professionally. I apply the law and Senator, I think I should say why I’m sitting in this seat in response to that question too, why I’ve agreed to be here. Because I don’t think it’s any secret to any of you or to the American people that this is a really difficult, some might say excruciating, process.

Amy Coney Barrett: ([28:17](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1697.4))  
And Jesse and I had a very brief amount of time to make a decision with momentous consequences for our family. We knew that our lives would be combed over for any negative detail. We knew that our faith would be caricatured. We knew our family would be attacked. And so we had to decide whether those difficulties would be worth it, because what sane person would go through that if there wasn’t a benefit on the other side. And the benefit, I think, is that I’m committed to the rule of law and the role of the Supreme Court in dispensing equal justice for all. And I’m not the only person who could do this job, but I was asked. And it would be difficult for anyone. So why should I say someone else should do the difficulty? If the difficulty is the only reason to say no, I should serve my country. And my family is all in on that because they share my belief and the rule of law.

Chairman Lindsey Graham: ([29:08](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1748.35))  
Well, thank you. I think a lot of people would say, you got to be sort of insane to run for the Senate in this world. But good news for you, we’ve all chosen kind of crazy stuff to do. I just end with this. I’m glad you said, “Yes.” I’m glad President Trump chose you. And really, before the people of the United States is a very basic question. Is it okay to be religiously conservative? Is it okay to be pro-life in your personal life? It clearly is okay to be progressive and be pro-choice and seek a seat on the Supreme Court. I think resoundingly, yes. And here’s why your nomination is so important to me. In my world, to be a young conservative woman is not an easy path to take. We have two women on this committee. They can talk about it better than I. So I want to thank President Trump for choosing you, and I will do everything I can to make sure that you have a seat at the table.

Chairman Lindsey Graham: ([30:03](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1803.011))  
… everything I can to make sure that you have a seat at the table, and that table is the Supreme Court. And if anybody in the country, in my view, deserves to have a seat at the table based on the way they’ve lived their life and their capabilities in the law, it is you, Judge. God bless you. Thank you.

Amy Coney Barrett: ([30:18](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1818.28))  
Thank you, Chairman Graham.

Chairman Lindsey Graham: ([30:19](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1819.4))  
Chairman Feinstein.

Senator Dianne Feinstein: ([30:22](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1822.61))  
Mister Chairman. Judge, it’s wonderful to see you here, also with a family that I have been observing. They sit still, quiet. You’ve done a very good job.

Amy Coney Barrett: ([30:34](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1834.75))  
I have eyes in the back of my head, so I’m good at watching.

Senator Dianne Feinstein: ([30:37](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1837.24))  
I was wondering if you might introduce us to them.

Amy Coney Barrett: ([30:40](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1840.63))  
Sure. So I have my husband, Jesse, my son, JP, my daughter, Emma, my daughter, Juliette, my daughter, Tess, my daughter, Vivian, and my son, Liam. And then behind them are my six siblings who are with me today. I’ll start the side right behind Vivian, it’s my sister, Vivian, my sister, Eileen, my brother, Michael, my sister, Megan and my sister, Amanda. And is Carrie in the room? And my sister Carrie is sitting right over there.

Senator Dianne Feinstein: ([31:11](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1871.46))  
You don’t have a magic formula for how you do it and handle all the children, and your job, and your work and your thought process, which is obviously excellent, do you?

Amy Coney Barrett: ([31:23](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1883.69))  
It’s improv.

Senator Dianne Feinstein: ([31:25](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1885.32))  
Yes. Yes. Well, let me begin with a question that the Chairman touched on, and it’s of great importance, I think, because it goes to a woman’s fundamental right to make the most personal decisions about their own body.

Senator Dianne Feinstein: ([31:44](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=1904.93))  
As a college student in the 1950s, I saw what happened to young women who became pregnant at a time when abortion was not legal in this country. I went to Stanford, I saw the trips to Mexico, I saw young women try to hurt themselves, and it was really deeply, deeply concerning. During her confirmation hearing, before this committee, in 1993, Ruth Bader Ginsburg was asked several questions about her views on whether the Constitution protects a woman’s right to abortion. She unequivocally confirmed her view that the Constitution protects a woman’s right to abortion. She explained it like this, and I quote, “The decision whether or not to bear a child is central to a woman’s life, to her well-being and dignity. It’s a decision she must make for herself. When government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choice.” At one point, our former colleague, Orrin Hatch, then the ranking member of this committee, commended her for her being “very forthright in talking about that.” So I hope, and you have been thus far, be equally forthright with your answers.

Senator Dianne Feinstein: ([33:21](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2001.28))  
In Planned Parenthood of Southeastern Pennsylvania versus Casey, Justice Scalia, as was said earlier, joined the dissent, which took the position, and I quote, “We believe that Roe was wrongly decided and that it can and should be overruled, consistent with our traditional approach to stare decisis in constitutional cases.” Do you agree with Justice Scalia’s view that Roe was wrongly decided?

Amy Coney Barrett: ([33:55](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2035.37))  
So Senator, I do want to be forthright and answer every question so far as I can. I think on that question, I’m going to invoke Justice Kagan’s description, which I think is perfectly put. When she was in her confirmation hearing, she said that she was not going to grade precedent or give it a thumbs up or thumbs down, and I think in an area where precedent continues to be pressed and litigated, as is true of Casey, it would actually be wrong and a violation of the canons for me to do that as a sitting judge. So if I express a view on a precedent one way or another, whether I say I love it or I hate it, it signals to litigants that I might tilt one way or another in a pending case.

Senator Dianne Feinstein: ([34:40](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2080.06))  
So on something that is really a major cause with major effect on over half of the population of this country, who are women after all, it’s distressing not to get a straight answer, so let me try again. Do you agree with Justice Scalia’s view that Roe was wrongly decided?

Amy Coney Barrett: ([35:05](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2105.83))  
Senator, I completely understand why you are asking the question, but again, I can’t pre-commit or say yes, I’m going in with some agenda, because I’m not. I don’t have any agenda. I have no agenda to try to overrule Casey. I have an agenda to stick to the rule of law and decide cases as they come.

Senator Dianne Feinstein: ([35:31](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2131.05))  
As a person, I don’t know if you’ll answer this one either, do you agree with Justice Scalia’s view that Roe can and should be overturned by the Supreme Court?

Amy Coney Barrett: ([35:42](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2142.92))  
Well, I think my answer is the same because that’s a case that’s litigated. Its contours could come up again, in fact do come up, they came up last term before the court. So I think what the Casey standard is, and it’s a contentious issue, which is I know one reason why it would be comforting to you to have an answer, but I can’t express views on cases or pre-commit to approaching a case any particular way.

Senator Dianne Feinstein: ([36:15](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2175.95))  
Well, that makes it difficult for me, and I think for other women also on this committee, because this is a very important case and it affects a lot of people, millions and millions of women, and you could be a very important vote. I had hoped, you would say, as a person, you’ve got a lovely family, you understand all the implications of family life, you should be very proud of that, I’m proud of you for that, but my position is a little different. You’re going on the biggest court of this land with a problem out there that all women see one way or another in their life, and not all, but certainly married women do and others too. So the question comes, what happens? Will this justice support a law that has substantial precedent now? Would you commit yourself on whether you would or would not?

Amy Coney Barrett: ([37:26](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2246.28))  
Senator, what I will commit is that I will obey all the rules of stare decisis, that if a question comes up before me about whether Casey or any other case should be overruled, that I will follow the law of stare decisis, applying it as the court is articulating it, applying all the factors, reliance, workability, being undermined by later facts in law, just all the standard factors. I promise to do that for any issue that comes up, abortion or anything else. I’ll follow the law.

Senator Dianne Feinstein: ([37:59](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2279.27))  
Well, I think that’s expected. Well, I guess I’ve gone as far as I can. Let me go to another issue.

Senator Dianne Feinstein: ([38:08](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2288.45))  
This country is facing great gun violence. There’s been a surge in gun sales during the COVID-19 crisis, which has led to more lives being needlessly lost. According to the Gun Violence Arcave, Archive, excuse me, an independent research organization, there were 60 mass shootings in May alone. These shootings killed 40 people. They hurt 250 more. Also, there’s been a troubling spike in gun sales. Americans bought approximately two million guns this past March. It’s the second highest month ever for gun sales. That figure does not take into account all the gun sales that could not be completed because the purchaser failed a background test, check, excuse me, a number that has also skyrocketed. For example, this past March, the FBI’s background check system blocked 23,692 sales, more than double the 9,500 sales blocked in March of 2019. Do you agree that federal state and local governments have a compelling interest in preventing a rise in gun violence, particularly during a pandemic?

Amy Coney Barrett: ([39:40](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2380.47))  
Well, Senator, of course, the constitutionality of any particular measure that was passed by state or local governments, or by this body, would be subject to the same judicial process that I described with Senator Graham.

Amy Coney Barrett: ([39:55](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2395.41))  
What I will say, because this is just descriptive of Heller, Heller leaves room for gun regulations, and that’s why there has been a lot of litigation in the lower courts, which makes me constrained not to comment on the limits of it. But Heller does not make a right absolute by its… Says so in the opinion,

Senator Dianne Feinstein: ([40:14](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2414.56))  
Well, let me ask one more question. In a recent dissenting opinion that you wrote, you said there was “no question” that “keeping guns out of the hands of those who are likely to misuse them” is “a very strong governmental interest.” Do you stand by that statement?

Amy Coney Barrett: ([40:37](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2437.43))  
So I don’t… Let’s see. I can’t remember precisely the words of Cantor, which is the case in which I dissented, which is-

Senator Dianne Feinstein: ([40:46](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2446.22))  
That’s correct, Cantor v. Barr.

Amy Coney Barrett: ([40:47](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2447.69))  
Cantor v. Barr. What I said in that opinion, I stand by, which is that the original meaning of the second amendment, and I went through a lot of detailed history, and that case does support the idea that governments are free to keep guns out of the hands of the dangerous. So for example, the mentally ill, others who would be likely to misuse guns.

Senator Dianne Feinstein: ([41:13](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2473.92))  
So where does that leave you on Roe? The Chairman asked, I thought, a very good question for many people and particularly for women. This is a fundamental question. We all have our moral values. We have our religions, we live by that, I respect you and your family for doing just that, but this is a very real problem out there. And if you could be more specific in any way with respect how you would view your place on the court with respect to controlling weapons in this country.

Amy Coney Barrett: ([41:56](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2516.98))  
I think what I can say is that my opinion in Cantor shows how I approach questions as a matter of judicial philosophy. I mean, I spent a lot of time in that opinion looking at the history of the second amendment and looking at the Supreme Court’s cases, and so the way in which I would approach the review of gun regulation is in that same way, to look very carefully at the text, to look carefully at what the original meaning was. That was the method that both the majority and dissent in Heller took. So I promise that I would come to that with an open mind, applying the law as I could best determine it.

Senator Dianne Feinstein: ([42:35](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2555.82))  
Okay, let me move on. One of my constituents, Christina Garcia, was able to obtain insurance coverage and have surgery that saved her eyesight only before the Affordable Care Act. Her experience is not unique. Senator Tammy Baldwin has a constituent, Jimmy Anderson, in her home state of Wisconsin, and she asked that this story be shared.

Senator Dianne Feinstein: ([43:03](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2583.47))  
Jimmy is a 34-year-old and member of the Wisconsin state legislature. In 2010, a drunk driver hit the family’s car as they were returning home from celebrating Jimmy’s 24th birthday. Jimmy’s mother, father and little brother were killed in the accident. Jimmy was paralyzed from the waist down. His medical recovery was intense. As Jimmy has said, “Doctors managed to patch me up with dozens of stitches and multiple surgeries and about a pound of steel on my spine.” But soon after, his insurance company told him he was nearing his lifetime maximums and he would have to pay for the rest of his health care expenses.

Senator Dianne Feinstein: ([43:54](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2634.01))  
As Jimmy explains, “With hundreds of thousands of dollars still left to go, I don’t know what I was going to do. I was scared. I was terrified. I was just a student. I didn’t have that kind of money.” Fortunately, a few days later, the insurance company sent him another letter. This one informed him that the provisions of the ACA had kicked in, which meant there were no longer lifetime maximums and his care would be covered. In Jimmy’s own words, “I was able to put my life back together, and I credit the Affordable Care Act for that.”

Senator Dianne Feinstein: ([44:34](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2674.9))  
Judge Barrett, how should the loss of ACA’s protection against lifetime coverage caps, caps that can be used to end coverage for life-saving care, factor into a court’s consideration of the validity of the ACA?

Amy Coney Barrett: ([44:53](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2693.42))  
Senator, so far as I know the case next week doesn’t present that issue. It’s not a challenge to-

Amy Coney Barrett: ([45:03](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2703.421))  
… issue. It’s not a challenge to pre-existing conditions coverage, or to the lifetime maximum relief from a cap.

Senator Dianne Feinstein: ([45:13](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2713.32))  
Well, what is your view?

Amy Coney Barrett: ([45:15](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2715.71))  
Of how it should factor in? Let’s see. I think that any issue that would arise under the Affordable Care Act or any other statute should be determined by the law, by looking at the text of the statute, by looking at precedent, the same way that it would for anyone, and if there were policy differences or policy consequences, those are for this body. For the court, it’s really a question of adhering to the law and going where the law leads, and leaving the policy decisions up to you.

Senator Dianne Feinstein: ([45:50](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2750.23))  
For me, my vote depends a lot on these responses, because these are life or death questions for people. It’s my understanding that you were critical of Justice Roberts for upholding the ACA, stating that he quote, “Pushed the Affordable Care Act beyond its plausible meaning to save the statute,” end quote. And in what way did the Chief Justice go beyond the ACA’s plausible meaning?

Amy Coney Barrett: ([46:24](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2784.66))  
So I’ve written about this, and that description is consistent with the way the Chief Justice described in his own majority. That was King v. Burwell, where the court had to decide whether the phrase, “Established by a state,” also included exchanges that were established by the federal government, and the majority in that case acknowledged that treating the phrase, “Established by a state,” as including exchanges established by the federal government was not the most natural reading, but for other reasons, other policy reasons in canons of interpretation, they chose to adopt the less natural reading.

Senator Dianne Feinstein: ([47:04](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2824.43))  
You see, for me, the case coming up, California v. Texas, puts a whole new weight on your nomination, because the Affordable Care Act is now being so well accepted. I represent the largest state, as does Senator Harris, that we have, and there are just over 10 million people dependent on the activities under this actually, and that they be sustained. And so, there is really great concern about what your view is. That case is coming up, can you give us at least your view?

Amy Coney Barrett: ([47:56](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2876.46))  
Well, Senator, the issue and the case that’s coming up, doesn’t involve… It’s not the same issue as the ones in NFIB versus v. Sebelius, or King v. Burwell. It’s a different issue, so.

Senator Dianne Feinstein: ([48:08](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2888.8))  
Well, then give us both.

Amy Coney Barrett: ([48:12](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2892.99))  
Well, let’s see. So what I said, what you quoted to me, was that I thought that the interpretation of the phrase, “Established by a state,” was stretched when the court held that it was established by the federal government. That’s not the issue in California v. Texas, the issue in California v. Texas is if, whether now that Congress has just completely zeroed out the mandate, whether it’s still a tax or a penalty, and even if so, is it constitutional, and then even so, is that fatal to the statute? There’s a doctrine called severability, which sounds like legalese, but what it means is, is it okay with the statute? Could you just pluck that part out and let the rest of the statute stand, or is that provision which has been zeroed out, so critical to the statute that the whole statute falls? So really, the issue in the case is this doctrine of severability, and that’s not something that I’ve ever talked about with respect to the Affordable Care Act. Honestly, I haven’t written anything about severability that I know of at all.

Senator Dianne Feinstein: ([49:26](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2966.09))  
So you have no thoughts on the subject?

Amy Coney Barrett: ([49:28](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2968.76))  
Well, it’s a case that’s on the court’s docket, and the canons of judicial conduct would prohibit me from expressing a view.

Senator Dianne Feinstein: ([49:38](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=2978.05))  
Okay, I’ll move on. On July 30th, 2020, President Trump made claims of voter fraud and suggested he wanted to delay the upcoming election. Does the Constitution gives the President of the United States the authority to unilaterally delay a general election under any circumstances? Does federal law?

Amy Coney Barrett: ([50:02](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3002.1))  
Well Senator, if that question ever came before me, I would need to hear arguments from the litigants, and read briefs, and consult with my law clerks, and talk to my colleagues, and go through the opinion writing process. So, if I give off the cuff answers, then I would be basically a legal pundit, and I don’t think we want judges to be legal pundits. I think we want judges to approach cases thoughtfully and with an open mind.

Senator Dianne Feinstein: ([50:30](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3030.61))  
Okay, let me try something else. In 2017, in a case called EEOC v. AutoZone, the Seventh Circuit, your circuit issued an opinion which permitted an employer to intentionally assign its employees to specific stores, due to their race. The dissent, in this opinion, argued the decision permitted employers to legally establish separate but equal facilities, and argued if upheld, this decision would be quote, “Contrary to the position that the Supreme Court has taken in analogous equal protection cases, as far back as Brown v. The Board of Education.” The case was appealed to the full panel of the Seventh, and you sided, as I understand it, with the majority, to deny a rehearing and let the opinion stand. Is that correct?

Amy Coney Barrett: ([51:32](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3092.73))  
That is correct, and I think I need to give a little context for what it means to vote to deny to rehear something en banc. Our court, just like the Supreme Court and the certiorari process, doesn’t take cases just because we think the panel got it wrong. There’s a lot of deference to panels, and Rule 35 of the Rules of Appellate Procedure constrains and limits the times in which we take the resources of the full court to rehear a case. So I was not on that panel and I did not express a view on the merits. A vote to deny to hear something en banc, is, like a vote, not to deny certiorari, not a vote that expresses a view on the merits.

Senator Dianne Feinstein: ([52:16](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3136.52))  
Okay.

Amy Coney Barrett: ([52:16](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3136.81))  
It was a statutory case, it was not an equal protection case.

Senator Dianne Feinstein: ([52:19](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3139.92))  
Let me ask you a question, as a person.

Amy Coney Barrett: ([52:25](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3145.04))  
Yes.

Senator Dianne Feinstein: ([52:25](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3145.66))  
If an employer can transfer an employee based solely on his or her race, and that does not constitute a materially adverse employment action, because it was purely lateral job transfer, please explain what factors must be present for a policy based on race to violate Brown v. The Board’s prohibition of separate but equal?

Amy Coney Barrett: ([52:53](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3173.4))  
Well, Senator, to my knowledge, Brown wasn’t at issue in the majority opinion, it turned on statutory language in Title VII. But again, I didn’t express a view on the merits, and so I can’t comment on whether I think that the panel majority got that right, or got that wrong. That’s an issue that may well come before me, even in the Seventh Circuit, some may press for its overruling, and I may be on a panel that has to decide whether that precedent was wrong.

Senator Dianne Feinstein: ([53:22](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3202.16))  
Well, let me ask you, as a person, do you have a general belief?

Amy Coney Barrett: ([53:27](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3207.68))  
As a person, I have a general belief that racism is abhorrent.

Senator Dianne Feinstein: ([53:32](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3212.11))  
That racism is what?

Amy Coney Barrett: ([53:33](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3213.79))  
Abhorrent.

Senator Dianne Feinstein: ([53:35](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3215.16))  
Well, I think we would all agree with that. So how should a lower court in the Seventh determine when race-based policies could constitute a materially adverse employment action?

Amy Coney Barrett: ([53:55](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3235.99))  
Well, I’m not aware of cases presenting the exact same facts. Is that AutoZone?

Senator Dianne Feinstein: ([54:00](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3240.97))  
I’m just asking you for your view.

Amy Coney Barrett: ([54:04](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3244.56))  
I know that the material adverse consequence was the standard at issue in that case. I have to confess that I would need to look at the statute and the precedent to… Well, even if I had a specific hypothetical in front of me, I couldn’t really say without looking at the statute and the precedent what factors are involved, because I wasn’t on that panel and haven’t decided a similar case.

Senator Dianne Feinstein: ([54:30](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3270.2))  
Okay. Let me go to another issue. The issue of LGBT equality is very personal for me. I spent two decades as a county supervisor and mayor of a city. I watched firsthand as the LGBT community fought for legal recognition of their lives, their relationships, their personal dignity. I was there before the loss, so I saw in San Francisco what was happening.

Senator Dianne Feinstein: ([55:02](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3302.41))  
I want to speak briefly about one couple, Del Martin and Phyllis Lyon, who I met in the 1970s. They were vibrant members of San Francisco’s community. I was President of the Board of Supervisors, they worked with me to pass a city-wide ordinance in 1978, that provided critical protection against discrimination in employment, housing, and public accommodations. At that time, this was one of the strongest protections for the gay community in the entire nation. We’ve come a long way since then, and I think we should never go back. In June of 2008, 58 years after they met, my two friends were finally able to marry, when the California Supreme Court ruled that same sex couples cannot be denied the fundamental right to marry. Del died two months later. Because of the federal Defense of Marriage Act, DOMA, Phyllis was denied social security survivor benefits, even though her spouse had paid into this basic safety net for her entire working life. Phyl had to rely on the help of friends and fellow activists. In 2013, as you probably know, because you know so much about this, US v. Windsor, the Supreme Court struck DOMA down. Two years later, in Obergefell v. Hodges, the Supreme Court recognized that the fundamental right to marry could not be denied to LGBT Americans. Both decisions were decided by a five to four margin. Justice Ginsburg was in the majority. Justice Scalia dissented in both cases.

Senator Dianne Feinstein: ([56:56](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3416.88))  
Now, you said in your acceptance speech for this nomination, that Justice Scalia’s philosophy is your philosophy. Do you agree with this particular point of Justice Scalia’s view that the US Constitution does not afford gay people the fundamental right to marry?

Amy Coney Barrett: ([57:17](https://www.rev.com/transcript-editor/shared/BA4w-xMb-K-HZIux9dfEfwA157W69nptFYgdyhbxw9_AXfUnudEHxWjAgTlHVLuVksZxCz2kgW8TyFqBxsNZbMnaYGI?loadFrom=PastedDeeplink&ts=3437.83))  
Senator Feinstein, as I said to Senator Graham at the outset, if I were confirmed, you would be getting Justice Barrett, not Justice Scalia. So I don’t think that anybody should assume that just because justice Scalia decided a decision a certain way, that I would too, but I’m not going to express a view on whether I agree or disagree with Justice Scalia, for the same reasons that I’ve been giving. Justice Ginsburg with her characteristic pithiness used this to describe how a nominee should comport herself at a hearing: “No hints, no previews, no forecasts.” That had been the practice of nominees before her, but everybody calls it the Ginsburg Rule because she stated it so concisely, and it’s been the practice of every nominee since. So I can’t, and I’m sorry to not be able to embrace or disavow Justice Scalia’s position, but I really can’t do that on any point of law.

Senator Diane Feinstein: ([00:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12.58))  
Well, that’s really too bad because it’s rather a fundamental point for large numbers of people I think in this country. I understand you don’t want to answer these questions directly, but you identify yourself with a Justice, that you like him would be a consistent vote to roll back hard fought freedoms and protections for the LGBT community. And what I was hoping you would say is that this would be a point of difference where those freedoms would be respected, and you haven’t said that.

Judge Amy Coney Barrett: ([00:55](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=55.3))  
Senator, I have no agenda, and I do want to be clear that I have never discriminated on the basis of sexual preference and would not ever discriminate on the basis of sexual preference. Like racism, I think discrimination is abhorrent. On the questions of law, however, because I’m a sitting judge and because you can’t answer questions without going through the judicial process, can’t give answers to those very specific questions.

Senator Diane Feinstein: ([01:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=86.02))  
Okay, thank you very much. Thanks, Mr. Chairman.

Senator Lindsey Graham: ([01:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=88.84))  
Thanks Senator Feinstein, Senator Grassley.

Senator Chuck Grassley: ([01:31](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=91.79))  
Judge, I welcome you again and you can rest for a minute because I’ve got some things to say to my colleagues, but more importantly, so people around the country understand what’s going on here. First of all, for your family and friends, I’m sure they’re very proud and they ought to be. I think everybody recognizes your sharp intellect, a deep understanding of, and even great reverence for the Constitution. Your legal experience and public service are impressive. Your dedication to mentoring young students and women in the legal profession ought to be admired by everybody. In all respects, you’re exceptionally qualified to be a justice. Many groups and individuals have written in strong support. So I guess now that the chairman is gone, I’m going to ask as the next one ranking, I got some letters from 21 state Lieutenant Governors and from 20 Secretaries of State that I want to put in the record at this point.

Senator Chuck Grassley: ([02:40](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=160.84))  
Before I question, I have a few points to make. Yesterday, my Democrat colleagues spoke about their concern that you, Judge, wouldn’t uphold certain laws, including the Affordable Care Act. And that you would strip Americans of their healthcare rights and those protections that come with it. These opponents said that Republicans just want to confirm you so that you, “will carry their policies forward.” Meaning Republican policies forward on the Supreme Court. But this only shows Democrats fundamentally misunderstand what judges are supposed to do. A judge is supposed to interpret laws in an impartial manner, consistent with the Constitution. Republicans aren’t interested in seeing judges, “carry their policies forward.” Republicans want judges to interpret the law and the constitution not make law. We want judges that won’t impose their policies and personal preferences in their decision making, plain and simple.

Senator Chuck Grassley: ([04:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=242.33))  
Policymaking is not the proper role of the judicial branch. That role is reserved for legislative and executive branches. As the judge said, the political branches elected by and accountable to the people because you got a lifetime appointment. And if you do lawmaking, we can’t vote you out of office. Lawmaking’s our job, if people are all like what we do, they can vote us out of office. Some other points on the Affordable Care Act, the Democrats continue to misrepresent or claim to know Barrett’s view on affordable care and access to healthcare. In fact, they made it their entire game plan yesterday. And I suppose today we’ll see it again. But we should dispense with the total fiction the Democrats are pedaling. Apparently her technical concerns with Chief Justice Roberts legal reasoning in the Obama decision disqualifies her. Democrats are painting the judge as heartless and on a mission to scrap the healthcare law. Frankly, that’s absurd.

Senator Chuck Grassley: ([05:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=324.69))  
Not only is Judge Barrett a mother of seven, she had children with pre-existing medical challenges of her own. No one on this committee or anyone has any right to suggest that she doesn’t care about access to healthcare or protection for the vulnerable. Now, getting back to the technical concerns about Robert’s Affordable Care Act opinion. First, and I got four points along this line, her comments dealt with Robert’s statutory interpretation of just one provision of the law. That provision is no longer even in effect. In 2017, Congress zeroed out the so-called tax, the tax connected with the individual mandate. The question before the court this fall are entirely separate. She never ruled on the Affordable Care Act, nor commented on how she’d vote. Meaning the Judge, how she would vote. So it’s pointless to speculate, but we’re going to get a lot of speculation during this election season, just two and a half weeks before the election.

Senator Chuck Grassley: ([06:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=403.43))  
Now second point. Lawyers and legal academics often consider a court reasoning even when they have no disagreement with the outcome of the case. For instance, the New York Times recently reported, Ginsburg, before joining the Supreme Court, “Wasn’t really fond of Roe v. Wade. She didn’t like how it was structured.” I don’t blame or don’t know why Democrats have a different standard for you, Judge Barrett. Now a third point. It’s blatantly inconsistent for the left to use this line of attack. We all know that President Obama said that the ACA legislative mandate was not a tax. Even liberal Jeffrey Toobin said Robert’s argument was, “Not a persuasive one.” So Judge Barrett’s analysis of Robert’s legal reasoning is well inside the mainstream. Now a fourth point, more inconsistency. The same Democrats vilify Judge Barrett as a threat to those with pre-existing conditions.

Senator Chuck Grassley: ([08:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=488.86))  
Well, it seems that those same people just filibustered the COVID relief bill that would have protected pre-existing conditions. They’re the ones that blocked the COVID relief legislation. Republicans stood ready to move forward with that bill and remain ready. Seems to me it’s the other side who really playing politics with healthcare during a pandemic. The truth is Judge Barrett already said, “A judge must apply the law as written.” She further commented, “To decide cases according to the rule of law, beginning to end.” That’s what we should all look for judges to do. Now for my first question, when Justice Scalia came to my office before his confirmation, and I think I brought this up with every nominee to the Supreme Court by Republican or Democrat nominees. I don’t think I brought it up in my private conversation with you, but I always bring up, what’s your attitude about legislative history?

Judge Amy Coney Barrett: ([09:27](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=567.61))  
Um-

Senator Chuck Grassley: ([09:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=568.17))  
Let me ask my question first.

Judge Amy Coney Barrett: ([09:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=569.29))  
Sorry.

Senator Chuck Grassley: ([09:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=569.55))  
I’m sorry.

Judge Amy Coney Barrett: ([09:31](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=571.67))  
I thought that was it.

Senator Chuck Grassley: ([09:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=572.76))  
I think you probably know, Judge, how important it is. I want to know how important legislative history is to you. When is it appropriate to look to legislative history, to interpret the statute? And are there some circumstances when more appropriate than other? And I’d like to also give your view on legislative history compared to what I heard from Scalia 35 years ago.

Judge Amy Coney Barrett: ([09:59](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=599.54))  
Sure. So I’m very comfortable talking about the use of legislative history because that’s a matter of interpretive philosophy. What governs of course, is the text of the statutes. So the legislative history can never supersede the text and it should never substitute for the text of the statute. Justice Scalia as was well-known railed against the use of legislative history. And I think it was because at the time that Justice Scalia went onto the D.C. circuit before he was on the Supreme Court, the use of legislative history had really kind of gotten out of control. And many courts were saying things, Justice Scalia in his book, quotes this line from a brief, “The legislative history being unclear, we turned to that other reliable guide in statutory interpretation, the statute.” And that has things backwards. And so I think Justice Scalia really tried to clean that up and say, listen, the priority is the text. And when the text answers the question, you don’t go to legislative history. And there’s some pragmatic reasons to be careful about doing so.

Judge Amy Coney Barrett: ([11:06](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=666.59))  
Legislative history can be long. There’s a famous quotation from Judge Levinthal that, “Legislative history is like going to a cocktail party and picking out your friends, can be easy to manipulate because there might be something in there for everyone.” So as a general rule, I don’t look to legislative history when I’m deciding cases. I wouldn’t say that it would never be relevant. Even Justice Scalia himself said that there could be instances. For example, if you were trying to determine whether a term used in a statute, how it was used, if it had a technical meaning, or how it was understood, that that might be an appropriate time to consult legislative history. Or Justice Scalia himself consulted it when he was trying to determine whether there had been an error in the way the statute was drafted. He looked at legislative history to see whether what seemed unthinkable actually was unthinkable.

Senator Chuck Grassley: ([12:01](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=721.57))  
Now I’d like to go to a specific case. I’d like to go to United States v. Uarte, which involved the interpretation of Section 403 of the First Step Act, which I had a big part along with Senator Lee and Senator Durbin in getting that passed in 2018. This is the most significant criminal justice legislation in a generation, our criminal justice system can’t just punish and deter. It must also rehabilitate and promote successful re-entry into society. The First Step Act accomplished these goals through prison and sentencing reform. It was well-known that the goal of the First Step Act was to make smart and cost-effective changes to the criminal code and to reduce a risk of recidivism. So I want to ask you about your dissent in this case, the issue was whether the sentencing reform provision of the First Step Act applied to a defendant whose sentence had been vacated. Here the defendant had been convicted, but not re-sentenced at the time of the First Step Act becoming law.

Senator Chuck Grassley: ([13:18](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=798.4))  
The majority opinion cited the plain meaning of the First Step Act in congressional intent in finding that Section 403 would apply to a defendant with a vacated sentence. Your dissent, as I understand it, argued among other things that congressional intent shouldn’t be heavily relied on, “Every statute requires a resolution of competing policy interest.” President Trump signed the First Step Act into law only two years ago. So wouldn’t re-referencing congressional intent be accessible and relevant? And then another question, why did you find the majority relying on legislative history unpersuasive?

Judge Amy Coney Barrett: ([14:05](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=845.44))  
So we did, the majority. It was a very, very difficult case. It was voted on, on bunk by our full court. And the quote from my dissent that you’re pointing to was actually that we had a dispute about what the plain text of the statute required. And so that portion of my dissent that you just read was saying that I thought that the majority had permitted the policy goals of the act to supersede the text. And in dissent, I argued that the text drew the line after someone had been sentenced. So if someone had already been sentenced on the date of the First Steps Act’s passage and the relevant language was, if a sentence had already been imposed. I thought with my dissenting colleagues, and this was consistent with the approach the third circuit had already taken that, that meant if the person had already been through sentencing. And this case involved a re-sentencing, and re-sentencing can happen years after. And so it didn’t seem to my dissenting colleagues and I that looking in the statute that the plain language of the text supported the majority’s approach to it.

Senator Chuck Grassley: ([15:22](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=922.4))  
Now I think on my next question on the same case, you may have just partially answered it, but let me go ahead with my lead in, and then also a question. Both the majority and your dissent in the case reviewed 403 of the Act under a plain reading of the text. As an author and leader in this law’s passage, I’d like to discuss how a plain reading of the statute could lead to varying outcomes. The section in question contemplates, when a sentence has been imposed on a defendant, according to the text’s statute and relevant case law, a defendant sentence, if vacated creates a clean slate. That means defendant is placed in the same position as if he had never been sentenced. But your dissent comes to the opposite conclusion on whether a sentence has been imposed. Note, that I agree with you that the laws need to be read and interpreted literally. So my question is this, how could we come to different conclusions?

Judge Amy Coney Barrett: ([16:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=988.32))  
Well, that language that it did not apply to defendants on whom sentences had already been imposed, my dissenting colleagues and I said, well, the language is sentences. It doesn’t say invalid sentences. And one could certainly say, if asked if someone had been sentenced, yes, he was sentenced, but that sentence was later vacated. And you’re right that the majority relied heavily on this clean slate principle. But in my review of the law, this clean slate principle wasn’t really present because the sentencing reform act for example, instructs district courts applying the guidelines at sentencing to ply those that were in effect on the date of the original sentencing. So I thought that the clean slate principle, they were pushing a little too hard on it. And there’s certainly unfairness, the First Step Act, it’s policy is clearly to bring justice to sentencing. But whenever you draw a line at who gets the benefit of a law, and this is especially acutely true in the sentencing area, it’s very difficult.

Judge Amy Coney Barrett: ([17:40](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1060.16))  
And some people ran on either side of the line will not get the benefit of the law wherever you draw it. So, for example, in this case, Mr. Uarte had a co-defendant named Sparkman, his case came up right behind … together. They had been tried together and initially sentenced together, but Uarte’s appeal took longer to resolve, or his re-sentencing took longer because of a lot of delays. So there was unfairness there too in the majority’s approach because Uarte, despite the fact that he was more culpable than Sparkman, wound up with a sentence that was like 15 years less.

Senator Chuck Grassley: ([18:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1099.62))  
That’s the end of my questioning on that, but let me make a comment before I go to my next question, my position has always been that legislative history can be instructive with respect to the intent of the statute so judges should not completely disregard it. Certainly I acknowledge that the legislative branch can be more careful about drafting laws. But I also think that judges should pay attention to congressional intent as set forth in history, when there might be a dispute about how to interpret the statute. Justice Ginsburg at her hearing quote, and you’ve discussed this a little bit already, but I think it deserves emphasis because you’re going to go through a lot of this business of maybe not being … and I know legitimately not being able to comment on a prospective case. So she said, “A judge sworn to decide impartiality can offer no forecasts, no hints for what would show not only disregard for the specifics of this particular case, it would display disdain for the entire judicial process.”

Senator Chuck Grassley: ([19:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1169.93))  
Obviously, we all know that that’s the Ginsburg standard. The underlying reason for this rule is that making promises or giving hints on how a judge would rule in a case undermines the very independence of our system. But you’re going to be asked about your personal views as you just have been on various topics, and how you might correctly decide. Of course, the judicial nominee should never promise their future votes on the bench in exchange for the president’s nomination or a senator’s support, you’d be showing the opposite of independence. So my question, so I ask you, do you agree with the Ginsburg standard that it goes to the question of judicial branches independence for legislative history, and all you got to do is say yes, because I’ve heard you talk about it.

Judge Amy Coney Barrett: ([20:27](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1227.27))  
Yes, I agree the Ginsburg rule reinforces judicial independence.

Senator Chuck Grassley: ([20:33](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1233.15))  
Yeah. Now here’s something that a lot of people’s suspicion. So I want to ask you, have you made any promises or guarantees to anyone about how you might rule on a case or issue that might come before you if you’re confirmed to the Supreme Court?

Judge Amy Coney Barrett: ([20:51](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1251.57))  
I want to be very, very clear about this Senator Grassley. The answer is no. And I submitted a questionnaire to this committee in which I said, no, no one ever talked about any case with me, no one on the executive branch side of it. One reason you asked that question, I think as a committee, is that you want to know that no nominee has made any pre-commitments. And so just as I didn’t make any pre-commitments and was not asked to make any commitments on the executive branch side, I can’t make any pre-commitments to this body either. It would be inconsistent with judicial independence.

Senator Chuck Grassley: ([21:25](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1285.66))  
No, I know the answer to my last question and then Mr. Chairman, I’m going to reserve the rest of my time. The Democrats claim that you’re being put on the Supreme Court so you can vote to repeal the Affordable Care Act. Is that your agenda, if confirmed, is your goal repealing the Affordable Care Act? Have you committed to the President or anyone else that you will vote to repeal the Affordable Care Act if confirmed to the court?

Judge Amy Coney Barrett: ([21:50](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1310.91))  
Absolutely not. I was never asked and if I had’ve been, that would have been a short conversation.

Senator Chuck Grassley: ([21:55](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1315.56))  
I think that your record shows that you’ll be a faithful judge that takes each case seriously and approach each case in a non-biased way rather than with the policy agenda in mind. Is it a fair … we can reserve our time?

Senator Lindsey Graham: ([22:10](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1330.02))  
Absolutely.

Senator Chuck Grassley: ([22:10](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1330.62))  
Okay.

Senator Lindsey Graham: ([22:11](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1331.75))  
Senator Leahy.

Senator Diane Feinstein: ([22:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1332.63))  
Mr. Chairman, letters for the record [inaudible 00:22:14].

Senator Lindsey Graham: ([22:13](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1333.11))  
I’ll introduce … the letters by Senator Feinstein will be introduced into the record without objection. Senator Leahy, are you with us?

Senator Patrick Leahy: ([22:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1344.19))  
I think I am. Do you hear me there?

Senator Lindsey Graham: ([22:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1346.51))  
Yes, sir, see if we can get you up on the screen here. There you go. Floor is yours.

Senator Patrick Leahy: ([22:34](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1354))  
Thank you, thank you very much. And Judge, I was watching as you introduced your family, thank you for doing that. It’s obvious that family is very important to you as it should be. My wife and I have been married for 58 years and our children, and our grandchildren are the most important things in our life. And I was pleased to see you introduce the family. Now as a senator, of course, another important part of my life is referring to and representing the people of Vermont. And let me talk to you about some of the things I’ve been hearing from Vermonters. And you have to understand in Vermont, Vermonters just walk up to the grocery store or coming out of church or whatever, and perfectly happy to express their views. And they’re concerned about what the Republican’s Affordable Care Act lawsuit on November 10th would mean for them. Now, do you know how many Americans have attained insurance through the Affordable Care Act?

Judge Amy Coney Barrett: ([23:45](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1425.07))  
I do not.

Senator Patrick Leahy: ([23:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1427.11))  
It’s more than 20 million. And do you know how many children under the age of 26 stay on their parents’ insurance because of the Affordable Care Act?

Judge Amy Coney Barrett: ([23:59](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1439.22))  
I do not.

Senator Patrick Leahy: ([24:00](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1440.96))  
It’s two point three million. And do you know how many Americans are covered under the Affordable Care Act’s Medicaid expansion?

Judge Amy Coney Barrett: ([24:10](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1450.59))  
I do not.

Senator Patrick Leahy: ([24:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1452.54))  
It’s a little more than 15 million. And I look at that because I look at the people who called me from Vermont. I think of Alex Johnson, she’s a single mother, she’s a childhood cancer survivor. She works as a nanny in South Burlington, Vermont. She relies on Medicaid for her doctor’s visits or blood drawings, or other testing. All that done to make sure her leukemia stays in remission. She tells me she stays awake at night worrying about losing Medicaid. Now, if the Republicans are successful in what they’re trying to do on November 10th, then Alex and actually 60,600 other Vermonters enrolled in Medicaid expansion are going to be left behind. [inaudible 00:25:12] contract COVID-19, that’s seen as a pre-existing condition. Do you know approximately how many million Americans have tested positive for the coronavirus and survive?

Judge Amy Coney Barrett: ([25:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1528.2))  
I do not.

Senator Patrick Leahy: ([25:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1529.1))  
It’s more than 7 million, 700,000, those are people now considered to have a pre-existing condition. And one of the most common pre-existing conditions is diabetes. The CDC estimates that 34 million Americans, that’s about one in 10 Americans have diabetes. This shows that the ACA’s Medicaid expansion is the single most important factor for expanding access to affordable insulin. Leslie, a Vermonter diagnosed with late onset type 1 diabetes at age of 25. For years, she’s dependent on Medicaid to keep her alive and out of bankruptcy. Now, President Trump recently claimed that he’s made insulin as cheap as water. I wish he had told the truth of that, we all know it’s not. Leslie now has insurance to pay for insulin. And without this insurance, do you know how much … because unlike what the President says, insulin is not as cheap as water. Do you have an idea how much Leslie’s out-of-pocket expenses for insulin would increase?

Judge Amy Coney Barrett: ([26:58](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1618.6))  
No, I do not.

Senator Patrick Leahy: ([27:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1622.48))  
And I wouldn’t expect you to, there’s no reason why you should. But Leslie’s costs would more than triple, would go up by $11,215 a year. That’s in a state where the per capita income is $33,000. So I’m not suggesting that you’re callous or indifferent to the consequences if the Affordable Care Act is overturned, you know that these are real cases and I think you’re a sympathetic person. But I do believe that the President selected you because he wanted somebody with your philosophy and he had a reason for it. Some are going to pretend that’s a mystery and that’s what some of my colleagues have [inaudible 00:27:53] what a Justice Barrett would do when the Supreme Court takes up the leaves attack in the ACA. President Trump has made crystal clear, he’s promised his nominees would overturn the ACA. It’s even in the official Republican Party platform. And when he said, will the case be argued next month, he said, “We want to terminate healthcare under Obamacare, ACA.” And within hours of nominating you, he again repeated that the ACA would be overturned. I know I mentioned my friend the chairman, Senator Graham knows the President as well as anyone here. He goes golfing with him and he spends a lot of time with him. And I think Chairman Graham knows that the President would not repeatedly promise the American people, that his judges will overturn the ACA if he didn’t mean it. I think Senator Graham would have to agree that the President’s confident Judge Barrett would side with him on November 10. That’s not necessarily a question for either one of you but of course the chairman has an opportunity to respond on his time if he wants. But I think we know the President’s confidence. There’s not been an issue in the last decade that’s animated Republicans in Congress more than the zeal to overturn the Affordable Care Act. In fact, I counted it the other day, I was surprised at the answers.

Senator Patrick Leahy: ([29:44](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1784.82))  
You know, Judge Barrett that Republicans in Congress have voted to repeal or gut the ACA more than 70 times? Seven, oh times in the last 10 years. And when they failed, they turned to the court. Do you know how many Republicans on this committee have joined amicus briefs urging courts to overturn the ACA in NFIB v. Sebelius and King v. Burwell?

Judge Amy Coney Barrett: ([30:15](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1815.77))  
How many Republicans had voted, was that the question?

Senator Patrick Leahy: ([30:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1819.35))  
Do you know how many Republicans in this committee have joined an amicus briefs urging the courts overturn the ACA?

Judge Amy Coney Barrett: ([30:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1829.81))  
I don’t, I’m having a little bit of trouble hearing Senator Leahy. Is there a way for the volume to be turned up?

Senator Lindsey Graham: ([30:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1836.06))  
Yes, ma’am.

Senator Patrick Leahy: ([30:41](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1841.59))  
I am sorry for that.

Senator Lindsey Graham: ([30:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1843.67))  
It’s on our end Senator Leahy, that’s okay. You can repeat the question.

Senator Patrick Leahy: ([30:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1847.83))  
How’s it coming through now?

Senator Lindsey Graham: ([30:53](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1853.42))  
Very good.

Judge Amy Coney Barrett: ([30:54](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1854.09))  
Very well, thank you.

Senator Patrick Leahy: ([30:57](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1857.07))  
As you know, I’ve stayed away simply because I don’t think it is safe for you or anybody else to be there. But my question is, do you know how many times Republicans on the committee you’re sitting before have joined the amicus briefs urging courts overturn the Affordable Care Act?

Judge Amy Coney Barrett: ([31:20](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1880.13))  
I do not know.

Senator Patrick Leahy: ([31:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1883.06))  
It’s at least nine by my account. In fact, they’ve already weighed in on the November 10 case. Two weeks ago, the Senate voted on whether to side with President Trump in Texas v. California. And 11 of the 12 senators on this committee sided with the Trump administration and asked to kill the ACA. Now I understand that you will not share your views on Texas v. California. I know you look at judicial candidate [inaudible 00:32:01] and you’re concerned that commenting may give future [inaudible 00:32:06] appeared before you an indication of which way you’d rule. Is that correct?

Judge Amy Coney Barrett: ([32:14](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1934.49))  
Yes, that is correct.

Senator Patrick Leahy: ([32:17](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=1937.91))  
Okay. My concern is that you’ve already given us every indication. Every time you weighed in, it hasn’t even been close. You repeatedly disagreed with Chief Justice Roberts. From what you said, you clearly believe that the statute is unconstitutional. The President has made very clear he expects that you side with him. And let me tell you another area where he expects you to side with him. He expects you to side with him in an election dispute. He says he needs a ninth justice because he’s counting on the court to look at the ballots. And he says, the election will be rigged. The recusal statute, 28 USC 455 requires recusal where partiality might reasonably be questioned. Now, when the President declares he needs his nominate to secure his reelection, and then the nominee is rammed through the Senate in record time during the middle of an election. Some are going to question that nominee’s impartiality. To protect confidence in both you and the court, would you commit to recuse yourself from any dispute that rises out of the 2020 presidential election?

Senator Patrick Leahy: ([34:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2042.401))  
… the 2020 presidential election.

Judge Amy Coney Barrett: ([34:04](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2044.38))  
Senator Leahy, I want to begin by making two very important points and they have to do with the ACA and with any election dispute that may or may not arise. I have had no conversation with the President or any of his staff on how I might rule in that case. It would be a gross violation of judicial independence for me to make any such commitment or for me to be asked about that case and how I would rule. I also think it would be a complete violation of the independence of the judiciary for anyone to put a Justice on the court as a means of obtaining a particular result, and that’s why, as I was mentioning, I think to Senator Grassley, that the questionnaire that I fill out for this committee makes clear that I have made no pre-commitments to anyone about how I would decide a case. That’s out of respect for Article 3 and its designation of the judiciary as a co-equal and independent branch of government.

Judge Amy Coney Barrett: ([35:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2102.49))  
On the recusal question-

Senator Patrick Leahy: ([35:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2103.64))  
And I might say that you gave a similar answer when I talked with you and Mr. [inaudible 00:01:14]. I had a question of course, because one of the members of the Judiciary Committee said he would not support you unless he had a commitment that you would vote that way.

Judge Amy Coney Barrett: ([35:27](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2127.64))  
Vote on the election?

Senator Patrick Leahy: ([35:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2129.42))  
On another case, Roe vs. Wade, and I understand what you’re saying is notwithstanding what a member of this committee said, you have not made a commitment to anybody. Is that correct?

Judge Amy Coney Barrett: ([35:41](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2141.58))  
Senator Leahy, let me be clear. I have made no commitment to anyone, not in this Senate, not over at the White House, about how I would decide any case.

Senator Patrick Leahy: ([35:50](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2150.48))  
And the reason I ask is we also have the question of appearance. Now, Judge Joan Larsen of the Sixth Circuit sat next to you during your 2017 hearing. She was confronted with this issue as a judge on the Michigan Supreme Court in 2016. Then President-elect Trump challenged a ballot recount. Judge Larson was on his short list for the Supreme Court at the time. She found that being on the short list was a conflict and it required her recusal. You were also on the short list, then you were actually chosen. Now he’s not the President-elect, he’s the President. And then the President makes a similar thing as he did that Judge Larson looked at. He’s counting on you to deliver him the election. Judge Larson said that was a conflict for her and would have to recuse. You do not find his comments a conflict for you. Is that correct?

Judge Amy Coney Barrett: ([37:06](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2226.86))  
Senator Leahy, I’m not familiar with Judge Larson’s decision, but she clearly made it once it was presented to her in the context of an actual case where she had to weigh her obligations under 28 U.S.C. 455. If presented to me, I would, like Judge Larson, apply that statute, and I recently read a description by Justice Ginsburg of the process that Supreme Court justices go through in deciding whether to recuse. And it involves not only reading the statute, looking at the precedent, consulting counsel if necessary, but the crucial last step is that while it is always the decision of an individual justice, it always happens after consultation with the full court. So I can’t offer an opinion on recusal without short-circuiting that entire process.

Senator Patrick Leahy: ([38:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2283.66))  
Well, I think what I worry about, and I said over and over again, that if the courts are politicized, from the Supreme Court down through other courts, and I’ve [inaudible 00:38:13] in cases in federal courts, I’ve always assumed the judges are totally impartial no matter what president had nominated. But this president has not been subtle in the expected nominee to side with him in election dispute. I’m thinking of the credibility of our federal courts. And I had hoped you would at least consider that. The President has said he needs a ninth Justice because he’s counting on the court to look at the ballots in case he loses, because if he lost, and that the Democrats had rigged the election. They recusal statue, as you know as well as anyone in 28 U.S.C. 455 requires a Justice recused herself in any proceeding in which impartiality might reasonably be questioned.

Senator Patrick Leahy: ([39:14](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2354.61))  
Now, whether you like it or not, and I suspect you probably do not, the President has placed both you and the Supreme Court in the worst of positions. And so let me ask you a different type of question. I assume you agree with me that it’s critical for Americans to have confidence in the Supreme Court. Is that true?

Judge Amy Coney Barrett: ([39:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2383.15))  
That is true. And I agree with your earlier statement that the courts should not be politicized.

Senator Patrick Leahy: ([39:49](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2389.44))  
Thank you. And I voted for an awful lot of Republican and Democratic nominated Justices. I did, of course, for Chief Justice Roberts because I wanted to keep Supreme Court and other courts out of politics. But when the President repeatedly declares is he needs his nominee as well a way of securing his re-election, and that nominee is then ran through the Senate in the middle of that election, well, you can see where the nominees impartiality might be questioned. So my request is in protecting confidence in both you and the Court, are you able to commit to recuse yourself from disputes arise out of the 2020 presidential election?

Judge Amy Coney Barrett: ([40:54](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2454))  
Senator Leahy, I commit to you to fully and faithfully applying the law of recusal and part of that 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 legal conclusion right now about the outcome of the decision I would reach.

Senator Patrick Leahy: ([41:17](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2477.95))  
Which is sort of [inaudible 00:41:20] polite response on recusal. So let me ask you another question. You laid out the case for blocking President Obama’s Supreme Court nominee, Judge Barrett Garland for 10 months during an election year. You have [inaudible 00:41:33] prior to Justice Scalia was the staunchest conservative on the court, and Justice Scalia and I were personal friends. I had voted for him. I agree with you on that. You claimed that the moderate eminently qualified Judge Garland would dramatically flip the balance of the court. You said it was not a lateral move. That’s your quote. It was not a lateral move. So your nominated to replace Justice Ginsburg, perhaps the stanchest champion for civil rights of the Court. You claimed that [inaudible 00:42:06] Justice Scalia is your own. Of course, he was the opposite side of Justice Ginsburg in countless civil rights cases. Would you say that replacing Justice Ginsburg by yourself is not a lateral move like you had urged when you supported the blocking of President Obama’s nominee, Judge Garland?

Judge Amy Coney Barrett: ([42:35](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2555.48))  
Senator Leahy, I want to be very clear. I think that’s not quite what I said in the interview. It was an interview that I gave shortly after Justice Scalia’s death. And at that time, both sides of the aisle were arguing that precedent supported their decision. And I said while I had not done the research myself, my understanding of the statistics was that neither side could claim precedent, that this was a decision that was the political branches to make. And I didn’t say which way they should go. I simply said it was the Senate’s call. I didn’t advocate or publicly support the blockade of Judge Garland’s nomination as you’re suggesting.

Senator Patrick Leahy: ([43:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2599.34))  
That’s not what I’m suggesting. You said it was a lateral. It would not be a lateral move.

Judge Amy Coney Barrett: ([43:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2608.76))  
What I was suggesting is that it was unsurprising that there was resistance as a political matter to that nomination because it would change the balance of the court. It’s just a-

Senator Patrick Leahy: ([43:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2623.38))  
Well, I was surprised, I was surprised there was resistance and surprised there’s so many, at that time, Republican members of the Judiciary Committee who had stated publicly before the vacancy that they thought Garland would be a good person to have on the Court, and somebody who could appeal to both conservatives, liberals and moderates. But-

Judge Amy Coney Barrett: ([44:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2648.25))  
I have full respect for Judge Garland.

Senator Patrick Leahy: ([44:13](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2653.32))  
I beg your pardon?

Judge Amy Coney Barrett: ([44:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2659.06))  
I’m sorry. I missed the first part. Are they right to say… Could you repeat the question?

Senator Patrick Leahy: ([44:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2666.93))  
No, it was not a question. I was just saying that we had many members of our committee, number of Republicans, who prior to the vacancy had been saying Garland would be a good person for President Obama to nominate because he could appeal to moderates, conservatives and liberals. And then of course their response was, well, we can’t have a nominee confirmed by one party that’s in control of the Senate and nominated by a President of another party. I pointed out I was here when Democrats controlled the Senate and President Reagan nominated Anthony Kennedy, and in an election year, Democrats confirmed him.

Senator Patrick Leahy: ([45:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2724.35))  
But let me go to another area. Three judge panel of the Seventh Circuit struck down three provisions of an Indiana law restricting reproductive rights. State of Indiana requests an en banc review of just one of the provisions, the fetal tissue disposition provision. Of course then whether review the case, leaving intact the panel decision striking down the law, you joined Judge Eastorbrook in his dissent. But then the dissent went out of its way to address a separate provision, not before the Court, the so-called being your dissent called a eugenic statute.

Senator Patrick Leahy: ([46:18](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2778.97))  
Judge Barrett, the issue before your Court was a narrow one. Why didn’t you limit your descent to the one issue the state of Indiana was asking you to review?

Judge Amy Coney Barrett: ([46:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2792.1))  
So we dissenters from that denial of rehearing en banc. First of all, dissented as you say on the fetal remains disposition portion, which the Supreme Court wound up summarily reversing the panel. On the eugenics portion of the bill, it’s true that the state of Indiana did not seek en banc rehearing on that, but we had many other states enter the case as a Miki, urging us to take that claim up. And what Judge Easterbrook’s dissent did was explain why he actually thought it was an open question, but one best left to the Supreme Court. And we didn’t reach any conclusion with respect to it

Senator Patrick Leahy: ([47:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2828.91))  
Well, and whatever position you took would not have changed the final decision of the Court. Now in 2006, you signed an open letter and it is published in the South Bend Tribune. On one side, the advertisement describes the legacy of Roe vs. Wade is apparent. On the other, what you signed, is stated that you oppose abortion [inaudible 00:13:46], defend the right to life from fertilization to natural death, and I had circuit voted for some judges to take that position, but what not mentioned in the letter, the organization that led the effort believes that in vitro fertilization, IVF, is equivalent to manslaughter and should be prosecuted. Do you agree with them that IVF is tantamount to manslaughter?

Judge Amy Coney Barrett: ([48:20](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2900.73))  
Senator, the statement that I signed, as you said, simply said, we, I signed it on the way out of church, it was consistent with the views of my church, and it simply said we support the right to life from conception to natural death. It took no position on IVF.

Senator Patrick Leahy: ([48:40](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2920.16))  
No, I understand that. And I said, I voted for judges who take the same position you do. But I’m asking, do you agree with the same Joseph County Right to Life that sponsored ad that IVF is handed out to manslaughter?

Judge Amy Coney Barrett: ([49:04](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2944.11))  
Well, Senator, I signed the statement that you and I have just discussed and you’re right, that the St. Joseph County Right to Life ran an ad on the next page. But I didn’t, I don’t even think the IVF view that you’re expressing was on that page. But regardless, I’ve never expressed a view on it. And for the reasons that I’ve already stated, I can’t take policy positions or express my personal views before the committee, because my personal views don’t have anything to do with how I would decide cases. And I don’t want anybody to be unclear about that.

Senator Patrick Leahy: ([49:35](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=2975.81))  
Well, I mean to talk about some of the positions you have taken before you became a judge, who are paid by the Alliance Defending Freedom, ADF, for five electors. You gave them originalism at the Blackstone Legal Fellowship. Now I recall being asked about some of their controversies. Were you aware of ADF’s decades on efforts to re-criminalize homosexuality?

Judge Amy Coney Barrett: ([50:16](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3016.51))  
I am not aware of those efforts. No.

Senator Patrick Leahy: ([50:21](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3021.46))  
Okay. One of the reading materials they had for the program that you lectured to several times, spoke at that, in fact that they had filed a brief in Lawrence versus Texas in support of state laws punishing a private homosexual activity. They celebrated when India restored a law punishing sodomy to 10 years in prison. Now whether you believe that being gay is right or wrong is irrelevant to me. But my concern is you work with an organization working to criminalize people for loving a person that they are in love with. So that’s what worried me.

Judge Amy Coney Barrett: ([51:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3089.23))  
I wasn’t sure if you wanted me to answer that, you know, my-

Senator Patrick Leahy: ([51:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3092.89))  
Yeah, go ahead.

Judge Amy Coney Barrett: ([51:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3096.01))  
My experience with the Blackstone program at which I spoke was a wonderful one. It gathers best and brightest Christian law students from around the country. And as you said, I gave a one hour lecture on originalism. I didn’t read all of the material that the students were given to read. That had nothing to do with my lecture. I enjoyed teaching the students about what my specialty was, which is constitutional law, and nothing about any of my interactions with anyone involved in the Blackstone program were ever indicative of any kind of discrimination on the basis of anything.

Senator Patrick Leahy: ([52:11](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3131.67))  
Well, as you know, same sex marriage, for example, and Senator Feinstein mentioned this at the beginning, is legal, certainly legal in my state. Has been for some time. Do you feel that it should be a crime.

Judge Amy Coney Barrett: ([52:30](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3150.16))  
Same sex marriage?

Senator Patrick Leahy: ([52:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3152.21))  
Yes.

Judge Amy Coney Barrett: ([52:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3152.84))  
Obergefell clearly says that there is a constitutional right to same-sex marriage.

Senator Patrick Leahy: ([52:40](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3160.18))  
And do you agree with that stare decisis?

Judge Amy Coney Barrett: ([52:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3163.48))  
Well, Senator, for the reasons that I’ve already said, I’m not going to, as Justice Kagan put it, give a thumbs up or thumbs down to any particular precedent. It’s precedent of the Supreme Court that gives same-sex couples the right to marry.

Senator Patrick Leahy: ([52:55](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3175.09))  
Well, you mentioned Justice Kagan, [inaudible 00:53:00] an opinion, and there’s not enough that five justices believe a precedent is wrong, reversing course to mandate special justification over or above the belief that the precedent was wrongly decided. Do you agree with that?

Judge Amy Coney Barrett: ([53:15](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3195.98))  
I do agree with that. The doctrine of stare decisis itself requires that.

Senator Patrick Leahy: ([53:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3204.55))  
Having relied on stare decisis in many of my arguments before Courts of Appeals, I thank you for your answer. Chief Justice Roberts-

Senator Lindsey Graham: ([53:35](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3215.84))  
Senator Leahy, I don’t mean to interrupt. I know you don’t have a clock in front of you, but we’re about a little over a minute over. So if you could-

Senator Patrick Leahy: ([53:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3223.52))  
I am sorry, Mr. Chairman. I do not ever go over.

Senator Lindsey Graham: ([53:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3227.31))  
No. I understand. I totally understand.

Senator Patrick Leahy: ([53:49](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3229.3))  
I appreciate it. And I will look forward to the next round of questioning.

Senator Lindsey Graham: ([53:54](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3234.75))  
Thank you. We’ll make sure that happens. Very briefly forego to Senator Cornyn. Senator Leahy mentioned the time with the President, and I think probably all of us on this side were consulted by the President regarding how to fill the opening. He gave me a small list of names, all women. You were on it. I was enthusiastic about everybody and very enthusiastic about your nomination by the President. Play a lot of golf with the President, I guess. I’ve enjoyed it. We talk about a lot on the golf course, some policy, killing Soleimani. We talked about that. That was an interesting discussion. I promise you. I’ve never talked about severability with the President. Senator Cornyn.

Senator John Cornyn: ([54:40](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3280.85))  
Speak for yourself. Good morning, your honor.

Judge Amy Coney Barrett: ([54:46](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3286))  
Good morning, Senator Cornyn.

Senator John Cornyn: ([54:48](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3288.75))  
You know, most of us have multiple notebooks and notes and books and things like that in front of us. Can you hold up what you’ve been referring to in answering our questions? Is there anything on it?

Judge Amy Coney Barrett: ([55:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3302.16))  
That letterhead that says United States Senate.

Senator John Cornyn: ([55:06](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3306.1))  
That’s impressive. Well, Judge, the best I can understand the objections to your nomination are not to your qualifications or your experience or training, but it’s that you have, or you will violate your oath of office.

Judge Amy Coney Barrett: ([55:31](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3331.35))  
Got a law, a government of laws, not of men.

Senator John Cornyn: ([55:37](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3337.86))  
Well, Judge Barrett, I’m almost through, but I can’t pass up the opportunity to ask you a question about the establishment clause I did with Justice Kavanaugh and Justice Gorsuch as well. It’s born out of my frustration. One of the couple of times I had a chance as Attorney General of Texas to argue before the Supreme Court, I argued in a case called Santa Fe Independent School District versus DOE. This was about a commonplace practice where before us football games in Texas, students would volunteer to offer invocation or an inspirational poem or saying, or something like that. The ACLU sued the school district and obviously it made its way all the way to the Supreme Court. And I’m not going to ask you your opinion on the outcome of the case, but what troubles me the most, what troubled me the most about that experience is when the Supreme Court struck down or held that practice unconstitutional and in violation of the establishment clause. Chief Justice Rehnquist said the constitution requires neutrality toward religion, but the Court’s approach speaks of hostility toward religion. Could you just talk a little bit about the establishment clause generally with not in regard to any particular set of facts, but sort of what the Courts over time have tried to do to enforce the mandate of the constitution?

Judge Amy Coney Barrett: ([57:18](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3438.69))  
Well, Senator Cornyn, when I interviewed for my job with Justice Scalia, he asked what area of the Court’s precedent that I thought needed to be abetter organized or that sort of thing. And off the cuff, I said, “Well, gosh, the first amendment.” And he said, “Well, what do you mean?” And I fell down a rabbit hole of trying to explain, without success, because it is a very complicated area of the law, how one might see one’s way through the thicket of balancing the establishment clause against the free exercise clause. It’s a notoriously difficult area of the law. And to the extent that there is tension in the courts cases-

Senator Dick Durbin: ([58:01](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3481.91))  
The Supreme Court nominee to do politically for him, that’s where it comes from. That’s where it originated. And you have said very clearly today, without equivocation, you are not going to be influenced by President Trump’s importuning or the importuning of this committee or anyone else, which is what we expect you to say. But this notion that this whole idea of you’re being used for political purposes is a Democratic creation. Read the tweets. And you have plenty to work with. Read the tweets.

Senator Dick Durbin: ([58:33](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3513.41))  
The second thing I would like to say is I’m not going to spend a lot of time defending the Affordable Care Act, although I think it’s the most important single vote I’ve cast as a member of Congress period. But I will say that when the Chairman opened up on it and said what he did, I was puzzled. Three states get 35% of the money. How can that possibly be true? Well, it turns out because those states decided to extend Medicaid coverage to the people who lived in the states and his did not. And as a consequence, fewer people in South Carolina have the protection of health insurance. And those that do are paying for their services and those that don’t are not, which imperils hospitals and others in the process.

Senator Dick Durbin: ([59:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3559.4))  
So I would say there is an explanation as to why some states are spending more and incidentally, there was a Republican governor of your state, Indiana, by the name of Mike Pence, who decided to break with other Republican governors and extend Medicaid coverage under the Affordable Care Act. I think it was the right thing to do for Indiana as it was for Illinois. But that’s part of the reasoning.

Senator Dick Durbin: ([59:40](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3580.9))  
Let me just say that the Affordable Care Act really is at the heart of this, as you can tell, on the Democratic side. We really believe the Supreme Court’s consideration of that case could literally change America for millions of people. I have with me today another group I’d like you to at least be aware of, because they’re pretty amazing people. But this is the Williams family. They live in Naperville, not too far from Chicago. Kathy and Les Williams have four sons from left to right. Matt, Joey, Tommy, and Mikey. Matt who’s 27 was diagnosed with Type One diabetes when he was 13. The other three Williams boys were all born with cystic fibrosis. Joey is 24. Mikey’s 21. Sadly, Mikey’s twin Tommy, after this picture was taken, passed away in January 2019 from complications. This is the last photo was ever taken of their full family.

Senator Dick Durbin: ([01:00:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3636.7))  
Here’s what they wrote me. “We cannot imagine having to go through losing another child. People with cystic fibrosis required daily medication, regular doctor visit, access to high quality specialized care. That means people with pre-existing conditions like cystic fibrosis cannot be discriminated against. The ACA’s protections ensure a ban on annual and lifetime caps and enforce the requirement that insurers cover essential health benefits, such as hospitalizations or mental health services. People with CF and other pre-existing conditions need adequate affordable health care to live longer, healthier lives.”

Senator Dick Durbin: ([01:01:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3672.76))  
That’s why we keep bringing this up, real people that we run into all the time. There’s a chart here I’d like to show it to you while we’re at it. On the Republican side, there’s some obvious controversy as to whether we’re right or wrong, but there are an awful lot of people in each of the states represented by our Republican senators who have their health care and literally in some cases, their lives hanging in the balance. South Carolina, 242,000 people would lose their insurance coverage if the affordable care act were eliminated. Two million living in that state have pre-existing conditions. You could imagine the list goes on. Thank you.

Senator Dick Durbin: ([01:01:51](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3711.6))  
Here’s what it comes down to. You’ve been unequivocal and being critical of the decisions both in NFIB Sebelius and the King Burwell. And we naturally draw the conclusion there’s going to be a third strike when it comes to Texas and California. You said it won’t affect pre-existing conditions. If the petitioners have their way, there will not be an Affordable Care Act to protect pre-existing conditions on the severability question. So give us an insight how you can be so unequivocal in opposing the majority decisions in NFIB Sibelius and in King and Burwell, but have an open mind when it comes to the future of the affordable care act.

Judge Amy Coney Barrett: ([01:02:37](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3757.09))  
Sure. Thank you for that question, Senator Durbin, because it gives me an opportunity to make my position clear. When I wrote, and add this was as a law professor about those decisions, I did critique the statutory interpretation of the majority opinions. And as I’ve mentioned before, my description of them was consistent with the way that Chief Justice Roberts described the statutory question. But I think that your concern is that because I critiqued the statutory reasoning, that I’m hostile to the ACA, and that because I’m hostile to the ACA, that I would decide a case a particular way. And I assure you that I am not. I’m not hostile to the ACA. I’m not hostile to any statute that you pass.

Judge Amy Coney Barrett: ([01:03:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3806.52))  
And the cases on which I commented, and we can talk at another time, I guess, about the context, the distinctions between academic writing and judicial decision-making, but those were on entirely different issues. So to assume that because I critiqued the interpretation of the mandate or the phrase established by a state means that on the entirely different legal question of severability, I would reach a particular result, just assumes that I’m hostile. And that’s not the case. I apply the law. I follow the law. You make the policy.

Senator John Cornyn: ([01:04:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3842))  
So et’s talk about that for a moment from a different issue perspective. Bear with me for a couple of questions. Have you seen the George Floyd video?

Judge Amy Coney Barrett: ([01:04:11](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3851.53))  
I have.

Senator John Cornyn: ([01:04:13](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3853.32))  
What impact did it have on you?

Judge Amy Coney Barrett: ([01:04:17](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3857.26))  
Senator, as you might imagine, given that I have two black children, that was very, very personal for my family. Jesse was with the boys on a camping trip out in South Dakota, so I was there and my 17 year old daughter, Vivian, who’s adopted from Haiti, all of this was erupting. It was very difficult for her. We wept together in my room and then it was also difficult for my daughter, Juliette, who’s 10. I had to try to explain some of this to them. I mean, my children to this point in their lives, have had the benefit of growing up in a cocoon where they have not yet experienced hatred or violence. And for Vivian to understand that there would be a risk to her brother or the son she might have one day of that kind of brutality has been an ongoing conversation. And it’s a difficult one for us, like it is for Americans all over the country.

Senator John Cornyn: ([01:05:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3919.34))  
And so I’d like to ask you, as an originalist who obviously has a passion for history, I can’t imagine that you could separate the two, to reflect on the history of this country. Where are we today when it comes to the issue of race? Some argue it’s fine. Everything’s fine and you don’t have to even teach children about the history of slavery or discrimination. Others say there’s implicit bias in so many aspects of American life that we have to be very candid about and address. Others, go further and say, no, it’s systemic racism that’s built into America and we have to be much more pointed in our addressing it. How do you feel?

Judge Amy Coney Barrett: ([01:06:04](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=3964.78))  
So I think it is an entirely uncontroversial and obvious statement given, as we just talked about the George Floyd video, that racism persists in our country. As to putting my finger on the nature of the problem, whether, as you say, it’s just outright or systemic racism, or how to tackle the issue of making it better, those things are policy questions. They’re hotly, contested policy questions that have been in the news and discussed all summer. So while as I did share my personal experience, I’m very happy to discuss that the reaction our family had to the George Floyd video, giving broader statements or making broader diagnoses about the problem of racism is kind of beyond what I’m capable of doing as a judge.

Senator John Cornyn: ([01:07:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4023.92))  
Well, I would doubt that. I just don’t believe you can be as passionate about originalism and the history behind language that we’ve had for decades, if not centuries, without having some thought about where we stand today, but I’m not going to press you on that. I’m going to take you to a case which I have read and re-read, Kanter v. Barr, and you know the case well because it’s all already been referred to. And it clearly is a case where you had your day in court. You wrote the sole dissent, the 64 page case, 37 pages were your dissent, so you gave to the court, I assume, a pretty full accounting of your thoughts on the subject. And here’s the way I understand the case. A fellow named Ricky Kanter from Mequon, Wisconsin, invented some pads to put in a shoe to be sold to particularly older Americans under Medicare.

Senator Dick Durbin: ([01:08:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4082.881))  
Sold to particularly older Americans under Medicare, to relieve foot pain. And he designed them and submitted them to Medicare and didn’t get the approval that he was looking for, but instead sold them and represented to many customers that they had been approved by Medicare. And so he was charged with fraud.

Senator Dick Durbin: ([01:08:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4103.54))  
Now, this wasn’t a matter of a casual misapplication of the law. When it was all said and done, Ricky Kanter of Mequon, Wisconsin, ended up spending over a year, a year and a day, in federal prison, paying somewhere near $300,000 in penalties and fines and $27 million in a civil settlement on this issue. So this was not a casual wrongdoing. This man was a swindler, and he was taking the federal government for a ride, as well as other customers, and misleading senior citizens about his product and paid a heavy price for it.

Senator Dick Durbin: ([01:09:05](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4145.42))  
Then he decided, having left prison, that it’s just fundamentally unfair that the law says that if you’ve been convicted of a felony, you can’t own a firearm. Now I don’t know what his appetite is when it comes to firearms, whether it’s a revolver or a AK-47 with a banana clip, I have no idea. But he went to court and said, “This is unfair. It was just mail fraud, and you’re taking away my Second Amendment rights.”

Senator Dick Durbin: ([01:09:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4172.68))  
So two out of three of your colleagues then, basically said, “Sorry, Ricky, you have forfeited your right to own a firearm because of your conviction of a felony.” You took a different approach, exactly the opposite approach, and went deep into history. I think the earliest citation I see here was 1662, to figure out just what was going on here and whether or not he had to have committed a violent felony to have forfeited this right to own a firearm. Have I stated the facts close to what you remember?

Judge Amy Coney Barrett: ([01:10:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4208.63))  
I don’t remember the amount of the loss, some of those details, but yes, Ricky Kanter was convicted of selling fraudulent shoe inserts, and it was a felony.

Senator Dick Durbin: ([01:10:18](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4218.24))  
$27 million settlement, along the way. So I’d like to take you into your thinking on this. When the Heller decision was handed down, Justice Scalia expressly said, ” I’m not taking away the authority of government to impose limitations based on felonies,” not violent felonies, felonies, “and mental illness.” He said as much in the Heller decision. And yet this man who was your inspiration, as you’ve told us all, you decided he was wrong, and that it had to be a violent felony. Can you explain why?

Judge Amy Coney Barrett: ([01:10:54](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4254.9))  
I can. So we’ve talked about precedent. And in my court, the seventh circuit, there is precedent saying that that phrase doesn’t control, as my colleague, Judge Frank Easterbrook has said a number of times, that judicial opinions aren’t statutes and shouldn’t be read as if they were. So Heller, obviously, wasn’t about the scope of the right, its application to felons or those who are mentally ill, et cetera. And so that passage was dicta. It didn’t fully dive down into it.

Judge Amy Coney Barrett: ([01:11:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4288.58))  
But what I did was apply Heller’s methodology, both Justice Scalia’s majority opinion and Justice Stevens’ dissent, used an originalist methodology to answer that question, and I concluded that based on that history, one couldn’t take the right away simply because one was a felon, that there had to be a showing of dangerousness. And I didn’t rule out the possibility that the government might be able to make that showing about Ricky Kanter. But I think we could all agree that we ought to be careful of saying that because someone’s a felon, they lose any of their individual rights.

Senator Dick Durbin: ([01:12:04](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4324.55))  
I want to get to that point, but I’d like to stick with this for just a moment more. I’m honored to represent the city of Chicago and the state of Illinois. It’s a great city, but it has great problems too. And one of them is gun violence. On the average, we know in America, 100 Americans are killed everyday by gunfire, 40,000 per year. In the city of Chicago, more than 3200 people have been shot just this year. 3200. According to the city’s gun trace report in 2017, the majority of illegally used or possessed firearms recovered in Chicago are traced back to states with less regulation over firearms, such as Indiana and Mississippi.

Senator Dick Durbin: ([01:12:49](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4369.57))  
The 2017 report found that Indiana alone was the source of 21% of all Chicago’s recovered crime guns. We know how it works. Where you live, you know how it works. There’s a traffic between Chicago, Northern Indiana, and Michigan going on constantly. Gun shows are held in Gary, Indiana, and other places. And when they’re selling these firearms without background checks, unfortunately, these gang bangers and thugs fill up the trunks of their cars with firearms and head into the city of Chicago and kill everyone from infants to older people. It’s a horrific situation. Law enforcement is fighting it, trying to get Indiana to at least do background checks at these gun shows, with limited success. And we are trying to apply the standards that you disqualify yourself from buying a firearm to felonies and mental illness. And you want to take away part of that protection with your decision in this case. Because if you eliminate felonies and just confine it to violent felonies, you’re opening up more opportunities for people to buy firearms. Are you not?

Judge Amy Coney Barrett: ([01:13:57](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4437.65))  
Well, Senator, you referred to gang members and thugs buying guns in Indiana and taking them across the border. And certainly, if they had felony convictions for doing the kinds of things that members of gangs and thugs do, nothing in Kanter says that the government can’t deprive them of firearms. And nothing says, in my opinion, that the government can’t deprive Ricky Kanter of having firearms. They simply had to make a showing of dangerousness before they did so. And nothing in the opinion opines at all on the legality of background checks and gun licensing, those are all separate issues.

Senator Dick Durbin: ([01:14:35](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4475.91))  
But the majority zeroes in and says, what you’ve just said is totally impractical, that we are going to go case by case and decide, well, what kind of felonies and what kind of person? And then they go on to produce evidence. I could read the numbers here, but you know them well because you wrote the dissent, where the likelihood of committing a violent felony after being convicted of a felony is pretty dramatic. And they’re saying to us, don’t force us to make a case by case. We want to make it by category. It’s the only practical way to deal with the thousands if not millions of people who are buying firearms. You are aware of the fact that even those who are so-called not violent felons, “only felons” like Ricky Kanter, have a propensity to commit violent felonies in the future, are you not?

Judge Amy Coney Barrett: ([01:15:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4519.81))  
There was no evidence of that in the case. And we, on courts, for example, the Armed Career Criminal Act that’s a federal statute, have to make judgements categorically all the time about what count as crimes of violence. So I don’t think that’s beyond the ken of courts in any area, to identify which felonies are violent and which felonies are not. But [crosstalk 01:15:43]

Senator Dick Durbin: ([01:15:44](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4544.19))  
Excuse me, but I want to address that issue. Let’s go to page 21 of the opinion, and what the court said, the majority of the court. They quoted Yancey. Most felons are nonviolent, but someone with felony conviction on his record is more likely than a non felon to engage in illegal and violent gun use. For example, one study, this goes on to say, 210,886 non-violent offenders found that one out of five were rearrested for a violent crime within three years. So the evidence is there. It is there for the court to consider, and you ignored it.

Judge Amy Coney Barrett: ([01:16:18](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4578.76))  
Senator, I didn’t ignore it. As I recall, that evidence and the studies were unclear. And let’s see. I can’t remember, as I’m sitting here, the details of all the specific statistics, but I did consider it. And I recall saying something in the opinion about the reliability of those studies, because they didn’t say whether someone had been convicted of a non-violent crime, but had later been convicted of a violent crime as well. Felonies cover a broad range of things, including selling pigs without a license in some states, redeeming too many bottle caps in Michigan. So felonies now cover broad swath of conduct, not all of which seems indicative of whether someone’s likely to abuse a firearm.

Senator Dick Durbin: ([01:17:05](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4625.76))  
Let me take you… I’m not going to go so far back in history, but I’m going to take you back in history for a moment, and note that when that Second Amendment was written, and you did the analysis of it, we were talking about the likelihood that a person could purchase a muzzle loading musket. We are now talking about virtual military weapons that can kill hundreds of innocent people. It is a much different circumstance. Maybe an originalist pins all their thinking to that musket, but I’ve got to bring it to the 21st century. And the 21st century has people being killed in the streets of Chicago because of the proliferation of deadly firearms.

Senator Dick Durbin: ([01:17:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4667.5))  
But let me bring it closer to home and tie up the George Floyd question with where I’m headed. There’s also a question as whether the commission of a felony disqualifies you from voting in America. And the history on that is pretty clear. In an article, the American Journal of Sociology found that many felony voting bans were passed in the late 1860s and 1870s, when implementation the 15th Amendment and its extension of voting rights to African-Americans were ardently contested. It still goes on today with voter suppression. But we know that in reconstruction, in the Jim Crow era, in black code era, that was used, the felony conviction was used to disqualify African-Americans from voting in the South and in many other places. The sentencing project today has found that more than six million Americans can’t vote because of a felony conviction, and one out of every 13 black Americans have lost their voting rights.

Senator Dick Durbin: ([01:18:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4727.38))  
The reason I raised that is that in your dissent, you said disqualifying a person from voting because of a simple… Simple, because of a felony is okay, but when it comes to the possession of firearms, wait a minute, we’re talking about the individual right of a Second Amendment. What we’re talking about in voting is a civic right, a community right, however you define it. I don’t get it. So you’re saying that a felony should not disqualify Ricky from buying an AK-47, but using a felony conviction someone’s past to deny them the right to vote is all right?

Judge Amy Coney Barrett: ([01:19:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4763.94))  
Senator, what I said was that the Constitution contemplates that states have the freedom to deprive felons of the right to vote. It’s expressed in the Constitutional text. But I expressed no view on whether that was a good idea, whether states should do that. And I didn’t explore in that opinion, because it was completely irrelevant to it, what limits, if any, there might be on a state’s ability to curtail felon voting rights.

Senator Dick Durbin: ([01:19:51](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4791.35))  
But did you not distinguish the Second Amendment right from the right to vote, calling one an individual right, under the Constitution, and the other a civic right?

Judge Amy Coney Barrett: ([01:20:01](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4801.7))  
That’s consistent with the language and the historical context, the way the briefs described it. And it was part of the dispute in Heller, of whether the Second Amendment was an individual right or a civic one that was possessed collectively for the sake of the common good. And everybody was treating voting as one of the civic rights.

Senator Dick Durbin: ([01:20:20](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4820.85))  
Well, I will just tell you that the conclusion of this is hard to swallow. The notion that Mr. Kanter, after all that he did, should not be even slowed down when he’s on his way to buy a firearm. My goodness, it’s just a felony. It’s not a violent felony that he’d committed. And then to turn around on the other hand and say, well, but when it comes to taking away a person’s right to vote, that’s the civic duty. It’s something that we could countenance. That really goes back to the original George Floyd question. That was thinking in the 19th century that resulted in voter suppression and taking away the right to vote from millions of African-Americans across this country, and it still continues to this day. I just don’t see it. I think the right to vote should be given at least as much respect as any Second Amendment right. Do you?

Judge Amy Coney Barrett: ([01:21:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4872.82))  
Senator, the Supreme Court has repeatedly said that voting is a fundamental right, and I fear that you might be taking my statement in Kanter out of context. What I said in that opinion was distinguishing between… It was a descriptive statement of the state of the court’s case law, comparing it to stripping felons of Second Amendment rights. I expressed no view about what the Constitutional limits of that might be or whether the law should change with respect to felling voting rights. And obviously, that’s a contested issue in some states that are considering it right now. And I have no view on that, and it wasn’t the subject of Kanter.

Senator Dick Durbin: ([01:21:51](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4911.65))  
It may not have been. It wasn’t the subject of the case, that’s for sure, but in your writings, you’re raised this. It was part of your dissent, discussing the right to vote and felony conviction eliminating it. I’m afraid it’s inescapable. You’ve got to be prepared to answer this kind of question. I read it and thought, I can’t imagine that she’s saying this, but I’m afraid I was left with a suggestion you might.

Senator Dick Durbin: ([01:22:15](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4935.36))  
Which brings me to the conclusion here. We hear over and over from the other side of the aisle, we don’t want any activist judges. We want judges who are going to go back to the original document, literally take it word for word, put it in historical context, and don’t get in the way of making laws. We make the laws. You’re a judge, you stay away from them. And yet when we look at this case, the notion of what disqualifies you from buying a firearm was being rewritten by the dissenting judge and saying, when we say felony, we just mean violent felony. Well, the word violent isn’t in there, but you found it or at least found reference to it.

Senator Dick Durbin: ([01:22:48](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=4968.58))  
It’s not the only time this has happened. In Citizens United and its progeny, Republican-appointed justices struck down bipartisan campaign finance reform to unleash a flood of dark money into our political system. Part of that flood is paying for the ad campaign, promoting your nomination for the Supreme Court. I know you’ve said you’ve gone radio silent in following the media. I don’t blame you. I do the same thing politically, but I can just tell you, I’ve seen them. They are beautiful, expensive ads, boosting your nomination for the Supreme Court, from organizations we’ve never heard of, spending millions of dollars to make sure you get on the Supreme Court. Citizens United opened the door for that. And in Shelby County, conservative justice has gutted the voting rights act to unleash a wave of voter suppression across the country.

Senator Dick Durbin: ([01:23:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5016.2))  
Going back to the George Floyd moment, unfortunately, a lot of is for racial purposes. And this is an example, two or three examples, that I’ve given here, of activist judges rewriting the law, abolishing the law. People have to get real.

Senator Dick Durbin: ([01:23:51](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5031))  
As I said to you on our phone conversation, I don’t think you put the facts here and the law here, and nine justices come to the same conclusion. Cases are five-four, six-three, seven- two, unanimous. People see things differently based on their backgrounds, their values, their experience. And I think it’s simplistic to think this is a robotic performance. Once we put a judge on the bench, they just go back, read the Constitution and rule. It’s not that simple. And I think you’ve acknowledged that by saying even originalists disagree with one another. Is that true?

Judge Amy Coney Barrett: ([01:24:21](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5061.04))  
Yes. Law is hard, and it’s complicated, and people who approach it from different jurisprudential perspectives will sometimes reach different results. I think that’s hard to deny because as you say, every vote from the Supreme Court isn’t unanimous, and sometimes it is, but cases don’t get to the Supreme Court unless the circuits disagree among themselves. So it’s hard. But to the extent, Senator Durbin, that you’re suggesting that I have some sort of agenda on felon voting rights or guns or campaign finance or anything else, I can assure you and the whole committee that I do not.

Senator Dick Durbin: ([01:24:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5096.04))  
I didn’t say that. I wouldn’t say that. But I will say that you come, if you’re successful in this pursuit, you come to the Supreme Court with life experiences. You come to the Supreme Court, having read a lot, I’m sure, and drawn some conclusions in your own mind about certain things and certain issues. Everyone on the court has that same background. They bring something to it that is just not generic. It’s individual. And that’s the point I’m making. There’s an individualism to this. The class of originalists on the Supreme Court are not all going to vote the same on every case. And I think merely saying originalism does not absolve you or us from observing the obvious. There are going to be differences. Would you like to say something? I don’t want to cut you off?

Judge Amy Coney Barrett: ([01:25:42](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5142.26))  
No, that’s okay.

Senator Dick Durbin: ([01:25:42](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5142.42))  
Okay. Thank you very much.

Judge Amy Coney Barrett: ([01:25:44](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5144.01))  
Thank you, Senator.

Mr. Chairman: ([01:25:45](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5145.26))  
Senator Durbin. We’ll go to Senator Lee. And after that, we’ll take a 30 minute lunch break and start back with Senator Whitehouse. Senator Lee.

Senator Lee: ([01:25:53](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5153.1))  
Thank you, Mr. Chairman. I have two letters for the record that I’d like to have admitted. They’re authored by former law clerks of Judge Barrett’s.

Mr. Chairman: ([01:26:00](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5160.08))  
Without objection.

Senator Lee: ([01:26:01](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5161.04))  
I’d encourage all my colleagues to read them. They’re outstanding and provide a great insight into Judge Barrett’s immense qualifications.

Senator Lee: ([01:26:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5172.39))  
Judge Barrett, moments ago we went through rather interesting set of exchanges. One of my colleagues, I hope I misunderstood him, seems to have suggested that it’s a political talking point for you to decline to indicate how you would rule on a particular case or a particular type of case. To the extent that that’s what any colleague has suggested, I’d remind that colleague that’s just wildly incorrect, wildly incorrect with canons of judicial ethics, with federal law, with the statement laid out by Justice Ruth Bader Ginsburg in her own confirmation proceedings, before this very body in this very room, nearly 30 years ago.

Senator Lee: ([01:27:06](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5226.36))  
It is imperative that you uphold those standards, and I applaud you for doing so. And I think on no planet is it appropriate for anybody to suggest that that’s a political talking point for you to say, “I’m not going to indicate how I’m going to rule in a particular case.” Justice Ginsburg did in fact say it well, and some of this has been quoted today. I’m going to quote it again, just for good measure. She said, “Judges in our system are bound to decide concrete cases, not abstract issues. A judge sworn to decide impartially can offer no forecast, no hints, for that would show not only disregard for the specifics of a particular case, it would display disdain for the entire judicial process. Similarly, because you’re considering my capacity for independent judging, my personal views on how I would vote on a publicly debated issue, where I in your shoes, where I a legislator, are not what you will be closely examining.” That’s what she said. She said it well. It was true in 1993, and it remains true today.

Senator Lee: ([01:28:14](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5294.18))  
I want to turn next to a line of questioning that you just finished, that you just completed. I too have read the Kanter case, and I am thrilled that we’ve got a jurist who is willing, when looking at somebody whose constitutional rights are about to be taken away, thrilled to have a jurist who’s willing to consider a pre-deprivation review for that individual. Is it unusual, Judge Barrett, to consider someone’s constitutional rights on an individualized basis, before having a specifically enumerated constitutionally protected right removed?

Judge Amy Coney Barrett: ([01:28:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5336.51))  
That would be very, very unusual.

Senator Lee: ([01:29:00](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5340.2))  
It’d be very, very unusual, and it would be unwise. Would it not?

Judge Amy Coney Barrett: ([01:29:04](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5344))  
Well, I think what I could say to that, just to be careful about how much law I’m analyzing, is that the 14th Amendment due process clause certainly guarantees to each individual due process before liberty is taken away.

Senator Lee: ([01:29:17](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5357.25))  
I also appreciated the thorough analysis that you undertook, making clear that our rights in this area don’t just date back a few decades. They don’t just date back to the ’60s. They don’t date just back to the 1780s or the 1760s. They date back at least to the 1660s. They go way, way back. There is a lot of history that went into what became the Second Amendment. There were conflicts involved, not just partisan conflicts, but conflicts between the king and subjects. And not just between the king and subjects in the abstract, but very often it was between Protestants and Catholics. Sometimes it was Catholics who weren’t trusted with guns. Sometimes it was Protestants who weren’t trusted with guns. But there was a lot of violence that went into that. And that led to our adoption of that amendment.

Senator Lee: ([01:30:07](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5407.88))  
I appreciated your historical analysis of this, your willingness to be thorough, to make sure that when someone’s constitutionally protected rights are taken into account, you’re going to do your homework. You’re going to do your homework, even if it’s hard. You’re going to do it, even if you’ve got colleagues who aren’t willing to go there. That’s what judicial leadership is. Judicial leadership involves willingness to stand alone. Judge Barrett, one of the things that came out to me, as I read your opinion in the Kanter case, is that your commitment to textualism and originalism are in fact real. They’re not feigned. This is the kind of thing you can’t fake. This isn’t something you make up at the last minute. And yes, I agree with Senator Durbin. Being a textualist and originalist doesn’t guarantee a particular result, a particular outcome in any particular case, but it does indicate a style, a preference. Tell me why textualism and originalism are important to you.

Judge Amy Coney Barrett: ([01:31:07](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5467.67))  
Because I think that both statutes and the Constitution are law. They derive their democratic legitimacy from the fact that they have been enacted, in the case of statutes, by the people’s representatives, or in the case of the Constitution, through the Constitution making process. And I, as a judge, have an obligation to respect and enforce only that law that the people themselves have embraced. As I was saying earlier, it’s not the law of Amy, it’s the law of the American people. And I think originalism and textualism, to me, boil down to that, to a commitment to the rule of law, to not disturbing or changing or updating or adjusting and in line with my own policy preferences what that law required.

Senator Lee: ([01:31:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5516.01))  
And is it the subjective motivation, the subjective intent of an individual lawmaker or drafter of a constitutional provision that we’re looking at? Or is it original public meaning? And if so, what’s the difference between those two?

Judge Amy Coney Barrett: ([01:32:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5528.3))  
It’s original public meaning, not the subjective intent of any particular drafter. So one thing I have told my students in constitutional law is that the question is not what would James Madison do? We’re not controlled by how James Madison perceived any particular problem. That’s because the law is what the people understand it to be, not what goes on in any individual legislator’s mind. I respect you greatly, Senator Lee, but what you think in your mind, rather than what passes through both Houses and is signed by the President, that’s what’s the law, not any private intentions you have.

Senator Lee: ([01:32:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5567.1))  
So regardless of what… Let’s say, I pass bill XYZ, and I’m the sponsor of it, and I take it down to the floor, and I say, here’s bill XYZ. And here’s what I think about it. Here’s what I intend to do with it. And I put that statement into the legislative record. What, if any, impact should that statement have on the meaning of law XYZ, once it becomes law?

Judge Amy Coney Barrett: ([01:33:16](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5596.85))  
Nothing. You’ve got to get it into the law itself, if you want it to be law. Legislative history is not what goes to the process of bicameralism and presentment.

Senator Lee: ([01:33:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5603.22))  
Regardless of how passionately and persuasively I make that point, in whatever glorious speech I give in support of bill XYZ, it doesn’t make a darn bit of difference, does it?

Judge Amy Coney Barrett: ([01:33:35](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5615.89))  
It doesn’t. I’m sure the speech would be glorious, but I assume the point you make probably would be made by the advocates in the case too. And so in that respect, you are functioning as an advocate when you make the glorious statement, but not speaking with the voice of the lawmaker because no individual does. It’s the full body that speaks.

Senator Lee: ([01:33:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5636.87))  
I want to speak next about the Affordable Care Act. We’ve seen posters going up over and over and over again. We’ve seen them yesterday. We’ve seen them today. We’ve seen a lot of compelling stories about people whose lives have been marked by difficult things that they’ve endured. They’ve involved touching and heartwarming stories. I continue to doubt the relevance of things like that here, especially insofar as they’re being used to suggest that your confirmation to the Supreme Court of the United States has anything to do with their healthcare. Tell me why you think that any individual American’s healthcare status is or is not tied to your confirmation to the Supreme Court of the United States?

Judge Amy Coney Barrett: ([01:34:53](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5693.1))  
It is not tied to my nomination to the Supreme Court of the United States. I have said repeatedly under oath that I had no conversations with anyone in the White House about that case. And I’m not sure, to the extent there’s a suggestion that I have an agenda that I want to strike down people’s protection for preexisting conditions, that’s just not true. I’ve never taken that position. And as I’ve also said repeatedly, any policy preferences that I have don’t matter anyway. They’re irrelevant. So making that law, coming out with the contours of the ACA, that’s your job.

Senator Lee: ([01:35:31](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5731.45))  
It is our job. It is the job of policymaking branches of government. It’s the job of whatever combination of state and federal lawmakers and other policy makers have. A judge is not a policymaker. When Congress passes a law, Congress is in charge of making sure that that law works, insofar as that doesn’t work or that law ends up being stricken down, it’s our job to replace it with something that does work, whether constitutionally or otherwise in all respects. That’s our job, not yours.

Senator Lee: ([01:36:10](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5770.26))  
You made some comments a few years ago, comments with which I wholeheartedly agree, raising a criticism with Chief Justice Roberts and his majority decision in NFIB versus Sebelius decision. And don’t worry, I’m not going to ask you to weigh in on this. You made those comments at the time, and they’re not relevant to me now, but I set this up for reasons I’ll explain in a moment.

Senator Lee: ([01:36:38](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5798.82))  
He rewrote the Affordable Care Act, not just once but twice, in substantive ways, in order to save that law from an otherwise inevitable finding of unconstitutionality. Because that law, as written by this Congress, was in fact unconstitutional in two material respects at issue in NFIB versus Sebelius. Blatantly unconstitutional. He effectively acknowledged that the law as written couldn’t pass constitutional muster. And so he rewrote it, not just once but twice, in order to save it.

Senator Lee: ([01:37:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5832.3))  
That’s water under the bridge. That happened. It’s inexcusable that he did that. He misused the judicial authority. That case has absolutely nothing to do with California versus Texas. It has absolutely nothing to do with the question of severability in that case. Would it be fair to say that my very strong opinions that I’ve just expressed do not indicate how I would feel, how I would lean, where I a jurist in California versus Texas?

Judge Amy Coney Barrett: ([01:37:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5867.35))  
I think you’re correct, Senator Lee, that the question, the legal issue is entirely different in California versus Texas. Severability is its own independent doctrine and has nothing to do with the statutory interpretation questions presented in Sebelius.

Senator Lee: ([01:38:04](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5884.07))  
In many circumstances in this country, we see emotionally charged issues that boil and boil for a long time, and they can’t always be resolved. Not everybody’s going to agree on everything. Not everybody is going to agree on certain hot button social issues that result in some cases, from just basic differences in how people view life and how people view their place in the universe.

Senator Lee: ([01:38:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5912.49))  
One of those areas where it manifests itself is in the area of abortion. People view life and when it begins differently. Some of that’s informed by religious beliefs. Some of it’s informed just by people’s common sense approach to what they think the law ought to say and what it ought not to say. Disputes regarding when life begins and disputes regarding abortion didn’t begin with Roe vs. Wade. What did change with Roe vs. Wade, however, was the federalization and the grasping of the issue and the taking it beyond the realm of political debate within the federal judiciary, such that elected lawmakers were no longer in a position to be the primary drivers of policy.

Senator Lee: ([01:39:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=5969.9))  
As a result, over the last few decades, you’ve had all kinds of questions that have been put into uncertainty. You’ve got uncertainty by people at the state level who want to make their own decisions about certain things around abortion. They know they can’t prohibit it entirely. They know that there’s this undue burden standard that has to be addressed. Nobody’s completely sure in advance what that means. And so they work around it. There are discussions that arise, regarding health and safety qualifications for abortion clinics, how close an abortion clinic needs to be to an accredited hospital, how it needs to be staffed and what the sanitation protocols are.

Senator Lee: ([01:40:13](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6013.2))  
Then you’ve got, more recently, some states passing laws saying, look, there’s abundant medical science showing that an unborn human can feel and respond to pain as early as, I don’t know, 10 or 12 gestational weeks, but certainly by 20 weeks. And so by 20 weeks, we’re going to adopt a different set of legal procedures for an abortion as a result of that. Because if this is a human that everybody agrees can feel and respond to pain, we’re going to handle that differently. All of those things, the legitimacy of those laws, are thrown into the federal courts yet again, all because those were made federal issues.

Senator Lee: ([01:40:59](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6059.78))  
Now I want to be very clear. You’d have the impression from watching debates in circumstances like this one and in protests outside the Supreme Court of the United States, you’d have the impression that if Roe vs. Wade didn’t exist, then all of a sudden, abortion would immediately become illegal in every state in America. That assumes a lot of facts not in evidence. In fact, that assumes a lot of things contrary to evidence.

Senator Lee: ([01:41:33](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6093.3))  
It is simply not the case that the fate of healthcare in America turns on whether or not someone is confirmed to the Supreme Court of the United States, nor is it a fact to suggest that the availability of an abortion or lack thereof is contingent upon anyone’s confirmation to the Supreme Court of the United States. The fact that we have this debate and the fact that it’s become as protracted as-

Senator Lee: ([01:42:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6123.551))  
We have this debate, and the fact that it’s become as protracted, as personal, as ugly it has, could I suspect be traced to the fact that we’ve tried to take a debatable matter beyond debate. And we’ve tried to take it outside the political branches of government where people can elect their individual representatives and have laws respecting and reflecting the views of their respective communities. We’re a country of what, 330 million Americans? It’s really, really difficult to have those 330 million Americans reflected in nine members of a Supreme Court. It’s still really hard to have them reflected in a hundred senators and 435 representatives. That’s doable, especially when those people are elected. They stand for election every couple of years in the case of the House, every six years in the case of the Senate. It doesn’t happen that way in the Supreme Court of the United States.

Senator Lee: ([01:43:04](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6184.47))  
So to my colleagues on the other side of the aisle who are fear-mongering on this, causing people to worry and lose sleep over this, fundraising over this, fundraising over threats that people are going to lose their healthcare fundraising over threats that people are going to be dying in the streets because of the lack of availability of this or that medical procedure. I’d ask, have we created a monster? Have we ourselves, through our own inaction, through our own voluntary cessation of authority to a non-legislative, nonpolitical brand, have we created the very set of untenable social circumstances that are causing people to protest outside of a nonpolitical entity? I think we have to ask ourselves that question from time to time.

Senator Lee: ([01:43:57](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6237.16))  
Life is in fact valuable. It’s not a religious statement to make that observation. In fact, it’s the foundation of basically all of our laws, not just in this country, not just in countries with Christian origins, but in basically every country that has ever existed anywhere in the world. The purpose of government is to protect life. That’s what it’s about. If we can’t agree on the fact that it’s reasonable, but people ought to be able to have some say, at least at some limit, at least at some point beyond the moment when an unborn human can feel and respond to pain, something’s wrong with us. And if we’re going to leave those things perpetually in the hands of the unelected, it might be really convenient for political fundraising within Congress, but it’s not good for the United States of America. It’s not good for Constitutionally limited government. It’s not good for our individual liberties.

Senator Lee: ([01:45:05](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6305.87))  
Judge Barrett, Alexander Hamilton was prescient in a number of areas. He had some crazy ideas. He did some crazy things. He was also freaking brilliant. I think he foresaw certain aspects of our lives when he described the differences between the branches of government in Federalist 78. And in Federalist 78, he said that the legislative branch, Congress, being a political branch, a branch whose job it is to make policy, to make law, was possess with will, and that what’s possessed of a judicial branch is not will, but judgment. He then went on to explain that it’s really important to maintain that clear distinction between will and judgment, lest you have the judicial branch, consisting of people who are not elected by the people, not accountable to the people at the regular intervals, and who serve basically for the rest of their lives, so long as they’re on good behavior. You can’t have them exercising will because it’s not their job. What do you think he meant? What’s the difference between will and judgment,

Amy Barrett : ([01:46:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6383.9))  
I think will is the imposition of policy preferences as happens in the making of law. Judgment is evaluating that law for its consistency with the Constitution, for example. Or to give another example, to interpret what that law means. But it most certainly is not the imposition of policy preferences. A judge who approaches a case as an opportunity for an exercise of will, has acted, has betrayed her judicial duty.

Senator Lee: ([01:47:00](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6420.1))  
How does she know when she’s reached that point?

Amy Barrett : ([01:47:05](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6425.73))  
So, I think it requires disciplined judicial decision-making. So you approach the text, you treat it as a text, you treat it as law. I’ve described originalism and textualism so I won’t belabor that point, but I will say that one practice that I have, one check that I put on myself to make sure that I’m not biased, is that when I write an opinion, I try to read it from the perspective of the losing party so that any sympathy that I might feel for the particular result that I reach, I try to make the sympathy run the other way to see if it will still hold and also to see like… I would be disappointed in this outcome if it was my child who’s sentence or criminal conviction or civil loss, whatever it is is on the line, but would I still think it was a well-reasoned opinion? And that’s the test that I use for myself. I think discipline is required, but I take it very, very seriously

Senator Lee: ([01:48:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6492.64))  
As we’ve had this conversation today, one of the arguments that’s been made by some of my colleagues is referred to activism, and has accused, if I understood the argument correctly, some textualist, originalist jurists as having engaged in activism. I want to be clear, I’m one who doesn’t believe that there is any thing worse about an activist judge than a passivist judge. I think it’s every bit as bad to be a passivist. That is, for example, to let stand an invalid, unConstitutional law as if it were valid and Constitutional. It’s every bit as bad to do that as it is to invalidate as unConstitutional something that is in fact not unConstitutional. Do you agree with me that both of those are equally instances of bad judging?

Amy Barrett : ([01:49:25](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6565.63))  
They are both instances of, as you’ve posed them, of not following the law, not following the Constitution or not correctly interpreting a statute.

Senator Lee: ([01:49:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6576.95))  
By the same token, a judge who fails to grant a meritorious dispositive motion and a judge who grants a non-maritorious dispositive motion. They’ve both probably done an equally bad thing. Is that right?

Amy Barrett : ([01:49:52](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6592.13))  
Yeah.

Senator Lee: ([01:49:55](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6595.33))  
Does the Constitution say anything about the size of the Supreme Court?

Amy Barrett : ([01:49:59](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6599.54))  
The Constitution does not. That is a question left open to Congress. It’s my understanding that it’s been nine for about 150 years, but that’s as a matter of statute, not Constitutional requirement.

Senator Lee: ([01:50:11](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6611.16))  
So, it’s with statutory. It’s a statutory decision, one that’s stood for more than a century and a half. It’s a decision nonetheless that has some bearing, could have some bearing, on Constitutional issues. Correct?

Amy Barrett : ([01:50:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6628.22))  
In so far as there would be more decision- makers on the court?

Senator Lee: ([01:50:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6632.72))  
If we abandoned the longstanding historical practice and tradition of having nine justices, could that have an impact on the way the three branches of government interact with each other?

Amy Barrett : ([01:50:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6647.65))  
Possibly. But it’s difficult for me to imagine what specific Constitutional question you’re asking. And of course, if there were one, I couldn’t opine on it.

Senator Lee: ([01:50:55](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6655.99))  
Of course. There are strong reasons, I believe, why over the last more than a century and a half, we’ve left that number at nine. As you point out there’s nothing in the Constitution that requires it. We could come up with any number we wanted. There does have to be a Supreme Court and such inferior courts as we choose to create, but it doesn’t specify the number of seats that can be on there. There are nonetheless good prudential reasons, reasons having to do with respect for the separation of powers between the three branches of government. Reasons that have, over the last 150 plus years, left us to leave that number at nine.

Senator Lee: ([01:51:42](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6702.17))  
The last time, as far as I can tell, there was any serious effort to move the number above nine, it was in the fall of 1936 when president Franklin D. Roosevelt got tired of the so-called four horsemen of the apocalypse, a few members of the Supreme Court who were consistently voting against his agenda, and sometimes joined by one or more other members of the Supreme Court. He got particularly tired of this, and so he proposed packing the court. And let me explain what I mean by packing the court here. What I mean when I refer to this is increasing the number of seats on the Supreme Court and doing so by statute with the intent of altering the composition of the court for short-term political gain. That’s what FDR wanted to do.

Senator Lee: ([01:52:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6752.44))  
Not withstanding the fact that he had an overwhelming super majority in both houses of Congress, fortunately, FDR’s idea that he pushed in the fall of 1936 didn’t make it anywhere. It didn’t gain progress. It met enough opposition, even with both houses of Congress being overwhelmingly controlled by his political party, that it stalled, quite mercifully, and it’s remained ever since then at nine justices. I think it would have been a colossal mistake. Joe Biden, himself as a US Senator, as a member of this body, in a proceeding of this committee in 1983 gave a rousing speech that I recommend to all talking about that very thing. Acknowledging that the Constitution doesn’t require it, but our respect for the separation of powers really ought to lead to us sticking to the number nine. Don’t pack the court.

Senator Lee: ([01:53:27](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6807.98))  
In recent days, I’ve seen some in the media and some in this body try to redefine what it means to pack the court. Some have suggested, well, court packing takes various forms, and it can mean confirming a lot of people all at once. Some have defined it so as to suggest that it consists of doing that which the Trump administration and the Republican Senate have been doing over the last three and a half years, which is filling vacancies as they have arisen and doing so with textualist, originalist judges. This may not be something that some like, but this is not court packing. Court packing is itself manipulative. It’s something that has great danger to do immense political and Constitutional harm to our system of government. In part, because it would set up a one-way ratchet. Once you create a position and confirm someone to that position, absent death, retirement, or impeachment and removal, that position remains in place.

Senator Lee: ([01:54:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6868.78))  
So if, for example, a future Congress and White House were to decide to get together and to pack the court and increase the number, say to 11. And let’s say it’s Democrats who do that. And we’ve got Joe Biden now as a Presidential candidate who’s refusing to say whether he would do it. There’s a reason he’s not saying whether he would do it. There’s only one reason why you refuse to answer that question, and it’s if you’re wanting to be able to do it, but you don’t want to take the heat for the fact that you’re thinking about doing it right now.

Senator Lee: ([01:55:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6908.36))  
So if they do that, where does it lead? Well, it inevitably leads to the point where the next time Republicans have control of both houses of Congress and the White House, they’d increase it as well. You’d end up increasing it incrementally. Before long, it looks like the Senate in Star Wars where you’ve got hundreds of people on there. I don’t know what the total number would be, but you increase it at all, you change the number at all, you do so for partisan political purposes at all, you de-legitimize the court. And you can’t de-legitimize the court without fundamentally threatening and eroding and impairing some of our most valued liberties. You can’t do that without inevitably threatening things like religious freedom, things like free speech, things that are themselves often unpopular, but are protected by the Constitution, precisely because they are unpopular.

Senator Lee: ([01:56:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=6968.37))  
And yes, in that respect, the Constitution is sometimes counter democratic. Sometimes it can be described as fundamentally undemocratic. In fact, the whole reason to have a Constitution is to protect us from the impulse of a majority that might be bent on harming the few in the name of the many. That’s why the law is so important. That’s why the position for which you’re being considered is so essential. That’s why we’ve got to do our job to make sure that the only people who get the job for which you’ve been nominated fit the bill.

Senator Lee: ([01:56:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7007.04))  
You Judge Barrett are someone in whom I have immense confidence, immense trust, and I look forward to voting, to confirming you for that very position.

Mr. Graham : ([01:57:00](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7020.63))  
Thanks Senator Lee. We’ll take, let’s come back at 12:45. We’ll start with Senator Whitehouse. We have 15 Senators left. Everybody takes the 30 minutes, that’s seven and a half hours. We’ll take a break for dinner tonight, sometime later on, and a short break? Are you doing okay?

Amy Barrett : ([01:57:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7043.09))  
Mm-hmm (affirmative).

Mr. Graham : ([01:57:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7043.56))  
Three hours about right? So we’ll come back at 12:45, and right now we’re on schedule to be here until nine o’clock, but we’ll do whatever the committee wants. We’re in recess to 12:45.

Judy Woodruff : ([01:57:35](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7055.01))  
That is Senator Lindsey Graham, the Chair of the Senate Judiciary Committee, saying they will take a short lunch break for about 40 minutes and then come back when we will hear questions from 15 more Senators who are members of the Judiciary Committee, part of these confirmation hearings of Judge Amy Coney Barrett to the Supreme Court. We have our regular News Hour contingent with us, Congressional Correspondent Lisa Desjardins, our National Correspondent, John Yang, who covers Supreme Court issues. Also our White House correspondent, Yamiche Alcindor. And to help analyze and give context to the hearings, I’m joined by News Hour regular Marcia Coyle of the National Law Journal, Victoria Nourse of Georgetown University. Earlier, she served as Chief Counsel to then Vice-President Joe Biden and his counsel to the Senate Judiciary Committee when he was its chairman. And Saikrishna Prakash, he’s a Constitutional law scholar at the University of Virginia. He’s also a former clerk to Justice to Clarence Thomas. He has been contacted, we should say, by the Judiciary Committee to potentially testify on Thursday as a witness in favor of Judge Barrett’s confirmation.

Judy Woodruff : ([01:58:48](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7128.38))  
So to all of you, we’ve heard a lot this morning from the Senators, a little less from Judge Barrett about her views, but I want to come to you first, Marcia Coyle. We did hear a little from her that we know that her family owns a gun. We know that she and her family teared up when they watched the video of the death of George Floyd this summer. But when it comes to answering questions about how she would rule, what she would decide, how does that compare to what we’ve seen from other justices nominated in recent years?

Marcia Coyle: ([01:59:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7169.42))  
Well, Judy, I think it’s pretty clear that all nominees have learned sort of the magic words to say when they are asked about specific rulings by the Supreme Court, how they may rule on other issues, they’re just not going to make any kind of commitment or any statement that might reveal how they think about those particular issues. And so we didn’t really learn a whole lot from Judge Barrett about issues that are common discussions and debates at dinner tables in America. I think that the hearing this morning really stayed focused on each side’s goals here. You saw that the Democrats who were singularly focused yesterday on the Affordable Care Act followed up on that. I’d say the Affordable Care Act, abortion, and guns were the topics they were most interested in, and that was because they have a little more meat to deal with. They have some of Judge Barrett’s opinions on the Seventh Circuit, as well as writing and speeches. So they did try to learn more about her through those, but I think they scored limited points.

Judy Woodruff : ([02:00:51](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7251.92))  
Democrats, I was going to say, Democrats certainly did come back at those questions time and again. John Yang, on several occasions, we heard Judge Barrett say, and it came out at the very beginning when Lindsey Graham, the Chair, asked her to compare herself to the late Justice Antonin Scalia, because she has called him her mentor. He asked her, would you be another Judge Scalia? And she made a point of saying she’d be different.

John Yang: ([02:01:27](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7287.21))  
She said she’d be Justice Barrett. I think it’s also, to sort of add on to what Marcia was saying, we learned, or she spoke more about her judicial philosophy. But I think that was clear from her previous writings that she’s an originalist, she goes back to what the words meant when the Constitution was ratified or when the amendments were ratified. And she is a textualist, she goes after the words on the paper. She doesn’t care, not doesn’t care, but she does not give precedence to legislative intent, what the lawmakers said when they pass laws.

John Yang: ([02:02:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7323.84))  
But I don’t know that that is necessarily a predictor of how she would rule, as was pointed out before, yesterday. The current, one of the leading originalists and textualists on the court now, is Neil Gorsuch. And he ruled earlier this year that Title Seven of the Civil Rights Act of 1964 bans discrimination against gay men, lesbian women, and transgender Americans. That was hotly contested by two other originalists, contextualist, Justices Alito and Thomas, who said in their dissent that this was not a textual exercise, that all Gorsuch had done was rewrite Title Seven to meet the current standards. So it’s really not a predictor at all. As she says, originalists and textualists can disagree, and they do.

Judy Woodruff : ([02:03:00](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7380.91))  
And Victoria Nourse, we did hear her make that point. And we also heard her in several question and answer exchanges, say that on the ACA, when it comes to the Affordable Care Act, also known as Obamacare, that the case coming before the court in November is based on a different question from the case that was decided several years ago, in which the Chief Justice ruled one way in a way that she was critical of. She went out of her way, it seemed to me, to say, “I don’t want you to think that I’ve telegraphed anything by what I’ve said before about the Chief.”

Victoria Nourse: ([02:03:49](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7429.85))  
Well, I think she did go out of her way because it is somewhat unusual for a Justice who had been so pointed about criticizing a Chief in their writings. But I think what you really need to know about this methodology here, which is behind this is it can predict something. And it predicted that cases such as King v. Burwell, which was the first one up there on text, or this current case would never have gone up there when I was a law student, because textualism didn’t exist. Textualism allows a judge to pick and choose texts. They don’t think that, but that’s what happens. And these cases would have been considered, “Well, I defer to the legislature.” So there is something more I think you can predict. Yes, they come out with different results sometimes, but that’s because the method isn’t determinative in any way.

Victoria Nourse: ([02:04:38](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7478.39))  
So they believe that it restrains. But in fact, the data shows that it doesn’t constrain. And you know, I think one of the ways you can see this is if you look at the gun decision that Senator Durbin was talking about, because she’s to the right of Scalia on that. He said that gun felon laws in Heller were fine. Now she said that was dicta. But in that case, she basically claimed, “Oh, I’m not going to decide anything about the consequences of this. And I’m going to rewrite the statute.” She rewrote the statute, as Durbin said, to add violent felony. Wisconsin wrote a statute that said felony, period. Why doesn’t it say all felonies? Well, she says, “No, it doesn’t because of the Constitution.” So I think the method is something of a smoke screen here. John is actually right, it doesn’t lead to results. But that’s the problem [inaudible 02:05:33] claim that it restrains. And it doesn’t.

Judy Woodruff : ([02:05:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7536.23))  
Well, Saikrishna Prakash, pick up on that because people are going to be, certainly are acutely interested, listening for any hint of any kind on how she’d rule on guns, on the ACA, on abortion, on same-sex marriage. What did you hear?

Saikrishna Prakash : ([02:05:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7556.57))  
I heard a judge who was committed to a methodology, and unlike Professor Nourse, I do believe that the methodology constraints. I think there were two possible textual readings of the Anti-Discrimination Act, and Gorsuch and Thomas and Alito ably demonstrated those two possible readings. They disagree with themselves, but that’s not uncommon. The textualist slash originalist approach doesn’t yield one answer in many cases. And that’s not a fault of the theory, it’s the fault of imprecision in language. And I say this as someone who is an originalist, but who’s not a textualist. I kind of have Professor Nourse’s approach to statutory interpretation. I think it’s appropriate to look at legislative history.

Saikrishna Prakash : ([02:06:40](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7600.41))  
And if you listen very carefully today, Judge Barrett didn’t deny that legislative history can be relevant in certain cases. She just adopted the approach that where the text is clear, you shouldn’t look to it. And then the rub is, well, when is it clear and when is it not? And I suspect that some people are more apt to say it’s unclear than she would be. But I don’t think that it’s just a smoke screen for ideology. I do think that texts constrains. And I think the alternative approach, I think, is to think that text doesn’t and shouldn’t constrain judges and they should do what they want. And as you can tell, Judge Barrett did not believe that.

Judy Woodruff : ([02:07:16](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7636.7))  
Lisa Desjardins, you’ve been following these Senators, trying to understand what their goals are throughout these hearings. Are you getting the sense that they’re going in the direction they had planned to go?

Lisa Desjardins : ([02:07:34](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7654.45))  
I think that’s right so far. I’ll say that I was on a call with two Democratic Senators on the committee this morning, Senators Durbin and Blumenthal. They held this for reporters to talk about their strategy today going into questions. And the strategy that Democrats said they were going to pursue, at least what Senator Blumenthal said, is they wanted to show that Amy Coney Barrett’s ideas are radical and extreme. That while she is clearly very smart, capable, that she has high intellect, in their view that her reading of the law is extreme. And they said they wanted to show this through a number of examples. We heard those subject areas come up, guns, LGBTQ rights potentially, abortion in particular. And of course the Affordable Care Act.

Lisa Desjardins : ([02:08:20](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7700))  
But Judy, I don’t think they’ve really made that case so far. They haven’t really used words like extreme or radical, which are things that Senator Blumenthal was using. He’s still a couple hours ahead. I think about three hours ahead in the hearing. But I think if they’re trying to make the case that Judge Barrett is way out of step with judicial norms, they haven’t gone that far. They seem to have instead done more to say that she could affect people’s lives. That’s a political message that also has to do with the election. Now, on the other hand, Republicans have their own strategy. As Democrats want to show Judge Barrett as being extreme, Republicans are trying to make the case that it’s Democrats who are extreme, that they are willing to do anything to push out a nominee who they see as credible. And that also of course has to do with the election and trying to convince voters which side is more reasonable and better for the future of this country.

Judy Woodruff : ([02:09:18](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7758.31))  
Marcia Coyle, let me come back to you on that. These hearings are being held just a matter of days, less than three weeks, before election day. We know Americans have been going to the polls already for days, millions have already voted. How do you see the election? We’ve never seen a Supreme Court nomination hearing this close to an election in this country. And so how do you see that showing up in this hearing?

Marcia Coyle: ([02:09:55](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7795.6))  
By the Democratic Senators who are seeking a commitment from Judge Barrett to recuse from any election related disputes that come before her if she is seated in time to rule on those disputes. And she has refused to make a commitment to recuse, she has said that she would apply the guidelines in the statute on recusal. And she did emphasize that within those guidelines is recusal if there is an appearance of bias. So I think that’s as far as she was willing, obviously it’s as far as she was willing to go. I’m sure it wasn’t what the Democrats wanted to hear.

Marcia Coyle: ([02:10:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7843.32))  
Judy, I’d like to go back a bit first to the Affordable Care Act and her comment that the issue before the court in November is not the same issue that was before the court in the 2012 case, the first case to go to the Supreme Court, as well as in King v. Burwell, the second case. And that is correct. It’s not the same issue, but I think the point that the Democrats were trying to make is that the stakes are very much the same. Especially [inaudible 02:11:20] yes, the question is different. But if the Supreme Court were to rule in favor of the Republican led states and the Trump administration that are challenging the act, the entire act could fall. And yes, the coverage for pre-existing conditions, having your child on your insurance until age 26, all of that would fall and certainly much more the Medicaid expansion.

Marcia Coyle: ([02:11:45](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7905.1))  
And then I also wanted to add on guns that Judge Barrett’s dissent in the gun case that was discussed, it was really out of step with how all of the federal appellate courts that have ruled on the felon possession laws have ruled. But there also has been considerable debate about whether the laws should be as strict as they are when it comes to non-violent felons. But as of today, her dissent really was, I don’t think you would call it radical, but I would say that she pretty much stands alone in her view of the Indiana law, as well as the federal law that prohibits felons from having guns.

Marcia Coyle: ([02:12:34](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=7954.09))  
And in the broader context, Judy, the Second Amendment is still very much an issue in the Supreme Court. And it’s an issue that the court hasn’t really wanted to get back into. If you remember in the end of June, I believe it was, the court turned away 10 petitions involving the Second Amendment. Cases that covered so many of the issues that have been percolating in the lower courts. And the common wisdom on this is that the court, that there really are four justices who would like to take another gun case and four votes are all you need to grant review, but those four justices were never really sure that they had a fifth vote in the end for the view that they wanted to see the court adopt. And so they have been very reluctant to take a case. I don’t know if Judge Barrett would come down on whether she’s willing to get into the Second Amendment as a justice, but that’s another area where her vote could be very important.

Judy Woodruff : ([02:13:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8016.47))  
Victoria Nourse, if you would comment on that. And then I do want to turn us to Roe v. Wade and what we picked up, if anything, on her thinking on abortion.

Victoria Nourse: ([02:13:50](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8030.68))  
Well, I’ll just start with that. I don’t think we picked up much of anything. I mean, there’s a rehearsed line that the Justices use. I’m not going to give a thumbs up or thumbs down. So we weren’t going to hear anything from her on a topic like that. This is why the ideology or the philosophy is so important and it’s kind of coded. Right? So let me translate a little bit for you. One of the reasons that she’s probably going to find the hearing very odd is that if she and I were to debate, we wouldn’t care really, presumably we would care about method rather than the consequences. Because originalists don’t look at the consequences. They say that they take pride in that. So it doesn’t matter to her how many people will lose their health insurance. She prides herself on that. She thinks that’s what’s constraining her.

Victoria Nourse: ([02:14:38](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8078.02))  
And so one of the things you have to understand about the method is that she herself has said that it would make great changes if you took it consistently. All right? So she knows and has signaled that originalism, there is no right to abortion in the Constitution. Right? This is the big claim about originalists. This is where originalism started so many years ago. And she has written that originalism would do things that would wreak quote unquote havoc. This is in her own article. “Adherence to originalism arguably requires the dismantling of the administrative state, the invalidation of paper money, the reversal of Brown v. Board of Education, and that West Virginia might be unconstitutional.”

Victoria Nourse: ([02:15:25](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8125.44))  
Anybody who studies this method knows that it has extreme consequences. Now they were not willing to accept those, and in the articles she disavows them. But that’s not a method if you’re just going to pick it when you like it and then get rid of it when you don’t like it. So that’s the real issue here because all of this is veiled. Now, she won’t answer questions about specific cases. So it’s something of a charade, and no Democrat would either, nominee. So you have to read between the lines.

Judy Woodruff : ([02:15:57](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8157.19))  
I’m sorry to interrupt, but just to respond. [ Saiprakash 00:34:03], why shouldn’t someone who cares…

Judy Woodruff : ([02:16:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8162.841))  
… Prakash, why shouldn’t someone who cares very much about these cases that Victoria is citing continue to have big questions based on what Victoria just said?

Saikrishna Prakash: ([02:16:16](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8176.91))  
So on that article that professor Nourse just cited, I don’t think she actually said those things. I think what she said is that some originalists have said the following things and that they could have these consequences. As for what she’ll do on the bench, I think the idea that she expressed in another article is that judges don’t continually review precedents to decide whether they ought to be tossed aside. They are primarily dependent upon the parties to raise cases and ask for them being overturned. And in that context, most cases aren’t before the court. Litigants aren’t asking the courts to overturn a bunch of cases. And in that context, the judges don’t have some duty to independently come up with those ideas on their own. So when you think about her context or her discussion of super precedents, what she’s describing there is a sociological situation where no one’s likely to ask for these cases to be overturned. And therefore she doesn’t need to decide whether some case like Marbury was right in 1789.

Judy Woodruff : ([02:17:15](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8235.03))  
Victoria, what about that?

Victoria Nourse: ([02:17:17](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8237.57))  
Well, I mean, I don’t think most Americans don’t think that we want a 1789 constitution in my view. My first article was on the Federalist. I love history too. And I think it is a guide in cases where nothing’s been decided, but there are plenty of people who are about to challenge all sorts of abortion restrictions. She’s already ruled on two or three. And on the seventh circuit, there are plenty of people. There’s entire groups of lawyers, hundreds of lawyers who challenge every gun restriction. These are the kinds of things that Americans care about now, and whether she’ll actually pay attention to the consequences of her rulings. And that is part of the originalist idea and something I find very strange.

Victoria Nourse: ([02:17:57](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8277.88))  
I mean, I’d like professor Prakash to answer this because some people think that it’s irrational, if not immoral, not to look at the consequences of your actions. That’s not impartiality. Impartiality is saying I don’t favor either side, I have empathy with both sides, which is what she said at one point. A much better explanation of impartiality. But the refusal to look at consequences, particularly the consequences for the separation of powers, which is something I’ve studied, she’d studied, you’ve studied, seems to be disastrous for the future of democracy. You have to understand that if you repeatedly rule against democratic majorities, that court will be in trouble.

Judy Woodruff : ([02:18:37](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8317.42))  
Sai Prakash?

Saikrishna Prakash: ([02:18:38](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8318.99))  
There’s much that Professor Nourse said that I agree with, but I think the general proposition is that judges don’t have the same role as legislators. If we have our judges just deciding based on the consequences, I can tell you that we’d have a very conservative set of principles annunciated that goes far beyond what the court is doing today. We might have a right to life enshrined in the constitution. I don’t think the constitution either speaks to a right to life of fetuses or a right to choice for women. And in that context, I don’t know why we would want…

Saikrishna Prakash: ([02:19:10](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8350.18))  
We already have a legislature that’s supposed to be looking at the policy. To have a court do it on top of that… I don’t know anyone who would say let’s have a country run by nine judges, or more precisely five of them who will decide what the laws we ought to have by virtue of their consequences. I think it’s a reasonable position to say A, legislature’s make law, B, judges decide what they mean, and C, occasionally the constitution should be read to overturn the laws of the majority, despite the fact that the majority passed them.

Judy Woodruff : ([02:19:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8383.66))  
John Yang, we heard at the very end of the Senate questioning Senator Mike Lee bringing up the court packing question. It’s come up with Joe Biden. He has said, “I’m not going to answer that right now. It’s a distraction.” But it is a point that Republicans keep raising because some Democrats have raised it as a possibility given the fact that Republicans may end up placing a sixth conservative justice on the court. What do we know about the issue? Everybody refers back to FDR, to Franklin Roosevelt and what he tried to do, but how much conversation is there around it? We heard Judge Barrett say it’s been 150 years or more since we’ve had nine justices, but where is that issue right now in terms of the courts? I mean, has it been raised as a serious question?

John Yang: ([02:20:42](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8442.01))  
It has been raised, especially by sort of more progressive Democrats. I think a lot of it is from as you listen to their argument, it is what they say is redressing what they see as the wrong of Merrick Garland as they’re still angry that Senate majority leader Mitch McConnell would not move on the Merrick Garland nomination in 2016 after Justice Scalia died. There is no magic number about nine as a Judge Barrett I think correctly said. The constitution says that Congress should decide how many justices there are on the Supreme Court. And I think in past history, I think the first Supreme Court there were six justices. I think at other times, there have been as many as 10.

John Yang: ([02:21:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8489.66))  
And actually at one point, I think in, in 1801, Congress reduced the size of the Supreme court to five in an attempt to prevent incoming President Thomas Jefferson of being able to put more members on the court. So I think it is sort of a political question in a lot of ways. And I think it is going to percolate up that the more liberal Democrats and progressive Democrats talk about adding justices to the Supreme Court, talk about doing away with the legislative filibuster in Congress as ways of sort of moving forward, what they see as moving forward and moving into a more progressive direction.

Judy Woodruff : ([02:22:16](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8536))  
Lisa Desjardins, how much conversation has there been among the senators you’ve spoken with about appetite for or against increasing the number of justices?

Lisa Desjardins: ([02:22:30](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8550.85))  
They’re trying to walk a high wire on this. Clearly it’s something that many Democrats are very interested in. As we’ve said, they are resigned to the idea that Judge Barrett will be confirmed, that Republicans have the votes here, and they have the enough time to do it before the election. Just barely. I think that if you talk to different leaders, you hear different things. Chuck Schumer, the Democratic leader has said everything is on the table. He won’t say anything more. I’ve spoken to Senator Dick Durbin, the number two, and he’s told me he himself isn’t considering it. He doesn’t want to go down that road right now. However, I’ve spoken to many other senators, including Mazie Hirono on the committee who clearly have a very large appetite for this.

Lisa Desjardins: ([02:23:10](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8590.61))  
What I’ve noted is that in the last day, we heard from a Biden himself who said he’s not a fan of the idea of court packing. He said he doesn’t want to indicate which way he would go, but he did sort of in the words I think of the New York Times crack on that topic and said he himself is not a fan. Another procedural thing to watch, though, that is closer at hand, Judy is Democrats are discussing if they can find some way to delay the vote in committee on Judge Barrett. There is an idea that they can prevent the committee from having a quorum on Thursday, which is when Chairman Graham wants to sort of initiate the voting process for the committee. This is something that Democrats have tried before in other contexts, in other committees, because the committee requires at least nine of the 22 members be present. And of those nine, two must be from the minority party. That’s in the rules of the committee.

Lisa Desjardins: ([02:24:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8643.13))  
So the idea is that Democrats don’t show up, the committee can’t meet. It seems like something that Democrats would want to talk about. However Judy, the problem is that Republicans in the majority can simply change the rules. That’s what they did in the past when Democrats tried this with the Senate finance committee under Orrin Hatch. so I don’t think this is a very, a real way that Democrats can affect the process, but it could be something symbolic that they do. Senator Durbin on a call this morning would not say his thoughts on whether they should do it or not, but said, “This is a new idea, I need to talk to Senator Feinstein about it.” It’s something to watch for Thursday. Either way, Judy, I think Republicans are going to keep this train on the track as much as they can, keep moving toward what looks like a likely Senate floor vote on Judge Barrett in the last week of the month.

Judy Woodruff : ([02:24:55](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8695.77))  
But just to refresh us Lisa, at this point, Chair Lindsey Graham is talking about a vote this Thursday, or when?

Lisa Desjardins: ([02:25:06](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8706.84))  
Yeah. It gets a little bit weedy and gunky the way that the committee works. The Chairman Graham would initiate that voting, he would probably call for a vote on Thursday. However, committee votes and committee tradition and rules say that the minority can ask for a one week delay. That’s something that’s kind of baked in. Everyone expects it. So essentially he would tee up the vote on Thursday, open up that process. Then you would expect Democrats to ask for that one week delay setting up the committee vote for one week from Thursday, but he has to start the process a week ahead.

Judy Woodruff : ([02:25:44](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8744.04))  
But it does look as if he may start the process on Thursday.

Lisa Desjardins: ([02:25:49](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8749.36))  
Oh absolutely. He certainly will start the process on Thursday, unless something completely unexpected happens before then.

Judy Woodruff : ([02:25:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8756.21))  
I think our White House correspondent Yamiche Alcindor is with us. Yamiche, I’m coming back now to what we’ve heard the president say just around the time he appointed Judge Barrett, and that was he wanted someone on the court in case something, and I’m paraphrasing here, went wrong in the election, and he needed help or support. What do we know about the President’s thinking on that? If there’s some dispute in the election and whether it ends up in the court or not, what has he said about that?

Yamiche Alcindor: ([02:26:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8796.29))  
Well, the president has made it very clear that he believes he needs his Supreme Court nominee to be confirmed, in this case being Judge Barrett, because he believes that Democrats are trying to rig the election. There is no evidence that Democrats are trying to do that. There is no evidence that there is some mass voter fraud by mail, but the President has continued to say that. And as a result, he said that if there is some sort of election issue that makes it to the Supreme Court in response specifically to the general election, that he wants his nominee to be there so that he can win the case. He wants that nominee to vote in favor of him. He’s made that very clear over and over again. You saw Senator Dick Durbin make the case that he believes that the president is the one who has essentially said that Judge Barrett should violate her oath and tell Senators and tell the world how she would vote and whether or not she would support President Trump.

Yamiche Alcindor: ([02:27:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8848.07))  
He said, “Who has put that out there that you might violate your oath? Who has put it out there that you might be wanting to help the President politically?” And he said, “All you have to do is look at the President’s tweets and he’s the one that put it out there. He’s the one who originates that idea.” So you saw Judge Barrett over and over again not want to talk about how she would rule in whether it was an election case or whether it was Roe V Wade, but the president has made it very clear how believes she would rule based just on the fact that he has nominated her. He said in 2016 that he wanted to overturn Roe V Wade. He said just a few weeks ago that he wants her to vote in his favor. So it’s put Judge Barrett in a tough position because she’s not saying what her views are, but the president has essentially offered what her views are.

Judy Woodruff : ([02:28:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8892.5))  
And coming back to you, Marsha Coyle, her answer… I know Senator Leahy raised it, Senator Durbin raised it, she would not be pinned down. She said she would consult. She said the practice is to consult with other justices to look at what the law says, what the constitution says, but she didn’t flatly say, obviously she didn’t say one way or another.

Marcia Coyle: ([02:28:39](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8919.06))  
No, she didn’t Judy. And to be honest, I wouldn’t expect her to. I would like to say something though. The Supreme Court has been an election issue since the early 1800s. And for the most part, it’s been about cases that the Supreme Court has decided. Brown vs. Board of Education was an election issue. Reg V Scott was an election issue. But recently, more recently, and in particular in the 2016 presidential election, the debate seemed to move or the trends seem to move sharply in another direction. You had then candidate Donald Trump saying he was going to appoint justices who would overrule Roe V Wade. And you had candidate Hillary Clinton saying she was going to appoint justices who would overrule Citizens United.

Marcia Coyle: ([02:29:34](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=8974.99))  
And so introduced has been this very clearly, I think in the public mind is that presidents are going to have litmus tests. They may not use the magic word litmus test, but they’ve created that impression. And that has put nominees, I think, to a terrible disadvantage and also has put the Supreme Court to a terrible disadvantage. That’s a huge burden to go onto the Supreme Court knowing that the president who nominated you told the American public I’m only going to nominate nominees who will do a certain kind of action once that person becomes a justice. So it really has changed. And I think we’re seeing it play out again in this presidential election with President Trump and what he had said, and Yamiche just recounted what he has said. And I don’t expect Judge Barrett to announce she’s going to recuse from election-related cases or the affordable care act at this point. But I think she tried very, very hard to make clear that she had not made any commitments to anybody and had not spoken to anybody about those issues.

Judy Woodruff : ([02:30:48](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9048.5))  
I want to ask Victoria Nourse and Sai Prakash this. I mean, how does that work? I mean, how do those conversations work between a president and someone they are seriously considering nominating to the court? They say they don’t ask them flat out what would you do on Roe V. Wade, what would you do on this or that? So how does a president reassure himself or herself what that nominee is going to do? Victoria?

Victoria Nourse: ([02:31:17](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9077.9))  
Well, you read her writings and you listen to people who are in her elite group, which is the Federalist Society that has produced the list here of the nominees. And then again, it’s code, you signal what you would do through various associations. The philosophy has a name originalism or textualism, but what it means is conservative rights, conservative outcomes matter. I mean, it’s been identified. I mean, I hate to say this because I’ve never commented on a judge before they changed the rules to 51 votes. When I was nominated to the seventh circuit, I would’ve had to get 60 votes. I never got a hearing, but once they changed this to 51 votes, this has become hardball politics. So they aren’t going to say anything in the White House. They’re smart. If I had been a lawyer in the White House, I would never have said you have a five minute conversation with the President. You’ll go out and then they’ll start prepping you for not answering questions, basically is how it works. The playbooks known by both sides.

Judy Woodruff : ([02:32:18](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9138.49))  
Sai Prakash, what’s your perspective on that? I mean, we’re not privy to those conversations, they’re behind closed doors, but what is the signaling that goes on back and forth? What does it look like?

Saikrishna Prakash: ([02:32:31](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9151.89))  
I think that the key to being chosen as a Supreme Court justice is getting on the shortlist. The President had several lists that seem to grow over time, but he’s not looking at all those potential nominees when he’s deciding. He’s looking at a much shorter list compiled by his aides. And his aides are thinking about the proper judicial philosophy, the proper outcomes, certainly if you’re a Democratic president and compiling that list. But as a Professor Nourse said, they’re not asking these people how they’re going to vote. If you believe in living constitutionalism, you’ll want to appoint someone who’s more likely to be a progressive on these issues because you will think that the progressive judge will bend to that outcome. If you’re a conservative, I think you’ll be more inclined to the idea that judges shouldn’t be legislating from the bench and you’ll favor originalist judges. Having said that the president, I don’t think is wedded to a constitutional principle of originalism. I think he’s just chosen from the people he was given by his staff.

Judy Woodruff : ([02:33:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9209.26))  
Let me just ask you John Yang. I mean, based on your watching of the court, is that likely what happened here?

John Yang: ([02:33:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9216.38))  
Well, I think he clearly had a list. I mean, he put out the list, a list in 2016 during the campaign and in large part to try to reassure evangelical Christians that he would be, he would nominate the sort of sorts of judges that they want. I think that they do try, but I think that in past history we’ve seen justices who have surprised the presidents who’ve nominated them and surprised lawmakers who fought for their confirmations. I mean, going, as far back as Earl Warren, President Eisenhower’s been quoted as saying that nominating Earl Warren to be the Chief Justice was the biggest mistake of his presidency. I think that David Souter surprised conservatives who pushed him to get on the court.

John Yang: ([02:34:37](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9277.86))  
And presidents have had said that they wanted to push justices on the court who believed in the sanctity of human life. I mean, Ronald Reagan talked that way. George HW Bush talked that way. George W. Bush talk that way. And I think that the demise of Roe vs Wade has been predicted every time one of those justices has been nominated. But I think that this is something that Marsha I know has talked about. Things can look differently once you get on the court, you worry about the court’s reputation, you worry about the court standing. This is something that Chief Justice Marcia has written about. This is something that Chief Justice John Roberts is very concerned about

Judy Woodruff : ([02:35:25](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9325.21))  
Marsha, yes. I’d like you to comment on that. And again, to comment on the fact that how unusual it is that a president one president gets to choose three Supreme Court justices. How many presidents have had that opportunity?

Marcia Coyle: ([02:35:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9343.03))  
Not many at all. And yes, it is unusual. I wanted to say too, that we have to remember that the nomination and confirmation process is a political process. These nominees, whoever they are, do become nominees because they have made contacts over the years, they have mentors that may be politically connected, and that’s how they come to the attention of a White House. I know at one point I think Judge Barrett said in her opening statement that she had never imagined that she could be sitting where she was sitting, but I don’t think that’s really accurate because she had been mentioned in recent years as a possible Supreme Court nominee. In fact, president Trump had said he was saving her for Justice Ginsburg’s seat, but also she had been very active with the Federalist Society, which is a conservative organization and has been almost a feeder organization to this White House for judicial nominations.

Marcia Coyle: ([02:36:50](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9410.43))  
So it is a political process. It doesn’t mean that they know how she is going to vote as she is confirmed on every issue. But I think while there have been surprises on the Supreme Court, as John pointed out, I think that the process from the presidential appointer has become firmer, more assured because of roots like the Federalist Society. And I think going back to Reagan, they just have really honed how to do this process. And there aren’t many surprises. You are going to have in Judge Barrett, a very conservative justice if she is confirmed.

Judy Woodruff : ([02:37:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9452.36))  
Yamiche Alcindor, that is certainly what President Trump is counting on. We know that he has just gone back out on the campaign trail after going through his own diagnosis treatment. And he says complete recovery from COVID, COVID-19, but he has continued to bring up the Amy Coney Barrett appointment to speak about it with great pride and he’s keeping an eye on it.

Yamiche Alcindor: ([02:38:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9483.71))  
He’s keeping a very close eye on these hearings and on the confirmation, upcoming confirmation he believes of Judge Barrett. He says over and over again on the campaign trail that one of the things that conservatives can trust him on is his ability to pick really good, he says, and really conservative justices. He brags a lot about the federal bench and the dozens and dozens of nominees that he’s put there. But as he has nominated Judge Barrett, he’s also started to incorporate her into what we in politics call his stump speech, it’s a speech that he gives a different cities and in different states. He returned to the campaign trail and went to Florida yesterday and he was talking about the Supreme Court to big, big applause from people who are very excited about that. So the president understands this is a conservative goal, and this is something that he’s delivering to his base.

Judy Woodruff : ([02:38:53](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9533.01))  
All right, we are back in the hearing room. The committee is back from its lunch break. I want to thank all of our reporters and analysts, the questioning resumes. We are going to start preparing for the news hour this evening, but we hope you’ll stay right where you are. Uninterrupted coverage will continue on PBS stations and online on our website, YouTube and other social media through the conclusion of today’s hearings. I’m Judy Woodruff, thank you for joining us. Please stay with us [crosstalk 02:39:19].

Sheldon Whitehouse: ([02:39:18](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9558.1))  
… conversation that you and I had, when we spoke on the telephone. You were kind enough to hear out a presentation that I made, and I intend to ask some questions in that area, but it doesn’t make sense to ask questions if I haven’t laid the predicate, particularly for viewers who are watching this. So I guess the reason that I want to do this is because people who are watching this need to understand that this small hearing room and the little TV box that you’re looking at, the little screen that you’re looking at are a little bit like the frame of a puppet theater. And if you only look at what’s going on in the puppet theater, you’re not going to understand the whole story. You’re not going to understand the real dynamic, what is going on here. And you’re certainly not going to understand forces outside of this room who are pulling strings and pushing sticks and causing the puppet theater to react.

Sheldon Whitehouse: ([02:40:38](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9638.87))  
So first let me say, why do I think outside forces are here pulling strings? Well, part of it is behavior. We have colleagues here who supported you, this nominee, before there was a nominee. That’s a little unusual. We have the political ram job that we have already complained of driving this process through at break neck speed in the middle of a pandemic while the Senate is closed for safety reasons and while we’re doing nothing about the COVID epidemic around us. We have some very awkward 180s from colleagues, Mr. Chairman, you figure in this, our leader said back when it was Garland versus Gorsuch that of course, of course the American people should have a say in the court’s direction. Of course, of course, said Mitch McConnell. That’s long gone. Senator Grassley said, “The American people shouldn’t be denied a voice”, that’s long gone. Senator Cruz said, “You don’t do this in an election year.” That’s long gone. And our chairman made his famous hold the tape promise, “If an opening comes in the last year of president Trump’s term, we’ll wait till the next election”, that’s gone too.

Sheldon Whitehouse: ([02:42:18](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9738.06))  
So there is a lot of hard to explain hypocrisy and rush taking place right now. And my experience around politics is that when you find hypocrisy in the daylight, look for power in the shadows. Now people may say, well, what does all this matter? This is a political parlor game, it’s no big deal. Well, there’s some pretty high stakes here that we’ve been talking about here on our side. And I’ll tell you three of them right here. Roe versus Wade, Obergefell, and the Obamacare cases. Here’s the GOP platform, the Republican platform, the platform of my colleagues on the other side of this aisle say that, “A Republican president will appoint judges who will reverse Roe, Obergefell, and the Obamacare cases.”

Sheldon Whitehouse: ([02:43:20](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9800.19))  
So if you have a family member with an interest in some autonomy over their body under Roe vs Wade, the ability to have a marriage, have friends marry, have a niece or a daughter or son marry someone of their same sex, you’ve got a stake. And if you’re one of the millions and millions of Americans who depend on the Affordable Care Act, you’ve got a mistake. It’s not just the platform over and over again. Let’s start by talking about the Affordable Care Act. Here’s the President talking about this litigation that we’re gearing up this nominee for, for November 10th. In this litigation. He said, “We want to terminate healthcare under Obamacare.” That is the president’s statement. So when we react to that, don’t act as if we’re making this stuff up. This is what President Trump said. This is what your party platform says. Reverse the Obamacare cases.

Sheldon Whitehouse: ([02:44:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9866.17))  
Senator after Senator, including many in this committee, filed briefs saying that the Affordable Care Act should be thrown out by courts. Why is it surprising for us to be concerned that you want this nominee to do what you want nominees to do? One quick stop on NFIB V Sebelius, because a lot of this has to do with money. This is an interesting comparison. National Federation of Independent Businesses, until it filed the NFIB versus Sebelius case, had its biggest donation ever of $21,000. In the year that it went to work on the Affordable Care Act, 10 wealthy donors gave $10 million. Somebody deserves a thank you.

Sheldon Whitehouse: ([02:45:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9919.51))  
So let’s go onto Roe V. Wade. Same thing, same thing. The president has said that reversing Roe V. Wade will happen automatically because he’s putting pro-life justices on the court. Why would we not take him at his word? The Republican party platform says it will reverse Roe. Why would we not comment on that and take you at your word? Senators here, including Senator Hawley, have said, “I will vote only for nominees who acknowledge that Roe V. Wade is wrongly decided”, and they’re pledged to vote for this nominee. Do the math. That’s a really simple equation to run. The Republican brief in June Medical said Roe should be overruled. So don’t act surprised when we ask questions about whether that’s what you’re up to here.

Sheldon Whitehouse: ([02:46:20](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=9980.68))  
And finally, out in the ad world that you have spared yourself wisely, Judge Barrett, the Susan B. Anthony foundation is running advertisements right now saying that you are set. You are set to give our pro-life country the court that it deserves. There’s the ad with the voiceover. She’s set, she’s set. And then Roe, Obamacare cases, and Obergefell, gay marriage. National Organization for Marriage, the big group that opposes same-sex marriage, says, “In this proceeding, all our issues are at stake.” Republican platform says it wants to reverse Obergefell. And the Republican brief filed in the case said, “Same-sex relationships don’t fall within any constitutional protection.”

Sheldon Whitehouse: ([02:47:18](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10038.61))  
So when we say the stakes are high on this, it’s because you’ve said the stakes are high on this. You have said that’s what you want to do. So how are people going about doing it? What is the scheme here? Let me start with this one. In all cases, there’s big anonymous money behind various lanes of activity. One lane of activity is through the conduit of the Federalist Society. It’s managed by a guy, was managed by a guy named Leonard Leo, and it’s taken over the selection of judicial nominees. How do we know that to be the case? Because Trump has said so over and over again, his White House counsel said so. So we have an anonymously funded group controlling judicial selection run by this guy, Leonard Leo.

Sheldon Whitehouse: ([02:48:13](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10093.73))  
Then in another lane, we have again, anonymous funders running through something called the Judicial Crisis Network, which is run by Carrie Severino. And it’s doing PR and campaign ads for Republican judicial nominees. It got 17 million, single $17 million donation in the Garland Gorsuch contest. It got another single $17 million donation to support Kavanaugh. Somebody, perhaps the same person, spent $35 million to influence the makeup of the United States Supreme Court. Tell me that’s good. And then over here, you have a whole array of legal groups also funded by dark money, which have a different role. They bring cases to the court. They don’t wind their way to the court your honor, they get shoved to the court by these legal groups. Many of which asked to lose below so they can get quickly to the court to get their business done there. And then they turn up in an chorus, an orchestrated chorus of [anarchy 00:33:22].

Sheldon Whitehouse: ([02:49:22](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10162.36))  
Now I’ve had a chance to have a look at this. And I was in a case actually as an amicus myself, the consumer financial protection board case. And in that case, there were one, two, three, four, five, six, seven, eight, nine, 10, 11 amicus briefs filed. And every single one of them was a group funded by something called Donors Trust. Donors Trust is a gigantic identity scrubbing device for the right wing so that it says Donors Trust is the donor without whoever the real donor is. It doesn’t have a business. It doesn’t have a business plan. It doesn’t do anything. It’s just an identity scrubber. And this group here.

Sheldon Whitehouse: ([02:50:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10203.561))  
… Vanity scrubber. And this group here, the Bradley Foundation, funded 8 out of the 11 briefs. That seems weird to me when you have an Amicus briefs coming in little flotillas that are funded by the same groups, but nominally separate in the court. So, actually attach this to my brief as an appendix.

Sheldon Whitehouse: ([02:50:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10224.46))  
Center for Media and Democracy saw it and they did better work. They went on to say which foundations funded the brief writers in that CFPB case. Here’s the Bradley Foundation. For 5.6 million to those groups. Here’s Donors Trust, 23 million to those brief writing groups. The grand total across all the donor groups was $68 million. So, the groups that were filing Amicus briefs, pretending that they were different groups, and it’s not just in the consumer financial protection board case, you might say, “Well, that was just a one-off.”

Sheldon Whitehouse: ([02:51:06](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10266.97))  
Here’s Janice, the anti-labor case, that had a long trail through the court through Friedrichs and through Knox and through other decisions. And Source Watch, and ProPublica did some work about this. Here’s donor’s trust and donor’s capital fund, and here’s the Bradley Foundation. And they totaled giving $45 million to the 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 groups that filed an Amicus briefs pretending to be different groups. And both of the lawyer groups in the case. Funded by Donors Trust, funded by Bradley Foundation and Janice. This is happening over and over and over again. And it goes beyond just the briefs. It goes beyond just the Amicus presentations. The Federalist Society. Remember this group that is acting as the conduit and the Donald Trump has said is doing his judicial selection? They’re getting money from the same foundations. From Donors Trust, $16.7 million. From the Bradley Foundation, $1.37 million. From the same group of foundations, total, $33 million.

Sheldon Whitehouse: ([02:52:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10343.25))  
So, you can start to look at these and you can start to tie them together. The legal groups, all the same funders over and over again, bringing the cases and providing this orchestrated chorus of Amiki. Then, the same group also funds the Federalist society over here. The Washington Post wrote a big expose about this and that made Leonard Leo a little hot, a little bit like a burned agent. So, he had to jump out and he went off to go and do anonymously funded voter suppression work. Guess who jumped in to take over the selection process in this case for Judge Barrett? Carrie Severino made the hop. So, once again, ties right in together.

Sheldon Whitehouse: ([02:53:16](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10396.5))  
So, the Center for Media and Democracy’s done a little bit more research. Here’s a Bradley Foundation memo that they’ve published. The Bradley Foundation is reviewing a grant application, asking for money for this orchestrated Amicus process. And what did they say in the staff recommendation? “It is important to orchestrate,” their word not mine, “important to orchestrate high caliber Amicus efforts before the court.” They also note that Bradley has done previous philanthropic investments in the actual underlying legal actions. So, Bradley is funding. What do they call? Philanthropic investing in the underlying legal action and then giving money to groups to show up in the orchestrated chorus of Amici. That can’t be good.

Sheldon Whitehouse: ([02:54:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10452.61))  
And it goes on because they also found this email. This email comes from an individual at the Bradley Foundation, and it asks our friend Leonard Leo, who used to run the selection process, “Is there a 501(c)(3) non-profit to which Bradley could direct any support of the two Supreme Court Amicus projects, other than donor’s trust?” I don’t know why they wanted to avoid the reliable identity scrubber donors trust, but for some reason they did. So, Leonard Leo writes back on Federalist society address, so don’t tell me that as the Federalist society business, on Federalist society, on his address, he writes back, “Yes, send it to the Judicial Education Project, which could take and allocate the money.” And guess who works for the judicial education project? Carrie Severino. Who also helped select this nominee, running the Trump Federalist Society selection process.

Sheldon Whitehouse: ([02:55:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10519.45))  
So, the connections abound in the Washington Post article, they point out that the judicial crisis network’s office is on the same hallway, in the same building as the Federalist society. And that when they sent their reporter to talk to somebody at the Judicial Crisis Network, somebody from the Federalist society came down to let them up. This, more and more, looks like it’s not three schemes, but it’s one scheme, with the same funders selecting judges, funding campaigns for the judges, and then showing up in court in these orchestrated Amicus flotillas to tell the judges what to do.

Sheldon Whitehouse: ([02:56:11](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10571.85))  
On the day judicial crisis network, you’ve got the Leonard Leo connection, obviously, she hopped in to take over for him with the Federalist Society. You’ve got the campaigns that I’ve talked about, where they take $17 million contributions. That’s a big check to write, $17 million. To campaign for Supreme Court nominees, no idea who that is or what they got for it. You’ve got briefs that she wrote. The Republican Senators filed briefs in that NFIB case signed by Ms. Severino. The woman who helped choose this nominee has written briefs for Republican senators attacking the ACA. Don’t say the ACA is not an issue here.

Sheldon Whitehouse: ([02:56:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10616.43))  
And by the way, the Judicial Crisis Network funds the Republican Attorney’s General, funds RAGA the Republican Attorney Generals Association, and it funds individual Republican Attorneys General. And guess who the plaintiffs are in the Affordable Care Act case? Republican Attorneys General. Trump joined them because he didn’t want to defend. So, he’s in with the Republican Attorneys General. But, here’s the Judicial Crisis Network campaigning for Supreme Court nominees, writing briefs for senators against the Affordable Care Act, supporting the Republicans who are bringing this case, and leading the selection process for this nominee.

Sheldon Whitehouse: ([02:57:37](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10657.73))  
Here’s the page off the brief. Here’s where they are. Mitch McConnell and on through the list. Senator Collins, Senator Cornyn, Senator Hoven, Senator, who’s still here? Marco Rubio. It’s huge assortment of Republican senators who Carrie Severino wrote a brief for against, against, against the Affordable Care Act. So, this is a, to me, pretty big deal. I’ve never seen this around any court that I’ve ever been involved with. Where there’s this much dark money and this much influence being used.

Sheldon Whitehouse: ([02:58:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10703.03))  
Here’s how the Washington Post summed it up, “This is a conservative activist behind the scenes campaign to remake the nation’s courts. And it’s a $250 million dark money operation.” $250 million is a lot of money to spend if you’re not getting anything for it. So, that raises the question, what are they getting for it? Well, I showed the slide earlier on the Affordable Care Act and on Obergefell and on Roe vs. Wade. That’s where they lost. But with another judge, that could change. That’s where the contest is. That’s where the Republican party platform tells us to look at how they want judges to rule, to reverse Roe, to reverse the Obamacare cases, and to reverse Obergefell and take away gay marriage. That is their stated objective and plan. Why not take them at their word?

Sheldon Whitehouse: ([02:59:20](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10760.7))  
But there’s another piece of it. And that is, not what’s ahead of us, but what’s behind us. What’s behind us is now 80 cases, Mr. Chairman, 80 cases under Chief Justice Roberts that have these characteristics. One, they were decided five to four by a bare majority. Two, the five to four majority was partisan in the sense that not one democratic appointee joined the five. I refer to that group as the Roberts five. It changes a little bit as with Justice Scalia’s death, for instance. But, there’s been a steady Robert’s five that has delivered now 80 of these decisions. And the last characteristic of them is that there is an identifiable Republican donor interest in those cases, and in every single case, that donor interest won. It was an 80 to 0, 5 to 4 partisan route, ransacking.

Sheldon Whitehouse: ([03:00:27](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10827.01))  
And it’s important to look at where those cases went, because they’re not about big public issues like getting rid of the Affordable Care Act, undoing Roe vs. Wade and undoing same-sex marriage. They’re about power. And if you look at those 80 decisions, they fall into four categories over and over and over again. One, unlimited in dark money in politics. Citizens United is the famous one, but it’s continued sense with McCutcheon, and we’ve got one coming up now. Always the 5 4 unlimited money in politics, never protecting against dark money in politics. Despite the fact that they said it was going to be transparent. And who wins when you allow unlimited dark money in politics? A very small group. The ones who have unlimited money to spend and a motive to spend it in politics. They win, everybody else loses. And if you’re looking at who might be behind this, let’s talk about people with unlimited money to spend and a motive to do it. We’ll see how that goes.

Sheldon Whitehouse: ([03:01:37](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10897.58))  
Next. Knock the civil jury down. Whittle it down to a nub. The civil jury was in the Constitution, in the Bill of Rights, in our darn Declaration of Independence, but it’s annoying to big corporate powers because you can swagger your way as a big corporate power through Congress. You can go and tell the president, you put money into to elect what to do. He’ll put your stooges at the EPA. It’s all great until you get to the Civil Jury because they have an obligation, as you know, judge Barrett, they have an obligation under the law to be fair to both parties, irrespective of their size. You can’t bribe them. You’re not allowed to. It’s a crime to tamper with a jury. It’s standard practice to tamper with Congress. And they make decisions based on the law. If you’re used to being the boss and swaggering your way around the political side, you don’t want to be answerable before a jury. And so, one after another, these 80, 5 to 4 decisions have knocked down, whittled away at the civil jury, a great American institution.

Sheldon Whitehouse: ([03:02:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=10967.62))  
Third. First was unlimited dark money. Second was demean and diminish the civil jury. Third is weaken regulatory agencies. A lot of this money I’m convinced is polluter money. The Koch industries is a polluter. The fossil fuel industry is a polluter. Who else would be putting buckets of money into this and wanting to hide who they are behind Donor’s Trust or other schemes? And if you’re a big polluter, what do you want? You want weak regulatory agencies. You want ones that you can box up and run over to Congress and get your friends to fix things for you in Congress. Over and over and over again, these decisions are targeted at regulatory agencies to weaken their independence and weaken their strength. And if you’re a big polluter, a weak regulatory agency is your idea of a good day.

Sheldon Whitehouse: ([03:03:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11027.17))  
And the last thing is in politics. In voting. Why on earth the court made the decision, a factual decision, not something appellate courts are ordinarily supposed to make, as I understand it, Judge Barrett, the factual decision that nobody needed to worry about minority voters in pre-clearance States being discriminated against, or that legislators would try to knock back their ability to vote. These five made that finding in Shelby County against bipartisan legislation from both Houses of Congress, hugely passed on no factual record. They just decided that that was a problem that was over. On no record, with no basis because it got them to the result that we then saw. What followed? State after state, after state passed voter suppression laws. One, so badly targeting African-Americans that the two courts that it was surgically, surgically tailored to get after minority voters.

Sheldon Whitehouse: ([03:04:55](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11095.35))  
And gerrymandering, the other great control. Bulk gerrymandering, where you go into a state like the REDMAP project did in Ohio and Pennsylvania, and you pack Democrats so tightly into a few districts that all of the others become Republican majority districts. And in those States, you send a delegation to Congress that has a huge majority of Republican members, like 13 to 5, as I recall, in a state where the five, the party of the five, actually won the popular vote. You’ve sent a delegation to Congress that is out of step with the popular vote of that state and court after court figured out how to solve that. And the Supreme Court said, “Nope, 5 to 4, again. Nope. We’re not going to take an interest in that question.”

Sheldon Whitehouse: ([03:05:46](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11146.87))  
In all these areas where it’s about political power for big, special interests and people who want to fund campaigns, and people who want to get their way through politics without actually showing up, doing it behind Donors Trust and other groups, doing it through these schemes, over and over and over again, you see the same thing. 80 decisions, judge Barrett. 80 decisions, an 80 to 0 sweep. I don’t think you’ve tried cases, but some cases, the issue is bias and discrimination. And if you’re making a bias case as a trial lawyer, Lindsey Graham is a hell of a good trial lawyer, if he wanted to make a bias case, Dick Durbin’s a hell of a good trial lawyer, if they wanted to make a bias case and they could show an 80 to 0 pattern, A, that’s admissible and B, I’d love to make that argument to the jury. I’d be really hard pressed to be the lawyer saying, “No, 80 to 0 is just a bunch of flukes.” All 5 4, all partisan, all this way.

Sheldon Whitehouse: ([03:06:51](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11211.66))  
So, something is not right around the court. And dark money has a lot to do with it. Special interests have a lot to do with it. Donors Trust and whoever’s, hiding behind Donor’s Trust, has a lot to do with it. And the Bradley Foundation orchestrating it’s Amici over at the court has a lot to do with it. So, I thank you, Judge Barrett for listening to me now a second time. And I think this gives you a chance for you and I to tee up an interesting conversation tomorrow. And I thank my colleagues for hearing me out.

Mr. Chairman: ([03:07:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11252.44))  
Thank you, Senator Whitehouse. Senator Cruz.

Sheldon Whitehouse: ([03:07:37](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11257.04))  
Oh, Mr. Chairman, can I put three letters in [inaudible 00:17:40]?

Mr. Chairman: ([03:07:39](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11259.9))  
Without objection.

Sheldon Whitehouse: ([03:07:40](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11260.57))  
Thank you.

Senator Cruz: ([03:07:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11263.03))  
Thank you, Mr. Chairman. Judge Barrett, welcome. Congratulations on being nominated. Congratulations on enduring the confirmation proceedings. And I think it is a particularly good thing we’ve made it through what I guess you would call the top of the lineup of the questioning and some of the smartest and frankly, most effective questioners on the Democratic side. And I think it speaks volumes that collectively, they’ve had very few questions for you. And virtually none calling into question your credentials, which are impeccable [crosstalk 00:03:08:33]. Your record. And what I think is, has been an extraordinary life you’ve led. So, that should be the source of great satisfaction in terms of the scholarly record and judicial record that you’ve spent a lifetime building. I want to start by asking you a question. Why is the first Amendment’s protection of religious Liberty? Why is that important?

Judge Amy Coney Barrett: ([03:09:04](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11344.7))  
Well, I think it’s broadly viewed that the framers protected, and ratifiers, protected the free exercise of religion because for reasons that we all know from history of persecuted, religious minorities fleeing to the United States, that enshrining that protection it was one of the Bill of Rights because it was considered so fundamental.

Senator Cruz: ([03:09:27](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11367.52))  
And why does that matter to Americans? What difference does that make in anybody’s life?

Judge Amy Coney Barrett: ([03:09:35](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11375.3))  
Well, I think all of the Bill of Rights, each and every one of them, is important to Americans because we value the constitution, including religious Liberty.

Senator Cruz: ([03:09:46](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11386.52))  
Well, how about the free speech protections of the first amendment? Why are those important?

Judge Amy Coney Barrett: ([03:09:49](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11389.86))  
So that minority viewpoints can’t be squashed. So that it’s not just the majority that can speak popular views. You don’t really need the first amendment if what you’re saying is something that everybody wants to hear, you need it when people are trying to silence you.

Senator Cruz: ([03:10:07](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11407.85))  
And how about the second amendment? Why is the right to keep and bear arms important?

Judge Amy Coney Barrett: ([03:10:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11412.34))  
Well, we’ve talked about Heller earlier this morning and what Heller tells us is that the second amendment protects an individual right to bear arms for self-defense.

Senator Cruz: ([03:10:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11424.75))  
Well, I think all of those rights, and I agree with you, the entire Bill of Rights is incredibly important to Americans. I also think what is really striking about this hearing today and also yesterday, is that Senate Democrats are not defending what I think is really a radical agenda that they have when it comes to the Bill of Rights. And the topics they’re discussing today have little bearing to the rights that are really at issue and in jeopardy at the Supreme Court.

Senator Cruz: ([03:11:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11462.64))  
And so, let’s take a few minutes to go through them. First of all, we’ve had some discussion of Roe vs. Wade. You have declined to give an opinion on a matter that might be pending before the court. That is, of course, the same answer that every single sitting justice has given when he or she was sitting in the same chair you are. It is mandated by the judicial canons of ethics, whether one is a nominee of a Democratic president or a Republican president, that has been the answer that has been given to this committee for decades. But I do think it is interesting that our Democratic colleagues, number one, don’t discuss what would actually happen if there came a day in which Roe vs. Wade were overruled. Which is namely that it would not suddenly become the case that abortion was illegal, but rather it would revert to the status of the law as it’s been for nearly 200 years of our nation’s history. Which is that the question of the permissibility of abortion as a question for elected legislatures at the state level and at the federal level.

Senator Cruz: ([03:12:17](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11537.32))  
And it is difficult to dispute that there are a great many jurisdictions, including jurisdictions like California and New York, who even if Roe vs, Wade were no longer the law of the land, their elected legislatures would almost certainly continue unrestricted access to abortion with virtually no limitation. What I find interesting though, is that our Democratic colleagues do not discuss what is really the radical position of the most liberal justices on the Supreme Court. Which is that no restrictions whatsoever are permissible when it comes to abortion.

Senator Cruz: ([03:13:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11583.88))  
Yesterday, one of the Democratic senators made reference to the case Gonzalez vs. Carhart. I’m quite familiar with that case. And I represented Texas and a number of other States as a Miki in that case. That case concerned the constitutionality of the Federal ban on partial birth abortion. That was legislation that passed Congress was signed into law that made the really gruesome practice of partial birth abortion, illegal. Overwhelming majority of Americans believe partial birth abortion should be prohibited. Even those who identify as pro choice. A significant percentage of Americans don’t want to see that gruesome practice allowed. Supreme Court, by a vote of 5 to 4 in Carhart vs. Gonzales, upheld the federal ban on partial birth abortion. That means there were four justices ready to strike it down, ready to conclude that you can’t ban partial birth abortion, that you can’t ban late term abortion.

Senator Cruz: ([03:14:04](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11644.36))  
And by the way, other restrictions that are at question include parental consent laws, parental notification laws. None of our Democratic colleagues want to talk about the justices they want to see on the court would strike down every single reasonable restriction on unlimited abortion on demand that the vast majority of Americans support. How about free speech? Well, we’ve heard quite a bit about free speech. The Senator from Rhode Island just gave a long presentation, complete with lots of charts. I’ll say a couple of things on free speech.

Senator Cruz: ([03:14:48](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11688.83))  
First of all, our Democratic colleagues when they address the issue of so-called dark money in campaign finance contributions, are often deeply, deeply hypocritical, and don’t address the actual facts that exist. Here are some facts. Of the top 20 organizations spending money for political speech in the year 2016, 14 of them gave virtually all of their money to Democrats and another 3 split their money evenly. So, only 3 of the top 20 gave money to Republicans. What did that mean in practice? That meant the top 20 super PAC donors contributed $422 million to Democrats and 189 million to Republicans. Those who give these impassioned speeches against dark money, don’t mention that their side is funded by dark money with a massive differential. The Senator from Rhode Island talked about big corporate powers without acknowledging that the contributions from the fortune 500 in this presidential election overwhelmingly favor Joe Biden and The Democrats. Without acknowledging that the contributions from Wall Street in this election overwhelmingly favor Joe Biden and the Democrats.

Senator Cruz: ([03:16:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11772.91))  
It’s an awful lot of rhetoric about power. But it gets even more interesting when you look at Supreme Court nominations. We just heard an attack on the Federalist Society, a group that I’ve been a member of for over 25 years, I joined as a law student. It’s a group that brings Conservatives, Libertarians Constitutionalists together to have robust discussions about the Constitution and about the law.

Senator Cruz: ([03:16:39](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11799.38))  
What’s interesting is nowhere in the Senator of Rhode Island’s remarks was any reference to a company called Arab Baila Advisors, which is a for-profit entity that manages non-profits including the 1630 Fund in the new Venture fund. Now what on earth are those? Those sound like awfully dark and can be confusing names. Well, according to the Wall Street Journal this Sunday, in the year 2017 and 2018, those entities reported $987.5 million in revenue. That’s nearly a billion dollars. We heard a lot of thundering indignation at what was described as $250 million of expenditures. In this case, you’ve got a billion dollars.

Senator Cruz: ([03:17:33](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11853.15))  
The Senator Rhode Island said that that much money, much of which is dark money that we don’t know who contributed it, he asked what are they getting for it? And by the way, one of the things they’re getting for it is a group called Demand Justice. A project of those entities spent $5 million opposing Justice Brett Kavanaugh, and has just launched a seven figure ad by opposing your confirmation. So, all of the great umbrage about the corporate interest or spending dark money, is wildly in conflict with the actual facts that the corporate interests that are spending dark money are funding the Democrats. By a factor of 3 to 1 or greater. A fact that doesn’t ever seem to be acknowledged.

Senator Cruz: ([03:18:33](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=11913.59))  
But not only that, what was Citizens United about? It’s interesting, most people at home they’ve heard about Citizens United. They know it makes Democrats very, very upset, but they don’t actually know what the case is about. Citizens United concerned, whether or not it was legal to make a movie criticizing a politician. Specifically, Citizens United is a small nonprofit organization based here in DC, that made a movie that was critical of Hillary Clinton. And the Obama Justice Department took the position that it could fine, it could punish Citizens United for daring to make a movie critical of a politician. The case went all the way to the U S Supreme Court at the oral argument there was a moment that was truly chilling. Justice Sam Alito asked the Obama Justice Department, ” Is it your position under your theory of the case that the Federal Government can ban books?” And the Obama justice Department responded, “Yes. Yes. It is our position that if the books criticize a political candidate, a politician, the Federal Government can ban books.” As far as I’m concerned, that is a terrifying view of the first amendment.

Senator Cruz: ([03:20:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12003.05))  
Citizens united was decided 5 to 4. By a narrow 5, 4 majority, the Supreme Court concluded the First Amendment did not allow the Federal Government to punish you for making a movie critical of a politician. And likewise, that the Federal Government couldn’t ban books. Four Justices to Senate. Four Justices were willing to say the Federal Government can ban books and can ban movies and presumably could ban books, as well.

Senator Cruz: ([03:20:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12036.46))  
When Hillary Clinton was running for president, she explicitly promised every Justice she nominated to the Court would pledge to overturn Citizens United. By the way, Hillary Clinton said she would demand of her nominee something you have rightly said that this administration is not demanded of you, which is a commitment on any case as to how you will rule. Democrats have shown no compunction in expecting their nominees to make a promise, here’s how I’m going to vote on a pending case, judicial ethics be damned.

Senator Cruz: ([03:21:14](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12074.41))  
Or how about the Second Amendment? We’ve heard some reference to the Heller decision. Senator from Connecticut yesterday, talked about reasonable gun control and gun safety provisions. Well, that of course was not what was at stake in the Heller decision. Number one, majority decision in Heller, Justice Scalia’s opinion, acknowledges reasonable provisions, things like prohibitions on felons and possession are permissible. Your opinion in the Canner decision, likewise acknowledged that restrictions preventing dangerous criminals from receiving firearms are entirely consistent and permissible under the Second Amendment.

Senator Cruz: ([03:22:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12123.93))  
But, the issue at Heller was much more fundamental. It was whether the Second Amendment protects an individual right to keep and bear arms at all. The vote in Heller was 5 to 4. By a vote of 5 to 4, the majority struck down the District of Columbia’s total prohibitions on owning an operative firearm in the District of Columbia. The argument of the four dissenters was not what our democratic colleagues talk about here. It wasn’t some reasonable gun control provisions are okay. That was not the argument of the dissenters. That question we can actually have a reasonable debate on, reasonable minds can differ on what the appropriate line should be, what are reasonable laws there. But that was not what was an issue at Heller.

Senator Cruz: ([03:22:50](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12170.23))  
The position of the four dissenters was the second amendment protects no individual right to keep and bear arms whatsoever, but merely a quote collective right of the militia. Which is fancy lawyer talk for a non-existent right. Four justices would have ruled that way. One vote away. The consequences of the court concluding that there is no individual right under the first amendment would mean you and I, and every American watching this, would lose your Second Amendment right. It would mean the Federal Government, the State Government, the city, could ban guns entirely, could make it a criminal offense for any one of us to own a firearm and no individual American would have any judicially cognizable right to challenge that.

Senator Cruz: ([03:23:44](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12224.68))  
That is a radical reading of the constitution. That is effectively erasing the Second Amendment from the Bill of Rights. And Hillary Clinton, likewise, promised in 2016 that every Justice she nominated would commit to voting to overturn Heller. They were big on…

Senator Cruz: ([03:24:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12243.8))  
Would commit to voting to overturn Heller, they were big on litmus tests. And Joe Biden, although he refuses to answer just about anything. About whether or not he’s going to pack the court, he did tell the American people, the voters don’t deserve to know whether he is going to pack the court. Truly a statement of disrespect and contempt for the voters, unusual in our political process. One vote away from the second amendment being erased from the bill of rights. One of our democratic colleagues admit that that is their agenda, and yet those are the justices that democratic presidential nominees are promising they will appoint. Justices who will take away your right to criticize politicians, justices who will allow censorship, justices who will allow movies and books to be banned. Justices who will erase the second amendment from the bill of right.

Senator Cruz: ([03:25:11](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12311.27))  
And how about religious liberty? religious liberty is an issue near and dear to a great many of us. The right of everybody American to live according to your faith, according to your conscience, whatever that faith may be. religious liberty is fundamentally about diversity. It’s about respecting diversity, that whatever your faith tradition might be, the government is not going to trample on it. religious liberty cases over and over again had been decided five, four, the case of Van Orden versus Perry, a case I litigated. Dealt with the 10 commandments monument that stands on the state Capitol ground, has been there since 1961 in Texas. An individual plaintiff, an atheist, a homeless man filed a lawsuit seeking to tear down the 10 commandments. The case went all the way to the US Supreme Court, it was decided five to four. Four justices were willing to say in effect, send in the bulldozers and tear down that monument, because you can’t gaze on the image of the 10 commandments on public land.

Senator Cruz: ([03:26:16](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12376.27))  
Another case, the Mojave desert veterans Memorial. This is a Memorial erected to the men and women who gave their lives in World War One. It’s a lone white, Latin cross, simple and bare in the middle of the desert. I’ve been there on sunrise rock where it stands. The ACLU filed a lawsuit saying you cannot gaze on the image of a cross on public land, and the ACLU won in the district court. They won in the ninth circuit court of appeals. The federal court ordered that veteran’s Memorial to be covered up with a burlap sack with a chain on the bottom, and then apply wood box.

Senator Cruz: ([03:26:58](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12418.55))  
When the case to the US Supreme Court, I represented 3 million veterans pro bono, for free, defending that veterans Memorial. We won five, four, and there were four justices prepare to say, “tear down the veterans Memorial.” And under the reasoning that they put forth, they were not far away from saying, “bring out the chisels and remove the crosses and the stars of David on the tombstones of the men and women that gave their lives at Arlington cemetery, defending this nation.” That is a radical view, and we’re one vote away. That is utterly contrary to the text of the first amendment, to the understanding of the first amendment.

Senator Cruz: ([03:27:55](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12475.65))  
When we argued the 10 commandments case to the US Supreme Court, there was more than a little bit of irony. In that, do you know how many times the image of the 10 commandments appears in the courtroom of the Supreme Court? The answer to that is 43. There were two images of the 10 commandments carved on the wooden doors. As you walk out of the courtroom, you will soon be sitting looking at them. There are 40 images of the 10 commandments on the bronze gates on both sides of the courtroom. And then Judge Barrett, when you’re sitting at the bench above your left shoulder will be a phrase you know well. A phrase carved into the wall of great law givers, one of whom is Moses. He is standing there holding the 10 commandments. The text of which is legible in Hebrew, as he looks down upon the justices. And four justices were willing to say in effect, “bringing out the sandblaster, because we must remove God from the public square.”

Senator Cruz: ([03:29:06](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12546.45))  
That is a profound threat to our religious liberty. And I would note that it doesn’t just extend to public acknowledgements. It also extends to religious liberty. The Little Sisters of the Poor are Catholic convent of nuns who take oaths of poverty. Who devote their lives to caring for the sick, caring for the needy, caring for the elderly. And the Obama administration litigated against The Little Sisters of the Poor seeking to find them, in order to force them to pay for abortion inducing drugs among others. It’s truly a stunning situation when you have the federal government litigating against nuns. Supreme court decided the Hobby Lobby case and other case routinely denounced by Senate Democrats. The Hobby Lobby case concluded that the federal government could not permissibly force a Christian business to violate their faith. It reflected the religious liberty traditions of our country, that you can live according to your faith without the government trampling on it.

Senator Cruz: ([03:30:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12619.58))  
You know what this body did, I’m sorry to say. Senate Democrats introduced legislation to gut The Religious Freedom Restoration Act. Religious Freedom Restoration Act, when it passed this body, passed with a overwhelming bipartisan majority. Senate Democrats, including Chuck Schumer, Joe Biden and Ted Kennedy all voted for the Religious Freedom Restoration Act. Democratic president, Bill Clinton signed The Religious Freedom Restoration Act. And yet in the wake of the Hobby Lobby decision, this body voted on legislation to just gut the protections for religious liberty. And I’m sorry to say, every single Senate Democrat voted to do so. Not a single one, zero, would defend religious liberty.

Senator Cruz: ([03:31:07](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12667.89))  
Joe Biden has already pledged if he’s elected, he plans to initiate again the attack on The Little Sisters of the Poor. It’s interesting folks in the press like to talk about Pope Francis, and on some issues Pope Francis has been vocal. When it comes to the environment, when it comes to issues concerning immigration, the Pope has been vocal on issues that our democratic colleagues like and agree with. The press is happy to amplify those views. Somehow missing from that amplification is acknowledgement that when the Pope came to the United States in Washington, he went and visited The Little Sisters of the Poor. Here in DC, he went to their home here in DC, and the Vatican explained he did so because he wanted to highlight their cause. That the federal government shouldn’t be persecuting nuns for living according to their faith. That what’s at stake in these nominations.

Senator Cruz: ([03:32:10](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12730.15))  
And you won’t hear any of that from the Senate Democrats on this committee. That’s why their base is so angry at your nomination Judge Barrett, because they don’t believe you are going to join the radical effort to erase those fundamental rights from the Bill of Rights. I believe that issue, preserving the constitution, preserving the Bill of Rights, our fundamental liberties, I believe is the most important issue facing the country in the November elections. And I think for those of us who value those rights, we should take solace in the fact that not a single Democrat is willing even to acknowledge the radical sweep of their agenda, much less defend it. They know it’s wildly unpopular, and look right at the heart of this is a decision many Democrats have made to abandon democracy.

Senator Cruz: ([03:33:17](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12797.81))  
You see most policies, policies like Obamacare, policies like healthcare. Most policies under our constitutional system are meant to be decided by democratically elected legislatures. Why? So they can be accountable to the people. So if the voters disagree, they can throw the bums out. But too many Democrats have decided today that democracy is too complicated. It’s too hard to actually convince your fellow Americans of the merits of your position. It’s much easier just to give it to the courts. Find five lawyers in black robes and let them decree the policy outcome you want, which makes your radical base happy. Presumably makes the millions, if not billions in dark money being spent for Democrats happy, without actually having to justify it to the American people. Judge Barrett, I’m not going to ask you to respond to any of that, but I do want to shift to a different topic. Which is a bit more about you personally, your background. Judge Barrett, do you speak any foreign languages?

Judge Amy Coney Barrett: ([03:34:38](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12878.86))  
Once upon a time I could speak French, but I have fallen woefully out of practice. So please don’t ask me to do that right now.

Senator Cruz: ([03:34:46](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12886.26))  
You can be assured of that, because I had two years of high school French, and I suspect yours remains much better than mine. How about music? Do you play any instruments?

Judge Amy Coney Barrett: ([03:34:57](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12897.22))  
The piano.

Senator Cruz: ([03:34:58](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12898.03))  
Do you? How long have you played the piano?

Judge Amy Coney Barrett: ([03:35:00](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12900.82))  
Well, I played the piano growing up for 10 years, and now most of my piano playing consists of playing my children’s songs for them and supervising their own piano practice. I look forward, one day when I have more time, to be able to choose some of my own music.

Senator Cruz: ([03:35:16](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12916.67))  
Now, do the kids do piano lessons as well?

Judge Amy Coney Barrett: ([03:35:20](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12920.14))  
The kids do piano lessons. Some of the older ones who are in high school have gotten so busy with sports and those things that they’ve stopped, but the younger children do.

Senator Cruz: ([03:35:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12929.4))  
Our girls are nine and 12 and they both do piano lessons. And I will say at least in our household, it is less than voluntary. One of the things Heidi and I found, particularly the last six months during COVID, which has been an extraordinary crisis. Is just with two kids at home that doing distance learning when schools were shut down was really hard for us with two children. For you and your husband, you’ve got seven kids. How did you all manage through the lockdowns and distance learning? What was that like in the Barrett household?

Judge Amy Coney Barrett: ([03:36:07](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12967.21))  
Well, it was a challenging time as it was for every American. Our oldest daughter, Emma, who’s in college, moved home at that point. Because she’s at Notre Dame, it closed. So Emma obviously could manage her own e-learning, and our high school age children, Tess and Vivian could too. But Jesse and I just tried to take a divide and conquer approach for the younger four. And yeah, it was quite challenging I assure you.

Senator Cruz: ([03:36:34](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=12994.46))  
One part of your story that I find particularly remarkable and that I admire is the decision you made to adopt two children. You and your husband had five biological children and you adopted two more. Both of your adopted children are from Haiti. Haiti is a country that has some of the most crushing poverty in the world. My brother-in-law is a missionary in Haiti, and actually Heidi the girls just got back from Haiti a couple of weeks ago. Just curious if you would share with this committee and with the American people, what led you and your husband to make the decision to adopt? It’s, I think, one of the most loving and compassionate decisions any family can make.

Judge Amy Coney Barrett: ([03:37:25](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13045.8))  
When Jesse and I were engaged, we met another couple who had adopted… In this instance, it was a couple who had adopted a child with special needs. And then we also met another couple who had adopted a few children internationally. We decided at that point, while we were engaged, that at some point in the future we wanted to do that ourselves. I guess we had imagined initially that we would have whatever biological kids that we had decided to have, and then adopt at the end. But after we had our first daughter, Emma, we thought, well, why wait? So I was expecting Tess when we went and got Vivian. She and Tess, I functionally call them my fraternal twins. They’re in the same grade, and it really has enriched our family immeasurably. Once we had adopted Vivian at that point, then we made the decision that we definitely wanted to adopt again. So several years later, John Peter entered our family.

Senator Cruz: ([03:38:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13106.56))  
Your children have been wonderfully well behaved. I think you’re an amazing role model for little girls. What advice would you give little girls?

Judge Amy Coney Barrett: ([03:38:37](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13117.52))  
Well, what I’m saying is not designed. My brother now has left, I was just thinking of what my dad told me before the spelling bee about anything boys can do, girls can do better. And since my sons are sitting behind me, I’ll also say, “but boys are great too.”

Senator Cruz: ([03:38:52](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13132.42))  
Thank you.

Lindsey Graham: ([03:38:52](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13132.42))  
Thank you. Senator Klobuchar.

Amy Klobuchar: ([03:38:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13136.8))  
Thank you very much, Mr. Chair. Welcome again, judge. Since I have the draw to always follow Senator Cruz, I did want to make one thing clear after listening to that for a half hour. That Joe Biden is Catholic and he is a man of faith. Then I want to turn to something else. And that is that we need a reset here in my mind for the people at home, a bit of a reality check that this isn’t normal right now. We have to understand that what people are dealing with, that 7.7 million people have gotten this virus. That 214,000 Americans have died. For people watching at home and wondering what we’re all doing in this room right now, and maybe you’re home because you lost your job. Or maybe you got your kids crawling all over your couch right now, maybe you’re trying to teach your first grader how to do a mute button to go to school. Or maybe you’ve got a small business that you had to close down or that’s struggling.

Amy Klobuchar: ([03:40:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13202.27))  
We should be doing something else right now. We shouldn’t be doing this. We should be passing coronavirus relief. Like the house just did, which was a significant bill that would have been a big help. And I think people have to know that right now. Whether you’re Democrat, independent or Republican. That’s why I started out yesterday by telling people that they need to vote. Number two, some of my colleagues throughout this hearing, on the other side, have been kind of portraying the job that the judge is before us on, as being some kind of ivory tower exercise. I think one of my friends related that you’d be dealing with the dormant commerce clause. While I’m sure that might be true, but we also know that this is the highest court in the land, that the decisions of this court have a real impact on people.

Amy Klobuchar: ([03:40:57](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13257.84))  
And I appreciated judge that you said that you didn’t want to be a queen. I actually wouldn’t mind being a queen around here. The truth be known, I wouldn’t mind doing it. Kind of a benevolent queen and making decisions so we could get things done. But you said you wouldn’t let your views influence you and the like, but the truth is the Supreme Court rulings they rule on people’s lives. They decide if people can get married, they decide what schools they can go to. They decide if they could even have access to contraceptives, all of these things matter. So I want to make that clear. And the third reset here, that I think we need to have is that this is hearing is not normal. It is a sham. It is a rush to put in a justice. The last time that we had a vacancy so close to an election was when Abraham Lincoln was president, and he made the wise decision to wait until after the election.

Amy Klobuchar: ([03:42:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13323.01))  
The last time we lost a justice so close to an election, that’s what he did. Today, we are 21 days from the election. People are voting. Millions of people have already cast their ballots. And I go to the words of Senator McConnell the last time we have a situation in election year. He said, “the American people should have a voice in the selection of their next Supreme Court justice. Therefore, this vacancy should not be filled until we have a new president.” That set the precedent that so many of you have embraced, or at least you did a few years ago. That is that in an election year, the people choose the president and then the president nominates the justice. So why is this happening? Well, that’s a good question.

Amy Klobuchar: ([03:42:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13376.37))  
This guy, our president, he is the one that decided to plop a Supreme Court nomination in the middle of an election, when people’s healthcare is on the line with a case before the court on November 10th. So let’s see what he said about the Supreme Court. Well, one of president Trump’s campaign promises in 2015 was that his judicial appointment will do the right thing on Obamacare. You can see it right here. And in fact, judge, just one day after you were nominated, this is like few weeks ago. He said also on Twitter that it would be a big win if the Supreme Court strikes down the health law. So judge my first question, do you think we should take the president at his word when he says his nominee will do the right thing and overturn the affordable care act?

Judge Amy Coney Barrett: ([03:43:58](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13438.87))  
Senator Klobuchar, I can’t really speak to what the president has said on Twitter. He hasn’t said any of that to me. And what I can tell you, as I have told your colleagues earlier today, is that no one has elicited from me any commitment in a case or even brought up a commitment in the case. I’m a 100% committed to judicial independence from political pressure. Whatever party platforms may be, or campaign promises may be the reason why judges have life tenure is to insulate them from those pressures. So I take my oath seriously to follow the law. And I have not pre-committed, nor would I pre-commit to decide a case any particular way.

Amy Klobuchar: ([03:44:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13483.47))  
Okay. I think this life tenure, this idea that you have, just for out there, a job for life makes this even more important for us to consider where you might be. I know you have not said how you would re rule on this case that’s coming up right after the election, where the president had said it would be a big win if the Supreme Court strikes down the law. But you have directly criticized justice Roberts in an article in my own state, in one of the Minnesota law school journals. It was in 2017. It was the same year you became a judge. And when Roberts writes the opinion to uphold the affordable care act, you said he “pushed the affordable care act beyond its plausible meaning to save the statute.” Is that correct?

Judge Amy Coney Barrett: ([03:45:34](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13534.13))  
Senator Klobuchar, I just want to clarify. Is this the constitutional commentary publication that you and I discussed that [crosstalk 00:21:40].

Amy Klobuchar: ([03:45:41](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13541.53))  
Yes, it is. But it’s still University of Minnesota.

Judge Amy Coney Barrett: ([03:45:44](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13544))  
Okay. I just want ed to be sure, because I hadn’t published in the Minnesota [crosstalk 00:21:47].

Amy Klobuchar: ([03:45:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13547.98))  
Again, did you ask that question. Did you say that, that he pushed the affordable care act beyond its plausible meaning to say the statute?

Judge Amy Coney Barrett: ([03:45:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13556.28))  
One thing I want to clarify is, you said that I criticized chief justice Roberts, and I don’t attack people, just ideas. That was just designed to make a comment about his reasoning in that case, which as I’ve said before, is consistent with the way the majority opinion characterize it as the less plausible reading of the statute.

Amy Klobuchar: ([03:46:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13579.43))  
Okay. so you didn’t agree with his reasoning in the case that upheld the affordable care act.

Judge Amy Coney Barrett: ([03:46:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13584.83))  
What I said… And was this King versus Burwell or NFIB versus Sibelius?

Amy Klobuchar: ([03:46:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13589.9))  
That was NFIB versus Sebelius.

Judge Amy Coney Barrett: ([03:46:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13592.1))  
Sebelius.

Amy Klobuchar: ([03:46:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13592.41))  
I’ll get to King versus Burwell in a second.

Judge Amy Coney Barrett: ([03:46:34](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13594.1))  
Okay. What I said with respect to NFIB versus Sebelius is that the interpretation that the majority adopted, construing the mandate to be a tax rather than a penalty was not the most natural reading of the statute.

Amy Klobuchar: ([03:46:49](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13609.82))  
But it was still the reading that justice Robert got to. Now, you also criticized, as you pointed out by bringing up King V Burwell, another case where the court ruled in favor of the health law. This was in 2015 national public radio interview. And you acknowledge that the result of people being able to keep their subsidies under the affordable care act would help millions of Americans. Yet you praise the dissent by justice Scalia, saying the descent had “the better of the legal argument.” Is that correct?

Judge Amy Coney Barrett: ([03:47:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13644.93))  
I did say that, yes.

Amy Klobuchar: ([03:47:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13646.01))  
Okay. So then would you have ruled the same way and voted with justice Scalia?

Judge Amy Coney Barrett: ([03:47:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13652.72))  
Well, Senator Klobuchar, one of the plus size or the upsides of being an academic is that you can speak for yourself, that a professor professes and can opine. But it’s very different than the judicial decision-making process. So it’s difficult for me to say how I would have decided that case, if I had to go through the whole process of judicial decision-making that I was describing this morning. Now, having been a judge for three years, I can say, “I appreciate greatly the distinctions between academic writing or academic speaking and judicial decision-making.” Such that a judge might look at an academic and say, “easy for you to say, because you’re not on a multi-member court. You’re not constrained by stare decisis. You don’t have real parties in front of you consulting with litigants, consulting with your clerks.” It’s just a different process.

Amy Klobuchar: ([03:48:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13706.16))  
I view that one so interestingly, because you were commenting on the public policy result. Which you and my colleagues on the Republican side have said that it shouldn’t be about public policy and you said, “okay, that’s okay.” But then you were really clear on your legal outcome, in terms of your view of whose side you were on. You were on Scalia’s side. And of course that was a side to not uphold the affordable care act. Which would have kicked millions of people off of their health care in effect, because they would have lost their subsidies. I just see this as interesting, because of this kind of dichotomy they’re trying to make between policy and legal. My view is that legal decisions affect policy. I mean, I’m looking at people in my state that will deal with this if the affordable care act is struck down.

Amy Klobuchar: ([03:49:17](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13757.58))  
Elijah from St. Paul who was born with cerebral palsy. Because of the affordable care act, he is now 16 and is a proud boy scout. Casey, whose brother lives in Alexandria, he is chronic kidney failure and he needs a transplant. Without the ACA that’d be that. Or Burnett from the suburbs of St. Paul, whose daughter has multiple sclerosis, depends on benefits under the ACA. Liliana of Fridley who has a 21 year old son with autism and needs her children to be able to stay on her insurance until she’s 26. Melanie, a senior from Duluth, who’s being treated for ovarian cancer and needs access to the affordable care act. My point is that these are real world situations. And so I get that you’re not saying how you’d rule on these cases. What does that leave us with here to try to figure out what kind of judge you would be?

Amy Klobuchar: ([03:50:15](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13815.02))  
And I was thinking last night of when I was growing up, we would go up to Northern Minnesota and we didn’t have a cabin. But we had friends that did, we would go on these walks in the woods with my mom. And she loved to show all the tracks on that path, whether they were deer tracks and she’d have us figure out what they were. Or elk, or maybe even a bear. We would follow these tracks down that path. And you’d always think, is there going to be a deer around the corner that we’re going to see? Very rarely was there one, but we would follow the tracks. So when I look at your record, I just keep following the tracks. That’s what I’ve got to do. When I follow the tracks, this is what I see. You consider justice Scalia, one of the most conservative judges in the history of the Supreme Court, as your mentor.

Amy Klobuchar: ([03:51:10](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13870.75))  
You criticized the decision written by justice Roberts upholding the affordable care act. That is to me, one big track. Even if you didn’t consider yourself criticizing him personally, you criticized the reasoning. You then said in another case about the affordable care act, that you like the legal reasoning, that he had the better legal argument. That justice Scalia had the better legal argument. You have signed your name to a public statement featured in an ad, a paid ad that called for an end to what it called, the ad called the barbaric legacy of Roe V. Wade. Which ran on the anniversary of the 1973 Supreme Court decision. You disagreed with longstanding precedent on gun safety, which said that felon shouldn’t be able to get guns. Something that was pretty important to me when I had my old job in law enforcement.

Amy Klobuchar: ([03:52:11](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13931.17))  
This is something that Senator Durbin asked you about. You suggested that you agree with the dissent in the marriage equality case, Obergefell, that it wasn’t the role of the court to decide that same sex couples had the right to be married. I think this was in a lecture you gave, where you said, ” the dissent view wasn’t for the court to decide that people could lobby in state legislatures.” And all this takes me to one point as I follow those tracks down that path. It takes me to this point where I believe, and I think the American people have to understand that you would be the polar opposite of Justice Ginsburg. She and justice Scalia were friends, yes, but she never embraced his legal philosophy. That is what concerns me. And I want to turn to an area where I think Justice Ginsburg, whose seat we are considering you for, was truly a hero.

Amy Klobuchar: ([03:53:11](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=13991.83))  
That was the area of voting rights. That was the area of elections. I think that… What did the president say here? He said, September 23rd, 2020, “I think this,” he means the election, “will end up in the Supreme Court, and I think it’s very important that we have nine justices.” I don’t think how much clearer we can be. And as I said yesterday, I do not for a minute concede that this election is going to end up in the Supreme Court, because people are voting in droves as we speak. But that is what is on the mind of the man who nominated you for this job. Then he said on September 29th of 2020, “I think I’m counting on them,” he meant the court, “to look at the ballots, definitely.” I know you said earlier in questions from Senator Leahy, that you are not going to commit to whether or not you’re going to recuse yourself offering any kind of an election case.

Amy Klobuchar: ([03:54:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14064.28))  
But I do want to point out that as the president has said these things, and as he has nominated you, that people are voting right now. They are voting, as I said, in droves. Do you know how many States people are voting right now, judge? I think one of my colleagues said it.

Judge Amy Coney Barrett: ([03:54:45](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14085.47))  
I don’t know.

Amy Klobuchar: ([03:54:45](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14085.87))  
It’s more than 40 States. People are voting right now as we speak. I think something like 9 million votes have been cast. Do you think it is faithful to our democratic principles to fill a Supreme Court vacancy this close to an election when people are still voting?

Judge Amy Coney Barrett: ([03:55:06](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14106.62))  
Senator Klobuchar, I think that is a question for the political branches.

Amy Klobuchar: ([03:55:15](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14115.77))  
Okay. That’s your right to answer in that way. Beyond this immediate election, I want to turn to the Supreme Court’s critical role when it comes to the right to vote. There is the area where Justice Ginsburg was such a champion. Senator Durbin went over your dissent at length in Kanter V. Barr, where you drew a distinction between individual rights and civic rights. You wrote that historically felon should be disqualified from exercising certain rights, like the right to vote and to serve on juries. So my question is this,, actually this next line where you said, “these rights belong only to virtuous citizens.” What does that mean?

Judge Amy Coney Barrett: ([03:56:10](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14170.46))  
Senator, I would need to look at the article to clarify. But as I’m sitting here, I don’t think I said felons should lose voting rights. I think what I was talking about is that-

Amy Klobuchar: ([03:56:20](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14180.68))  
Could.

Judge Amy Coney Barrett: ([03:56:20](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14180.99))  
… the 14th amendment. Yeah, that…

Amy Klobuchar: ([03:56:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14183.46))  
But it wasn’t an article, just to be clear. This is your dissent.

Judge Amy Coney Barrett: ([03:56:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14188.24))  
Sorry, my dissent.

Amy Klobuchar: ([03:56:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14189.56))  
I think it’s your dissent in Kanter V.

Judge Amy Coney Barrett: ([03:56:31](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14191.63))  
In Kanter, yes, you’re right.

Amy Klobuchar: ([03:56:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14192.22))  
And it says, “felons could be disqualified from exercising certain rights, like the right to vote and serve on juries.” But apart from that clause you said, “these rights belong only to virtuous citizens.” That’s what I’m trying to understand what that means.

Judge Amy Coney Barrett: ([03:56:46](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14206.13))  
The argument in the case, those who were challenging Heller and those who are arguing on the side of the government in the Kanter case, is that the second amendment is a civic right. That is how the Supreme Court itself framed the debate, as a distinction between civic rights and individual rights with voting being a civic right. In literature, in the historical literature that was, which was at play in that case, [crosstalk 03:57:19].

Amy Klobuchar: ([03:57:18](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14238.92))  
But how would you define the word virtuous? Because it doesn’t appear in the constitution. I’m just trying to know what that means, because we’re living at a time where a lot of people are having their voting rights taken away from them. So what’s virtuous?

Judge Amy Coney Barrett: ([03:57:31](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14251.77))  
Okay. Well, Senator, I want to be clear that that is not in the opinion designed to denigrate the right to vote, which is fundamental. The distinction between civic and individual rights is one that’s present in the court’s decisions. And it has to do with if they’re going to have a jurisprudential view of what rights are. The virtuous citizenry idea is a historical and jurisprudential one. It certainly does not mean that I think that anybody gets a measure of virtue and whether they’re good or not, and whether they’re allowed to vote. That’s not what I said.

Amy Klobuchar: ([03:58:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14282.92))  
Okay. Now, let me ask-

Judge Amy Coney Barrett: ([03:58:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14283.8))  
… good or not and whether they’re allowed to vote. That’s not what I said.

Amy Klobuchar: ([03:58:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14283.8))  
Now, let me ask you this in a different way, because now let’s go to the real world here. So in Justice Ginsburg’s dissent in Shelby are where a 5-4 court struck down a key provision of the Voting Rights Act, she described the right to vote as a fundamental right in our democratic system. And I assume you agree with this, because you just said that, let’s not get to her dissent, you agree with the concept that it’s a fundamental right?

Judge Amy Coney Barrett: ([03:58:25](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14305.6))  
As I just said, yeah, the court has repeatedly, repeatedly said it was fundamental.

Amy Klobuchar: ([03:58:29](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14309.62))  
So she also wrote in her dissent that, “The Constitution uses the words right to vote in five separate places, the 14th, 15th, 19th, 24th, and 26th Amendment, each of these Amendments,” this is still her talking, not me, “each of these amendments contains the same broad empowerment of Congress to enact appropriate legislation to enforce the protected right. The implication is unmistakable. Under our Constitutional structure, Congress holds the lead reign in making the right to vote equally real for all U.S. citizens.” Do you agree with Justice Ginsburg’s conclusion that the Constitution clearly empowers Congress to protect the right to vote?

Judge Amy Coney Barrett: ([03:59:11](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14351.06))  
Well, Senator, that would be eliciting an opinion from me on whether the dissent or the majority was right in Shelby County, and I can’t express a view on that, as I’ve said, because it would be inconsistent with the judicial role.

Amy Klobuchar: ([03:59:22](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14362.88))  
Okay, so here’s my problem. So you go out of your way in the case that Dick Durbin was discussing to make this distinction between voting rights and gun rights but now you won’t say whether or not you agree with Ginsburg. And so my view is just based, again, following those tracks on this case, that you are most likely with the majority. But I know you’re not going to answer this. But what I do want you to know is this, and this is where it gets interesting, because of what Justice Ginsburg predicted in that dissent. According to the Brennan Center, over 20 states since that case came out that withdrew, that took away part of the protections from the Voting Rights Act, over 20 states have now made more restrictive voting laws than they did before that case.

Amy Klobuchar: ([04:00:13](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14413.83))  
Doesn’t that suggest to you that Justice Ginsburg had the better of the argument when she wrote that, “Throwing out pre-clearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet”? Do you think that that’s true? And I mean, it seems to me that the proof is in the pudding. Basically, this rainstorm that she said would come has come with all these states, including a number of them that my colleagues over there represent have enacted stricter laws. Has it happened?

Judge Amy Coney Barrett: ([04:00:54](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14454.93))  
Senator Klobuchar, I want to clarify, you said I was answering Senator Durbin’s about the Second Amendment but refusing to answer yours. And so I just wanted to clarify that I have written Kanter versus Barr, and so that’s why I was talking about it. But since I didn’t write Shelby, I can’t really talk about it. So anything that I’ve written about or talked about, I would be happy to answer your questions.

Amy Klobuchar: ([04:01:16](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14476.8))  
Okay. All right. But, again, it just seems to me you went out of your way on that case and this is a case that is so real for so many people right now. And that while you can say it’s a fundamental right, the issue is that this case and the Voting Rights Act are so key. And let me just say why. We’re talking about the entire foundation of our democracy here. For centuries, Americans have fought and died to protect the right to vote, and so what matters is not just what you say about its being fundamental, it’s what you do. States like South Carolina, Texas, North Carolina, Louisiana, Tennessee, have policies that make it harder for people to vote. And it’s a real world thing before the Supreme Court.

Amy Klobuchar: ([04:02:01](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14521.48))  
In fact, back in May, when voters in Wisconsin were standing in line in the middle of a pandemic in homemade masks, in garbage bags, in the middle of a rainstorm, just to exercise their right to vote, 70 of them got COVID, because we didn’t know enough about it back then because the President hadn’t told us what he knew and we didn’t know enough to protect those voters. So it ends up at the Supreme Court. What did Justice Ginsburg do? When the Republican appointed majority on the court ruled that voters in Wisconsin could not have more time to get their ballots in during the pandemic, she called them out in her dissent, in her blueprint for the future. And she said, “The majority opinion boggled the mind.” So what boggles my mind? Well, two weeks ago, the U.S. Supreme Court reinstated the South Carolina report requirement that mail in ballots must have witness signatures, in the middle of a pandemic. You’ve got to go and get a witness.

Amy Klobuchar: ([04:03:04](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14584.07))  
In Texas, republicans have argued that the pandemic wasn’t a good enough reason to let people under age 65 vote by mail, despite the fact that over 42,000 Americans under 65 have died from COVID. And the Governor right now is forcing that state to have only one ballot box per county, including in Harris County where there are 4.7 million people. And for those of you that thought a judge took care of it a few days ago, he did. But then yesterday three Trump appointed judges came in and reversed that, so we’re back to one ballot box for people to drop their ballots off in a county of 4.7 million people. In Tennessee, Republicans have tried to prevent ballot drop boxes. I know, we had the Secretary of State as one of our witnesses at a rules committee hearing, and they have argued in court that COVID-19 is a valid excuse to vote by mail. In North Carolina, the Supreme Court struck down a core component of the Voting Rights Act. What happened? Well, states like North Carolina passed laws that were so egregious to make it harder to vote that the Fourth Circuit struck down their law and noted that it targeted African Americans with almost surgical precision. So that is what the states saw, and that is why not having Justice Ginsburg on the court right now is so frightening to so many Americans out there and that is why we are asking you these questions about voting. So let me turn to another election question, gerrymandering. In 2015, Justice Ginsburg wrote the and majority opinion in Arizona State Legislature V the Arizona independent Redistricting Commission, holding that it was constitutional for the people of Arizona to amend the State Constitution to establish an independent redistricting commission.

Amy Klobuchar: ([04:04:59](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14699.97))  
Because of this case and Justice Ginsburg’s opinion, many argue now that Arizona has fairer electoral maps. The decision was 5-4. Here’s your example. And now Justice Ginsburg and Justice Kennedy are no longer on the court. My question is this, must state legislatures abide by their own state’s Constitution when exercising their authority under the Elections Clause?

Judge Amy Coney Barrett: ([04:05:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14728.16))  
Senator Klobuchar, that would be eliciting an opinion from me about whether I agreed or disagreed with the result in that case.

Amy Klobuchar: ([04:05:35](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14735.14))  
Okay. Is it constitutional for voters to amend the state constitution to establish specific processes for election, like the voters in Arizona did to stop gerrymandering?

Judge Amy Coney Barrett: ([04:05:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14747.38))  
Again, you’re asking me for a view on that particular case and Justice Ginsburg herself gave the most famous articulation of the principle that constrains me from doing so, which is no hints, forecasts, or previous. So I can’t express a view on precedent or on how I would decide any question that was provoked by the application of that precedent to a later case.

Amy Klobuchar: ([04:06:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14768.16))  
Okay, Last week, a contractor from outside of my state of Minnesota started recruiting poll watchers with special forces experience to protect polling locations in my state. This was clear voter intimidation. Similar efforts are going on around the country solicited by President Trump’s false claims of massive voter fraud. Something that, by the way, many Republican leaders, including Michael Steele, the former head of the Republican Party, including Tom Ridge, including Governor Kasich, including sitting Senator Romney have made very clear is not true. So as a result of his claims, people are trying to get poll watchers, special forces people, to go to the polls. Judge Barrett under federal law, is it illegal to intimidate voters at the polls?

Judge Amy Coney Barrett: ([04:07:04](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14824.8))  
Senator Klobuchar, I can’t characterize the facts in a hypothetical situation and I can’t apply the law to a hypothetical set of facts. I can only decide cases as they come to me, litigated by parties on a full record after fully engaging precedent, talking to colleagues, writing an opinion. And so I can’t answer questions like that.

Amy Klobuchar: ([04:07:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14846.31))  
Well, I’ll make it easier. 18 USC 594 outlaws anyone who intimidates, threatens, coerces or attempts to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote. This is a law that has been on the books for decades. Do you think a reasonable person would feel intimidated by the presence of armed civilian groups at the polls?

Judge Amy Coney Barrett: ([04:07:52](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14872.66))  
Senator Klobuchar, that is eliciting. I’m not sure whether to say it’s eliciting a legal opinion from me because the reasonable person standard, as you know, is more common in the law, or just an opinion as a citizen. But it’s not something really that’s appropriate for me to comment on.

Amy Klobuchar: ([04:08:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14888.42))  
Okay. Here’s one that I think is, a selection of electoral college electors. You know that each state has laws that dictate how electoral college electors are selected. Judge Barrett, in 1932, the Supreme Court in Smiley V Holm, a case involving my state, ruled that the Minnesota State Legislature could not change election rules unilaterally. Do you agree that the unanimous opinion in Smiley V holm, which has never been questioned by any other Supreme Court case, is settled law?

Judge Amy Coney Barrett: ([04:08:44](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14924.59))  
I’ll say two things about that. First of all, I was not aware of that case. So you’ve taught me something. But secondly, I can’t comment on the precedent, “Give thumbs up or thumbs down,” in Justice Kagan’s words.

Amy Klobuchar: ([04:08:55](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14935.09))  
Okay. Well, why don’t we end there with precedent? And I think that’s a good way to end here. So you wrote in your 2013 Texas Law Review Article that you tend to agree with the view that when a justice is best understanding of the Constitution conflicts with Supreme Court precedent or case law, it is “more legitimate for her to follow her preferred view rather than apply the precedent.” And I want to run through a few examples. So Brown V board of Education, as we know, that holds that the 14th Amendment prohibits states from segregating schools on the basis of race. So is that precedent that can’t be overruled?

Judge Amy Coney Barrett: ([04:09:38](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14978.32))  
Well, that is precedent, and as I think I said in that same article, it’s super precedent. People consider it to be on that very small list of things that are so widely established and agreed upon by everyone calls for it’s overruling simply don’t exist.

Amy Klobuchar: ([04:09:55](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=14995.96))  
Okay. Well, you also separately acknowledged that in a Planned Parenthood V Casey, the Supreme Court’s controlling opinion talked about the reliance interests on Roe V Wade, which it treated in that case, as super precedent. Is Roe a super precedent?

Judge Amy Coney Barrett: ([04:10:13](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15013.44))  
How would you define super precedent?

Amy Klobuchar: ([04:10:17](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15017.33))  
Actually, I thought someday I’d be sitting in that chair. I’m not. I’m up here. So I’m asking you.

Judge Amy Coney Barrett: ([04:10:22](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15022.44))  
Well, people use super precedent differently.

Amy Klobuchar: ([04:10:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15024.78))  
Okay.

Judge Amy Coney Barrett: ([04:10:25](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15025.24))  
The way that it’s used in the scholarship and the way that I was using it in the article that you’re reading from was to define cases that are so well settled that no political actors and no people seriously push for their overruling. And I’m answering a lot of questions about Roe, which I think indicates that Roe doesn’t fall in that category. And scholars across the spectrum say that doesn’t mean that Roe should be overruled, but descriptively, it does mean that it’s not a case that everyone has accepted and doesn’t call for its overruling.

Amy Klobuchar: ([04:10:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15056.08))  
Okay, so here’s what’s interesting to me. You said that Brown, and I know my time is running out, is a super precedent. That’s something the Supreme Court has not even said, but you have said that. So if you say that, why won’t you say that about Roe V Wade, a case that the courts controlling opinion in that Planned Parenthood V Casey case has described as a super precedent? That’s what I’m trying to figure out.

Judge Amy Coney Barrett: ([04:11:22](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15082.31))  
Well, Senator, I can just give you the same answer that I just did. I’m using a term in that article that is from the scholarly literature. It’s actually one that was developed by scholars who are certainly not conservative scholars, who take a more progressive approach to the Constitution. And again, as Richard Fallon from Harvard said, “Roe is not a super precedent because calls for its overruling have never ceased, but that doesn’t mean that Roe should be overruled.” It just means that it doesn’t fall on the small handful of cases like Marbury versus Madison and Brown versus the Board that no one questions anymore.

Amy Klobuchar: ([04:11:58](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15118.81))  
Is United States V Virginia Military, is that super precedent?

Judge Amy Coney Barrett: ([04:12:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15123.38))  
Senator Klobuchar, if you continue to ask questions about super precedents that aren’t on the list of the super presidents that I discussed in the article that are well acknowledged in the Constitutional law literature, every time you ask the question, I will have to say that I can’t grade it.

Amy Klobuchar: ([04:12:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15139.43))  
Okay. Well, I am then left with looking at the tracks of your record and where it leads the American people. And I think it leads us to a place that’s going to have severe repercussions for them. Thank you.

Lindsey Graham: ([04:12:30](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15150.28))  
Senator Sasse.

Ben Sasse: ([04:12:33](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15153.39))  
Thank you, Mr. Chairman. Judge, welcome back. I mean this as good news, but it might not feel like it after me. You’re half done for today. I’m 11th of 22. Mr. Chairman, before I begin my questioning, I’d like to ask unanimous consent to admit into the record a letter from Allen Guelzo, the historian at Princeton, who has written a letter to the committee in response to some of Senator Harris’ claims about the history of Supreme Court vacancies going back to the Civil War.

Lindsey Graham: ([04:13:00](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15180.41))  
Without objection.

Ben Sasse: ([04:13:01](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15181.28))  
Thank you. Judge, you have said that the meaning of law doesn’t change with time and you’ve said that’s very important. Can you unpack for us why it’s so important that the meaning of a law doesn’t change with time?

Judge Amy Coney Barrett: ([04:13:14](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15194.7))  
Sure. Because the law stays the same until it is lawfully changed, and if we’re talking about a law that has been enacted by the people’s representatives, or gone through the process of constitutional amendment or constitutional ratification, it must go through the lawfully prescribed process before it’s changed. So Article Five in the context of the Constitution or bicameralism and presentment in the context of statutes, and it’s not up to judges to short circuit that process by updating the law. That’s your job.

Ben Sasse: ([04:13:49](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15229.56))  
But laws clearly are written in a context and then the things, the circumstances to which those laws have applied would change. Does the Fourth Amendment have nothing to say about cell phones? Unreasonable search and seizure was obviously not written at a time when they had imagined mobile technological devices that addicted our kids. Does the Fourth Amendment have nothing to say about cell phones?

Judge Amy Coney Barrett: ([04:14:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15252.54))  
No, the Fourth Amendment, so the Constitution, one reason why it’s the longest lasting written constitution in the world is because it’s written at a level of generality that’s specific enough to protect rights, but general enough to be lasting so that when you’re talking about the constable banging at your door in 1791 as a search or seizure, now we can apply it, as the court did in Carpenter versus the United States, to cell phones. So the Fourth Amendment is a principle. It protects against unreasonable searches and seizures, but it doesn’t catalog the instances in which an unreasonable search or seizure could take place. So you take that principle and then you apply it to modern technology like cell phones or what if technological advances enable someone with Superman x-ray vision to simply see in your house so there’s no need to knock on the door and go in. Well, I think that could still be analyzed under the Fourth Amendment.

Ben Sasse: ([04:15:13](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15313.36))  
I think this is a useful place to explain to the American people again what originalism is and why it’s a mistake to view it as a Republican position. I think that originalism is a part of a jurisprudential debate. It’s not a part of a policy continuum between Republicans and Democrats. I think it’s something that is useful for everybody who believes that three branches of government have two that are political and one that is not. So maybe it’s useful to just kind of back up and say, when you define yourself as an originalist, what does that mean? And then, how is it going to relate to that distinction between the principles that are timeless but applications that are clearly going to change by circumstance?

Judge Amy Coney Barrett: ([04:15:53](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15353.23))  
Right. So originalism means that you treat the constitution as law, because it commits these texts to writing, and in interpreting that law, you interpret it in accord with the meaning that people would have understood it to have at the time that it was ratified. And the reason that you do that is because, as I said, the law stays the same until it’s lawfully changed, otherwise, judges would be in the constitutional convention business of updating the law rather than allowing the people to take control of that. Now, in the case of the Constitution, as I said with the Fourth Amendment, many of its principles are more general. Unreasonable searches and seizures, free speech, those are things that have to be identified or fleshed out or applied over time. So the fact that there wasn’t the internet or computers or blogs in 1791 doesn’t mean that the First Amendment’s free speech class couldn’t apply to those things now. It enshrines a principle, and we understand the principle as it was at the time, but then it’s capable of being applied to new circumstances.

Ben Sasse: ([04:17:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15428.56))  
So when you define yourself as an originalist, what are the other schools of thought that are adjacent to it, and how do you think about the debates among those with other people that are now with you on the Seventh Circuit, for instance?

Judge Amy Coney Barrett: ([04:17:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15446.03))  
Sure. Well, Senator Sasse, I think one thing that it’s worth pointing out is that in the Academy, in any event where I’ve spent a large portion of my career, originalism is not necessarily a conservative idea. There is a whole school of thought, and so originalists are now a very diverse lot. And there is a school of originalism that’s more of a progressive originalism and is very committed to keeping the Constitution’s meaning just interpreting texts the way all originalists do to say that it has the meaning that it had at the time that it was ratified, but they tend to read it at a higher level of generality. So all originalists don’t necessarily agree. And, in fact, there’s an advocacy group called the Constitution Accountability Center, which has routinely filed briefs in the Supreme Court, it writes briefs in support of originalism but taking it from a more progressive standpoint.

Judge Amy Coney Barrett: ([04:18:25](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15505.57))  
I think probably people think, “Oh, it’s only conservatives who are originalists,” but actually it’s a more widely accepted view than that. I think that if you think about different strains of approaching constitutional texts, originalism is one. All judges and justices take account of history and the original meaning. It’s just that some weight at differently whereas originalists would give it dispositive weight when it’s discernible. Other approaches to constitutional interpretation may take a more pragmatic view and say in some instances, “Well, that may have been the historical meaning, but that’s an uncomfortable fit for current circumstances so we will tweak it a little bit to adjust it to fit these circumstances, that situation.” Sometimes it’s called living constitutionalism, that the constitution can evolve and change over time. Sometimes it’s called a more pragmatic constitutionalism.

Ben Sasse: ([04:19:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15564.5))  
So I want to make sure we’ve established this fact clearly together, because one of the things that I think is really unhelpful for the American people when they see hearings like this over the last 20 years is there is an assumption that those of us who’ve advocated for you over the course of the last three years must be doing it because we know something about your policy views, and we’ve seen the Beautiful Mind conspiracy theory charts, for instance, that this is about specific outcomes that people want. What I want is to have a judge who doesn’t want to take away the job of a legislature that’s accountable to the people. What I want is to be sure that the two political branches that are accountable to the people because they can hire and fire us are the places where policy decisions are made.

Ben Sasse: ([04:20:09](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15609.89))  
So what you’re saying is in the Legal Academy there are people who agree with you on originalism as a broad philosophical school, and yet would come out very different places on the outcomes of particular policy decisions.

Judge Amy Coney Barrett: ([04:20:22](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15622.33))  
That is what I’m saying.

Ben Sasse: ([04:20:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15623.52))  
So on the Notre Dame Law Faculty, when you were up for the vacancy on the Seventh Circuit three years ago, the Notre Dame Law Faculty, as I understand, the letter that we got from them here had people unanimously recommend you across the faculty, and I would assume there’s a pretty wide view on the Notre Dame Law Faculty.

Judge Amy Coney Barrett: ([04:20:44](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15644.05))  
There is.

Ben Sasse: ([04:20:45](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15645.02))  
And so people can affirm that you know what the job of a judge is. You have the judicial temperament and modesty and humility about the calling and they’re comfortable with you even though they don’t think they might agree with every policy view that you have before you put on your robe.

Judge Amy Coney Barrett: ([04:21:00](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15660.97))  
I hope that is what people think of me because that’s what I’ve always striven to do and certainly in my time as a judge. My boss is the rule of law, not imposing my policy preferences.

Ben Sasse: ([04:21:13](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15673.45))  
So can you tell us what the black robe is about? Why do judges in our system wear robes?

Judge Amy Coney Barrett: ([04:21:19](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15679.95))  
Well, judges in our system where black robes and they started wearing black robes actually because Chief Justice John Marshall started the practice. In the beginning, justices used to wear colorful robes that identified them with the schools that they graduated from. And John Marshall, at his investiture, decided to wear a simple black robe. And pretty soon the other justices followed suit and now all judges do it. And I think the black robe shows that justice is blind. We all dress the same. And I think it shows that once we put it on, we are standing united symbolically speaking in the name of the law, not speaking for ourselves as individuals.

Ben Sasse: ([04:22:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15722.55))  
Thank you. You, in your questioning from Chairman Graham this morning, talked a little bit about the process of judicial decision making and you started with four steps and then added a fifth, and then I think added a sixth, because it turns out being a reactive branch is really reactive. Can you explain what it means that the judiciary, the Article Three branch, is reactive?

Judge Amy Coney Barrett: ([04:22:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15743.02))  
So Article Three of the Constitution says that courts can hear cases or controversies. So a judge can’t walk in one day and say, ” I feel like visiting the question of healthcare and telling people what I think.” We can’t even think about the law or how it would apply until litigants bring a real live case with real live parties and a real life dispute before us, and the material that we have to decide that dispute is what comes from you. It’s the statutes that you pass. We don’t get to come up with the policies and see our wishes become part of the United States Code. So we react to the litigants who bring cases before us and we apply the laws that you make.

Ben Sasse: ([04:23:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15782.75))  
And what are the steps inside those Article Three courts before it would ever get to a situation where the Supreme Court hears cases? What is unique about the Supreme Court?

Judge Amy Coney Barrett: ([04:23:13](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15793.2))  
So the Supreme Court obviously sits atop the federal hierarchy of the judiciary, and so my court now, the Seventh Circuit, every time someone loses in the District Courts, which are the trial courts, they can appeal, and we take every single appeal that comes. The Supreme court works differently. The Supreme Court takes cases when it needs to, most frequently, the reason it takes them as to resolve a division among the Courts of Appeal or the State Supreme Courts. The Supreme Court gets about 8,000 petitions a year, and they hear about 80 cases a year. So it’s discretionary what cases to take.

Ben Sasse: ([04:23:53](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15833.54))  
So it’s reactive, it’s a reactive branch, and it’s after a process where there’s a statute, it’s been challenged, they’re active cases, and then it works its way up to the court. But when the justices declined to take a case, what are they saying? They’re saying, “You don’t matter and you don’t have a right to appeal”? What are they saying to the litigants in a case when they declined to grant cert?

Judge Amy Coney Barrett: ([04:24:15](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15855.65))  
They’re not expressing any view on the merits. They’re simply saying, “This isn’t a case that we’re going to put on our docket for [inaudible 04:24:22] because the court has obviously limited time and limited resources.” And so it selects the cases where it’s resolving a division, for example, in the courts or some other question of national importance on which the Supreme Court needs to step in.

Ben Sasse: ([04:24:38](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15878.08))  
There has been a lot of discussion in some of the questioning early this morning implicitly about standing. Can you just explain what standing is so that the American people understand?

Judge Amy Coney Barrett: ([04:24:49](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15889))  
Yes. So this dovetails with your question about the judiciary being a reactive branch. So, as I said, the Constitution gives the courts, the federal courts, the power only to decide actual live cases and controversies. So not only can we wake up one morning and volunteer our views, because the Constitution prohibits us from giving what are called advisory opinions, we can’t just dispense advice or give our views on the law, which is one reason why I’m not able to answer some of the questions being asked today, a litigant can’t get us to give an advisory opinion or elicit a view unless the litigant actually has a real case. So you, Senator Sasse, couldn’t walk into court and file a lawsuit and just ask me to give my advice on whether some particular statute was constitutional. I can only decide that question if there is an actual dispute about it.

Ben Sasse: ([04:25:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15943.13))  
You mentioned living constitutionalism a little bit ago. I think Chief Justice Warren had a much broader view of standing than some of the folks that have influenced your thinking and writing. Can you walk us through a little bit of the history of the court’s view of standing over the last few decades?

Judge Amy Coney Barrett: ([04:26:00](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15960.16))  
So are you thinking about how broadly, like when a plaintiff has suffered an injury or that’s a concrete injury?

Ben Sasse: ([04:26:06](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15966.29))  
Right.

Judge Amy Coney Barrett: ([04:26:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=15968.66))  
So, Senator Sasse, if you came into court and you were objecting to a particular statute and you didn’t like a particular statute, you would have to actually suffer what’s called a concrete injury. So the Supreme Court a few terms ago in a case called Spokeo said that a plaintiff lacks a concrete injury if the harm isn’t, let’s see, to use words the American people might understand, palpable. It can’t just be a procedural injury or something that didn’t actually have real consequence, a real effect on the litigant. I think that the dispute about standing, or the difficult thing in deciding questions of standing, and the Spokeo opinion lays this out, is deciding when an injury is concrete and courts can hear it or when that injury is more abstract and designed to elicit an advisory opinion from the court.

Ben Sasse: ([04:27:07](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16027.19))  
You said in your opening comments yesterday that it is not the responsibility of the courts to right every wrong in society. I want to ask you a question about it. But first, can you just remind us what your view is there? Why did you say that?

Judge Amy Coney Barrett: ([04:27:23](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16043.33))  
So I think probably what I was getting at there, though I have to say Senator Sasse, so much has happened since I gave the opening statement yesterday, courts, because they are reactive, can’t reach out to right wrongs that don’t come to them in the situation of a case or controversy. And then even if they come to courts in the situation of a case or controversy that a court can legitimately decide, we’re not free to just resolve it like Solomon in the way that we think is wisest. So we are only free to address wrongs and decide cases in accordance with democratically elected law. So the policymaking is yours to do, and it is only if you have enacted policies that enable us to right a wrong that we can do so.

Ben Sasse: ([04:28:13](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16093.5))  
So you still said though that you view it as some of your responsibility on the Seventh Circuit to write every opinion, every judgment from the standpoint of the losing party. Explain to us why you take that perspective of wanting the losing party to understand the law and the argument.

Judge Amy Coney Barrett: ([04:28:31](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16111.88))  
So I just write the opinion as I would write the opinion. And then after I write the opinion, I read it from the perspective of the losing party, because I want to make sure that, like I said earlier, it’s a check on me to make sure that if I try to put my emotions or my preferences on the other side that I can see that it’s been a balance just strictly driven by legal analysis. I also want to make sure that the language in it is very respectful to the party who will ultimately be disappointed. I don’t know if that is that responsive to.

Ben Sasse: ([04:29:07](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16147.99))  
Yeah, because why I want to ask this is because I’m in my fifth year here, a little over five years, and I’m on my fourth year on this committee, and pretty much, you’re the third Supreme Court nominee to come before the committee during that time and we’ve had dozens of appellate court nominees, and I’ve been amazed how many times the argument is American people be really, really scared, the person sitting before us obviously hates people and wants sick people to die and not have healthcare coverage. That’s an argument that’s routine around here. It’s been focus grouped obviously as a good way to demonize nominees to the court and hopefully drive outcomes in elections, I guess. I don’t understand it. I think it’s terribly destructive of the civic health. And yet I think about it from the standpoint of thoughtful, well-meaning Nebraska Democrats who hear that and they know I have a different policy view than they might on getting to portability and healthcare so people can keep their health insurance across job and geographic change, because that’s actually, what’s driving un-insurance in America over the last few decades.

Ben Sasse: ([04:30:14](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16214.98))  
It’s not primarily health status. It’s not primarily a pre-existing conditions or socioeconomics. The number one driver of un-insurance in American public life is that we change jobs a lot more frequently than we used to. And so I have a different policy solution of how we would get to portability in healthcare than a lot of my Democratic colleagues. But those are policy disputes about a modern economy where people move around a lot, both geographically and in terms of employer sponsored health insurance relationships. Those contracts are not really the things that a nominee coming before the court is supposed to opine on because I don’t have any idea what your views are on healthcare, but I know that it’s not really the job of a judge to reflect on those things. And so I want to be sure that folks who hear this hearing and at the end of the process, they can have trust that you’re not a person who really wishes secretly you could be the queen of all healthcare and decide all these issues.

Ben Sasse: ([04:31:09](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16269.16))  
And so when you write your opinion it seems to me that one of the really humble things you’re doing is you’re saying, “In every case that’s come before me on the Seventh Circuit, I want to write this opinion from the standpoint of the losing party to understand what was the question before the court today and how did the court rule on that specific narrow thing?” Because, ultimately, I think you would believe given your jurisprudential tradition and given your view of judicial modesty and humility and your Scalia mentorship, my guess is there are times when you rule in cases where you go home at night and you take off your robe and you think the outcome is not the outcome you wish had been the case, but it wasn’t your job to ultimately decide all policy in American life. It was to decide the specific question before you. And it seems to me, the humble, empathetic way that you write those opinions is really important. Also, it should be in the interest of public trust …

Ben Sasse: ([04:32:03](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16323.8))  
… opinions is really important. Also, it should be in the interest of public trust and American people who might listen to a lot of the demagoguery that implies that really, you’re just secretly a policy actor. It should be pretty comforting to them that except for probably Justice Breyer, you’ve written more, I think, than anybody who’s currently on the court. So people can actually know your jurisprudential views and how you’re going to approach cases when you get on the court, because you’ve written a ton. There’s a reason why the Notre Dame faculty, regardless of their policy positions, wrote a letter to this committee universally recommending you. There’s a reason why year after year on the Notre Dame law faculty, you were Professor of the Year, because students, regardless of their policy views, thought you were really good at explaining what the job of a judge is and what the purpose of Article III in our constitutional system is.

Ben Sasse: ([04:32:48](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16368.67))  
As somebody who worries a lot about institutional trust and a lot of the attacks that we see on the court, a lot of the attempts we see in this language about potentially court packing, if we would go to 11 or 13 or 15, or a Venezuelan style 47 person court over the next couple of election cycles, that undermining, that de-legitimizing of the courts should have as its antidote the fact that you have written a ton about what you think the job of a judge is, and people can actually understand it. And I would hope that that’s some of what this hearing would try to unpack.

Ben Sasse: ([04:33:21](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16401.87))  
I am nearly out of time and I think the chairman is going to take away my slot. So I want to ask one final thing. Tell us about the Scalia-Ginsburg friendship and the impact that it made on you.

Judge Amy Coney Barrett: ([04:33:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16416.23))  
So Justice Scalia famously, when the vacancy came up, I think it was Justice White’s seat that Justice Ginsburg filled. But when the vacancy came open during the Clinton administration, Justice Scalia recommended her, even though they’d been together on the DC circuit, that’s where they got to know each other. And he knew that she had a different jurisprudential approach. And a lot has been said in the weeks since Justice Ginsburg died about that friendship, because I think it speaks so well to both of their characters that despite the fact that they had such great differences and they could fight with the pen, when they were socializing, when they were outside of the opinion writing world, they had respect and affection for one another. And that’s how I’ve tried to live my life. I have friends who disagree with me vehemently about all kinds of things. But I think that it is dehumanizing if we reduce people to the political or policy differences that we might have with one another.

Ben Sasse: ([04:34:42](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16482.04))  
Thank you and congrats on being half done.

Speaker 1: ([04:34:45](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16485.03))  
Well, for the record, I really enjoyed listening to you, Senator Sasse. I think you make a lot of sense and you explained the system very well. You don’t have to be a lawyer to understand what the law is all about. I think you get it very much. So Senator Coons.

Chris Coons: ([04:34:59](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16499.11))  
Thank you, Mr. Chairman. Thank you, Judge Barrett, to you and your family. Welcome. I guess I’m on the downside if you’re halfway through. If I might just at my opening, Mr. Chairman, I’ll submit two letters for the record, if I might. One from the FCIU on behalf of the 2 million members of the Service Employees International Union, and one on behalf of a national constellation of disability rights groups who [crosstalk 04:35:25] concerns.

Speaker 1: ([04:35:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16526.45))  
Without objection.

Chris Coons: ([04:35:27](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16527.26))  
So Judge Barrett, if I might, the calendar behind me makes clear something about the context that we’re in. Because I think folks watching this at home, despite the wonderful efforts that a number of my colleagues have made to make this accessible, may have difficulty understanding exactly why we’re here and why under these circumstances and why we keep bringing up the Affordable Care Act. So let me try and walk that through.

Chris Coons: ([04:35:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16556.25))  
These aren’t normal times, as you all know. Most of us are wearing masks. There are a number of members of this committee and the Senate who’ve been infected by COVID, as our president has. And that’s resulted in the Senate being closed this week and are not being able to perceive we’re in the middle of a pandemic. And we are just three weeks from an election, a presidential election in which folks are voting in more than 40 states. Millions of votes have already been cast. And just a week after that election, the Supreme Court is going to hear a case that could take away healthcare protections for more than half of all Americans. So this is not an abstract academic argument, it’s one that will have real life consequences.

Chris Coons: ([04:36:40](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16600.14))  
Destroying the essential protections of the Affordable Care Act, which was enacted just more than a decade ago, would have a real impact on a majority of all Americans. It prevents insurance companies from discriminating against the more than 100 million Americans with preexisting conditions like diabetes or heart disease. It dramatically expanded Medicaid, and it provides coverage for kids on their parents’ insurance up to the age of 26. I should say young adults. And perhaps most importantly, since a lot of what we’ve been talking about is the legacy of Justice Ginsburg and her lifelong commitment to gender equity, it also prevents insurance companies, the Affordable Care Act does, from discriminating against women just for being women. It may be hard to imagine now, but more than a decade ago, before the ACA, pregnancy was treated as a preexisting condition, and women were routinely charged more than men just because insurance companies could.

Chris Coons: ([04:37:37](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16657.6))  
So President Trump, he said over and over again that he is determined to appeal the Affordable Care Act, that he is determined to overthrow it. And there’s two things all of us are waiting for. One is his detailed health plan, the other is his taxes. And I don’t expect either one of them in the next three weeks. The president tried to do it here in Congress. In fact, I think by one count, my colleagues have voted 70 times to overturn the ACA. And many in this chamber, many members of this committee, members like Senators Cornyn and Lee and others, have filed amicus briefs before the Supreme Court asking for the law to be struck down. So now on the eve of the election, I believe President Trump is making a last gasp attempt to get the Supreme Court to do it for him. He can’t do it through the democratic process, he can’t do it administratively. He’s going to try and do it with one more challenge.

Chris Coons: ([04:38:31](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16711.55))  
And as you well know, Judge, it was upheld eight years ago in a five to four decision where Chief Justice Roberts wrote a critical decisive piece of the majority opinion. But Justice Scalia, for whom you clerked, your mentor whose broad philosophy you embraced, dissented. He thought it was unconstitutional and voted to strike down the entirety of the law. You wrote an article in a Constitutional Commentary in 2017 in which you were quite critical of Chief Justice Roberts’ decision. And so I want to ask you about that article, not as a matter of debating abstract academic principles, but because I believe the outcome in this case, a week after the election, may hang in the balance.

Chris Coons: ([04:39:15](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16755.05))  
You wrote in that article, and I quote, “In NFIB v. Sebelius, the case that upheld the ACA against a constitutional challenge, Chief Justice Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute.” I think those are fighting words as an originalist and a textualist. You were referring to Chief Justice Roberts’ ruling that the individual mandate in the ACA is constitutional under Congress’s taxing powers, a ruling essential to upholding the law and protecting the health care of a majority of Americans. So just if you could, do you think the Chief Justice’s ruling upholding the ACA was implausible and unsound?

Judge Amy Coney Barrett: ([04:39:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16796.54))  
Well, Senator Coons, what I said in that article, which was a book review of someone else’s book, was that the statutory interpretation, as I said earlier, as Chief Justice Roberts’ own opinion said, was the less natural reading of the mandate, construing it as a tax rather than a penalty. That the statutory interpretation seemed, as you said, stretched beyond its plausible meaning. But NFIB v. Sebelius turned on the constitutional question. That was the statutory interpretation was the threshold question, and the constitutional question was not something that I ever opined on.

Judge Amy Coney Barrett: ([04:40:39](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16839.21))  
The case that’s coming down the pike in a few weeks, California v. Texas, I wouldn’t say they’re fighting words from the article that you read from me, because the California v. Texas case involves a very different issue, this issue of severability. And for those to be fighting words, I think you would have to assume that my critique of the reasoning reflects a hostility to the act that would cause me to approach a case involving the ACA with hostility, and looking for a way to take it down, to deprive people of their coverage under the ACA because I didn’t like it. But I can promise you that that is not my view. It’s not my approach to the law. I have no hostility to the ACA or any other law and I will faithfully apply the law. And nothing that I’ve said with respect to the ACA in print, and my law review articles actually bears on the severability questions, so it’s not indicative of how I might approach that question.

Chris Coons: ([04:41:39](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16899.54))  
Let me go back to what I perhaps too jokingly referred to as fighting words. You’re both textualists. You’re both from the same general school of constitutional methodology, correct?

Judge Amy Coney Barrett: ([04:41:48](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16908.55))  
You mean Justice Scalia and me?

Chris Coons: ([04:41:50](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16910.56))  
And Chief Justice Roberts.

Judge Amy Coney Barrett: ([04:41:52](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16912.47))  
I’m not actually sure that Chief Justice Roberts has ever identified himself as a textualist.

Chris Coons: ([04:41:57](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16917.73))  
So to that point, in this article three years ago, you chastised Chief Justice Roberts for not being a textualist. You said he has not proven himself to be a textualist and has been willing to depart from ostensibly clear text. And so you said in this article, and I’m quoting you, “It is illegitimate for the court to distort either the Constitution or a statute to achieve what it deems a preferable result.” So this was the sort of outcomes oriented judicial crafting that has often been sharply criticized by your mentor, Justice Scalia, when criticizing the living constitutionalists. And as I read this, you are saying to Chief Justice Roberts, you’re no textualist. You have overreached, you have delivered an implausible conclusion. And frankly, I disagree with your upholding the constitutionality of this statute. That seems to me, again, as a textualist here, a plain reading of your own writing.

Judge Amy Coney Barrett: ([04:42:59](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=16979.02))  
Well, Senator Coons, I want to make very, very clear. I think maybe this came up with Senator Klobuchar, that I was not attacking or chastising Chief Justice Roberts at all, for whom I have the greatest respect. I think this passage that you’re talking about in this book review and constitutional commentary was maybe a couple paragraphs, maybe even one paragraph at the end, because it was a comment on Randy Barnett’s book. And a lot of his book dealt with the NFIB v. Sebelius as an example, so I was responding to that. And the sentence that you read me about it’s illegitimate for a court to twist language in pursuit of a policy goal, I think that’s what I was telling Senator Sasse. I don’t think it is the job of courts to pursue policy goals that the text that you enact doesn’t support.

Chris Coons: ([04:43:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17027.18))  
So to be clear, you’re specifically accusing the Chief Justice, or you’re chastising might be the better word, the Chief Justice of distorting the statute and upholding it when it should have been struck down.

Judge Amy Coney Barrett: ([04:44:01](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17041.9))  
No, I was not. I said it was not chastising. All I was doing was expressing some… Well, and as I’ve said several times, it’s how the Chief Justice himself characterizes. It’s not the most natural reading of that language. And all I was doing was-

Chris Coons: ([04:44:16](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17056.13))  
If I might, Your Honor, I don’t think the Chief Justice would agree with that characterization. He didn’t describe his own opinion as not plausible.

Judge Amy Coney Barrett: ([04:44:24](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17064.67))  
He said less natural.

Chris Coons: ([04:44:25](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17065.95))  
Less natural.

Judge Amy Coney Barrett: ([04:44:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17066.53))  
And I thought it was implausible.

Chris Coons: ([04:44:28](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17068.2))  
But not unsound.

Judge Amy Coney Barrett: ([04:44:30](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17070.34))  
So Senator Coons, I certainly would not and did not criticize or chastise the Chief Justice or impugn his integrity. It is true that Chief Justice Roberts and Justice Scalia took different approaches to the text in the Affordable Care Act case, which is something that’s widely acknowledged.

Chris Coons: ([04:44:46](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17086.76))  
I’m simply trying to make clear that I think your writing here in 2017 in Constitutional Commentary, yes, the majority of it is a book review about a book that centrally talks about NFIB v. Sebelius and methodological questions. But near the end, you are, I think, unmistakably clear in saying, “I disagree with the Chief Justice’s ruling upholding the Affordable Care Act, and I deem it implausible and unsound.”

Judge Amy Coney Barrett: ([04:45:16](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17116.32))  
Senator, as an academic, I did express a critique. And you’ve quoted the language, you’ve pulled out those few sentences at the end. I guess I’m a little uncertain what it indicates, because as I’ve said, I have no hostility to the ACA. And if a case came up before me presenting a different question to the ACA, I would approach it with no bias or hostility. I also have said, earlier points in this hearing, that the exercise of being a commentator, an academic, is much different than the enterprise of judging. And I didn’t have to sit in Chief Justice Roberts’ seat or Justice Scalia’s seat when NFIB v. Sebelius was decided. So it would be-

Chris Coons: ([04:46:01](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17161.34))  
But you will, if we follow the timeline laid out by my colleagues, you will sit in former Justice Ginsburg’s seat. And you will sit as a member of the court deciding a case that is very similar to the previous one in which the central issue before the court, believe it or not, somehow will be the constitutionality of the mandate that’s, in some ways, been the linchpin of its being upheld previously in NFIB v. Sebelius. That was the key point, was that at the end of the day, there were five Justices who, for different reasons, concluded that they could uphold it, in the case of the Chief Justice, as a legitimate exercise of the taxing power.

Chris Coons: ([04:46:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17203.52))  
You wrote, and this is the next sentence, that Chief Justice Roberts, if he had treated the payment owed under the mandate as the statute did, as a penalty, he would have had to invalidate it. So I think you’re unmistakably criticizing this decision to uphold the Affordable Care Act in a case that will be before you as a newly seated member of the Supreme Court, if the majority continues with this race towards your confirmation. It is the nerve center of the case. The entire future of the Affordable Care Act, I think, hinges on this question of whether or not you share a view with the four who were in the minority at the time. That this is something that cannot be upheld under any plausible reading of the statute.

Chris Coons: ([04:47:36](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17256.46))  
Let me move on, if I might. Judge Barrett, you’re not the only person who’s criticized Chief Justice Roberts for his decision to uphold the ACA. President Trump criticized him for it sharply and repeatedly. Soon after the NFIB decision first came out in 2012, he tweeted that “Justice Roberts turned on his principles with irrational reasoning in order to get loving press.” And then later, “Congratulations to John Roberts for making Americans hate the Supreme Court because of his BS.” A few years later, while running for president, then candidate Trump said on Twitter, and I believe my colleague put this up earlier, “If I win the presidency, my judicial appointments will do the right thing, unlike Bush’s appointee, John Roberts, on Obamacare.” And as recently as just two months ago, Vice President Pence described Chief Justice Roberts as, and I’m quoting, “A disappointment to conservatives because of the Obamacare decision.”

Chris Coons: ([04:48:38](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17318.43))  
In upholding the ACA, the Chief Justice was the one justice appointed by a Republican president who went against the political wishes of the party that appointed him. Why did you choose to single him out for criticism in that Constitutional Commentary article?

Judge Amy Coney Barrett: ([04:48:58](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17338.12))  
Well, Senator Coons, I was writing about the majority opinion, and Chief Justice Roberts was the author of the opinion. So I was simply discussing what the five justice majority adopted as its reasoning. And I’d like to emphasize, again, that I was not attacking Chief Justice Roberts or impugning his character or anything of that sort. It was an academic critique. And I want to emphasize, just given these last line of questions that you’re asking, that I am standing before the committee today saying that I have the integrity to act consistently with my oath and apply the law as the law. To approach the ACA and every other statute without bias. And I have not made any commitments or deals or anything like that. I’m not here on a mission to destroy the Affordable Care Act. I’m just here to apply the law and adhere to the rule of law.

Chris Coons: ([04:49:53](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17393.03))  
And look, I think it is important that folks watching understand that I believe your views are sincere and earnestly held. And I am not trying to suggest that there was some secret deal between you and President Trump. When you told me that when we spoke a week ago, I’ve had no conversations about these cases with the president or his legal team. I believe you. I think you are a person who earnestly means that, and I do think it’s important that you keep repeating that. But we cannot ignore the larger context that sits outside your nomination and this rushed process.

Chris Coons: ([04:50:32](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17432.05))  
I’m sure you have no ill will towards the Chief Justice and meant no disrespect to him as an individual. We’ve talked repeatedly about the friendship between Justice Scalia and Justice Ginsburg. I was long inspired by the friendship between Senator Biden and Senator McCain, and they fought hammer and tongs, tooth and nail, disagreed with each other on foreign policy day in and day out. But then could still also spend time together, with each other’s families, and respect each other afterwards. And to the point my colleague from Nebraska has made about civics versus politics, it is important for us to try and sustain these institutions that hold us together.

Judge Amy Coney Barrett: ([04:51:08](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17468.47))  
And you and Senator Flake, I think, are another good example of that.

Chris Coons: ([04:51:11](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17471.25))  
Indeed. As you well know, we came to Notre Dame Law School just over a year ago to talk about working together even across significant differences. But the broader context that Senator Whitehouse went through in detail was as you are expressing opinions in an academic journal, there is literally an army of lobbyists and lawyers and people, donors and activists, who are funneling new judges into our courts. And I have sat here for four years and watched a whole procession of judges where, without going on about this too much, a dozen have been deemed unqualified to serve. This is not a comment on you. But the speed and the process and the disrespect for some of the critical traditions of this body in terms of the blue slip and who gets nominated and why has made it harder and harder to see the independence of the judicial branch.

Chris Coons: ([04:52:12](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17532.35))  
And in this piece that you wrote in 2017, you made, I think, your position with regards to the Chief Justice and his opinion clear. Let me, if I could, put up another poster that may make this a little sharper in a way that is the political branches, not the judicial branch. The Supreme court is going to hear arguments, as I’ve said, in this case a week after the election. And most Americans are probably surprised to even hear about it.

Chris Coons: ([04:52:43](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17563.59))  
When I talked to a constituent, Carrie, who has a pre-existing condition, she was surprised this was even in front of the court. She said, “I thought that was settled.” Carrie owns a small business. She has a daughter she’s raising. And before the ACA, she had to spend $800 a month for insurance that she described as junk. Left her afraid of even going to the doctor’s office or needing drugs. And because of the ACA, she’s been able to get better quality insurance that she can afford. And she’s got both type two diabetes and high blood pressure, but the ACA guarantees she can’t be denied insurance or made to pay higher premiums either because of her gender or because of these pre-existing conditions. She’s expressed to me astonishment. Many of us are engaged and interested in this because we care about the Constitution. We care about constitutional law and the ways in which it impacts a majority of all Americans. Frankly, all Americans. Help me explain to her, how is it that the Affordable Care Act, settled eight years ago, is back in front of the Supreme Court?

Judge Amy Coney Barrett: ([04:53:53](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17633.19))  
Well, Senator, I spent some time with Senator Sasse talking about how a case winds its way up, and it’s because litigants chose to challenge the law again. And it went through the district court and the Fifth Circuit, and now the Supreme Court has granted certiorari on it and is answering the question. But as to the broader question, which I think is a political one, which is why are people fighting the Affordable Care Act? You have to ask the litigants. I don’t know why they’re fighting the Affordable Care Act.

Chris Coons: ([04:54:21](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17661.25))  
Well, two things on that. Yes, there are no advisory opinions, as you said in your exchange with Senator Sasse. And you have to have standing, the courts are reactive. But as Senator Whitehouse laid out, there’s a whole network of groups that fund and develop and present test cases over and over and over. And this is an issue that’ll be before the court just a week after the election that is really not distinguishable from NFIB v. Sebelius. They are centrally about the constitutionality of the mandate, whether it’s a legitimate exercise of the taxing power. You don’t get to the question of severability if you haven’t already determined the question of constitutionality.

Judge Amy Coney Barrett: ([04:55:00](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17700.86))  
But I think that the question of severability, even if the now zeroed out mandate provision is a penalty, it doesn’t affect the act at all. If that provision can be severed out, then the whole rest of the act would stand. And so I actually think that severability is one of the most important issues in the case. I don’t think the question of characterizing as a tax versus a penalty… NFIB v. Sebelius also is interpreting a different provision. It was one that wasn’t zeroed out, that actually had money attached to it.

Chris Coons: ([04:55:39](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17739.7))  
But if I could, this is the filing of the Department of Justice in the Supreme Court. As you well know, the Justice Department is supposed to defend the constitutionality of federal laws if any reasonable defense can be made. And the Trump Justice Department has sided with those advocates who are trying, once again, to strike the law down now in the courts when they couldn’t accomplish that here. In fact, I’d argue that they’re denying the will of the voters, that clearly in 2018 in deciding control of the house on healthcare, want this to stay. And the administration’s arguing that this now toothless mandate, which imposes no payment on anyone, is unconstitutional, and they’re arguing the entire act must be struck down as a result. I frankly think the DOJ is embarrassed by this brief. They rarely even talk about it. But it’s in black and white in the quotes over my shoulder that the mandate is unconstitutional and must go, and so the parts of the law that prevent insurance companies from discriminating against people with pre-existing conditions, that prevent discrimination against women, all of it must fall as a result.

Chris Coons: ([04:56:47](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17807.28))  
It seems to me that Americans who are watching deserve to understand that this is somehow back up in front of the court, the posture the administration is taking, the ways in which it really does follow some of the contours of NFIB v. Sebelius. And the ways in which, bluntly, well, I know you won’t talk about this pending case, what you said in that 2017 article, what you wrote is highly relevant. Just as a preliminary point, the vote to uphold the ACA and NFIB v. Sebelius was five to four, correct?

Judge Amy Coney Barrett: ([04:57:20](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17840.76))  
Yes.

Chris Coons: ([04:57:21](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17841.57))  
And Justice Ginsburg was in the majority and Justice Scalia in the minority.

Judge Amy Coney Barrett: ([04:57:25](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17845.8))  
Yes.

Chris Coons: ([04:57:26](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17846.44))  
So if you were to replace Justice Ginsburg with someone who followed precisely Justice Scalia’s analysis on the linchpin question of constitutionality, one could expect it would be overturned.

Judge Amy Coney Barrett: ([04:57:40](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17860.52))  
No, Senator Coons, because if there were a direct challenge to NFIB v. Sebelius, there would be precedent on point. And the law of stare decisis is a whole body of doctrine that binds, judges itself. So no, I don’t think one could assume that in a separate point in time, that even Justice Scalia would necessarily decide the case the same way once there was precedent on the books.

Chris Coons: ([04:58:05](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17885.88))  
I agree and I look forward to discussing that in some more detail tomorrow. I have just, I think, six minutes. Your views of precedent, Justice Scalia’s views of precedent, and the ways in which they may diverge, I think are important and important for us to spend some time on.

Chris Coons: ([04:58:21](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17901.8))  
Let me just recap this point. For President Trump, for Republican politicians, the argument about tax and about whether or not the mandate is a tax is the gateway to knocking down the entire Affordable Care Act. And that’s also the line of attack being taken by the Department of Justice. You’ve already said it’s not plausible to interpret the mandate as a tax. If you didn’t think it was a tax when it was raising billions of dollars in revenue, you certainly, I think, are unlikely to believe it’s a tax when it raises no revenue. And the thing that might distinguish it from NFIB v. Sebelius is reliance interests and precedent. And when I have more time tomorrow, we’ll go through that.

Chris Coons: ([04:59:02](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17942.25))  
But I just wanted to connect some dots. That Trump has repeatedly vowed to get rid of the ACA, has campaigned on it, has criticized the Chief Justice, has said his nominees would do the right thing. His administration, he’s in court right now arguing in a case to be heard in just four weeks that it should be invalidated. And a person you’ve criticized, Chief Roberts, a person whose opinion, whose decision you have criticized, Justice Roberts, means in many ways that you’ve signaled, I think, you were added to the Supreme Court short list after you wrote that article. And today my Republican colleagues, who themselves have promised to repeal the ACA, are rushing through your nominations so you can be seated in time to hear this case. It concerns me greatly that that’s the circumstances we’re in.

Chris Coons: ([04:59:56](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=17996.37))  
Let me ask one last line of questioning, if I might, in the five minutes I have left. There’s another subject on which President Trump has been, I think unfortunately, very, very clear about what he hopes for from a Supreme Court nominee. Just days after Justice Ginsburg passed, the president was asked why there was such a rush to fill her seat before the election. And he responded, and I quote, “We need nine Justices. You need that with the millions of ballots that they,” and he meant the Democrats, “are sending. It’s a scam, it’s a hoax. You’re going to need nine Justices.” The next day he told reporters again, he doubled down, “I think this,” and he means the election from the context, “will end up in the Supreme Court. It’s very important. We must have nine Justices.”

Chris Coons: ([05:00:41](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=18041.7))  
Our president has also been asked whether he’ll commit to a peaceful transition if he loses the election. He’s been asked directly and repeatedly. And instead of responding in the way we’d expect of any leader of the free world, with a clear and simple yes, he’s tried to sow confusion and distrust in the potential results. So Your Honor, I’m concerned that what President Trump wants here couldn’t be clearer. That he’s trying to rush this nomination ahead so you might cast a decision, a vote, in his favor in the event of a disputed election. And he’s doing his level best to cast doubt on the legitimacy of an election in which literally millions of votes have already been cast, most of them by mail.

Chris Coons: ([05:01:25](https://www.rev.com/transcript-editor/shared/kLwCZ4Ny26bpVAkh8sE7cHtYubvzrIeAmaQXsfEMSAU-NKpngE3pfL0TGR9uV7aQrw98a8n5Z9Py9S0_Cn1sg0WBDO4?loadFrom=PastedDeeplink&ts=18085.92))  
I was very encouraged, again, to hear from you specifically, you have not had any conversation with him about this topic. And that’s not what I’m suggesting. In fact, you repeated promptly 28 USC 455. You’re quite familiar with the recusal statute and its considerations. But I think the gravamen, the core issue in recusal, is that any judge or justice should recuse themselves from a case in which their impartiality might reasonably be questioned. Given what President Trump said, given the rushed context of this confirmation, will you commit to recusing herself from any case arising from a dispute in the presidential election results three weeks from now?

Amy Coney Barrett: ([02:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=123.01))  
Senator Coons, thank you for giving me the opportunity to clarify this because I want to be very clear for the record and to all members of this committee that no matter what anyone else may think or expect, I have not committed to anyone or so much as signaled, I’ve never even written. I’ve been in a couple of opinions in the seventh circuit that have been around the edges of election law but I haven’t even written anything that I would think anybody could reasonably say, ” Oh, this is how she might resolve an election dispute.” And I would consider it… Let’s see, I certainly hope that all members of the committee have more confidence in my integrity than to think that I would allow myself to be used as a pawn to decide this election for the American people. So that would be on the question of actual bias. And you asked about the appearance of bias.

Chris Coons: ([02:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=170.28))  
Correct.

Amy Coney Barrett: ([02:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=170.87))  
And you’re right that the statute does require a justice or judge to recuse when there is an appearance of bias. And what I will commit to every of this committee, to the rest of the Senate, and to the American people is that I will consider all factors that are relevant to that question, relevant to that question that requires recusal when there’s an appearance of bias. And there is case law under the statute. And as I referenced earlier in describing the recusal process at the Supreme Court, Justice Ginsburg said that it is always done with consultation of the other justices. And so I promise you that if I were confirmed and if an election dispute arises, both of which are ifs, that I would very seriously undertake that process and I would consider every relevant factor. I can’t commit to you right now for the reasons that we’ve talked about before, but I do assure you of my integrity and I do assure you that I would take that question very seriously.

Chris Coons: ([03:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=226.84))  
Thank you, your honor. Just on the question of consultation, the former chief justice Rehnquist, because this question came up in 2004, wrote a letter actually to members of this committee that there’s no formal procedure for court review of a decision by a justice in individual cases. It’s just something Justice Ginsburg did say, that there was a practice of consultation. I do think at the end of the day what matters is removing any potential conflict here, ensuring that there is confidence in our election, in the Supreme Court, and in its role is critical. I have reached out to a number of my colleagues to implore them to step back from the timing of this confirmation to consider the possible confluence of three different factors here, an election, an ACA case, and a rush timing in the middle of a pandemic. And I would just urge them one more time to think seriously about stepping back from this timing of this confirmation.

Chris Coons: ([04:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=288.55))  
That’s not meant to impugn you or suggest that in some way you’ve engaged in some inappropriate conversation, that’s just the confluence of these events at this time in this place. This election will have enormous consequences. I am troubled by what you’ve written about the Affordable Care Act. I am more concerned that the president has tried over and over and over to get rid of the ACA and that the American people have consistently said no and that the consequences for a majority of Americans who rely on the ACA in the middle of a pandemic would be significant, and that the president has refused to embrace the American people’s wishes and deliver some compelling alternative plan and instead has taken the battle back to the Supreme Court where it will be heard in just a month.

Chris Coons: ([05:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=335.89))  
I think to reach out and to strike this critical statute down now would be the worst example of judicial activism, which my colleagues say they don’t want and which I hope will not happen, but I am gravely concerned by what I see. Your honor, I believe your views are sincere but I also think you genuinely think the Affordable Care Act is unconstitutional.

Chris Coons: ([05:57](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=357.23))  
That’s my reading, and you are entitled to that view but this body and the American people, we shouldn’t kid ourselves. Bluntly, if our president and the majority are able to swing the court out of balance by replacing Justice Ginsburg by someone whose views may be significantly to the right, the health of a majority of Americans may well be in peril. Thank you, your honor.

Lindsey Graham: ([06:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=381.78))  
Thanks, Senator Coons. Judge, if it’s okay we’ll do Senator Hawley’s 30 minutes and take a break. Is that okay with you?

Amy Coney Barrett: ([06:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=389.35))  
Sure. Yep.

Lindsey Graham: ([06:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=391.17))  
So Senator Hawley, you’re on deck. We’ll try to take a 15 minute break. And just one observation, really a lot of good questions. Good interchange. Not one time has a senator and the judge talked over each other. I hope the American people understand that this is the way that it should be. Senator Hawley,

Josh Hawley: ([06:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=412.42))  
Mr. Chairman, thank you. I’d like to begin by asking consent to enter two letters into the record supporting the judge’s nomination. The first one, the Family Research Council and the second from a group of state attorneys general including the state attorney general of my home state of Missouri.

Lindsey Graham: ([07:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=425.46))  
Without objection.

Josh Hawley: ([07:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=426.43))  
Thank you very much. Judge, it’s good to see you again.

Amy Coney Barrett: ([07:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=430.54))  
Likewise.

Josh Hawley: ([07:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=431.26))  
I’ve been so impressed with your answers today. It’s really quite extraordinary. I look forward to visiting with you a little bit here. Can we just start on the topic of independence, picking up where Senator Coons just was questioning you? I’ve heard my Democrat colleagues over and over again suggest that because I guess you clerked for Justice Scalia that you’ll automatically vote however he did. They attribute his opinions to you, his decisions to you, his method to you. Did Justice Scalia tell you what to do in your career? Have you been in the habit your life of doing exactly what Justice Scalia told you to do in your professional career?

Amy Coney Barrett: ([07:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=468.29))  
Well, Senator Hawley, as I said earlier, if you confirm me you’re getting Justice Barrett, not Justice Scalia. I share his method of interpreting the text, but I didn’t agree with them on every case even when I was clerking. Then, he could tell me what to do and even if I disagreed I had to go his way. But the fact that we share the same approach does not mean that we would always reach the same result.

Josh Hawley: ([08:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=489.09))  
And you make up your own mind, don’t you?

Amy Coney Barrett: ([08:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=491.2))  
I do make up my own mind.

Josh Hawley: ([08:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=492.54))  
And you have your own views, I think it’s fair to say. Is that accurate?

Amy Coney Barrett: ([08:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=496.44))  
Indeed I do.

Josh Hawley: ([08:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=497.02))  
And you’re a very accomplished jurist in your own right. Is that fair to say?

Amy Coney Barrett: ([08:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=501.65))  
Well, it feels a little immodest to opine on that

Josh Hawley: ([08:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=503.56))  
Well, I’ll say it is. You’re very accomplished. So I think this one-way attribution, that everything that whatever Justice Scalia did you would automatically do, I have to say, frankly, I think is a little bit demeaning. Let me ask you about some other attacks that you’ve endured today. Now, I noticed yesterday, we were assured that you would not be attacked on the basis of your faith. I noticed that didn’t last 24 hours, but I’m not surprised because for three and a half years we have heard consistent attacks from the Democrat side on nominees on the basis of their faith, including of course you, Judge Barrett. And we talked about this some yesterday.

Josh Hawley: ([08:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=538.67))  
Today, the second Democrat senator to speak questioned, criticized you for speaking to a Christian legal group that has a summer program for Christian law students, where you gave I think a lecture once or twice on constitutional and statutory interpretation. So let me just ask you about that. You’ve talked about your faith, this has been well-established. You accepted an invitation to speak to a group of Christian law students on the topic of your specialty. Tell us why you accepted the invitation.

Amy Coney Barrett: ([09:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=573.78))  
I had several other colleagues who had participated in the Blackstone program lecturing, and I heard great things about it from them. We had a contingent of students from Notre Dame regularly attend this program and they were among our most engaged and smartest students. And I went and did it. The first time I did it, I really enjoyed it. The students were very, very engaged. So I did it. I don’t know, I might’ve done it four or five times each summer. I would go and just give a lecture on originalism. That was one hour of… Blackstone is a summer long program, so I went and gave my one hour lecture at the beginning of it. And I really thought it was fun to talk about the constitution to an engaged group of students is fun for someone who’s a law professor.

Josh Hawley: ([10:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=617.51))  
Are you aware of anything in the constitution or our laws that say that it is a disqualification for office for a believer of religious faith to go and lecture to law students of a similar faith in her area of expertise?

Amy Coney Barrett: ([10:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=633.06))  
I certainly… Let me see. I want to be careful that I’m not veering into answering hypothetical questions, but I certainly didn’t think there was anything wrong with my going to speak to a group of Christian law students about my expertise.

Josh Hawley: ([10:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=646.57))  
Let me ask you this. Senator Leahy he also raised a pledge, a statement that you signed regarding abortion. You told the committee in response to his question, you and your husband both signed it. I’m looking at the advertisement in question right here, the portion that you signed. You said that you signed it on your way out of church, if I remember correctly.

Amy Coney Barrett: ([11:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=668.84))  
I did. That was almost 15 years ago. At the back of church there was a table set up for people on their way out of mass to sign a statement validating their commitment to the position of the Catholic church on life issues. The ad that was next to it, I don’t recall seeing the ad at the time and in context looking at it, it looks to me like that was an ad by the St. Joseph County Right to Life group. The statement that I signed, it was affirming the protection of life from conception to natural death.

Josh Hawley: ([11:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=705.56))  
And you just made reference to the fact again that it was in church. Why would it have been in the back of church? why would the signature, why would this have been available to sign or not, as you so chose in the back of church?

Amy Coney Barrett: ([12:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=721.26))  
Because that is the position of the Catholic church on abortion, though I feel like I should emphasize here as I emphasized to others asking me the question, that I do see as distinct my personal, moral, religious views and my task of applying the law as a judge.

Josh Hawley: ([12:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=739.73))  
Is it safe to say following that distinction you just made though that the signature that you lent, your husband also reflects your understanding of your church’s teaching and your own personal views? That’s what this says, that you signed.

Amy Coney Barrett: ([12:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=754.4))  
What I would like to say about that is, I signed that almost 15 years ago in my personal capacity when I was still a private citizen, and now I’m a public official. And so while I was free to express my private views at that time, I don’t feel like it is appropriate for me anymore because of the cannons of conduct to express an affirmative view at this point in time. But what that statement plainly says is that when I signed that statement, that is what I was doing at that point as a private citizen.

Josh Hawley: ([13:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=784.46))  
And I’m not aware of any law or provision of the constitution that says that if you are a member of the Catholic church and adhere to the teachings of the Catholic church or you have religious convictions in line with those of your church teaching, that you’re therefore barred from office. Are you aware of any constitutional provision to that effect?

Amy Coney Barrett: ([13:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=807.1))  
I would think that the religious test clause would make it unconstitutional.

Josh Hawley: ([13:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=807.11))  
Well, let me just ask you about the test clause since you bring it up. Article six says, ” No religious test shall ever be required as a qualification to any office or public trust under the United States.” Can you just give us your sense as a constitutional expert, scholar, and judge now, of the significance of article six for our constitutional scheme?

Amy Coney Barrett: ([13:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=827.5))  
The religious test cross prohibits this body, prohibits the government generally from disqualifying people from office because of their religious beliefs.

Josh Hawley: ([14:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=841.03))  
And it guarantees, does it not? The freedom of religion. Article one… I’m sorry, amendment one, the first amendment, will go on to talk explicitly, and I want to ask you about that in a second, about religious Liberty. But article six is significant in that it sets out that one cannot be, no American citizen can be kept out of office based on his or her belief. You don’t have to go and get someone’s approval, certainly not somebody in government, their approval over what you believe. Does it meet this test or not? Do they like it or not? You don’t have to get any sign-off. In fact, any kind of sign-offs are explicitly ruled out by the constitution. Is that a fair characterization.

Amy Coney Barrett: ([14:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=877.98))  
The religious test clause makes plain that denomination or belief can’t be a reason to disqualify someone.

Josh Hawley: ([14:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=884.5))  
And that is why I continue to say it is vital that we underline in the constitution this test clause and that we insist that it be applied in the context of your confirmation, judge, and every nominee for every high office who comes before this committee. There are no religious tests for office and the attempt to smuggle them in, even in the midst of this committee’s hearings to date, must be resisted on the basis of the constitution itself. Let me ask you about the first amendment, about the free exercise of religion. That’s of course how the first amendment begins, “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” Tell me what you think this says about the place of religious observance in American life and its significance. Why is it protected like this in the first amendment? What do you draw from that?

Amy Coney Barrett: ([15:39](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=939.06))  
I think its presence in the bill of rights, like all of our rights, shows that it was one that the people for generations beginning in 1791 considered central to being a free people.

Josh Hawley: ([15:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=950.3))  
And there’s no indication from the constitution that religious believers are second class citizens in any way, is there?

Amy Coney Barrett: ([15:57](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=957.47))  
Well, the free exercise certainly suggests to the contrary.

Josh Hawley: ([16:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=961.29))  
And in fact the free exercise clause and the first amendment suggests that the exercise of religion, worship, religious belief gets special protection. It’s singled out here for protection along with, immediately after speech, press, right of the people peacefully to assemble. Religion is given a special place, which the United States Supreme Court has recognized. Let me just ask you about attempts to disfavor religious believers on the basis of faith. Is it your understanding, can a government at any level, federal government, state government, municipality, whatever. Can they treat religious believers differently? Can they single them out for disfavor versus a non-religious group? Is that permissible in our constitutional order?

Amy Coney Barrett: ([16:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1006.98))  
Well, Senator Hawley, that’s a complicated question because there’s a lot of doctrines surrounding that and there aren’t bright line rules. And so that question would come up in a case with facts and it would require the whole judicial decision making process. So it’s not a hypothetical that I can answer.

Josh Hawley: ([17:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1025.91))  
Let me ask you about the court’s unanimous decision and the Hosanna-Tabor case which touches some of these questions. In which the court there, it’s a question about church’s ability, any house of worship to hire and fire their ministers or those who perform religious functions, religious services. And in a unanimous decision the court says that houses of worship are different, that they are unique, that they are given special protection under the first amendment and that therefore they must be accorded special status. They have to have the ability for instance to hire and fire ministers, those who are going to perform religious functions. The state, the government cannot interfere with that. Do you agree with the teaching of that case? Do you think that that case remains good law and is a significant decision?

Amy Coney Barrett: ([17:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1073.2))  
Well, Senator Hawley, I think the way to answer that question is, again as I’ve said, I can’t grade precedent but I can talk about a precedent from my court. I was on a panel that decided a case called Grussgott which applied Hosanna Tabor to the situation of a Jewish school which had fired a teacher and the teacher sued. And the question was whether, following Hosanna Tabor, that school was entitled to treat her as a minister under the ministerial exemption recognized in Hosanna Tabor. And my court, the panel that I was on, said that she was a minister and we took the factors in Hosanna Tabor and said nothing was a bright line test. You look at the cluster, because Hosanna Tabor was designed to give religious institutions the freedom to hire and fire their ministers, in this case one of the Jewish faith, as consistent with their practice of their faith. And that view of ours in Grussgott was embraced by the Supreme Court last term in our lady of Guadalupe.

Josh Hawley: ([19:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1145.85))  
I think it’s vital in this time, in this season, judge, where we’re seeing many challenges to religious independence, many challenges to the ability of churches to conduct worship on equal terms with secular organizations, that the Supreme Court’s unanimous decisions in this area, Hosanna Tabor and others. The Trinity Lutheran case, which was not unanimous but as a recent, very important case as well. I will just say for myself that I think that the lines that the Supreme Court has drawn regarding the first amendment, regarding the status of houses of worship, regarding the rights of religious believers, that now more than ever it is vital that those be respected and that the constitution be fully enforced and that the line of cases that is now multi-years old that the Supreme Court has set out be followed. And I certainly hope that you will respect and apply that precedent going forward. I don’t have any reason to think that you won’t.

Josh Hawley: ([20:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1201.49))  
Let me shift gears and ask about another attack that has been made on you today having to do with the Cantor case. The Cantor case we’ve heard about. Senator Durbin asked you about it at some length, Senator Klobuchar asked you about it as well. The Cantor case, first of all, is a case about the second amendment, the right to keep and bear arms. Is that right?

Amy Coney Barrett: ([20:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1224.56))  
That is right.

Josh Hawley: ([20:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1225.97))  
And it’s about whether or not someone who had been charged with and convicted of or pled guilty to a felony could keep and bear arms under certain circumstances. Is that a fair summary?

Amy Coney Barrett: ([20:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1237.36))  
Yeah.

Josh Hawley: ([20:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1237.39))  
I’ve heard repeatedly from my Democrat colleagues that you right in your dissent, you dissented in this case, you write in your dissent that the right to keep and bear arms is an individual right but the right to vote is not an individual right. But maybe I’m reading a different opinion. That’s not what you say in the opinion that I see. Page 50 of your opinion, or of the joint opinion, your dissent. You refer to voting rights as civic rights and you say, “Civic rights,” you define them. “Civic rights are individual rights.” A moment later you say, “For example, the right to vote is held by individuals.” So let’s just set the record straight here. In this case you say that the right to vote is an individual right. Is that correct?

Amy Coney Barrett: ([21:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1284.12))  
That is correct.

Josh Hawley: ([21:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1285.48))  
And the distinction between a civic right and the second amendment has to do with the purposes of that right. First of all, that’s not a distinction you invented, is that correct?

Amy Coney Barrett: ([21:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1294.67))  
That is correct.

Josh Hawley: ([21:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1295.41))  
You were replying to both a chain of cases and also scholarship on this issue. Is that correct?

Amy Coney Barrett: ([21:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1302.22))  
That is correct. And also the arguments the litigants made in the Cantor case itself.

Josh Hawley: ([21:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1306.55))  
And this designation of a civic right talks about what the right to vote, what its civic purposes are. In other words, it gives us a stake in our democracy. Is that fair to say?

Amy Coney Barrett: ([21:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1314.48))  
Yes.

Josh Hawley: ([21:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1314.99))  
So you never at any point say that the right to vote is somehow secondary or less fundamental than any other right. Is that fair to say?

Amy Coney Barrett: ([22:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1323.03))  
Yes, that is fair to say. I never said that.

Josh Hawley: ([22:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1324.24))  
In fact, your whole right in this case, which is a fundamental rights case, doesn’t have anything to do with voting rights. This is not a voting rights case, is it? The Cantor case?

Amy Coney Barrett: ([22:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1331.07))  
It is not.

Josh Hawley: ([22:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1331.14))  
It has nothing to do with voting rights. Your whole point in this case, a fundamental rights case, is that you think that your colleagues on the seventh circuit actually constricted fundamental rights too narrowly. That is, the Supreme Court of the United States has said in Heller that the right to keep and bear arms is a fundamental right? That’s the Heller decision. You think in this case that your colleagues actually were constraining that fundamental right a little too narrowly and were shutting some people out of it. Is that fair to say?

Amy Coney Barrett: ([22:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1356.74))  
We did disagree about the scope of the right.

Josh Hawley: ([22:39](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1359.33))  
So just to make the record perfectly clear here, the United States Supreme Court has said over and over that the right to vote is a fundamental right. And I think you have affirmed that and recognized. Today you’ve said that is Supreme Court precedent. Am I right about that?

Amy Coney Barrett: ([22:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1374.91))  
Yes.

Josh Hawley: ([22:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1375.6))  
And the Supreme Court has said repeatedly that they adhere to the one person, one vote standard. The baseline, the touchstone, the keystone to that entire doctrine. Do I have that correct?

Amy Coney Barrett: ([23:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1385.02))  
Indeed, that is correct.

Josh Hawley: ([23:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1386.2))  
And nothing in your opinion challenges that or changes that or calls into question, critiques. Nothing, right?

Amy Coney Barrett: ([23:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1392.33))  
Not one iota.

Josh Hawley: ([23:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1393.35))  
Okay. I’m glad that we’re clear on that. Now, Senator Durbin said as part of his line of questioning on this, he suggested that… I don’t know, perhaps that your opinion in this case somehow, which has nothing to do with voting rights, makes you friendly to what he characterized as attempts to deny people the right to vote on racial grounds. He went on to say that we all come to everybody, every judge, all of us who come to the law, every judge who comes to the bench comes to the bench and to cases with their own individual experience and viewpoints. So let’s just talk about that for just a second, if we could, when it comes to the fraught but vital issue of race and your own experience with that. You and your husband are the parents of a multiracial family. Can you give us some sense, just in your personal experience, what that has been like for you? What that means to you? What experience you bring to the bench because of your experience as a parent in this unique context?

Amy Coney Barrett: ([24:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1458.8))  
Well, I think I could say how it is shaped me as a person. It has certainly, whenever you have a life experience it makes you acutely aware in your interactions with other people, it gives you empathy for them. The same is true of our having a son with a disability. But I want to make very clear, Senator Hawley, that while my life experiences I hope have given me wisdom and compassion, they don’t dictate how I decide cases because, as we discussed before and have discussed a couple of times, sometimes you have to decide cases in ways where you don’t like the result. So while I hope that my family has made me a better person, and my children definitely have given me new perspectives on life, I still, in applying the law and deciding cases, don’t let those experiences dictate the outcome.

Josh Hawley: ([25:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1518.53))  
You’ll follow the law where ever the law leads.

Amy Coney Barrett: ([25:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1521.12))  
Yes.

Josh Hawley: ([25:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1521.83))  
Which I think is a good way to bring us back full circle to where we started, about your own independence. You’ve cultivated, I think it’s fair to say, over the course of your very distinguished career you’ve cultivated a reputation for original thinking, for independence, I would say for courage and for toughness. And I see no evidence in your record that you’ve ever compromised, kowtowed, or bent your position to the whims of other people, especially people in power based on what they wanted you to do or expected you to do or told you to do. Is that fair to say? Have I missed something in your record?

Amy Coney Barrett: ([26:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1560.14))  
No, I think that it’s fair to say.

Josh Hawley: ([26:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1562.41))  
I admire the way in which you’ve answered these questions, judge, and your forthrightness on these issues. And I look forward to talking with you more tomorrow. And with that, Mr. Chairman, I yield back my time.

Lindsey Graham: ([26:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1573.14))  
Thank you, Senator Hawley. We’ll reconvene in 20 minutes and we will go till about 6:30 and take a 30 minute break to have some dinner and come back and finish out round one today. So, 20 minute break.

Lindsey Graham: ([26:49](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1609.2))  
Start the clock. You can relax a bit here, judge, and take your mask off. Yesterday we had a lot of the discussion about the Affordable Healthcare Act. What I’m going to try to do very briefly this morning is to demonstrate the difference between politics and judging. All of my colleagues on the other side had very emotional pleas about Obamacare, charts of people with preexisting conditions. I want to give you my side of the story about Obamacare. This is Lindsey Graham, the Senator from South Carolina talking. This is not a question directed at you. From my point of view, Obamacare has been a disaster for the state of South Carolina. All of you over there that want to impose Obamacare on South Carolina, we don’t want it. We want something better, we want something different. You know what we want in South Carolina? South Carolina Care, not Obamacare. Now, why do we want that?

Lindsey Graham: ([27:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1666))  
Under the Affordable Care Act, three states get 35% of the money, folks. Can you name them? I’ll help you. California, New York, and Massachusetts. They’re 22% of the population. Senator Feinstein’s from California, Nancy Pelosi’s from California, Chuck Schumer, the leader of the Democratic Senate is from New York, and Massachusetts is Elizabeth Warren. Now, why do they get 35% of the money when they’re only 22% of the population? That’s the way they designed the law, the more you spend the more you get. What does it mean for the people of South Carolina? If you had a per patient formula where you got the same amount from the federal government to the state, whether you lived in Charleston, Columbia, or San Francisco or New York City, if you leveled that out it’d be almost $1 billion dollars more for us in South Carolina. So to my friends over there, we’re going to fight back.

Lindsey Graham: ([28:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1733.88))  
We want our money. If you’re going to have money allocated for Obamacare, we’re not going to sit back and quietly let you give 35% of it to the three states. What else has happened in South Carolina? Four rural hospitals have closed because the revenue streams are uncertain. 30% increase in premiums in South Carolina for those on Obamacare. I was on Obamacare for a few years before I got on track here. My premiums went up 300%. My coverage was almost non-existent. A $6,000 deductible. So I want a better deal. And that’s a political fight. I’m in a campaign at home. If it were up to me we would block grant this money, send it back to the states in a more allocation, and we would require preexisting conditions to be covered as part of the block grant. We want sick people covered. But I’ve got an idea. I think South Carolina may be able to deal with diabetes better and different than California.

Lindsey Graham: ([29:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1798.71))  
If you want good outcomes in medicine you need innovation, and the best way to get innovation is to allow people to try different things to get better outcomes. So the debate on healthcare is consolidating all the power in Washington, have some bureaucrat you’ll never meet running this program versus having it centered in the state where you live. Under my proposal, South Carolina would get almost $1 billion dollars more, the state of South Carolina would be in charge of administering Obamacare. They couldn’t build football stadiums where the money, they’d have to spend it on healthcare, they’d have to cover pre-existing conditions. But as a patient in South Carolina, you would have a voice you don’t have today. If you didn’t like what was happening to you on the healthcare front, you could go to local officials and complain, and the people you’re complaining to live in your state.

Lindsey Graham: ([30:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1850.89))  
They send their family to the same hospital as you go. That’s a structural difference. That’s got nothing to do with this hearing, it’s got everything to do with politics. We, on this side, do not believe Obamacare is the best way to provide quality healthcare over time. Our friends on the other side, this is a placeholder for single payer healthcare. If you don’t believe me, just ask them. So that’s the fight going into 2020. Doesn’t make them bad, it just makes them different. If it were up to me bureaucrats would not be administering healthcare from Washington, people in South Carolina would be running healthcare. If it were up to me we’d get more money under Obamacare than we do today, 35% would not go to three states, and sick people would be covered. So that’s the political debate. We’re involved in a campaign in South Carolina. My fate will be left up to the people of South Carolina.

Lindsey Graham: ([31:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1907.36))  
So that’s what Obamacare is all about. Now, how do you play in here, judge? There’s a lawsuit involving the Affordable Care Act before the Supreme Court, and we’ll talk about that in a bit. And the difference between analyzing a lawsuit and having a political argument is fundamentally different, and I hope to be able to demonstrate that over the course of the day. And I hope that my colleagues on this side of the aisle will not feel shy about telling my colleagues on the other side of the aisle why we think we have a better idea on healthcare. Now, the bottom line here, judge, you said yesterday something that struck me, and I want the American people to understand what you meant. You said you’re an originalist. Is that true?

Amy Coney Barrett: ([32:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1953.03))  
Yes.

Lindsey Graham: ([32:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1953.06))  
What does that mean in English?

Amy Coney Barrett: ([32:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1957.06))  
In English-

Lindsey Graham: ([32:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1957.15))  
Press the button? We all love Senator Lee, but… In English.

Amy Coney Barrett: ([32:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1964.15))  
In English. Okay. So in English, that means that I interpret the constitution as a law, that I interpret its text as text, and I understand it to have the meaning that it had at the time people ratified it. That meaning doesn’t change over time and it’s not up to me to update it or infuse my own policy views into it.

Lindsey Graham: ([33:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1986.32))  
So in other words, you’re bound by the people who wrote it at the time they wrote it. That keeps you from substituting your judgment for theirs, is that correct?

Amy Coney Barrett: ([33:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1993.73))  
Yeah.

Lindsey Graham: ([33:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1994.29))  
All right. Justice Scalia, he was an originalist, right?

Amy Coney Barrett: ([33:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1998.21))  
Yes, he was.

Lindsey Graham: ([33:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=1998.99))  
People say that you’re a female Scalia. What would you say?

Amy Coney Barrett: ([33:22](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2002.47))  
I would say that Justice Scalia was obviously a mentor, and as I said when I accepted the President’s nomination, that his philosophy is mine too. He was a very eloquent defender of originalism, and that was also true of textualism, which is the way that I approach statutes and their interpretation. And similarly to what I just said about originalism, for textualism, the judge approaches the text as it was written with the meaning it had at the time and doesn’t infuse their own meaning into it. But I want to be careful to say that if I’m confirmed you would not be getting Justice Scalia, you would be getting Justice Barrett, and that’s so because originalists don’t always agree, and neither do textualists. Justices Scalia and Thomas disagreed often enough that my friend Judge Ann Melissa Parr teaches a class called Scalia versus Thomas. It’s not a mechanical exercise.

Lindsey Graham: ([34:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2061.79))  
Well I’ll wait till the movie comes out. The bottom line for me is, there is a narrative building in this country. And again, you can stand down. This is just me speaking for me. Justice Ginsburg was an iconic figure in American history, just not the law. She was a trailblazer. She fought for better conditions for women throughout society. She was unashamedly progressive in her personal thought. She was devout to her faith. She worked for the ACLU. She was proudly pro choice personally. But all of us on this side, apparently when they voted, accepted that she was highly qualified. What I want the American people to know…

Lindsey Graham: ([35:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2103.7))  
… accepted that she was highly qualified. What I want the American people to know, I think it’s okay to be religiously conservative, I think is okay to be personally pro choice, I think is okay to live your life in a traditional Catholic fashion, and you still be qualified for the Supreme Court. So all the young conservative women out there, this hearing to me is about a place for you. I hope when this is all over, that there’ll be a place for you at the table. There’ll be a spot for you at the Supreme Court. Like there was for Judge Ginsburg.

Lindsey Graham: ([35:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2134.27))  
And to President Trump, I don’t know if you’re listening or not by picking Judge Barrett, you have publicly said you find value in all of these characteristics. But beyond anything else, you find Judge Barrett to be highly qualified. I would say you’re one of their greatest picks President Trump could have made. And from the conservative side of the aisle, you’re one of the most qualified people of your generation. Let’s talk about Brown v. Board of Education, because I know Senator Blumenthal will. I’m going to talk about that. You said in writings, it was a super precedent. What did you mean?

Amy Coney Barrett: ([36:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2172.82))  
Well, in my writings, so as a professor, I talked about the doctrine of stare decisis. And super precedent is not a doctrinal term that comes from the Supreme Court. And I think maybe in political conversation or in newspapers, people use it different ways. But in my writing, I was using a framework that’s been articulated by other scholars. And in that context, super precedent means precedent that is so well established, that it would be unthinkable that it would ever be overruled. And there are about six cases on this list that other scholars have identified.

Lindsey Graham: ([36:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2207.86))  
Let’s talk about Brown and talk about why it would be unthinkable. First, let’s talk about what’s the process that would lead to it being overruled? What would have to happen?

Amy Coney Barrett: ([36:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2219.44))  
For Brown to be overruled, you would have to have Congress or some state or local government impose segregation again, open segregated schools-

Lindsey Graham: ([37:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2229.45))  
Let’s stop right there. If you want to make yourself famous, by the end of the day, you can say, “We want to go back to segregation.” I promise you, you’ll be on every cable TV channel in America. I doubt if you’ll go very far, but the point we’re trying to make here is the Court just can’t wake up and say, let’s revisit Brown. It has to be a case in controversy. Is that right?

Amy Coney Barrett: ([37:30](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2250.31))  
Yes, that’s right.

Lindsey Graham: ([37:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2251.25))  
So before a Brown decision, you could review Brown, somebody out there would have to be dumb enough to pass a law saying, “Let’s go back to segregated schools.” Is that fair to say?

Amy Coney Barrett: ([37:41](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2261.72))  
That it’s fair to say.

Lindsey Graham: ([37:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2262.75))  
Do you see that happening anytime soon?

Amy Coney Barrett: ([37:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2264.47))  
I do not see that happening anytime soon.

Lindsey Graham: ([37:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2266.65))  
Yeah, I don’t either. So let’s talk about the process in general. There’s the Heller case. What’s that about?

Amy Coney Barrett: ([37:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2274.11))  
The Heller case is a case decided by the Supreme Court, which held that the Second Amendment protects an individual right to bear arms.

Lindsey Graham: ([38:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2282.17))  
Okay. Now my friends on the left, some of them have a problem with Heller. They may try to challenge the construct of Heller. If a state or local government passed a law in defiance of Heller, what would happen?

Amy Coney Barrett: ([38:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2294.72))  
In defiance of Heller, or-

Lindsey Graham: ([38:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2296.03))  
That was challenging the construct of Heller.

Amy Coney Barrett: ([38:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2298.63))  
That challenged the construct of Heller. If it was brought in a lower court, Heller binds. I mean, Heller’s … lower courts always have to follow Supreme Court precedent and so that-

Lindsey Graham: ([38:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2309.85))  
If the Supreme Court wanted to revisit Heller, what would they do?

Amy Coney Barrett: ([38:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2314.77))  
If someone challenged Heller below because a state or local government passed a law contradicting Heller, the Supreme Court would have to take that case, once it was appealed, all the way up. So the Court would have to decide, yes, we want to overrule Heller and we have enough votes to grant cert and then do so.

Lindsey Graham: ([38:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2331.37))  
So that’s the way the process works.

Amy Coney Barrett: ([38:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2333.55))  
Yes. It would start because there was a law. Then there was a lawsuit. Then there was an appeal. Then the court granted cert. And then the court decided the case.

Lindsey Graham: ([39:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2341.41))  
Is that true no matter what the issue is? Whether it’s gun, abortion, healthcare, campaign finance. Does that process hold true for everything?

Amy Coney Barrett: ([39:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2350.51))  
Yes. You always … Judges can’t just wake up one day and say, “I have an agenda. I like guns. I hate guns. I like abortion. I hate abortion.” And walk in like a royal queen and impose their will on the world. You have to wait for cases and controversies, which is the language of the Constitution, to wind their way through the process.

Lindsey Graham: ([39:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2369.81))  
All right. Well, Senator Sasse gave us a good civics lesson. I hope that’s the basic lesson in law here. So if a state said, “You know, I don’t think you should have over six bullets,” and somebody believed that violated the Second Amendment, there would be a lawsuit and the same process would work, right?

Amy Coney Barrett: ([39:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2387.69))  
The same process would work. In that case, parties would have to sue the state, arguing that that law was unconstitutional. It would wind its way up. And if it got to the Supreme Court and if the Supreme Court decided to take it, a whole decision making process begins. You hear arguments from litigants on both sides. They write briefs. You talk to clerks as a judge. You talk to your colleagues. And you write an opinion. Opinions circulate, and you get feedback from your colleagues. So it’s an entire process. It’s not something that a judge or justice would wake up and say, “Oh, we’re hearing this case. I know what my vote’s going to be.”

Lindsey Graham: ([40:30](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2430.02))  
Let’s talk about the two Supreme Court cases regarding abortion. What are the two leading cases in America regarding abortion?

Amy Coney Barrett: ([40:39](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2439.12))  
Well, I think most people think of Roe v. Wade and Casey is the case after Roe that preserved Roe’s central holding, but grounded it in a slightly different rationale.

Lindsey Graham: ([40:49](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2449.74))  
So what is that rationale?

Amy Coney Barrett: ([40:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2451.34))  
Rationale is that the state cannot impose an undue burden on a woman’s right to terminate a pregnancy.

Lindsey Graham: ([40:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2458.5))  
Okay. Unlike Brown, there are States challenging on the abortion front. There are states that are going to a fetal heartbeat bill. I have a bill, Judge, that would disallow abortion on demand at the 20 weeks, the fifth month of the pregnancy. We’re one of seven nations in the entire world that allow abortion on demand, and at the fifth month. The construct of my bill is because the child is capable of feeling pain in the fifth month, doctors tell us to save the child’s life. You have to provide anesthesia if you operate because they can feel pain. The argument I’m making is if you have to provide anesthesia to save the child’s life, because they can feel pain, it must be a terrible death to be dismembered by an abortion. That’s a theory to protect the unborn at the fifth month. If that litigation comes before you, will you listen to both sides?

Amy Coney Barrett: ([41:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2515.5))  
Of course. I’ll do that in every case.

Lindsey Graham: ([41:57](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2517.27))  
So I think 14 states have already passed a version of what I’ve just described. So there really is a debate in America, still. Unlike Brown v. Board of Education about the rights of the unborn. That’s just one example. So if there’s a challenge coming from a state, if a state passes a law and it goes into court where people say, “This violates Casey,” how do you decide that?

Amy Coney Barrett: ([42:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2545.19))  
Well, it would begin in a district court, in a trial court. The trial court would make a record. The parties would litigate and fully develop that record in the trial court. Then it would go up to a court of appeals that would review that record, looking for error. And then again, it would be the same process. Someone would have to seek certiorari at the Supreme Court. The Supreme Court would have to grant it. And then at that point, it would be the full judicial process. It would be briefs, oral argument, conversations with law clerks and chambers, consultation with colleagues, writing an opinion, really digging down into it. It’s not just a vote. You all do that. You all have a policy and you cast a vote. The judicial process is different.

Lindsey Graham: ([43:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2587.25))  
Okay. So when it comes to your personal views about this topic, do you own a gun?

Amy Coney Barrett: ([43:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2597.25))  
We do own a gun.

Lindsey Graham: ([43:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2598.2))  
Okay. All right. Do you think you could fairly decide a case even though you own a gun?

Amy Coney Barrett: ([43:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2605.58))  
Yes.

Lindsey Graham: ([43:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2606.37))  
All right. You’re Catholic.

Amy Coney Barrett: ([43:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2607.8))  
I am.

Lindsey Graham: ([43:28](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2608.97))  
I think we’ve established that. The tenants of your faith mean a lot to you personally. Is that correct?

Amy Coney Barrett: ([43:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2615.06))  
That is true.

Lindsey Graham: ([43:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2615.8))  
You’ve chosen to raise your family in the Catholic faith. Is that correct?

Amy Coney Barrett: ([43:39](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2619.67))  
That’s true.

Lindsey Graham: ([43:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2620.53))  
Can you set aside whatever Catholic beliefs you have regarding any issue before you?

Amy Coney Barrett: ([43:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2627.02))  
I can. I have done that in my time on the Seventh Circuit. If I stay on the Seventh Circuit, I’ll continue to do that. If I’m confirmed to the Supreme Court, I will do that still.

Lindsey Graham: ([43:56](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2636.29))  
And I would dare say that there are personal views on the Supreme Court and nobody questions whether our liberal friends can set aside their beliefs. There’s no reason to question yours in my view. So the bottom line here is that there’s a process. You fill in the blanks for this about guns and Heller, abortion rights. Let’s go to Citizens United. To my good friend, Senator Whitehouse, me and you are going to come closer and closer about regulating money because I don’t know what’s going on out there, but I can tell you there’s a lot of money being raised in this campaign. I’d like to know where the hell some of it’s coming from, but that’s not your problem. Citizens United says what?

Amy Coney Barrett: ([44:41](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2681.33))  
Citizen United extends the protection of the First Amendment to corporations who are engaged in political speech.

Lindsey Graham: ([44:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2687.77))  
So if Congress wanted to revisit that and somebody challenged it under Citizens United, that Congress went too far, what would you do? How would the process work?

Amy Coney Barrett: ([44:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2699.09))  
Well, it’d be the same process I’ve been describing. First, somebody would have to challenge that law in a case. Somebody, presumably, who wanted to spend the money in a political campaign. It would wind its way up and judges would decide it after briefs, and oral argument, in consultation with colleagues, and the process of opinion writing.

Lindsey Graham: ([45:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2717.77))  
Okay. Same-sex marriage. What’s the case that established same-sex marriage as the law of the land?

Amy Coney Barrett: ([45:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2726))  
Obergefell.

Lindsey Graham: ([45:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2726.28))  
Okay. If there was a state who tried to outlaw same-sex marriage and there’s litigation, would it follow the same process?

Amy Coney Barrett: ([45:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2735.78))  
Well, it would. And one thing I’ve neglected to say before that’s occurring to me now, is that not only would someone have to challenge that statute. And somebody … so if they outlawed same-sex marriage, there’d have to be a case challenging it. And for the Supreme Court to take it up, you’d have to have lower courts going along and saying, “We’re going to flout Obergefell.” And the most likely result would be that lower courts, who are bound by Obergefell, would shut such a lawsuit down and it wouldn’t make its way up to the Supreme Court. But if it did, it would be the same process I’ve described.

Lindsey Graham: ([46:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2770.23))  
Well, let’s turn now to Senator Hawley’s favorite topic, substantive due process. As a legal theory, what am I talking about? Can you explain it for the country? Because if you can’t, we’re in trouble. I think I’ll have a hard time doing it.

Amy Coney Barrett: ([46:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2784.63))  
So both the Fourteenth and Fifth Amendments protect life or provide that the state cannot take life, liberty, or property without due process of law. And that sounds like a procedural guarantee, but in Supreme Court precedent, it has a substantive component. And so the substantive due process clause says that there are some liberties, some rights that people possess that the state can’t take away or can’t take away without a really good reason. So the right to use birth control, the right to an abortion are examples of rights protected by substantive due process.

Lindsey Graham: ([46:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2818.77))  
These are judicially created rights, not found in the document called the Constitution. Is that correct?

Amy Coney Barrett: ([47:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2824.11))  
Well, the Supreme Court has grounded them in the Constitution, although-

Lindsey Graham: ([47:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2826.66))  
But they’re not written.

Amy Coney Barrett: ([47:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2828.39))  
They’re not expressed.

Lindsey Graham: ([47:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2829.44))  
Okay. So is it fair to say there’s a great debate in the law about how far this should go and what limits should apply, if any?

Amy Coney Barrett: ([47:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2838.21))  
That’s fair to say. There’s also a lot of debate and Supreme Court opinions. I’m not aware of anybody proposing to throw it over entirely, but there’s certainly a debate about how to define these rights and how far it should go.

Lindsey Graham: ([47:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2849.75))  
Well, let’s just say that you’re in the camp or anybody’s in the camp that substantive due process as a legal concept is unbounded. It basically makes the Constitution no more certain than the five people interpreting it at any given time in the country. Whatever rights they think you have, you get; whatever rights they want to take away from you, they can, is a pretty nebulous legal concept. That’s sort of my view of it and I’m not imposing my views on yours. But then there’s a thing called precedent. Let’s say you didn’t like a case decided under substantive due process, you thought the whole concept was constitutionally in error. How does precedent play?

Amy Coney Barrett: ([48:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2893.69))  
So precedent is the principle that cases that have been decided by the Court before this one lands on the docket are presumptively controlling. And so, precedent comes from a concept called stare decisis, which is a shorthand for a longer Latin phrase that means stand by the thing decided and do not disturb the calm. So precedent is a principle that you’re not going to overrule something without good reason or royal up the law without justification for doing so.

Sen. Richard Blumenthal: ([48:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=2922.99))  
[inaudible 00:48:47], Your Honor, and thank you to your family as well. I want to just begin by saying perhaps, not surprisingly too, that I was really disappointed by your responses to a number of my colleagues. Most recently, to Senator Coons on the issue of whether you would participate in the decision involving the upcoming election if you are confirmed. I continue to believe that if you were to participate in a decision involving that election, it would do enduring, explosive damage to the Court. I think you know it would be wrong, not because of anything you’ve done. In fact, I’m not raising the issue of whether you’ve done any sort of deal or commitment. Because of what Donald Trump has done, and my Republican colleagues. Because they have indelibly put at issue your integrity through their statements. The President has said that he’s putting you on the Court as a ninth justice so you can decide the election.

Sen. Richard Blumenthal: ([50:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3013.33))  
It has been very clear and transparent. And the American people are not dumb. They’re watching and they’re listening. And if you were to sit on this case, if it goes to the Supreme Court, the American people would lose faith and trust in the Court itself. It would be a dagger at the heart of the Court and our democracy if this election is decided by the Court rather than the American voters. So I wanted to begin by making that point. And then go to again, the real people who are really in this room with us and who will be affected by you as a justice. Yesterday, I introduced you to Conner Kern.

Amy Coney Barrett: ([51:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3060.77))  
Mm-hmm (affirmative).

Sen. Richard Blumenthal: ([51:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3060.96))  
You may recall. He’s 10 years old. I was with him on his 10th birthday, September 27. He’s a remarkable champion. He was diagnosed, as you may remember, with Duchenne muscular dystrophy at age four. His parents were told to take him home and give him a good life because he would soon lose his ability to walk. Told his muscles would get so weak that he’d eventually lose his ability to smile. And still smiling. What lies behind that smile is untold pain. Physical pain, the anguish of going through the needles, and the prodding, and the treatments. But for his family, it’s also the anguish of wondering whether they’ll be able to pay for treatment that has kept him alive and whether he will be with them for all of life’s milestones.

Sen. Richard Blumenthal: ([52:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3127.87))  
They sent me a letter that they asked me to share with you, saying to you, Judge Barrett, please protect Conner. And they wrote also for millions of other Americans, 135 million Americans. Many of them, children, just like Conner. But also Christine Miller from Bloomfield, Connecticut. She was diagnosed with a thyroid condition. Her condition was only discovered because of the ACA, which gave her affordable coverage for the first time in a long time using Connecticut’s healthcare exchange. And they wrote for people like Julia Lanzano in Cheshire, Connecticut. She suffered from headaches for years and she put off going to a doctor because she lacked insurance. So typical and common for people, put it off. When Julia finally saw a doctor, still without insurance, she learned she had a brain tumor and she was eligible for coverage under Connecticut’s Medicaid expansion program, which was created by the Affordable Care Act. In her words, it was a godsend.

Sen. Richard Blumenthal: ([53:32](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3212.17))  
I raised these stories in part, because as you know, I’m sure, protection for people who suffer from pre-existing conditions is in fact on the line in this case that will come to the Supreme Court only a week after the election. I want to be crystal clear because you stated to Senator Feinstein that, and I’m going to quote, “So far as I know, the case next week doesn’t present that issue. It’s not a challenge to pre-existing conditions coverage, or to the extreme lifetime maximum relief from a cap.” And technically you’re right. But, it’s a big but, if the trial court is upheld and there’s no separability, the entire act goes down. That is what the Trump administration is asking the court to do. That’s what the plaintiffs want done. Correct?

Amy Coney Barrett: ([54:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3291.52))  
I gather that’s … Senator Coons had shown the brief with the litigating position-

Sen. Richard Blumenthal: ([54:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3295.42))  
Right.

Amy Coney Barrett: ([54:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3295.71))  
… with the Department of Justice.

Sen. Richard Blumenthal: ([54:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3298.82))  
I want to move on to another healthcare case. And this one involves some of the letters that Senator Hawley was mentioning. And I feel I need to raise them because Senator Hawley asked about them. So did Senator Leahy. And I want to just clarify what they mean. And I want to make absolutely clear, I detest and oppose any religious test. I am not asking you any questions about your religious beliefs.

Amy Coney Barrett: ([55:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3351.65))  
Okay.

Sen. Richard Blumenthal: ([55:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3352.16))  
I’m going to be asking some questions about your legal position. So in case I’m unclear in any of my questions, I want you to tell me.

Amy Coney Barrett: ([56:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3361.48))  
Thank you, Senator.

Sen. Richard Blumenthal: ([56:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3362.73))  
You signed onto this to 2006 open letter sponsored by an organization then known as the St. Joseph County Right to Life, which was published in the South Bend Tribune. Is that the letter that Senator Hawley was mentioning?

Amy Coney Barrett: ([56:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3384.14))  
I believe the statement that’s on the left, I think Senator Hawley had read the language. I can’t remember it verbatim, but it was something like, “We support the right to life from fertilization to natural deaths.” Yes.

Sen. Richard Blumenthal: ([56:39](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3399.48))  
The letter and ad referred to Roe v. Wade’s legacy as quote-unquote barbaric. Correct?

Amy Coney Barrett: ([56:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3407.42))  
I don’t think that that’s part of the statement. I think that’s part of the ad that appeared on the page next to it.

Sen. Richard Blumenthal: ([56:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3413.69))  
They appeared side by side. Correct?

Amy Coney Barrett: ([56:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3415.8))  
I believe that it ran that way in the newspaper. I’m not sure that I ever saw it in the newspaper. But yes, that is my understand [crosstalk 00:57:03].

Sen. Richard Blumenthal: ([57:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3423.68))  
That’s how it appeared, so they were side by side.

Amy Coney Barrett: ([57:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3425.31))  
That’s based, yes, based on … Yeah.

Sen. Richard Blumenthal: ([57:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3427.08))  
And the St. Joseph County Right to Life sponsored the letter that you signed.

Amy Coney Barrett: ([57:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3436.52))  
I think the St. Joseph County Right to Life organization was the one who presented the statement that I signed at the back of church.

Sen. Richard Blumenthal: ([57:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3444.61))  
I want to give you an opportunity to clarify. You didn’t disclose that letter when you were nominated to the Seventh Circuit in 2017, did you?

Amy Coney Barrett: ([57:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3455.47))  
I did not, Senator Blumenthal. And I’m actually very glad that you brought that up because I just want to clarify for the record. Number one, that I didn’t have any recollection of that letter. Or the statement. I signed it almost 15 years ago, quickly, on my way out of church. And the questionnaire asks me for 30 years worth of material and I’ve produced more than 1800 pages. And so I didn’t recall it. After it came to my attention, I did go back and look at the questionnaire. And I actually don’t think that particular statement is responsive to question 12, which is, I think, the closest that it would come. I don’t think it’s responsive. But in any event, it is part of the public record. And I’m very happy to discuss it. But I wasn’t hiding the ball.

Sen. Richard Blumenthal: ([58:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3504.22))  
It’s part of the public record now. And it’s a letter. The questionnaire asks for letters. Have you disclosed it now? Have you provided it officially?

Amy Coney Barrett: ([58:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3515.41))  
So, Senator, as I said, I’ve supplemented my questionnaire with other materials that came to light that I do think was responsive. That one, and I be happy to answer questions if you wanted questions for the record with more specific detail, but I did not understand that to be responsive to question 12, I think it is.

Sen. Richard Blumenthal: ([58:57](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3537.45))  
Well, in fact, we know about it only because the Guardian made it public. I believe. Let me ask you about another letter. 2013 letter. You signed on to this letter regarding Roe v. Wade. Was sponsored by the University Faculty for Life at Notre Dame. You were a member of that organization, correct?

Amy Coney Barrett: ([59:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3559.3))  
I do.

Sen. Richard Blumenthal: ([59:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3560.68))  
And the letter described Roe v. Wade, as, it’s behind me, infamous. And it stated that the signatories, quote, “Renew our call for the unborn to be protected in law.” Correct?

Amy Coney Barrett: ([59:41](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3581.75))  
Yes. I believe the full statement says, I’m testing my eyesight here, “Our full support for our university’s commitment to the right to life.” Because Notre Dame is a Catholic university and embraces the teachings of the Catholic Church on abortion. And so as a faculty member and member of the University Faculty for Life, I signed that statement.

Sen. Richard Blumenthal: ([01:00:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3601.53))  
But you didn’t disclose that letter.

Amy Coney Barrett: ([01:00:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3603.69))  
Again, Senator, I produced 1800 pages of material and all six prior nominees have had to supplement because they’ve overlooked things. 30 years worth of material is a lot to try to find and remember.

Sen. Richard Blumenthal: ([01:00:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3615.07))  
You disclosed it, in fact, just about three days ago, I believe.

Amy Coney Barrett: ([01:00:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3617.93))  
Because that’s when it was brought to my attention. I had no recollection of it and it surfaced in the press. And so it came to my attention, and then I supplemented. And I did think it was responsive because it was a statement of an organization of which I was part. And I belonged to the University Faculty for Life at the time.

Sen. Richard Blumenthal: ([01:00:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3635.27))  
If this process maybe had been a little less rushed, you might’ve had more time to go back and recall some of these documents.

Amy Coney Barrett: ([01:00:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3644.48))  
Well, Senator, as I said, all six prior nominees, or the most recent six, have had to supplement too. So I don’t think it really had anything to do with time. I think it has to do with the volume of material.

Sen. Richard Blumenthal: ([01:00:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3655.71))  
And when you and I spoke, when you appeared before this committee in connection with your 2017 nomination, I didn’t have the benefit of any of these documents. Although I asked you about right of privacy and the validity of Roe v. Wade, correct?

Amy Coney Barrett: ([01:01:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3669.92))  
Senator, I said on my SJQ when I was nominated to the Seventh Circuit and I said again now, I’ve produced all the material that I could find. And I conducted searches to try to find things that I forgot and I didn’t find that. I understand that someone had to manually go to Notre Dame and look through back archives. I didn’t remember it and I couldn’t find it. I assure you, I was not trying to hide it from you.

Sen. Richard Blumenthal: ([01:01:32](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3692.22))  
So, Judge, and I apologize for interrupting you.

Amy Coney Barrett: ([01:01:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3695.71))  
No, no. Go ahead.

Sen. Richard Blumenthal: ([01:01:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3696.2))  
I’m pressed for time.

Amy Coney Barrett: ([01:01:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3697.46))  
Sure.

Sen. Richard Blumenthal: ([01:01:38](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3698.1))  
Respectfully, I want to share another healthcare story with you. This is about Samantha. One night in January, 2017, Samantha went out with a few friends and coworkers. She woke up the next morning in a co-worker’s home confused, scared, covered in blood. She’d been raped. After she was raped, Samantha was in her words, a zombie. She couldn’t change clothes. She couldn’t shower. She couldn’t drink. Or think. She wanted this event to be erased from her memory. Samantha’s attacker also began stalking her and she was struggling with depression and PTSD.

Sen. Richard Blumenthal: ([01:02:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3745.57))  
In March, Samantha took a pregnancy test, and then another, then another. They kept coming back with the same result, pregnant. After the horrible violence she faced, she simply couldn’t process that she was now pregnant. When Samantha shared her story with me, she said, “I knew if I couldn’t end this pregnancy, it would end me.” So she decided to get an abortion. Now, as you know, Judge, the landmark Roe v. Wade decision gave her that option. It gave women the right to decide for themselves whether and when to have a child. Roe didn’t compel Samantha to get an abortion, it didn’t tell her what she had to do, but it gave her that choice. The question that I would like to ask you concerns your legal position. Does the Constitution protect Samantha’s right to have an abortion?

Amy Coney Barrett: ([01:03:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3835.35))  
Roe v. Wade clearly held that the constitution protected a woman’s right to terminate a pregnancy. Casey upheld that central folding and spelled out in greater detail the tests that the Court uses to consider the legality of abortion regulations.

Sen. Richard Blumenthal: ([01:04:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3852))  
Now, I’m asking you this question because the group that sponsored the first letter, St Joseph County Right to Life as it was then known, states, quote, “Abortion is never the right answer. Even in cases of sexual assault or where the pregnant woman’s life is in danger.” And the purpose of the letters that you signed seem to be a statement of legal position. But you’re saying that there is a constitutional right to an abortion.

Amy Coney Barrett: ([01:04:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3891.53))  
Senator, the statement that I signed from the St Joseph County Right to Life didn’t say anything about rape, or incest, or any of those things. It’s simply validated the teaching of my church on the sacredness of life from conception to natural death.

Sen. Richard Blumenthal: ([01:05:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3908.3))  
What I hear you saying is in the Constitution, there is that right.

Amy Coney Barrett: ([01:05:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3912.33))  
You mean when I was talking about Roe and Casey a moment ago? Yeah.

Sen. Richard Blumenthal: ([01:05:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3918.3))  
Well, Roe was correctly decided. You’re agreeing that …

Amy Coney Barrett: ([01:05:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3921.72))  
What I said was that Roe held, that the constitution protects a woman’s right to terminate a pregnancy, that Casey reaffirmed that holding. And indeed, many cases after Casey have affirmed that holding again. Whole Woman’s Health, for example. So I think we might be talking past each other because the statements that I signed were statements of my personal beliefs and not-

Sen. Richard Blumenthal: ([01:05:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3948.53))  
Not your personal belief, Your Honor, your legal position. Are you willing to say that Roe was correctly decided? Because that’s really the essence of the question here.

Amy Coney Barrett: ([01:06:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3961.85))  
Well, Senator, as I’ve said, to others of your colleagues in response to questioning, that it’s inconsistent with the duties of a sitting judge and therefore has been the practice of every nominee that sat in the seat before me to take positions on cases that the court has decided in the past.

Sen. Richard Blumenthal: ([01:06:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=3980.83))  
Well, I think Samantha and a lot of rape survivors would be really deeply fearful about that answer because it provides no reassurance that you believe that Roe was correctly decided. Let me talk about Tracy. I want to tell you about her because she, again, came to me, told me she was diagnosed with stage IV endometriosis, and that it had caused an ongoing, inability to have a healthy pregnancy. But as she said, she was one of the lucky ones. She had access to care and was able to receive treatment to assist in getting and staying pregnant. And I have encountered, maybe you have, many members of the military veterans who have sought similar kinds of treatment, some of them because they’ve suffered wounds of war. Tracy was scared when she saw the executive director of the St Joseph County Right to Life recently stated, and I quote, “We would be supportive of criminalizing the discarding of frozen embryos or selective reduction through the IVF process.” So Tracy wanted me to ask you. In fact, she asked me to pose this question, “Is it your legal position that making IVF a crime would be constitutional?”

Amy Coney Barrett: ([01:08:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4082.62))  
Well, Senator, the statement that I signed as we discussed, affirm to the belief of my church with respect to matters of life. But you’re-

Sen. Richard Blumenthal: ([01:08:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4091.22))  
I’m not asking about what you signed. I’m asking you about your present legal position.

Amy Coney Barrett: ([01:08:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4097.89))  
But what I was-

Sen. Richard Blumenthal: ([01:08:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4099.02))  
Is making IVF a crime-

Amy Coney Barrett: ([01:08:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4101.55))  
Senator, you’re-

Sen. Richard Blumenthal: ([01:08:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4104.44))  
… constitutional? Sorry, go ahead.

Amy Coney Barrett: ([01:08:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4104.81))  
Sorry, I was trying to answer. But you’re quoting positions from the St Joseph County Right to Life. I’m not a member of that organization and so I’m not responsible for statements that they make. The statement that I signed said what you and I have discussed and it said nothing further than that. And as for, what policy position someone might take, as I’ve said to your colleagues, it’s not up to me to be in the business of expressing views. And I am happy to talk about views that I expressed when I was a private citizen. But now I’m a judge and so I cannot publicly express views.

Sen. Richard Blumenthal: ([01:09:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4142.94))  
Just to be absolutely clear. I’m not asking about the St Joseph County Right to Life or their positions. And I understand you may or may not disagree or agree with them. But your legal position, IVF treatment. And I’m not going to ask again, just this last time. Criminalizing it.

Amy Coney Barrett: ([01:09:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4171.37))  
Well-

Sen. Richard Blumenthal: ([01:09:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4171.68))  
Would it be constitutional? I think there’s a clear answer.

Amy Coney Barrett: ([01:09:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4176.12))  
But, Senator I’ve repeatedly said, as has every other nominee who sat in this seat, that we can’t answer questions in the abstract that would have to be decided in the course of the judicial process with a [Cate 00:34:48]. Some legislature would actually have to do that. And then litigants would have to come to court. There would have to be briefs, and arguments, and consultation with colleagues, and opinion writing, and consideration of precedent. So an off-the-cuff reaction to that with just circumvent …

Amy Coney Barrett: ([01:10:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4203.8))  
… so an off the cuff reaction to that would just circumvent the judicial process.

Sen. Richard Blumenthal: ([01:10:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4206.56))  
Well, again, I’m disappointed, I think Tracy would find that response somewhat chilling because she and thousands, maybe millions of women, potential parents, would be horrified to think that IVF treatment could be made criminal. And I understand you’re not answering the question, but I think she would be deeply fearful. Do you think that it would be constitutional to make it a crime for doctors or healthcare providers to provide that care or abortion care?

Amy Coney Barrett: ([01:10:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4251.37))  
Well, Senator, again, that’s a hypothetical question. And so, as I’ve said, to give off the cuff responses about abstract issues… And I should clarify to say, it really doesn’t matter if they’re hard questions or easy questions, it’s just any questions that call for an abstract legal opinion are not ones that are appropriate for me to give either as a sitting judge or as a nominee, those questions in my judicial role can be answered only through the judicial process.

Sen. Richard Blumenthal: ([01:11:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4281.8))  
Just to be absolutely clear, there are millions of women like Samantha, and Tracy, and the veterans I mentioned who are terrified to think that their doctors and healthcare providers would be potentially in jail, at risk of prosecution, doctors who are exercising currently protected rights that Samantha says saved her life. And I believe our healthcare providers are heroes, particularly during the pandemic. But I want to ask you one more question about these documents. In the 2013 letter that you signed there is a following statement, we renew our call for the unborn to be protected in law and welcomed in life, what does it mean for ‘the unborn to be protected in law’? Does that statement mean there is no valid constitutional protection for an abortion and therefore Roe v. Wade should be overturned?

Amy Coney Barrett: ([01:12:38](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4358.43))  
I think that statement is an affirmation of life, it points out that we express our love and support for the mothers who bear them. Again, it was a statement validating the position of the Catholic University, at which I worked, in support for life and to support women in crisis pregnancies to support babies, so it’s really no more than the expression of a pro-life view.

Sen. Richard Blumenthal: ([01:13:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4385.5))  
I expect we’ll be talking more about this issue tomorrow, I want to move now to another topic. You and Senator Durbin and others talked about your dissent in Kanter v. Barr, and I think your approach here in effect usurps the legislature’s appropriate role in making policy judgments. In the case of Kanter… Which by the way, you put first on the list of decisions that you thought were most important that you have written, is that correct?

Amy Coney Barrett: ([01:13:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4426.59))  
I don’t remember the order in which I listed them.

Sen. Richard Blumenthal: ([01:13:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4428.98))  
It was first.

Amy Coney Barrett: ([01:13:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4430.46))  
I accept that, I just don’t remember the order.

Sen. Richard Blumenthal: ([01:13:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4433.73))  
Okay.

Amy Coney Barrett: ([01:13:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4433.95))  
I did list it, I remember listing it.

Sen. Richard Blumenthal: ([01:13:56](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4436.37))  
Okay. But that decision seems to use usurp the legislature’s role in deciding who should be permitted to have firearms and who should not, because you decided the legislature was wrong to classify felons as not deserving of firearms, you decided it’s a matter of policy that when they were not dangerous, they should have that right, that’s a policy or legislative judgment, and I think it has huge ramifications for real people across the country. And I want to tell you about one of them from Sandy Hook, Connecticut, Natalie, who is shown here with her brother, Daniel. Daniel was killed at Sandy Hook Elementary School in Newtown, Connecticut on December 14, 2012, Daniel was seven. I was there that day, I saw the parents after they’d learned that they have lost 20 beautiful children, and six grade educators died as well.

Sen. Richard Blumenthal: ([01:15:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4526.81))  
In a firehouse that day, there was unspeakable grief, and eight years later, Natalie says that grief remains with her. But, Natalie like Newtown is resilient, and strong, and her grief and trauma have spurred hope and action she and many young people across the country are leading a movement to deal with the epidemic and scourge of gun violence in this country. What happened at Sandy Hook was not an isolated instance, there have been 236 other mass shootings in the last decade, in the last 10 years, gun violence has taken more than 354,000 lives in rural communities and urban communities all around the country, and I’m sure in Indiana and South Bend as well. Your opinion in Kanter goes farther than Justice Scalia and Heller, in fact, you characterize it as kind of radical, it is, in effect, an outlier, and it is, in fact, radical.

Amy Coney Barrett: ([01:16:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4605.87))  
Did I say it was radical in the opinion?

Sen. Richard Blumenthal: ([01:16:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4608.12))  
I think you said, “It sounds kind of radical to say felons can have firearms,” that’s a direct quote.

Amy Coney Barrett: ([01:16:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4618.87))  
Oh, I didn’t remember that particular language.

Sen. Richard Blumenthal: ([01:17:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4623.92))  
You can change it-

Amy Coney Barrett: ([01:17:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4628.2))  
I just don’t recall it, but I’m not nitpicking about it.

Sen. Richard Blumenthal: ([01:17:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4633.56))  
We can look it up.

Amy Coney Barrett: ([01:17:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4635.15))  
That’s fine, Senator. I don’t think you’re making it up, trust me, no. I’ll check it and look it up, but I know that’s not the thrust of your question [crosstalk 01:17:22].

Sen. Richard Blumenthal: ([01:17:22](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4642.51))  
It sounds kind of radical because it is radical. In fact, no courts of appeals, except maybe the Seventh Circuit, has adopted this reasoning.

Amy Coney Barrett: ([01:17:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4654.37))  
The Third Circuit, I think has a rule that’s…

Sen. Richard Blumenthal: ([01:17:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4656.86))  
The third circuit, any others?

Amy Coney Barrett: ([01:17:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4660.09))  
I don’t know that it’s come up in others [crosstalk 01:17:40].

Sen. Richard Blumenthal: ([01:17:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4660.71))  
I knew there was one circuit that did, I wasn’t sure which one, but thank you.

Amy Coney Barrett: ([01:17:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4664.64))  
Well, my position was consistent with a Third Circuit en banc decision that had already been decided.

Sen. Richard Blumenthal: ([01:17:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4670.22))  
And cutting through all of the legalese, and we’ve had quite a bit of it going back and forth, what this approach does, potentially, is mean that Connecticut’s gun safety provision, that the people of Newtown, Kristin and Michael Song on behalf of their son, Ethan, who perished because of a gun that was unsafely stored, they championed a measure called Ethan’s Law, common sense measures that might have prevented the death of Shane Oliver, Janet Rice’s son who died on October 20th, 2012. Shane was killed when he was 20 years old in Hartford, he died fighting for his life in Hartford Hospital. And measures like the Emergency Risk Protection Order that Connecticut now has, 19 States have these laws, they’ve saved lives. And Extreme Risk Protection Order laws, which help minimize risk, might well be struck down under the reasoning of your dissent.

Amy Coney Barrett: ([01:19:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4767.38))  
Respectfully senator, my descent would not reach even those issues, my descent was about the narrow question about whether a felon who had sold fraudulent foot inserts could automatically be disqualified from his second amendment rights simply on that basis. It said that guns can be kept out of the hands of the dangerous, and it didn’t say anything about other gun safety or background check, those are all issues that are being litigated across the country and we’re not an issue in Kanter.

Sen. Richard Blumenthal: ([01:19:57](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4797.52))  
But, supplanting the legislators’ judgment about when dangerous people should be protected from themselves if they are potential suicides as Vic Bencomo, veteran in Iraq, found when his friend was going to take his life, the Emergency Risk Protection Order would have been available deciding what is dangerous, who is dangerous, when weapons should be taken away from them. If the courts are going to supplant the judgments of legislators, if judges are going to legislate from the bench, that’s the import of your reasoning in that descent, it may not have dealt precisely with any of these particular laws, but the reasoning throws into doubt, it raises the risk to many of them, and folks who live in Connecticut are terrified of that prospect, at least any who’ve talked to me.

Amy Coney Barrett: ([01:21:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4868.79))  
Well, Sandy Hook was a tragedy, so I express the deepest sympathy for those that experienced that loss there and elsewhere. But, Kanter… I hope you take some comfort from Kanter being a much narrower decision that doesn’t have any effect on those sorts of loss. Thank you, Senator Blumenthal.

Sen. Richard Blumenthal: ([01:21:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4885.47))  
Thank you, judge.

Chairman Lindsey Graham: ([01:21:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4887.73))  
Senator Tillis.

Senator Tillis: ([01:21:28](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4888.74))  
Thank you, Mr. Chairman. Thank you, Judge Barrett. Mr. Chairman, before I get started, I’d like unanimous consent to submit a letter from a primary care physician indicating that I’ve fully complied with CDC guidelines, I’ve being cleared like 2000 other North Carolinians yesterday, and I’m glad that they’re healing.

Chairman Lindsey Graham: ([01:21:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4906.42))  
Without objection.

Senator Tillis: ([01:21:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4907.23))  
I’d also like to put forth three letters in support of Judge Barrett, including one from [Deven Patel 00:11:53], a former student who speaks very highly of your academic prowess but also your compassion.

Chairman Lindsey Graham: ([01:21:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4919.79))  
Without objection.

Senator Tillis: ([01:22:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4920.78))  
Also, I’d like to cover what Senator Blumenthal just did. I think we should go back, I believe you alluded to it, Judge Barrett, but question 12a of the committee questionnaire asked for books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, is it fair to say that if you signed a petition you did not write or edit… Any other petition you signed?

Amy Coney Barrett: ([01:22:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4945.81))  
I did not write or edit that.

Senator Tillis: ([01:22:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=4945.82))  
It also needs to be restated, I think you alluded to it, but over the last six justice confirmed by this committee, all of them provided supplemental information, and in some cases after the actual hearing. So, I appreciate your being forthcoming that you’ve submitted 1800 pages of documents. Mr. Chairman, just going back, I also wanted to mention that as a part of my journey through my time in quarantine, I have enrolled in two studies so far, I’ll be giving blood on Friday to enroll in another program at UNC Chapel Hill, and I’m scheduled to donate convalescent plasma. Because this is being aired, I hope that anyone who’s recovered from COVID will do their part to try and heal this country from the health challenges that COVID has presented us with, I intend to do my part. I also would like to say, I like to consider the Senate an essential business, and I believe that the architect of the Capitol and our attending physicians here have taken great measures to make sure that we can safely come to work, and I would encourage anybody who works in the Senate to come to work.

Senator Tillis: ([01:23:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5016.55))  
I want to also go back to something that Senator Feinstein said earlier, and you’re not going to have to answer this question. Senator Feinstein mentioned earlier that we’ve had a surge in applications for guns or purchases of guns, I wonder if a part of that is where we find our society right now, we’re seeing great cities burned and looted. In my highway patrol in North Carolina, 75% fewer applications to go into the troopers Academy and record high request for retirement, we see that in New York, we see it across this country. I think people are afraid because many people, including people on this committee, are unwilling to condemn the acts of violence in public safety out there and condemn violence against law enforcement, which is rampant. I lost a sheriff’s deputy just about a month ago, who was shot protecting a family. So, yes, Senator Feinstein, I suspect that gun purchases are up, but I suspect the root cause behind a lot of them have to do with people’s personal safety.

Senator Tillis: ([01:24:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5086.87))  
To your family, I would encourage all your family members and your students who mercifully… Your children, who are your students too, who are mercifully taken a break, to treat social media like roadkill, just don’t look at it, because if you do, you’re going to regret it. I am going to also ask unanimous consent to put forth some articles or tweets from prominent people that I think kind of give you an idea of the guerrilla tactics that are being used right now. In the committee, this has sounded a whole lot like a lobbying session, it’s almost as if you’re being interviewed to become a US Senator so that you can decide policy on the Affordable Care Act and a number of other things that I’ll get to. But behind the curtains, we’re seeing people say all kinds of things about you. One called you a white colonizer for actually adopting two Haitian children.

Senator Tillis: ([01:25:39](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5139.54))  
We have another one calling you a handmaid and a clown car, and I’m not going to… It will be submitted for the record, but the profanity used in there. Another one that says that, yeah, you’re a good mom, but that doesn’t qualify you as a judge. What qualifies you as a judge, is being an extraordinary professor, an extraordinary student, an extraordinary jurist. And I think that these people need to recognize doing the bidding of this committee by attacking you outside of the committee is as bad as them being in this chamber. Now, I also want to talk about the discussion on Roe v. Wade and the Affordable Care Act. The… Senator Feinstein, in I think the same two or three minutes, said that she wanted to protect Roe v. Wade, but overturn Heller. Those seem to be in congruent, but I’ll just leave that out there, they’re asking you to basically legislate, I don’t want you to do that.

Senator Tillis: ([01:26:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5196.52))  
But when we talk about Roe v. Wade, the one thing that’s conveniently missed about this discussion is something that I think that most of the American people are at odds with the position that every member of the Democratic Conference supports. My granddaughter went to her two month health checkup today. She weighed in at 10.1 pounds, and you can’t see this picture, but I’m telling you from this granddaddy’s eyes, she’s gorgeous. But she was born three weeks premature, and she only weighed a little over six pounds, she was discharged from the hospital within 36 hours. My colleagues on the other side of the aisle want to talk about the broad strokes of Roe v. Wade, they don’t want to talk about their radical policy that would allow the right to take that child away that I just held in my arm two or three weeks ago, and eight weeks ago when she was three weeks premature.

Senator Tillis: ([01:27:28](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5248.94))  
Judge Barrett, I believe… I have complete confidence in your integrity, I have complete confidence that you’re going to go and you’re going to be a great justice, but I do want to ask a little bit about maybe your experience when you were working for… Actually, I want to start when you were in school, did you have… When you came in, you were obviously a brilliant student, you did your homework, we’ve heard professors that tested your intelligence and your performance in school, did you ever go into a classroom where the professor was espousing one position and you were espousing in another one and you ended up coming out with a different perspective?

Amy Coney Barrett: ([01:28:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5287.3))  
Sure.

Senator Tillis: ([01:28:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5287.33))  
Yeah. Did you ever change your professor’s perspective?

Amy Coney Barrett: ([01:28:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5292.73))  
I’m not sure about that.

Senator Tillis: ([01:28:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5292.96))  
Well, it’s kind of an unfair balance. Okay. Now, fast forward to when you were a clerk for Justice Scalia. I just saw an interview, last week when I was in quarantine, of Justice Breyer talking about these mounds of documents that his clerks would provide him, he’d quickly go through them. He said, “It’s actually a fairly quick process to winnow out the ones where there’s no dispute among… There’s no split circuit.” So, he moved through it pretty quickly. I understand that Justice Scalia, at least in some sessions, would have a mix of clerks, they would be across the ideological spectrum, was that the case when you were clerking for him?

Amy Coney Barrett: ([01:28:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5328.26))  
I would say that not all four of us, he had four clerks and we were not all of the same mind, there was a mix.

Senator Tillis: ([01:28:56](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5336.75))  
Were there ever cases when you went before Justice Scalia and you thought that maybe he was leaning one way where he actually listened to the arguments from the clerk and modified his position, or was it like the professor discussion?

Amy Coney Barrett: ([01:29:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5350.43))  
No, I think he definitely listened. I mean, we would go in before an argument when he was preparing and he would pepper us with questions and go back and forth, he wanted to hear it from all sides. And so, no, he definitely… It was part of the give and take, though to be clear, he was the one with the commission and he was the one who made the decisions.

Senator Tillis: ([01:29:28](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5368.48))  
Thank you. The last thing I’m going to say, because I want to yield back more time than most other members. As… Mr. Chairman, you opened up this morning talking about the Affordable Care Act, I don’t think there’s anybody in the US Senate that doesn’t want to make sure that every single picture that we’ve seen here, that those folks have affordable healthcare, and that they can be cared for. But what we have here in the Affordable Care Act is something that is so flawed that the majority of the Democratic candidates for president all raise their hand and said it needed to be replaced with something they call Medicare for All, which could be Medicare for none. We know the broken promises of, if you like your doctor, you could keep it, if you like your healthcare, you could keep it. What we’re not talking about are the thousands of people who were already forced off of their job healthcare because employers changed hours, and now instead of working one full-time job you’ve got to work two full-time jobs because the businesses can’t afford it.

Senator Tillis: ([01:30:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5420.46))  
We’ve got a fundamental problem here. We need to protect every one of them, but we also need to make sure that people who have a health plan under the Affordable Care Act can actually afford to use it. In the catastrophic situations, it’s life-changing and thank God that it’s there for them. But what about so many other people that only have it and will only use it if they have a catastrophic situation, because they can’t afford the copays, they can’t afford the underlying costs, we need to fix that. We shouldn’t expect a justice or the Supreme Court to fix it, that is our job. We should all show up here for work and we should get that done, and we should also work on all the other things that this country is suffering from as a result of COVID. Thank you, Judge Barrett, I look forward to supporting your nomination.

Amy Coney Barrett: ([01:31:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5461.22))  
Thank you, Senator Tillis.

Chairman Lindsey Graham: ([01:31:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5464.73))  
Thank you. Senator Hirono.

Senator Hirono: ([01:31:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5464.98))  
Thank you, Mr. Chairman. Mr. Chairman, I want to [inaudible 01:31:09] with my objections to the holding this nomination hearing instead of working to provide relief for the millions of Americans who are suffering during this pandemic. Three weeks ago, our country crossed a tragic milestone, we lost more than 200,000 Americans to COVID-19, that is more than the entire population of the Big Island in Hawaii. More than the population of Tempe, Arizona, Cedar Rapids, Iowa, Wilmington, North Carolina, Charleston, South Carolina, Waco, Texas, I could go on, 200,000 American lives plus. This is a photo of a memorial outside the White House where President Trump held a reckless super spreader event two weeks ago to announce the Supreme Court nomination. The memorial shows 20,000 empty chairs, one chair representing 10 American lives lost to COVID 19. And one of those chairs represents [Veronica Guevara’s 00:01:32:14] grandfather, who is pictured here with Veronica.

Senator Hirono: ([01:32:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5543.58))  
Veronica, who is from Iowa, has experienced the painful impact of the Trump administration’s failure to address the pandemic. Her family is composed of essential workers who are working on the front lines of this pandemic. Her mother, who worked at a fast food processing facility, caught COVID-19 at work and was eventually hospitalized for seven days. Thankfully, her mother recovered, but then her grandparents got COVID-19 and were admitted to the hospital, and although her grandmother recovered, sadly, her grandfather didn’t make it. After experiencing all of this tragedy, Veronica shared, “It is even more so insulting to see a Senate that is more concerned with rushing through a Supreme Court nominee rather than focusing on providing relief to all the hardworking people that gave them their current leadership positions.” Many Americans agree with Veronica. They’re sitting at their kitchen tables wondering how they’re going to buy food, how they’re going to pay rent.

Senator Hirono: ([01:33:38](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5618.89))  
Millions of them are out of… They don’t have jobs. They’re going to food banks for the first time in their lives. So rather than coming up with a bill that meets the needs of the urgency of this moment, Republicans are just coming up with piecemeal bills, that’s because we know that within your own caucus you can’t agree on one bill that fits the critical needs of this country. In fact, there are at least 20 Republicans we heard who have said we’re done, we’re not doing any more to help the Americans who are suffering with COVID. So, here we are racing forward with this nomination while the rest of the country is wondering, what the heck is the Senate doing, particularly the Senate Republicans? So I agree with all the people in our country who are asking, what the heck? This is hypocritical. This hearing shows the American public exactly what my Republican colleagues priorities are, ramming through another ideologically driven justice to the Supreme Court instead of helping the people in our country suffering during this pandemic.

Senator Hirono: ([01:34:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5691.81))  
Mr. Chairman, I have some letters of opposition to Judge Barrett’s nomination to enter into the record, these are letters from Lambda legal, the Japanese American Citizens League, and the National Asian Pacific American Women’s Forum, which was joined by 55 reproductive justice groups. I ask unanimous consent to enter these letters into the record.

Chairman Lindsey Graham: ([01:35:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5716.83))  
Without objection.

Senator Hirono: ([01:35:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5718.89))  
Judge Barrett, Chief Justice John Roberts has recognized that, and I quote him, “The judicial branch is not immune ‘from the widespread problem of sexual harassment and assault’ and has taken steps to address this issue within the judiciary.” As part of my responsibility as a member of this committee and indeed all of the committees on which I sit, to ensure the fitness of nominees for a lifetime appointment to the federal bench or to any of the other positions for any of the committees on which they appear, I ask each nominee these two questions and I will ask them of you. Since you became a legal adult, have you ever made unwanted requests for sexual favors or committed any verbal or physical harassment or assault of a sexual nature?

Amy Coney Barrett: ([01:36:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5764.12))  
No, Senator Hirono.

Senator Hirono: ([01:36:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5765.68))  
Have you ever faced discipline or entered into a settlement related to this kind of conduct?

Amy Coney Barrett: ([01:36:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5771.33))  
No, senator.

Senator Hirono: ([01:36:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5774.17))  
Judge Barrett, do you think it is appropriate for justices to consider real world impacts in their decision-making as Justice Ginsburg noted in a number of her dissents?

Amy Coney Barrett: ([01:36:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5787.73))  
Well, senator, the Doctrine of Stare Decisis is a good example of that because the factor reliance interests takes into account the real world impact the way that people have ordered their affairs and relied on decisions, so there are contexts, yes, in which considering the impact is expressly part of the doctrine.

Senator Hirono: ([01:36:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5807.53))  
So, you would say then… You’ve been listening to all of us here yesterday, as well as today, talk about the real world impact of the striking down of the Affordable Care Act, and would all of those impacts be factors that would be important for you to consider should you be a justice?

Amy Coney Barrett: ([01:37:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5830.82))  
Senator, to be clear, I have the utmost empathy, the stories that you have told, including the story of Veronica’s family, are very moving. If I were a justice, the commitment that I would make to you and all people affected by the laws is that I would follow the law as you enacted it, and I have no agenda, and I would not be coming in with any agenda. I would do equal justice under the law for all, and not try to thwart or disrupt in any way the policy choices that you and your colleagues have adopted.

Senator Hirono: ([01:37:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5865.15))  
So, are you saying that the impact of the Affordable Care Act on the millions of people who rely upon it, that those you would deem to be policy considerations that we should address?

Amy Coney Barrett: ([01:38:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5880.88))  
Senator, I think that you choose the law, and you’ve structured the Affordable Care Act, it’s a complex long statute. I think you set the policy. And then I think when a court has to interpret the statute or decide how it applies in a certain circumstance, the court looks traditional legal materials, looks to the briefs, it listens to the real world impact on the litigants who are before the court arguing the case, because every case affects real litigants, every case affects real people. I said in my opening statement yesterday that when you pass statutes they’re often named for the co-sponsors of the bill, but cases decided by all courts are typically named after the parties, they affect real people.

Senator Hirono: ([01:38:49](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5929.67))  
Judge Barrett, so are you saying that all of the stories that we brought forth yesterday and the millions of people who are relying on the Affordable Care Act can rely upon you that those impacts would be considered by you, that you would consider those to be legal arguments that you would consider? Because when you say that you’re going to make a decision based on the law, the real life stories that we’ve been talking about, you would consider those to be part of the law?

Amy Coney Barrett: ([01:39:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5966.3))  
Senator Hirono, every case that comes before a court… Because as I was saying earlier, no case comes before a court unless it involves real life people who’ve had a real life dispute, and it is the job of a judge deciding every case to take into account the real world consequences of the parties before it.

Senator Hirono: ([01:39:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=5988.21))  
So, does that mean that you would agree with Justice Ginsburg, that the court should be taking into consideration the real life effect of the decisions that they make? Because she wrote a number of dissents saying that the majority did not consider the real world impacts of their decisions. So, are you aligning yourself with Justice Ginsburg in terms of what you would consider real life impacts and the effect it would have on your decision regarding the law?

Amy Coney Barrett: ([01:40:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6021.34))  
Well, senator, I don’t know what context… The particular context in which Justice Ginsburg was describing that. I think what I’m trying to align myself with is the law, and that I will take into account all factors, including real world impacts when the law makes them relevant, as it clearly does, for example, in the Doctrine of Stare Decisis.

Senator Hirono: ([01:40:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6042.84))  
I’ll get to your views of precedent in a moment. I’ll give you a real life example of Justice Ginsburg in Ledbetter v. Goodyear Tire & Rubber Company. Lilly Ledbetter worked at a Goodyear plant for 19 years. As an area manager, a position held mostly by men, Lilly was paid less than all of her male counterparts. When she eventually realized this stark in equality, she sued for pay discrimination and a jury agreed, but the Supreme Court kicked Lily’s claim out of the court for being too late. The conservative majority, including your mentor, Justice Scalia, interpreted Title VII’s 180-day time limit to mean that Lily had to have filed her claim within 180 days of when her salary was decided, instead of accepting the common sense approach of viewing her paychecks as an ongoing part of pay discrimination. Justice Ginsburg, strongly disagreed with her conservative colleagues approach to the case.

Senator Hirono: ([01:41:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6105.55))  
In her dissent, she pointed out the many challenges women face in discovering pay disparities, including how many companies keep salaries confidential. In a stinging rebut she said, “The court does not comprehend or is indifferent to the insidious way in which women can be victims of pay discrimination.” In another case, in 2018, in Epic Systems Corp. v. Lewis, employees who have been illegally underpaid joined together to seek back pay in court. To block this effort, their employers force them to sign an arbitration agreement prohibiting collective actions… They actually had to sign these arbitration agreements in order to even have a job or keep their job. So, the Supreme Court’s conservative majority, including Justice Scalia, sided with the company, they interpreted a general federal arbitration law to override two worker protections laws instead of recognizing that the worker protection laws fall sensibly within the exceptions in the arbitration law, meaning that the worker protections laws should prevail. Again, Justice Ginsburg strongly disagreed with the majority’s approach to the case.

Senator Hirono: ([01:42:57](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6177.69))  
In her dissent, she pointed out that blocking joint losses would deter most workers from seeking individual unpaid wage claims because of the cost of lawsuits and fear of retaliation. She warned the majority’s decision would result in hurting vulnerable, low wage workers. Now, those are the kinds of real life impacts, the reality of women who are not paid the same as their male counterparts because of sex discrimination happening that she has no way of finding out about or of workers who are forced to sign an arbitration clause that overrides other worker protection laws, those are the kinds of real world impacts. So, do you think Justice Ginsburg was wrong to consider real world impacts in her decision making?

Amy Coney Barrett: ([01:43:49](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6229.6))  
Well, senator, both the case… You’re talking about Lily Ledbetter, both that case and Epic Systems are precedents of the court. And as I’ve said a number of times during the hearing, I can’t really comment or grade thumbs up or thumbs down, as Justice Kagan put it, prior precedents, or say how I would have decided them.

Senator Hirono: ([01:44:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6251.11))  
Judge Barrett, they are precedents of the court that do not take into consideration the real world factors at play here. And in fact, in the case of Epic Systems, the court sided with the corporation as opposed to the workers who were trying to remedy a wrong, and in Lily Ledbetter, she was totally out in the cold, so again, the court did not. So they established a precedent, all right, but it was a precedent that was not based on real life impacts. So, much as you sit here telling me that you would follow the law, after all the law, for example, the Affordable Care Act, that law embodies a policy that says we want as many people as possible to be covered under insurance, and if the affordable care act is struck down…

Senator Hirono: ([01:45:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6303.011))  
Then if the Affordable Care Act is struck down, that policy, that law will be struck down. I know that there was some discussion about some distinction that you make about policy versus the law. And I find that distinction to be a fiction because every law, or most laws we pass, are supposed to have real world impacts. Otherwise, why should we pass a law? So the fact that you’re not able to, I think it’s pretty clear. Let me rephrase that. You do consider Justice Scalia to be your mentor, that your judicial philosophy is in alignment with him. And I think we all acknowledge that Justice Scalia and Justice Ginsburg were at pretty much opposite ends of the spectrum. So since Justice Ginsburg made it a policy, her approach was to look at the real world impact. Justice Scalia’s was not.

Senator Hirono: ([01:45:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6358.98))  
So I’d say that when it comes to the Affordable Care Act, the real world policy considerations that will not be taken into consideration by the conservative judges would mean that 23 million people could lose their healthcare, that 133 million Americans with preexisting conditions could lose critical protections for their healthcare, and more than 7 million Americans who have tested positive for COVID-19 would probably be added to the group of people with pre-existing conditions. And millions of Americans would once again face lifetime limits on coverage for essential services. That 8.7 million women would lose coverage for critical maternity care services. And we know that Black and Native women are two to three times more likely to die than white women from pregnancy-related cases. That Americans could lose coverage for essential health benefits like prescription drugs and mental healthcare. That young adults will no longer be able to stay on their parents’ health insurance plan until age 26 at a time when our country is dealing with massive job losses.

Senator Hirono: ([01:47:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6433.87))  
So in my view, you have posed an artificial distinction between policy considerations that’s left up to us and following the law, because if your criticism of a Justice Roberts’ decision in upholding the Affordable Care Act, if that was something that he followed, he would have struck down the Affordable Care Act. If he followed your criticism of him in sustaining the Affordable Care Act, he would have struck it down. I would conclude that your approach is, in fact, not like that of Justice Ginsburg, who did care about what would happen.

Senator Hirono: ([01:48:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6487.82))  
Let me just tell you one story of a person who will be impacted in the real world if the Affordable Care Act is struck down. And I know that so many of my colleagues have already established that the president expects you to strike down the Affordable Care Act, and you’ve already established that you’ve made no such commitments, but clearly that is why this whole process is occurring so that you can be sitting on that court in time to hear the Affordable Care Act by the Supreme Court on November 10th.

Senator Hirono: ([01:48:38](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6518.82))  
One of the people who will be impacted is Elizabeth from Texas. She moved to Texas for a job and thought that she would have a stable income and healthcare coverage, and all that changed when her hours decreased and she lost her health insurance. Because she couldn’t afford health insurance, she couldn’t get proper treatment for her asthma. She had to resort to using friends’ expired inhalers and over the counter remedies. The ACA allowed her to get health insurance again.

Senator Hirono: ([01:49:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6544.64))  
The ACA also protects people with pre-existing conditions like Jordan, who I talked about yesterday. And she has a very rare illness that would require 500,000 per year just for her medication. And were it not for the Affordable Care Act, she wouldn’t be able to afford it. I mean, who can afford 500,000 a year to keep her going? And also people like Kimberly. I talked about her yesterday. The ACA enabled her to get a mammogram, which she wouldn’t have been able to get, and that mammogram revealed that she had breast cancer, and she got a mastectomy.

Senator Hirono: ([01:49:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6586.87))  
The real life impacts on people like Elizabeth, Jordan, and Kimberly, where you say you will follow the law, it really leaves me wondering whether all of these real life impacts are what you would call within the scope of the law that you would decide, should you be confirmed. November 10th, you’ll hear the case. You will be deciding on the constitutionality of the Affordable Care Act. And by the way, you noted that the issue in the Affordable Care Act was one of, what was it? That you-

Amy Coney Barrett: ([01:50:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6617.57))  
Severability?

Senator Hirono: ([01:50:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6618.5))  
Severability. But the other issue in the Affordable Care Act is the entire constitutionality of the law because the district court, the issue was whether the district court in Texas was correct in deeming the entire law unconstitutional. So in fact, we are facing the entire law falling by the wayside.

Senator Hirono: ([01:50:41](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6641.69))  
Let me move on. You’ve been also asked a lot of questions about whether or not you would overturn Roe v. Wade. Clearly, President Trump expects that you would do so because as he said, if we put another two or perhaps three justices on the court, that’ll happen, meaning the reversal of Roe v. Wade will happen automatically, in my opinion, because I am putting pro-life justices on the court.

Senator Hirono: ([01:51:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6667.72))  
And a number of us have mentioned that Senator, as far as Senator Hawley is concerned, where he said, I will only vote for those Supreme Court nominees who have explicitly acknowledged that Roe v. Wade was wrongly decided. And there’s a whole quote I have from him. But after you were nominated, Senator Hawley made clear that you passed his litmus test. And he said, “I think her record is awfully clear. I think that’s one where she meets my standard of having evidence in the record.” And by the way, he had noted that he expected this evidence in the record not from your post-nomination assurances to him. All your prior record, he said you met his standards. We usually expect justices to uphold and apply longstanding precedent, so was the president wrong in concluding that you would vote to overturn Roe v. Wade?

Lindsey Graham: ([01:52:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6723.53))  
Well, Senator, again, I can’t make any statements, no hints, forecasts, or previews, as Justice Ginsburg put it, about any case or any precedent, but I will repeat what I’ve said throughout this hearing, that I made no promises to anyone. I have no agenda. There are 598 volumes of the United States Reports. That’s something that judges build on. Justices don’t go to the court to start having a book burning.

Senator Hirono: ([01:52:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6751.71))  
I know that you have reiterated that time and again, but you know what we are left with are the positions that you have already taken. The 2006 newspaper ad you signed that said you, quote, oppose abortion on demand and defend the right to life from fertilization to natural death. It’s not just the fact that this newspaper ad you joined said what I just read, but it also said, quote, it’s time to put an end to the barbaric legacy of Roe v. Wade.

Senator Hirono: ([01:53:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6781.42))  
In a 2013 speech you gave where you said the Roe decision, quote, permitted abortion on demand, end quote, after you said you opposed abortion on demand in 2006. So what underscores my concern about your willingness to overturn Roe v. Wade, which is really the expectation that the president has and which Senator Hawley fully expects you to do because you have met his litmus test. But you know that’s stare decisis, which is precedent, and you have argued that a justice’s duty to follow the Constitution, which you’re explaining means that she should, this is regarding your view on precedent. That she should, quote, enforce her best understanding of the Constitution rather than a precedent she thinks clearly in conflict with it. End quote.

Senator Hirono: ([01:53:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6833))  
In fact, you say constitutional cases are the easiest to overrule because you bring your own assessment of what the Constitution requires. And as you said, if the precedent is clearly in conflict with your view of the Constitution, then that precedent falls by the wayside. You did indicate that there are a few cases that are immunized from overturning because they wouldn’t be challenged in the first place, i.e. Brown v. Board of Education. But Roe isn’t one of those cases, because we know that there are all kinds of challenges to Roe, basically because the states are very busy passing all these laws that limit a woman’s right to an abortion.

Senator Hirono: ([01:54:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6885.9))  
You also said in that speech that even if Roe is not overturned, you said, without overturning Roe, you explained, quote, the question is how much freedom the court is willing to let states have in regulating abortion. And so there are 14 cases right now relating to state abortion restrictions making its way through the circuit court, and some of these are going to land in the Supreme Court.

Senator Hirono: ([01:55:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6915.43))  
And these 14 cases include the following restrictions. Six cases involve bans on abortion starting at gestational ages ranging from six to 24 weeks. Two cases involving bans on a particular type of procedure, dilation and evacuation, that accounts for nearly all second trimester abortions. One case involving a requirement that fetal remains be buried or cremated. Four cases involve laws imposing unnecessary requirements on abortion providers, like transfer agreements with local hospitals. Four cases involve so-called reason bans. Two cases related to parental notification and consent.

Senator Hirono: ([01:55:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=6953.23))  
There are real reasons why the American public is concerned that you will overturn Roe or basically strip it of all meaning so that it becomes a nullity because you will have these cases that, as you say, the open question is how far the Supreme Court will go in letting states put limits on abortion. So that is why a lot of people are very concerned about your views as articulated pre-nomination, which convinced Senator Hawley you met his test. This morning, Senator Feinstein asked you a question about the Supreme Court’s 2015 decision in Obergefell v. Hodges, a case in which the court recognized a constitutional right to same-sex marriage, and I was disappointed that you wouldn’t give a direct answer on whether you agreed with the majority in that case or if you instead agree with your mentor, Justice Scalia, that no such right exists in the Constitution.

Senator Hirono: ([01:56:56](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7016.74))  
Even though you didn’t give a direct answer, I think your response today speaks volumes. Not once, but twice, you used the term sexual preference to describe those in the LGBTQ community. And let me make clear, sexual preference is an offensive and outdated term. It is used by anti-LGBTQ activists to suggest that sexual orientation is a choice. It is not. Sexual orientation is a key part of a person’s identity. That sexual orientation is both a normal expression of human sexuality and immutable was a key part of the majority’s opinion in Obergefell, which by the way, Scalia did not agree with.

Senator Hirono: ([01:57:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7065.84))  
So if it is your view that sexual orientation is merely a preference, as you noted, then the LGBTQ community should be rightly concerned whether you would uphold their constitutional right to marry. I don’t think that you used the term sexual preference as just a … I don’t think it was an accident. And one of the legacies of Justice Scalia and his particular brand of originalism is a resistance to recognizing those in the LGBTQ community as having equal rights under our Constitution. In 1996, Justice Scalia wrote a dissenting opinion in Romer v. Evans defending a state’s ability to openly discriminate against the LGBTQ community. In 2003, Justice Scalia wrote a dissenting opinion in Lawrence v. Texas defending a state’s right to criminally prosecute someone for same-sex sexual activity. Ten years later, in US v. Windsor, Justice Scalia wrote another dissenting opinion, this time defending the federal government’s right to deny federal recognition of same-sex marriages. And of course, two years after that, in Obergefell, Justice Scalia wrote yet another dissent, and this time, he argued that there was no constitutional right to same-sex marriage.

Senator Hirono: ([01:59:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7142.42))  
So under Justice Scalia’s judicial philosophy, what you have told us is your own, states could openly discriminate against the LGBTQ community, same-sex couples could be denied the right to get married, and they could actually be thrown in jail if they engaged in sexual intercourse. There are an estimated 11 million adults who identify as LGBTQ living in this country. Since Obergefell was decided in 2015, approximately 293,000 same-sex couples have gotten married. And many of these people are rightly afraid that if you are confirmed, you will join with other conservative members of the court to roll back everything the LGBTQ community has gained over the past two decades and push them back into the closet.

Senator Hirono: ([01:59:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7192.4))  
Now, two sitting justices are already calling for Obergefell to be narrowed, if not outright overturned. Just last week, Justices Thomas and Alito issued a statement concurring with the court’s decision to deny cert in Davis v. Ermold, a case involving a former Kentucky county clerk who refused to issue marriage certificates to same-sex couples. They accused the court of, and this is Justices Alito and Thomas. They accused the court of, quote, reading a right to same-sex marriage into the 14th Amendment, even though that right is found nowhere in the text. And these two justices signal that Obergefell is a problem that only the court can fix.

Senator Hirono: ([02:00:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7236.19))  
So coupled with your use of the term sexual preference, coupled with your view on precedents, and that a justice’s view or her own analysis of the constitutionality should overtake or overcome precedents, if it’s in conflict. This is why so many people in the LGBTQ community are so concerned that you would, in fact, join the signaling that these two justices have already put out there that Obergefell will fall by the wayside. Thank you, Mr. Chairman.

Lindsey Graham: ([02:01:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7281.77))  
Thank you. Senator Ernst.

Joni Ernst: ([02:01:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7287.61))  
Thank you, Mr. Chair, and Judge Barrett, thank you so much for being here today with your beautiful family, yet, once again. We appreciate the support that you are showing to Judge Barrett by being here today. And Judge, I just want to offer you the opportunity at this point. Is there anything from earlier today that you feel you need more time to respond to?

Amy Coney Barrett: ([02:01:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7311))  
Thank you, Senator Ernst. I would like to just make a quick follow on to some of Senator Hirono’s comments. One, I’ve said a number of times during the hearing that I can’t comment or grade existing precedent. And I want to be clear that the point of doing that is not to say whether I agree or disagree with it. It’s not to implicitly signal that I do disagree with it. It’s designed to be neutral. So in saying that I couldn’t opine on whether Obergefell was rightly decided or not, I was certainly not indicating disagreement with it. The point of not answering was to simply say it’s inappropriate for me to say a response. And the second point was to say that I certainly didn’t mean and would never mean to use a term that would cause any offense in the LGBTQ community. So if I did, I greatly apologize for that. I simply meant to be referring to Obergefell’s holding with respect to same-sex marriage.

Joni Ernst: ([02:02:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7366.97))  
Thank you for that. I appreciate the clarification, and it goes back to the discussion that you had with Senator Sasse on the black robes. When you put that robe on, you are neutral. Correct?

Amy Coney Barrett: ([02:02:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7379.67))  
Yes.

Joni Ernst: ([02:03:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7380.29))  
Yes. Thank you.

Joni Ernst: ([02:03:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7381.98))  
I did want to go back because the issue of coronavirus has come up yet once again in the committee room. And I just wanted to make a point and clarify that the Senate GOP did bring up a relief bill a number of weeks ago. And in that bill, there was a $300 boost in weekly unemployment insurance benefits. There was a second pass at Paycheck Protection Program for our small businesses. There was additional 105 billion for K through 12 schools and colleges with new scholarship programs and 15 billion to help working parents find accessible childcare options. There were supports for farmers and ranchers impacted by the pandemic. There was 31 billion for development and distribution of vaccines, drugs, and other medical supplies, 16 billion for testing and contact tracing. There was loan forgiveness for the Postal Service, liability protections for our schools and healthcare providers, and an expanded charitable deduction for contributions made during this pandemic, and many, many other things.

Joni Ernst: ([02:04:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7459.41))  
It was a very, very good bill. It was what we could agree upon. But I would note that Senate Democrats did block those provisions that would have gone to help families like Veronica and others in Iowa that are suffering from the pandemic and of course, our greatest sympathies to those that have been impacted all across the United States. Mr. Chairman, I would like to enter into the record. There’s three letters here for the committee and an op-ed, a letter of support from 48 Christian women scholars. The second is a letter from a group of governors all across the country, including our own Iowa’s Governor Kim Reynolds, strongly supporting the nomination of Judge Barrett. The third is a record letter from Traci Lovitt, who was with Judge Barrett while they both served on the SCOTUS clerk class of 1998.

Joni Ernst: ([02:05:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7519.05))  
And then there’s also an editorial by Derek Muller, a professor of law at the University of Iowa College of Law that appeared in The Gazette of Cedar Rapids, Iowa. And this professor had Judge Barrett as his evidence professor at Notre Dame Law School, and he does say she treated all law students from all backgrounds with dignity and respect. If I could have those entered into the record.

Lindsey Graham: ([02:05:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7546.39))  
Without objection.

Joni Ernst: ([02:05:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7547.96))  
Thank you. And Judge Barrett, I am pro-life. I am pro-life. And I see that judged by your faith and as has been aptly pointed out many times over by our colleagues across the aisle, that you are pro-life. But once again, can we reiterate your stance as a judge?

Amy Coney Barrett: ([02:06:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7573))  
As a judge, my personal moral beliefs, which I have not, that I can think of, I am not expressing them publicly right now because now that I am a judge, I can’t sign statements like that one that I did 15 years ago. But my policy views, my moral convictions, my religious beliefs do not bear on how I decide cases, nor should they. It would be in conflict with my judicial oath.

Joni Ernst: ([02:06:43](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7603.4))  
And I know that you consider yourself to be an originalist, as you discussed earlier with Senator Sasse. And it seems that adhering to the originalist view would naturally lead a judge to carry out her constitutional duty of impartiality when applying the law, and adhering to this philosophy as a judge takes real courage. And the courage you have displayed thus far as a federal judge prompted a coalition of groups to send me a letter supporting your nomination. Susan B. Anthony List led this coalition letter that I would like to submit to the committee for the record. And I know this is going to make a number of members on the committee just very squeamish because they are a pro-life organization. But with this in mind, I want to take a moment to read part of this letter.

Joni Ernst: ([02:07:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7662.33))  
Quote, Judge Barrett has proven herself to handle disputes impartially, approaching cases as a textualist and originalist who loves the Constitution. She is a jurist who rightly leaves politics to politicians and legislating to legislators. And I’ll quote further. Quite apart from whatever policy views she may have on the matter, Judge Barrett reasons to a proper result in each case before her. As a federal appellate judge appropriately following controlling precedent, in February 2019, she joined a panel decision upholding a law creating a buffer zone around abortion facilities. This buffer or bubble zone case being referred to is Price v. City of Chicago. Judge Barrett, could you please give us an overview of the city ordinance that was challenged here and explain how precedent established by the Supreme Court’s Hill decision influenced your reasoning of the case?

Amy Coney Barrett: ([02:08:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7734.43))  
Yes, I was on a panel. There was a challenge to a bubble zone ordinance, which essentially means … It was …. How to describe it? It limited where abortion protesters could go to do sidewalk counseling or leafleting or the things that they identified as the activities they desired to undertake and the expression of speech outside of the abortion clinic. The Supreme Court has a case called Hill v. Colorado, and that case said that such bubble zones, especially because this one in Chicago was nearly identical, as I recall, with the one that was at stake in Hill, said that they did not violate the First Amendment. And so our panel, we’re bound by that precedent. Our panel applied that precedent. And so, as you say, that was a case involving abortion, but my duty as a judge was to follow the governing law, and that governing law in that case was Hill.

Joni Ernst: ([02:09:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7792.36))  
Absolutely, and thank you for that clarification. And I think it was important to point that out because in that case, using precedent, it did favor that abortion clinic. Is that correct?

Amy Coney Barrett: ([02:10:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7807.26))  
That is correct.

Joni Ernst: ([02:10:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7808.36))  
Thank you very much. I would like to submit this for the record. Thank you.

Joni Ernst: ([02:10:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7814.88))  
Now turning to a topic of agency rulemaking, really sexy topic. Not something that we have talked about as of yet. But as I mentioned yesterday, when Congress makes laws that overstep the Constitution, it can be felt all across the state of Iowa, whether it’s in the streets of Council Bluffs, Iowa, or in the farm fields over in Clinton County. But Congress isn’t the only body capable of overstep. Executive agencies can be just as guilty of this, as we’ve seen in Iowa. In 2018, as a judge on the Seventh Circuit, you helped decide a Clean Water Act case, specifically, Orchard Hill Building Company v. Army Corps of Engineers. The decision found that the federal government did not provide enough evidence to justify its decision to deem 13 acres of Illinois wetlands as a water of the US.

Joni Ernst: ([02:11:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7879.94))  
I’m very supportive of a less expansive definition of WOTUS and am encouraged by how you approached this decision. Farmers in Iowa are also encouraged by this development. I believed then as I do now that the Obama administration’s Clean Water Rule, or the WOTUS rule, was unconstitutional. But I also want to talk to you about agency rulemaking that I believe was constitutional, which is illustrated in a case that the 10th Circuit court has recently ruled on, specifically Renewable Fuels Association v. EPA. At issue in this case were three exemptions the EPA granted to oil companies allowing them to avoid their obligations to blend renewable fuel under the Clean Air Act’s Renewable Fuel Standard. These oil refinery exemptions, which were not disclosed to the public, were challenged by renewable fuel producers who said that they only found out about the waivers because of investigative news reports.

Joni Ernst: ([02:12:28](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7948.78))  
The 10th Circuit concluded in this case that the renewable fuels producers were injured by the EPA’s exemptions and thus had standing to sue. The court also found that the EPA exceeded its statutory authority in granting those petitions because the agency may only extend previously existing waivers. In the case of these three refiners, there was nothing to extend because they had let their exemptions lapse. In other words, the three refineries had not received continuously extended exemptions in the years preceding their petitions, as required by the statute.

Joni Ernst: ([02:13:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=7989.6))  
However, in the wake of this 10th Circuit decision, small refineries flooded the EPA with 67 petitions for retroactive waivers, some dating back as far as 2011, in an attempt to go back in time and establish a chain of continuously extended exemptions. These oil companies have also appealed to the 10th Circuit decision, or the 10th Circuit decision to the Supreme Court.

Joni Ernst: ([02:13:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8017.37))  
While I’m not going to ask you to speak on all of this and what is going on, the problem here, bottom line, is that the EPA wasn’t following the law. They took the law that Congress passed. They twisted it and interpreted it for the benefit of oil producers, and that harmed our Iowa farmers. I know, again, you can’t speak on how you would rule on these cases, especially those that could be pending before the Supreme Court. But tell me, how do agencies … How should they interpret the laws that are passed by Congress?

Amy Coney Barrett: ([02:14:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8059.37))  
I think that the court’s role in reviewing the lawfulness of agency action, it’s largely governed by the Administrative Procedure Act, which governs the way that agencies can do their business and outlines what their authority can be. There’s also a doctrine called Chevron, which is named after a case. And many times, if we’re talking about a Chevron issue, we’re talking about an issue of statutory interpretation. And it sounds like that’s mostly what you’re thinking of. And an agency, when a court reviews whether an agency has exceeded its lawful authority, it goes to the statute that you in Congress enact and interprets that statute, looks at the text, and tries to tell whether you’ve given the agency, given the EPA, in your example, leeway to adopt policies. And that leeway would be present if you had ambiguity in the statute that left the decision to the agency.

Amy Coney Barrett: ([02:15:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8117.59))  
But if the agency goes farther than the text of the statute permits, then it is the role of a court to say that that action was in conflict with the statute and therefore illegal.

Joni Ernst: ([02:15:30](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8130.24))  
And what happens, then, if there is an actual question on the intent of the law?

Amy Coney Barrett: ([02:15:38](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8138.27))  
Well, a statute, in this context, in the context of a Chevron-type challenge to agencies, an agency’s interpretation of it, you would interpret the statute in the same way that you would interpret any other statute. So as I was talking with Senator Sasse about earlier, my own approach to it would be textualism. And so in my approach to language, the intent of the statute is best expressed through the words, so looking at what the words would communicate to a skilled user of the language.

Joni Ernst: ([02:16:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8169.92))  
Very good. Well, I appreciate it. We do have a little bit of time remaining. Again, I just want to thank you. I want to thank your family very much for lending their support to you through this process. It can be a bit grueling. But I do have to say, though, your temperament throughout the entire hearing has been truly commendable, so thank you so much. I look forward to working with you further. And with that, Mr. Chair, I will reserve my time.

Lindsey Graham: ([02:16:38](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8198.36))  
Thank you, Senator Ernst. Judge, are you okay to do two more?

Amy Coney Barrett: ([02:16:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8202.77))  
Sure.

Lindsey Graham: ([02:16:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8202.8))  
Senator Booker. Senator Crapo. Then we’ll take a 20 minute or so break, grab a bite to eat, and finish up. Senator Booker.

Cory Booker: ([02:16:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8210.22))  
Thank you, Mr. Chairman. Your Honor.

Amy Coney Barrett: ([02:16:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8213.6))  
Hi, Senator.

Cory Booker: ([02:16:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8215.56))  
I spoke yesterday, and I appreciate the attention which you gave me talking about how this is not a normal time. And I want to reiterate that one more time as cogently as I can because this is something like we’ve just never seen before in the history of the United States. We’re not just days away from Election Day, but people are actually voting right now. Close to a million people in my state have already voted, and about 10 million people voted nationally. The only other time a Supreme Court nomination hearing happened this close to an election was, as you probably know, is under President Lincoln, who declined to offer a nomination before the election.

Cory Booker: ([02:17:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8253.75))  
But we are in the midst of an ongoing election right now at a very contentious time in our democracy. It’s probably not normal also because people are already speaking in this election, and it seems like we are rushing through this process. When many of my colleagues on this committee said just four years ago that we should not proceed to fill a vacancy that opened 269 days before an election. In the words of some of my colleagues, including the chairman, was to use our words against us. We would not do exactly what we’re doing right now.

Cory Booker: ([02:18:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8287.37))  
It’s also not normal, clearly, because we’re in the middle of a pandemic, and we have tens of thousands of new COVID infections every single day. Widespread food insecurity like we haven’t seen these kind of food lines in my lifetime, I don’t think. People across our country are struggling. And unfortunately, we see that we are, right now, not dealing with this crisis. We are, instead, literally having closed the Senate virtually, and the only proceedings that are being allowed to go forward are not the issues of helping people who are struggling, but dealing with this.

Cory Booker: ([02:18:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8322.85))  
And it’s not normal that we have a president who has repeatedly attacked the legitimacy of our institutions. So much so, and I’ve never seen something like this in my lifetime, that his former cabinet members, his former chief of staff, all talked about the danger he represents to the country we all love. In fact, probably one of the most respected person on both sides of the aisle, General Mattis, who served as our Secretary of Defense, went as far as to say, a man who has been very reserved in his comments, that Donald Trump is a danger to our democracy.

Cory Booker: ([02:19:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8356.46))  
We are at a time that the legitimacy of our institutions are at stake, and it’s not normal that the president would further cast a shadow over your nomination, as well as the independence of the court by saying he would only nominate justices who would tear down Roe v. Wade, who would overturn ACA. And it’s not normal, amidst this all, and again, something that I find hard to believe that we’re talking about is that we have a president who cannot commit himself to the peaceful transfer of power. Now, in the light of this abnormality, most Americans think we should wait on your nomination. It’s an illegitimate process. Most Americans think that we should wait. Today, and I appreciate you not following the news, but 90 of your fellow faculty members from Notre Dame wrote an open letter.

Cory Booker: ([02:20:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8403.221))  
… Fellow faculty members from Notre Dame wrote an open letter calling on you for the sake of our democracy. They didn’t speak to whether you’re right or left or your judicial philosophy or qualifications. They wrote an impassioned letter for the sake of our democracy. They publicly issued a statement asking that your nomination, that you withdrawal from this nomination process and have it be halted until after the November election. This is not normal.

Cory Booker: ([02:20:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8427.9))  
And again, the overwhelming majority of Americans want to wait, but my colleagues here are not listening. And so I’m going to ask you some questions that if you had told me five years ago, that would be questions asked at a Supreme Court nomination hearing. I would have thought they wouldn’t be possible, but unfortunately I think they’re necessary to ask you. And I hope that you’ll give me direct answers.

Cory Booker: ([02:20:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8451.91))  
The first one, you’ve already spoken towards issues of racism and how you deplore it. But I want to just ask you very simply. I imagine you’ll give me a very short resolute answer, but you condemn white supremacy, correct?

Amy Coney Barrett: ([02:21:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8466.88))  
Yes.

Cory Booker: ([02:21:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8468.75))  
Thank you. I’m glad to see that you said that I wish our president would say that so resolutely and unequivocally as well, but we are at a time that Americans are literally fearful because their president cannot do that in the resolute manner in which you did. I’m sorry that that question had to even be asked at this time. Here’s another one. Do you believe that every president should make a commitment unequivocally and resolutely to the peaceful transfer of power?

Amy Coney Barrett: ([02:21:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8502.7))  
Well, Senator, that seems to me to be pulling me in a little bit into this question of whether the president has said that he would not peacefully leave office. And so to the extent that this is a political controversy right now, as a judge, I want to stay out of it and I don’t want to express a view on.

Cory Booker: ([02:22:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8524.44))  
So judge, I appreciate you what you’ve said about respecting our founding fathers about the originalism. It’s remarkable that we’re at a place right now that this is becoming a question and a topic, but I’m asking you in light of our founding fathers in light of our traditions, in light that everyone who serves in that office has sworn an oath where they “swear to preserve and protect and defend the constitution of the United States.”

Cory Booker: ([02:22:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8551.28))  
I’m just asking you, should a president commit themselves like our founding fathers I think had a clear intention like the grace that George Washington showed to the peaceful transfer of power. Is that something that presidents should be able to do?

Amy Coney Barrett: ([02:22:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8567.27))  
Well, one of the beauties of America from the beginning of the Republic is that we have had peaceful transfers of power and that disappointed voters have accepted the new leaders that come into office. And that’s not true in every country. And I think it is part of the genius of our constitution and the good faith and goodwill of the American people that we haven’t had the situations that have arisen in so many other countries where there have been, where those issues have been present.

Cory Booker: ([02:23:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8598.7))  
Thank you, your honor. Do you think that the president has the power to pardon himself for any past or future crimes he may have committed against the United States of America?

Amy Coney Barrett: ([02:23:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8609.21))  
Well, Senator Booker, that would be a legal question, that would be a constitutional question. And so in keeping with my obligation not to give hints, previews or forecasts of how to resolve the case, that’s not one that I can answer.

Cory Booker: ([02:23:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8620.93))  
Well, I think I agree with you that it is an issue right now. Something I never thought would be an issue before, but it is an issue that our president may intend to pardon himself for future crimes or past crimes.

Cory Booker: ([02:23:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8635.28))  
If a president is personally responsible for several hundred million dollars in debt while he’s in office potentially to foreign entities, do you think he has a responsibility to disclose who his lenders are, especially given the Emoluments Clause?

Amy Coney Barrett: ([02:24:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8652.02))  
Well, Senator there’s litigation about the Emoluments Clause, I think it was in the Fourth Circuit. I don’t know where it stands, but that clearly is an issue that’s being litigated. And one present in court is not one on which I can offer an opinion.

Cory Booker: ([02:24:28](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8668.15))  
Thank you. I think it’s disturbing that we’re having this conversation. I think it’s disturbing that we have a president that has brought what should be settled in the minds of most Americans. Presidents should reveal what their debts are, especially if they’re to foreign nations. Presidents should not be able to pardon themselves for future crimes. Presidents should condemn white supremacy. Presidents to commit themselves to the peaceful transfer of power.

Cory Booker: ([02:24:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8692.17))  
Judge Barrett, you’ve seen a lot of my colleagues and I put up pictures of people in this room and the stories we’ve told and I’ve appreciated the way you’ve listened. It’s not a stretch to understand why a lot of Americans are afraid right now. All we have to do is look at the statements and actions of my Republican colleagues, the Republican Party platform, and the president who nominated you. And even some of your own words, which have been read by my previous colleagues around the Affordable Care Act.

Cory Booker: ([02:25:22](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8722.47))  
President Trump who nominated you for this vacancy has not only explicitly stated that the Supreme Court should overturn the Affordable Care Act, but he promised that he would nominate a judge who would “do the right thing” unlike Bush’s appointee, John Roberts on Obamacare. The president has tried to do this legislatively. He’s tried to do it administratively. He’s failed time and time again, but he’s promised over and over again to tear down the Affordable Care Act.

Cory Booker: ([02:25:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8748.84))  
Meanwhile, all of my Republican colleagues on this committee except for one has voted to overturn the Affordable Care Act because House and Senate Republicans tried to do it 70 times. The one Republican who did not was an attorney general who joined 20 state attorney generals, who sued to overturn the Affordable Care Act. You yourself said and now I will quote you that justice, “Chief Justice Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute.”

Cory Booker: ([02:26:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8780.18))  
The same Chief Justice Roberts that Trump implied didn’t do the right thing. And so Judge Barrett, you have said that if you were on the court, you will hear and consider the arguments from both sides. I was actually very interested when you said that you would put your family members in the shoes of litigants on both sides. Given all that you’ve heard said over and over again about the intentions to tear away the Affordable Care Act and the Affordable Care Act.

Cory Booker: ([02:26:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8808.39))  
Given what you’ve heard about the people who rely on it, given the commitment President Trump’s too said explicitly to only appoint judges who would overturn the ACA. Is it unreasonable for people to fear putting yourself in the shoes of people? Is it unreasonable for the people that have been up here in their pictures? Is it unreasonable for them to fear that the ACA would be overturned if you were confirmed to the court?

Amy Coney Barrett: ([02:27:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8839.86))  
Well, Senator, I want to stress to you, Senator Booker, as I’ve stressed to some of your colleagues today that I am my own person independent under article three. And I don’t take orders from the executive branch or the legislative branch.

Cory Booker: ([02:27:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8854.66))  
I understand that, I guess. Can I restate my question? Because I don’t think you are understanding it. I’m just asking you as an act of empathy. Can you understand the fears that are exhibited by the people we put up? Two people I put up Michelle and Merritt. I don’t know what their political party is. I don’t know if they’re going to vote for me. I’m on the ballot. I don’t know. I just know that there were people that wanted their voices to be heard because they are afraid right now and what your nomination represents. All I’m asking is can you empathize with that? Can you understand that?

Amy Coney Barrett: ([02:28:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8887.12))  
Senator, I can certainly empathize with people who are struggling. I can empathize with people who lack healthcare. One of the things that was so striking to me when we went to get our daughter Vivian from the orphanage in Haiti was the lack of access to basic things like antibiotics. And it just made me appreciate the fact that we had access to healthcare. So I can certainly empathize with all of that.

Amy Coney Barrett: ([02:28:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8913.83))  
And with respect to the ACA should I be confirmed? And as I’ve said, I would consider the issue of recusal of threshold question of law and whether to hear that case, but should I be confirmed and should I sit and hear the case? As I assured you, I would consider all the arguments on both sides. And one of the important issues in that is whether even if the mandate has become unconstitutional since it was zeroed out, whether it would be consistent with the will of Congress for the whole act to fall.

Amy Coney Barrett: ([02:29:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8946.51))  
It’s a statutory question, not a constitutional one, or whether the mandate could be severed out and the rest of the act stand. And so the task of every justice who hears this case will be to look at the structure of the statute and look at its text to determine whether it was the will of Congress when they passed the ACA.

Cory Booker: ([02:29:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8966.07))  
And judge, I apologize, especially after the good behavior that was noted that we shouldn’t be talking over each other. My time-

Amy Coney Barrett: ([02:29:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8971.51))  
That’s okay, senator.

Cory Booker: ([02:29:32](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=8972.45))  
My time is running quickly. I guess I just as a guy who looks at justices, I was just asking you to express that you understand the fear that’s in America right now. Because you heard story after story of people who don’t know if they are going to be able to afford their healthcare, who don’t know if they will be denied insurance coverage. And I’m going to move on because of the short time. But I was just asking you is can you understand the fear giving a president that has said that that they will put a justice on there that will tear down the Affordable Care Act, thus taking away healthcare for millions of Americans?

Cory Booker: ([02:30:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9013.41))  
There is fear in our country right now, but I want to move now to earlier what Senator Durbin and you have discussed. They asked about your views on racism and the role of courts and addressing racial justice. I was troubled that you said that racial justice and equality and I’ll quote you or “How to tackle the issue of making it better. Those things are policy questions.” I think that that’s the quote. “How to tackle the issue of making it better, the racial injustice. Those things are policy questions and not for the court.”

Cory Booker: ([02:30:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9045.78))  
The federal government’s own data and this is I think you and I referenced this in our private conversation, which I appreciate. You said you were familiar with a lot of the data about the discrimination within our criminal justice system. For example, the U.S. Sentencing Commission, this is the U.S. Sentencing Commission said that, “Prosecutors are more likely to charge black defendants with offenses that carry harsh, mandatory minimum sentences than similarly situated whites.”

Cory Booker: ([02:31:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9073.09))  
Are you familiar with that, the U.S. Sentencing Commission?

Amy Coney Barrett: ([02:31:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9075.46))  
I’m not familiar with that particular-

Cory Booker: ([02:31:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9077.03))  
Does that surprise you?

Amy Coney Barrett: ([02:31:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9081.85))  
I mean, I don’t know, Senator Booker, that seems an odd thing for me to express an opinion out as-

Cory Booker: ([02:31:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9086.81))  
I’m not asking. These are facts. These are just facts.

Amy Coney Barrett: ([02:31:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9089.23))  
I am not familiar with that study. As you and I discussed, I am aware that there is evidence and that there have been studies of systemic racism or implicit bias in the justice system. So I am aware of that issue. I was not aware of-

Cory Booker: ([02:31:41](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9101.09))  
You were aware of evidence that there is implicit racial bias?

Amy Coney Barrett: ([02:31:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9104.21))  
I am aware that there have been studies showing that implicit bias is present in many contexts, including in the criminal justice system.

Cory Booker: ([02:31:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9112.26))  
Okay. I’m just going to read some of these other statistics, because I think they’re really important. And this is independent data from the U.S. Sentencing Commission that black defendants again are compared with similarly situated white defendants who were subject to three strikes sentencing enhancement at a significant higher rate, which on average added 10 years to sentences. You’re not familiar with that study?

Amy Coney Barrett: ([02:32:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9132.8))  
I’m not familiar with that study.

Cory Booker: ([02:32:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9135.07))  
Do such cases come before the Seventh Circuit?

Amy Coney Barrett: ([02:32:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9138.35))  
The three strikes cases?

Cory Booker: ([02:32:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9139.58))  
Yes.

Amy Coney Barrett: ([02:32:22](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9142.82))  
Are you talking about the three strikes, the Prison Litigation Reform Act cases where they’re struck out or are you talking about-

Cory Booker: ([02:32:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9149.08))  
I’m asking cases in the criminal justice system that relate to racial bias. Do they come before the court?

Amy Coney Barrett: ([02:32:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9153.53))  
So certainly we have discrimination cases. Certainly there are 1983 cases or Title VII cases.

Cory Booker: ([02:32:38](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9158.5))  
I would imagine so and in your research for those cases, you familiarize yourself with a lot of the data on the discrimination within the system?

Amy Coney Barrett: ([02:32:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9168.45))  
We familiarize ourselves with the arguments the parties make and the information that they put in the record. And in some cases, I have had parties submit or it’s submitted in the district court technically, and then made part of the record.

Cory Booker: ([02:33:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9182.08))  
And so I just want to be clear. Do you believe that there is in fact implicit racial bias in the criminal justice system? It’s just a yes or no question. Do you believe in fact that there is implicit racial bias in the criminal justice system?

Amy Coney Barrett: ([02:33:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9195.61))  
Senator, it would be hard to imagine a system, a criminal justice system as big as ours not having any implicit bias in it.

Cory Booker: ([02:33:22](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9202.79))  
So is that a yes?

Amy Coney Barrett: ([02:33:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9204.93))  
Senator, yes. I think that in our large criminal justice system, it would be inconceivable that there wasn’t some implicit bias.

Cory Booker: ([02:33:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9214.02))  
Okay. Over the last two years, about 121 of President Trump’s judicial nominees of the federal court have said unequivocally that there is implicit racial bias within the justice system quite clearly. I’d like to turn to an opinion you wrote last year about race discrimination, Smith v. Illinois Department of Transportation. The case involved an African-American traffic patrol officer who had been fired from the Illinois Department of Transportation. This employee claimed that he had been subjected to hostile work environment and that the supervisor called him the N-word.

Cory Booker: ([02:34:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9249.37))  
But you ruled that the employee had failed to make the case that he had been fired in retaliation for his complaints about race discrimination. And now you acknowledged that quote and I will quote you now. “The N-word is an egregious racial epithet,” but you went on to insist that the employee couldn’t “win simply by proving that the N-word was uttered at them. And that he failed to show that his supervisor’s use of the N-word against him altered the conditions of his employment and created a hostile or abusive working environment.”

Cory Booker: ([02:34:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9285.02))  
And you said that even based on his own subjective experience, this black employee had” no evidence that his supervisors were lashing out at him because he was black.” I’m very surprised to have to make this point at all, but even a staunch conservative like Justice Kavanaugh in my questioning of him spoke to the obvious harm here in a way that you don’t seem to. He wrote in a court of appeals case that, “being called the N-word by a supervisor suffices by itself to establish a racially hostile work environment.” And you disagreed with that.

Cory Booker: ([02:35:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9321.79))  
Why do you believe that the law recognizes the harm that is afflicted on a black person in this country when they are called that word by their work supervisor or by anyone really for that matter. And in all the history dredged up in that word, centuries of harm, why do you believe differently than Justice Kavanaugh?

Amy Coney Barrett: ([02:35:43](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9343.73))  
Well, Senator Booker that opinion does not take a position different than Justice Kavanaugh. It expressly and I wrote was written very carefully to leave open the possibility that one use of that word would be sufficient to make out a hostile work environment claim. The problem was that in that case, the evidence that the plaintiff had relied on to establish the hostile work environment involved he was driving the wrong way down a ramp, and then expletives were used, not the N-word.

Amy Coney Barrett: ([02:36:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9372.76))  
And the N-word was used after his termination had already begun. And he didn’t argue under clear Supreme Court precedent. I didn’t make up the objective-subjective element. Under clear Supreme Court precedent, both are required. And he didn’t say that it altered the terms. That’s not how he pled or made his case. And it was a unanimous panel decision.

Cory Booker: ([02:36:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9393.4))  
And forgive me if I’m reading this case wrong, but you’re saying to me, he was not claiming that he had a hostile work environment and that it is in the fact pattern that the supervisor called him the N-word, and that does not constitute a hostile work environment? And the way that Justice Kavanaugh has said clearly that it does.

Amy Coney Barrett: ([02:36:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9411.8))  
No Senator, I think you’re mischaracterizing what I said, with all the respect. In that opinion, the evidence that he introduced to show the hostile work environment was the use of expletives when he drove the wrong way down, he was hired to be a safety driver for the Illinois Department of Transportation. And he based his hostile work environment claim on the use of expletives at him based on poor work performance. That was what he relied upon and then his termination proceedings had begun.

Amy Coney Barrett: ([02:37:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9440.85))  
He didn’t tie the use of the N-word into the evidence that he introduced for his hostile work environment claim. And so as a panel, we were constrained to decide based on the case the plaintiff had presented before us. So the panel very carefully wrote the opinion to make clear that it was possible for one use of the N-word to be enough to establish a hostile work environment claim if it were pled that way.

Cory Booker: ([02:37:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9466.1))  
I’m going to turn to the AutoZone Casey discussed earlier with Senator Feinstein. The initial panel of three judges that examined the case ruled against Kevin Stuckey. You were not a part of that initial panel, but you did have an opportunity to vote on whether to hear the case before the entire court. You had an opportunity to affirm the Bedrock Principle and enshrined in Brown v. Board of Education about separate but equal really to say to separate is inherently unequal, but you voted no. You didn’t think the full court needed to examine this deliberate segregation of employees by race, but the judges on the court disagreed with you.

Cory Booker: ([02:38:22](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9502.62))  
In fact, three judges explained, “We know that deliberate racial segregation by its very nature has an adverse effect on the people subject to it.” One of the essential teachings of Brown v. Board of Education, which I know you’re familiar with is that idea of separate being inherently unequal. Why did you think that the separate but equal facilities were lawful or why didn’t you see this as a practice that was worthy of closer scrutiny?

Amy Coney Barrett: ([02:38:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9533.02))  
Senator, as I said earlier to Senator Feinstein, I did not make a merit’s decision on that case. And I wasn’t on the initial panel. The calculation of whether to take a case en banc is different than a merits determination. So I wasn’t reaching any decision about whether Title VII applied to that situation or not. Federal rule of appellate procedure I think it’s 35 that governance on bond proceedings sets out standards.

Amy Coney Barrett: ([02:39:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9558.53))  
And this case didn’t create an intracircuit conflict or an intercircuit conflict. And so I didn’t think it met federal … All my vote means is that I didn’t feel like it satisfied the elevated high standard for en banc review, not that I thought it was correct. There’s a lot of deference to panels in my court.

Cory Booker: ([02:39:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9577.8))  
Right. But I mean, three judges disagreed with you and these were judges appointed by Republican and Democrat presidents. They saw the case about separate but equal really compelling. They thought the issue deserves closer scrutiny and you had an opportunity to join them, but you didn’t.

Cory Booker: ([02:39:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9592.06))  
You referred earlier to the problem of implicit racial bias in our system. This idea that despite the color of our skin, people can get a hearing. People can get justice. And this denial, it seems to me that you disagree with the prioritization at least of your three colleagues.

Amy Coney Barrett: ([02:40:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9612.69))  
Senator, eight of my colleagues chose not to take the case en banc and the en banc process is a different one than the merits decision-making process. To decide that case on the merits and know whether I would come out the same way, I would have had to participate in it and read the briefs and hear the arguments.

Cory Booker: ([02:40:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9629.76))  
And so the three justices were wrong than you disagree with your colleagues?

Amy Coney Barrett: ([02:40:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9633.69))  
The three judges who dissented, my three colleagues to my respect very much thought that it met the standard for en banc review. That’s a different question than the merits. And so I did disagree with them about whether to take it en banc. So I was within the group eight colleagues that decided that maybe that was being an issue we could take up in the future, but not to disturb the panel decision then. That’s not a merits determination.

Cory Booker: ([02:40:56](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9656.81))  
Thank you, your honor. Thank you. Moving quickly, Judge Barrett, five years ago, the Supreme Court ruled that the constitution protects the rights of same-sex couples to marry. This was an Obergefell case, which has been discussed today. The court declared the constitution grants LGBTQ Americans equal dignity in the eyes of the law. Hundreds of thousands of couples have built their lives on this decision. I’ve married some of them myself. On that day five years ago, the court fulfilled really that ideal of equal justice under law. And yet now the same-sex marriage is legal. We’ve seen efforts to try to undermine that decision.

Cory Booker: ([02:41:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9689.86))  
Justice Ginsburg wrote about legal rules that would, “Create two kinds of marriage, full marriage and skim milk marriage. I firmly believe that our laws shouldn’t allow discrimination against people on the basis of who they are.” I have a number of questions on this topic if I can get through them, but I wanted to offer you a further opportunity to address the issue that I don’t think you’ve got to fully address that my colleague brought up. When you did use the term sexual preference earlier today, rather than sexual orientation. Is there a difference and what is it?

Amy Coney Barrett: ([02:42:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9720.24))  
Senator, I really in using that word did not mean to imply that I think that it’s not an immutable characteristic or that it’s solely a matter of preference. I honestly did not mean any offense or to make any statement by that.

Cory Booker: ([02:42:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9736.55))  
But by what you just said, you understand about that immutable characteristic. In other words, that one’s sexuality is not a preference, it is who they are. Is that what you’re saying?

Amy Coney Barrett: ([02:42:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9747.75))  
Senator, I’m saying I was not trying to make any comment on it. I fully respect all the rights of the LGBTQ community. Obergefell is an important precedent of the court. I reject any kind of discrimination on any sort of basis.

Cory Booker: ([02:42:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9762.96))  
So you say Obergefell’s decision. Well, what about your two colleagues? Excuse me, forgive me. What about Alito and Thomas who have said that the court has created a problem that only it can fix? They clearly don’t see that as a precedent worth following. You just said Obergefell is a precedent.

Amy Coney Barrett: ([02:43:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9784.21))  
Of course Obergefell is a precedent. It is an important precedent. As you pointed out, there are reliance interests now in Obergefell. As to why Justices Alito and Thomas have called for its overruling and the recent opinion that they issued, I can’t really speak-

Cory Booker: ([02:43:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9800.26))  
They call it a problem. Do you know what they’re referring to?

Amy Coney Barrett: ([02:43:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9803.13))  
Well, Senator Booker, I don’t know what Justices Thomas and Alito were thinking that. You’d have to ask them.

Cory Booker: ([02:43:28](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9808.77))  
So we’re now seeing cases where gay and lesbian Americans are being denied equal access to social security survivors benefits. One same-sex couple in Arizona was together for 43 years, got married, but one of them died six months later. And now the surviving spouse is being denied benefits because they weren’t married long enough after 43 years together in love. Does this violate the rule of equal treatment that the Supreme Court has laid down?

Amy Coney Barrett: ([02:43:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9834.92))  
Well, in Obergefell? Could you repeat the facts with this?

Cory Booker: ([02:43:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9839.45))  
They were together for 43 years. The law changed and allowed them to marry, they married, one died soon after. And they’re being denied survivor benefits because they weren’t married long enough because the law wrongfully denied them that equality.

Amy Coney Barrett: ([02:44:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9852.89))  
So that would be a legal question that would have to come up and be decided in the context of a real case. I mean, it’s playing that Obergefell recognizes the full right of same-sex couples to marry. But the question of what are the implications of that for benefits would be something that would come up with before a court later.

Cory Booker: ([02:44:30](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9870.86))  
But there are some precedents. Maybe I can ask a different question. Can a hairdresser refuse to serve an interracial couple’s wedding because they disapprove interracial marriages?

Amy Coney Barrett: ([02:44:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9880.34))  
Well, Loving v. Virginia follows directly from Brown and it makes unconstitutional any attempt to prohibit or forbid interracial marriage.

Cory Booker: ([02:44:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9890.91))  
Could they refuse to serve a black couple’s wedding?

Amy Coney Barrett: ([02:44:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9894.15))  
Could a baker or a florist refuse to? Title VII prohibits any sort of discrimination on the basis of race by places of public accommodation.

Cory Booker: ([02:45:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9906.29))  
How about an interfaith wedding?

Amy Coney Barrett: ([02:45:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9909.75))  
Well, Senator, I feel like you’re taking me down a road of hypotheticals that is going to get me into trouble here because as you know I can’t opine on how cases would be resolved. And I’ve said that whether they’re easy questions are hard questions. I can’t do that.

Cory Booker: ([02:45:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9924.15))  
So I’m not the lawyer that you are, but you seem to honor the precedents that are enough to protect discrimination against African- Americans, interracial couples. But you stop on saying that unequivocally about people stopping on religious discrimination or against a Muslim couple’s wedding or an interfaith wedding?

Amy Coney Barrett: ([02:45:41](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9941.23))  
Well Senator, I think what Title VII says as I’m sure you know is Title VII prohibits discrimination on the basis of race, on the basis of sex. All I can do is say refer to the statute, but of course as to whether there would be evidence to show or whether any particular encounter between a customer and a florist or a baker violated Title VII, that would be a case that would have to come up as I discussed with Senator Sasse with real litigants litigated on a full record. So you’re asking a series of hypotheticals.

Cory Booker: ([02:46:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9980.42))  
And so I’m assuming that you will not respond or for the same reasons you’ve uttered before you will not respond about whether a florist can refuse to serve a same-sex couple?

Amy Coney Barrett: ([02:46:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=9989.37))  
It sounds like you’re on your way to talking about Masterpiece Cakeshop and some of the cases that are very hotly contested and winding their way through the courts. Since I want to make sure that I’m not in a position where I’m eliciting any views that would bear on litigation that’s very active.

Cory Booker: ([02:46:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10005.05))  
And I guess you maybe can understand if we go back to the question that both I and Senator Hirono asked you about. What you said you didn’t mean to offend about whether it’s a choice or not. These are about are they immutable characteristics of an individual like their race. I just want to just close by saying the story of some folks in my home community of New Jersey, Emily Sonnessa and Jan Moore. They’ve been together for 51 years. They’ve raised three children. At last count and I think that that’s a good way of putting it, they have 18 grandchildren and 20 great-grandchildren. You know how families are.

Cory Booker: ([02:47:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10045.52))  
But for a long time, they had to keep their relationship and their love a secret. Finally, once same-sex marriage became legal, they got married and thanks to the Supreme Court decision in Obergefell, They can now enjoy their full rights. Judge Barrett, you’re asking the United States Senate to agree to have you replace Justice Ginsburg, which would tilt the balance of the court further to the right. Remember that it was Justice Ginsburg who warned against full marriage for some couples and skim milk marriage for others.

Cory Booker: ([02:47:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10074.35))  
Like so many couples in my state of New Jersey and around the country, Emily, Jan are worried about what might happen if the Supreme Court starts to peel back some of their hard fought rights. They believe that their love should be valued by their government and equally as a love of any other people. And they believe a lot of the rights that they now enjoy, which were denied in the past to African-Americans even to interracial couples, they believe that they should be able to preserve them. And so my time has expired. You’ve been very generous and has the chairman allowing me to go over. I’m grateful to have the opportunity to talk with you more tomorrow.

Amy Coney Barrett: ([02:48:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10111.68))  
Thank you, Senator Booker.

Cory Booker: ([02:48:32](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10112.4))  
Thank you very much.

Chairman: ([02:48:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10113.14))  
Thank you, Senator Booker. Senator Crapo and then we’ll take a break for supper. Thanks.

Senator Mike Crapo: ([02:48:39](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10119.96))  
Thank you, Mr. Chairman, and we’re four away from the finish today. Before I begin, I do have a couple of letters I’d like to submit for the record. One from the speaker of the Idaho House, Scott Bedke in support of Judge Barrett’s nomination and the other from the National Shooting Sports Foundation, also in support of the nomination, Mr. Chairman.

Chairman: ([02:49:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10143.46))  
Without objection.

Senator Mike Crapo: ([02:49:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10144.93))  
Thank you. And Judge Barrett, well, I’ll get to some new material, but a lot of what I do at the beginning, we’ll be going over things you’ve already said and you must think you had to say way too many times. I’m going to just be sure that we get some things nailed down once more. Before I do that, though, there’s been a lot said today that really needs to be responded to. This won’t be a question to you. These first two, I’m just going to quickly respond to a couple of them. The first was one of my colleagues, Senator Whitehouse spent a very long presentation trying to make the case that there is a lot of dark money out there trying to control the Supreme Court nominations and this whole process and the situation that we face today.

Senator Mike Crapo: ([02:49:56](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10196.07))  
I just want to set the record straight. These are actually some statistics that Senator Cruz quickly went through when he spoke. But yeah, there is dark money in politics and I think that we should get it out. What this means is that money that where you don’t know who the real donors are behind the entity that’s making the expenditures. Fortunately, we’re getting a lot of that out, but there’s still a lot there. The impression though that was left was that this dark money is all on one side. The reality is if you look at it, opensecrets.org, this data is from 2016, but I’ve seen that even later into 2018, and it’s the same kind of statistics.

Senator Mike Crapo: ([02:50:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10234.97))  
And that is that really the significant majority of the dark money is being spent in favor of the democratic side, rather than the Republican side. Of the top 20 organizations and individuals that they identified who contribute to super PACS, who then utilize the money in the way that was talked about, 14 of them give exclusively to Democrats. Of the top 10 on that list, only to give to Republicans. And the totals, by the way, were $422 million in this report going to Democrats and $189 million going to Republicans.

Senator Mike Crapo: ([02:51:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10271.92))  
So yeah, there is money in the system, which we can’t identify. A lot of this money by the way is going into ads against you, Judge Barrett but we can’t get it all out yet. I think we ought to get it out, but let’s not try to create the impression that this is just some one-sided circumstance that’s happening in the country. The other thing I want to go over first before I got into my questions is the same thing I went over yesterday. Because the allegations have been made again and again and again, that somehow we are rushing this case and somehow we are violating the history and the precedent of the way the Senate operates and the way the presidency operates when there is a vacancy in an election year.

Senator Mike Crapo: ([02:51:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10314.6))  
Some people count these things differently. There’s a statistic that I will use that will count all vacancies that have happened, whether the vacancy occurred in the election year or whether it just didn’t get resolved until the election year, but it doesn’t matter whether you just take the ones that arose in the election year, or if you take all of them that were resolved in the election year, the precedent is the same. It’s overwhelming.

Senator Mike Crapo: ([02:52:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10339.42))  
In every single case, the sitting president made a nomination, every case. In those cases in which the Senate was of the same party as the president, I’m going to use the one for all of the nominations that actually were dealt with in an election year, there were 29. 19 of them were when the party was the same as the president. 17 of those 19, the party moved ahead with the president’s nomination and the nomination was confirmed. 10 of those times, it was when the party was not the party of the president. In nine of those cases, the party that was not the party of the president declined to move forward until the next president was elected. Now that’s the precedent of the Senate. That’s what happened in 2016 when the Senate was of a different party than the president. And it’s what’s happening now when the Senate is the party of the president, and those are the facts, and that’s the precedent.

Senator Mike Crapo: ([02:53:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10404.82))  
In terms of the timing, I went through the timing then as well. I think you’re hearing started Judge Barrett on the 16th day from the day you were nominated. There’s a bunch of members of the Supreme Court whose nomination hearings started sooner than that, including Ruth Ginsburg, Ruth Bader Ginsburg. And so the fact is that normal procedures, appropriate timing and appropriate policy and precedent is being followed here as we move forward.

Senator Mike Crapo: ([02:53:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10433.73))  
Now having made those points once again, like I said, I will get into some new questions for you. But I’m going to go over a lot of things that you’ve already talked about because I really think it’s important that we just make it as clear as possible. You’ve talked about originalism and textualism. Is there a difference between those two things?

Amy Coney Barrett: ([02:54:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10454.15))  
They are the same basic approach, but we use originalism mostly to refer to interpreting the constitutional text and textualism we use to refer to interpreting statutory text. But they both involve the same principle, which is that one comes to the law and interprets it as it would have been understood by those at the time of its either its ratification in the case of the constitution or its enactment in the case of a statute. And that the law remains the law until it’s lawfully changed through democratic processes.

Senator Mike Crapo: ([02:54:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10488.3))  
All right. Thank you. And I assume you would consider yourself both an originalist and a textual?

Amy Coney Barrett: ([02:54:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10491.67))  
I do Senator Crapo.

Senator Mike Crapo: ([02:54:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10493.38))  
And you’ve written quite a bit about precedent and stare decisis. Could you just once again tell us what that is and maybe you could make a distinction between what-

Senator Mike Crapo: ([02:55:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10503.79))  
… And maybe you could make a distinction between what it means at the appellate level and at the Supreme Court level.

Amy: ([02:55:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10507.44))  
Sure. So there are two kinds of stare decisis. There’s horizontal stare decisis, which is say the Supreme Court’s obligation to follow its own precedent. And then there’s vertical stare decisis, which is my obligation right now on the seventh circuit to follow a Supreme Court precedent because it sits above me in the federal judicial hierarchy. For vertical precedent, there’s no question. I can’t buck what the Supreme court does. It sets the precedent and all lower courts must follow it. For horizontal precedent, for example, on my own court right now in the seventh circuit, the court that renders a precedent does have the ability to reconsider it under certain circumstances. Otherwise errors don’t get fixed and Plessy versus Ferguson would still be the law of the land.

Senator Mike Crapo: ([02:55:56](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10556.97))  
And you will, I’m sure, tell me, what are those… What are the rules there when you do horizontal re-evaluation?

Amy: ([02:56:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10562.61))  
Sure. So when a court decides whether or not to overrule a precedent, it considers first of all, is it wrong? And how egregiously wrong is it? That we can see in the Brown vs Board of Education decision, how that factor played. You also consider reliance interests, because as I said before, stare decisis is short for stand by the thing decided, and don’t disturb the calm. So courts don’t recklessly get in the business of just stirring up, disrupting people’s lives unless it’s the other factors, council, in favor of doing it. You consider whether the law has developed since the precedent in a way that undercuts the foundations of the precedent itself. Same for the facts. You also consider whether the precedent that you set has proved to be workable for the courts below you that must follow it. So in my case, on the seventh circuit, that would mean the district courts have we set out an articulation of the law and a case that lower courts can actually use.

Senator Mike Crapo: ([02:57:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10628.18))  
And so if I, to paraphrase here, if a judge in a horizontal situation, either a Supreme Court justice evaluating Supreme Court precedent, or a Circuit Court judge evaluating the Circuit Courts precedent, if they felt the precedent was wrong, that’s not enough.

Amy: ([02:57:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10647.21))  
That is not enough.

Senator Mike Crapo: ([02:57:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10649.54))  
And you have to have then the reliance and the other factors all falling into the right circumstance before a decision to actually overrule or overturn a precedent is made.

Amy: ([02:57:41](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10661.62))  
That’s true. And this might be a good time, Senator Crapo, for me to make one other point about horizontal stare decisis doctrine. Earlier, and I can’t remember which interchange it was, someone was pointing out, that I said, stare decisis should have weaker effect in constitutional cases. That’s actually what the Supreme Court has said. That’s a well-established principle of stare decisis doctrine itself. The court has said that it gives super strong effect to precedent in statutory cases because you all can always step in and fix any errors of statutory interpretation the court might make. But the court itself has expressly said that it gives weaker stare decisis effect in constitutional cases, because the only way to remedy an error is by constitutional amendment. So I just want to be clear that that is simply a restatement of the court’s own doctrine, that wasn’t something I invented.

Senator Mike Crapo: ([02:58:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10716.12))  
All right, I appreciate that. And you also mentioned earlier that there are some, I think you said six super precedents?

Amy: ([02:58:43](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10723.58))  
Let’s see. I can’t remember how many are on the list, but as I said, it’s in constitutional law scholarship, there are some precedents that scholars have identified as utterly beyond question that no serious person ever calls for their overruling.

Senator Mike Crapo: ([02:58:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10738.26))  
Could you… I think Brown versus Board of Education would be one of those.

Amy: ([02:59:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10742.24))  
Marbury versus Madison, which establishes the power of judicial review. Let’s see, the cases… It probably easier for me to just identify what the precedent stand for. So the power of judicial review, the power of the Supreme Court to refute judgments from state courts, the proposition that the 14th amendment applies only to state action, the incorporation of the fourth amendment, and by implication, the other rights in the Bill of Rights against the States. So they’re mostly structural foundational principles and they’re just so settled no one seriously challenges anymore.

Senator Mike Crapo: ([02:59:43](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10783.76))  
All right. Thank you. I appreciate that. I think that’s very helpful. And in this hearing you’ve been asked about at least three very significant Supreme Court precedents. And you’ve been asked whether you were asked to commit to overturn them, or whether you even had conversations with the president or his staff about them one. And I just want you to, again, give your answer on that because I want this to be very clear. Roe V wade, have you had any conversations with the president or with the white house staff, white house counsel, anyone, and have you made any commitments about how you would rule on any case dealing with that?

Amy: ([03:00:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10824.29))  
I have not Senator Crapo.

Senator Mike Crapo: ([03:00:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10826.36))  
Thank you. And the same set of questions with regard to Obergefell?

Amy: ([03:00:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10831.51))  
I’ve had no conversations with anyone in the white house staff about that case, my views of it, how I would rule.

Senator Mike Crapo: ([03:00:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10837.88))  
All right. And then finally, the current case, California V. Texas?

Amy: ([03:00:43](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10843.26))  
No conversations at all.

Senator Mike Crapo: ([03:00:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10845.77))  
All right. Thank you. Now, you also earlier testified that there’s a difference between judicial decision making and the process of making a judicial decision, versus say the process you would as a professor when writing an article or what have you. Could you just quickly get into that with me?

Amy: ([03:01:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10862.51))  
Sure. So a professor when writing law review articles or doing academic critique is kind of at a 10,000 foot level, you’re not in the trenches like a judge is because you are not deciding it in the context of a real case with real litigants in front of you, the adversarial process, where you have people on either side where you hear arguments and you consult with your colleagues and you write your opinion.

Amy: ([03:01:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10886.82))  
And I think one thing that’s worth pointing out about the judicial process is that I have had the experience of changing my mind at various points along the way. I’ve gone into oral argument more than once thinking I was going to rule one way, and then oral arguments changed my mind. Or I’ve gone into conference and my colleagues have changed my mind. I’ve even changed my mind, and this is not uncommon on the court, once I started writing an opinion, judges say it won’t right. Which means what you thought was right when you started writing it, you realize actually didn’t really work out. So I think that process and the fact that judges keep an open mind all the way through is evidence of how the judicial process really is unique in our system, and it is a different enterprise than academic critique.

Senator Mike Crapo: ([03:02:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10934.68))  
Thank you. I’ve been able to observe that a little bit. I clerked on the ninth circuit court of the three.

Amy: ([03:02:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10938.5))  
That’s right, you told me that.

Senator Mike Crapo: ([03:02:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10940.19))  
And so I’ve been able to observe that exact process in each of those steps that you talked about taking place and you’re right. That’s how it happens when it’s done properly. Next, I want to go to one more specific process type thing to make sure we all understand it right, and that’s the recusal. Interestingly, you’ve been asked by my colleagues on the other side to assure that you have made no commitments about case law, but that to give a commitment on recusal, you have said that there is a process for recusal as well, and that you would follow that. Could you please lay that out again once again for us?

Amy: ([03:02:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=10978.09))  
Yes. Recusal is a question of law because 28USC, 455, the recusal statute, actually obligates a judge to recuse in certain cases of either actual bias or apparent bias. And there are Supreme Court precedents interpreting the range of a judges obligations under that statute. There are also professional conduct committees to consult, and I think collaboration and consultation, as I’ve said before, with other justices is the typical practice, according to Justice Ginsburg’s description of it. So it is a legal question that’s governed by statute and precedent. So it’s not one that I can make an advanced resolution of.

Senator Mike Crapo: ([03:03:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11017.71))  
All right, thank you. Now I want to move to, frankly, back to California V Texas and the pre-existing conditions issue that has been raised by a number of my colleagues here. We’ve heard lot about the Affordable Care Act yesterday and today. I serve on the finance committee as well as the judiciary committee, and so this is an issue I really care about a lot. I’m passionate about ensuring that all individuals, especially Idahoans, have affordable quality healthcare coverage, and making sure that they have coverage for their pre-existing conditions is especially important, regardless of what one thinks about the Obamacare legislation. Reasonable people can disagree about the totality of the success of Obamacare, and this is something that I think should be remembered, but many of the policies in Obamacare were policies that on which we had agreement between Republicans and Democrats, as we moved forward at that time, trying to craft a healthcare law. People may recall this was being negotiated in the finance committee for a quite a while before President Obama pulled it back and then brought his own statute out.

Senator Mike Crapo: ([03:04:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11092.08))  
And one of the things that we had agreement on was protecting pre-existing conditions back then, there was no fight over that. And in fact, I think every single US Senator wants to protect access to coverage for patients with pre-existing conditions, Republicans and Democrats. So here we are now talking about the Obamacare legislation that was pushed through the Senate when there was a Senate and a president of the same party and the ability to avoid a filibuster. And we’re now looking at legislation challenging one part of that. Again, you’ve talked about this, but I’d like you to just to set up this next question, there’s a difference between NFIB versus Sebelius, the case which you have made some commentary on, and Texas V California. Could you tell me the difference?

Amy: ([03:05:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11146.17))  
Yes. NFIB versus Sebelius involved whether the mandate violated the con… It was framed initially as a case about whether the mandate violated the commerce clause and the majority in that case, as I’ve discussed in earlier interchanges, interpreted the mandate provision to be a tax rather than a penalty. And Chief Justice Roberts said that he thought it was justified as an exercise of Congress’s taxing power, but would have been invalid under the commerce clause.

Amy: ([03:06:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11177.2))  
Now, the new case that the Supreme Court is poised to hear involves a different question. If the mandate, which has now been zeroed out, the initial question does resemble NFIB versus Sebelius because the initial question is, is something a tax if it’s $0? So is it still a tax? And if it’s not a tax, can it be justified under Congress’s taxing power? But severability, even assuming that it is no longer a tax because it’s zeroed out, the next question is if that provision is unconstitutional, does just that provision become inactive, so to speak, or does the whole statute fall? And that is the question of severability. So in some respect, whether one thought that the mandate was unconstitutional or not, the act would have to be found, that would have to be an unseparable.

Senator Mike Crapo: ([03:07:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11235.61))  
You may not know the answer to this, but I believe that in the last session of the Supreme Court, the seven members of the court said that there’s a very strong presumption in favor of severability, rather than knocking down an entire status.

Amy: ([03:07:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11249.64))  
That is true. It’s an established doctrine and it was reiterated even last term.

Senator Mike Crapo: ([03:07:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11256.42))  
So did you participate in a moot court case on this last month or in the last near future?

Amy: ([03:07:43](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11263.61))  
I did.

Senator Mike Crapo: ([03:07:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11264.34))  
Can you tell us what a moot court case is?

Amy: ([03:07:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11268.43))  
So William and Mary Law School has every year, what it calls its Supreme Court preview and it includes a moot court case. There’s a long tradition of moot court exercises at law schools. Sometimes they’re called mock trials, sometimes they’re called moot courts, that’s when they’re appellant, and it’s a chance to educate the community around the law school, the students, or in the case of this William and Mary program, it also draws in people from around Williamsburg so that they can see how the judicial process works.

Senator Mike Crapo: ([03:08:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11299.53))  
And judges often participate in moot courts, Right?

Amy: ([03:08:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11303.66))  
Judges often participate in moot courts, and in this particular one, there were maybe comprising the panel, the conference involves several other events, but this moot court involved a panel, it was supposed to be a mock argument for this case. And there were about four judges, a couple of law professors, and some journalists, who were on the panel with advocates, fleshing out the case so that we did it by Zoom because of the pandemic, but so that students could see how the process might look.

Senator Mike Crapo: ([03:08:57](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11337.46))  
And so what did the moot court decide?

Amy: ([03:09:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11340.77))  
Well, I do want to preface this Senator Crapo by saying it was an educational exercise.

Senator Mike Crapo: ([03:09:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11345.14))  
I understand.

Amy: ([03:09:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11345.89))  
So it was made very clear to the audience, both at the outset, and then in the deliberation room, and then outside, that was not designed to reflect the actual views of any of the participants, and nor could it, because this was show up, you’re not reading the briefs diving deep down, and ya lot of times people change their votes in the deliberation room just for the sake of mixing it up and making it interesting.

Senator Mike Crapo: ([03:09:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11374.83))  
I understand. And I appreciate you making that clarification.

Amy: ([03:09:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11375.72))  
Yeah, I just want to make clear the context. The vote was in the panel, the majority said that the mandate was now a penalty and was unconstitutional, but severable. I think there was also group in a minority who said there was no standing. To be honest now, I can’t remember. Maybe there was, I could be wrong about this, and I feel like there’s maybe another minority that said it wasn’t unconstitutional.

Senator Mike Crapo: ([03:10:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11407.06))  
And how did you vote?

Amy: ([03:10:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11407.79))  
I’ve voted to say that it was unconstitutional, but severable.

Senator Mike Crapo: ([03:10:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11411.63))  
All right. So you voted in favor. The one clue we might have as to your thoughts on the issue, even though this was just an exercise, and you didn’t have the whole case presented, and I understand that. I’ll just say to the viewers, the one clue we have is your ruling in this moot court case. And I think that’s kind of an answer, frankly, to a lot of those who are raising the specter that you’re going to try to take the whole affordable care act away from everyone because of this very narrow case that is in front of the Supreme Court.

Amy: ([03:10:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11444.31))  
Although I do want to be very clear Senator Crapo for the record that it wasn’t designed to reflect my actual view. So to the extent that people think I might have been signaling to the president or anyone else what my views on the affordable care act are, they couldn’t have taken any signal from that certainly.

Senator Mike Crapo: ([03:11:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11462.38))  
I understand.

Amy: ([03:11:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11462.81))  
I wasn’t trying to signal anything because it was a mock exercise.

Senator Mike Crapo: ([03:11:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11466.5))  
It was a mock case. It was a moot court. I understand that very much. Let me just go into a couple of other issues here. In fact, I can hit him very fast. Senator Ernst mentioned the Orchard Hill versus the Army Corps of Engineers case, on the waters of the United States. That is a big deal in Idaho, and frankly, in most of the Western United States, most of the entire United States, and I appreciated your ruling. And I’m just going to tell you, I’m not going to ask you a question about it. I appreciated your ruling.

Senator Mike Crapo: ([03:11:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11500.99))  
I am going to ask you a question about the Chevron doctrine and this is one of those you may not be able to respond to, but what would you tell me what the Chevron doctrine is?

Amy: ([03:11:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11512.94))  
Sure. So I got into this a little bit with Senator Ernst. The Chevron doctrine is the doctrine that when a statute is clear, then that’s end of case. But if Congress passes a statute, that’s giving an agency authority, or that’s describing the boundaries of an agency’s authority and there’s ambiguity in that statute, then the court will treat that ambiguity as a delegation to the statute, a delegation to the agency, to fill in the details.

Senator Mike Crapo: ([03:12:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11540.05))  
Yeah. And I’ll just tell you, I disagree with that doctrine. I think that the courts ought to have the ability to interpret the statute, and if it’s ambiguous, they should interpret it as best they can. And that the interpreter in our system should not be the agency that is enforcing the statute. I think the courts should oversee this. Now, that’s just my opinion. So the question that you probably can’t answer is what’s your opinion?

Amy: ([03:12:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11567.21))  
You’re right. I can’t answer Senator Crapo.

Senator Mike Crapo: ([03:12:49](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11569.45))  
Okay. Well, thank you very much. I just had another couple of quick questions. I was going to go into the Heller case. Well, I will ask you. Tell me what do you believe the basic ruling of Heller is?

Amy: ([03:13:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11583.64))  
The basic ruling of Heller is that the second amendment protects an individual right to bear arms for self-defense.

Senator Mike Crapo: ([03:13:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11591.3))  
So if I were to characterize it as the Heller case reaffirmed that the right to bear arms is one of the rights guaranteed in the Bill of Rights to individuals.

Amy: ([03:13:22](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11602.85))  
That is what Heller held.

Senator Mike Crapo: ([03:13:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11603.81))  
That’s what Heller held. Okay. I do have a number of additional questions, which were just softballs but-

Amy: ([03:13:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11613.39))  
I like softballs.

Senator Mike Crapo: ([03:13:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11615.15))  
Maybe you deserve softballs right now, but I think instead, I’ll give you the break and you can have-

Amy: ([03:13:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11620.64))  
I like that too sir.

Senator Mike Crapo: ([03:13:41](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11621.08))  
You can have the last five minutes of my time, or you’ll get done five minutes sooner. Thank you very much for being willing to do this. You are an outstanding nominee, and I’m very glad to be able to support you.

Amy: ([03:13:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11633.66))  
Thank you, Senator Crepo.

Speaker 1: ([03:13:57](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11637.16))  
Thank you. With that goodwill in mind, we’ll break and we’ll come back say 6:50 and give us about 30 minutes to grab a bite. And we’ll start with Senator Harris when we get back.

Senator Dianne Feinstein: ([03:14:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11661.21))  
Mr. Chairman, judge, it’s wonderful to see you here also with the family that I have been observing, they sit still, quiet. You’ve done a very good job.

Amy: ([03:14:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11673.33))  
I have eyes in the back of my head, so they know I’m watching.

Senator Dianne Feinstein: ([03:14:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11675.84))  
I was wondering if you might introduce us to them.

Amy: ([03:14:39](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11679.2))  
Sure. So I have my husband Jesse, my son JP, my daughter Emma, my daughter Juliette, my daughter Tess, my daughter Vivian, and my son Liam. And then behind them are my six siblings who are with me today. I’ll start the side right behind Vivian. It’s my sister Vivian, my sister Eileen, my brother Michael, my sister Megan and my sister Amanda. And is Carrie in the room? And my sister, Carrie is sitting right over there.

Senator Dianne Feinstein: ([03:15:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11710.05))  
You don’t have a magic formula for how you do it and handle all the children and your job and your work and your thought process, which is obviously excellent, do you?

Amy: ([03:15:22](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11722.28))  
It’s improv.

Senator Dianne Feinstein: ([03:15:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11724.69))  
Yes. Well, let me begin with a question that the chairman touched on, and it’s of great importance I think because it goes to a woman’s fundamental right to make the most personal decisions about their own body. And as a college student in the 1950s, I saw what happened to young women who became pregnant at a time when abortion was not legal in this country. I went to Stanford, I saw the trips to Mexico, I saw a young women try to hurt themselves, and it was really deeply concerning.

Senator Dianne Feinstein: ([03:16:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11770.72))  
During her confirmation hearing, before this committee in 1993, Ruth Bader Ginsburg was asked several questions about her views on whether the constitution protects a woman’s right to abortion. She unequivocally confirmed her view that the constitution protects a woman’s right to abortion. And she explained it like this, and I quote: the decision whether or not to bear a child is central to a woman’s life, to her well-being and dignity. It’s a decision she must make for herself. When government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choice. End quote.

Senator Dianne Feinstein: ([03:16:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11819.92))  
At one point, our former colleague Orrin Hatch, then the ranking member of this committee, commended her for her being quote, very forthright in talking about that, end quote. So I hope, and you have been thus far, be equally forthright with your answers. In planned Parenthood of Southeastern Pennsylvania versus Casey, Justice Scalia, as was said earlier, joined the descent, which took the position, and I quote, we believe that Roe was wrongly decided and that it can and should be overruled, consistent with our traditional approach to stare decisis and constitutional cases. Do you agree with Justice Scalia’s view that Roe was wrongly decided?

Amy: ([03:17:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11873.96))  
So Senator I do want to be forthright and to answer every question so far as I can. I think on that question, I’m going to invoke Justice Kagan’s description, which I think is perfectly put. When she was in her confirmation hearing, she said that she was not going to grade precedent or give it a thumbs up or thumbs down, and I think in an area where precedent continues to be pressed and litigated, as is true of Casey, it would actually be wrong and a violation of the canons for me to do that as a sitting judge. So if I express a view on a precedent one way or another, whether I say I love it, or I hate it, it signals to litigants that I might tilt one way or another and a pending case.

Senator Dianne Feinstein: ([03:18:38](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11918.66))  
So on something that is really a major cause, with major effect on over half of the population of this country, who are women after all, it’s distressing not to get a straight answer. So let me try again. Do you agree with Justice Scalia’s view that Roe was wrongly decided?

Amy: ([03:19:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11944.41))  
Senator, I completely understand why you are asking the question, but again, I can’t pre-commit or say “Yes, I’m going in with some agenda”, because I’m not. I don’t have any agenda. I have no agenda to try to overrule Casey. I have an agenda to stick to the rule of law and decide cases as they come.

Senator Dianne Feinstein: ([03:19:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11967.82))  
Well, as a person, I don’t know if you’ll answer this one either, do you agree with Justice Scalia’s view that Roe can and should be overturned by the Supreme Court?

Amy: ([03:19:41](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=11981.67))  
Well, I think my answer is the same because that’s a case that’s litigated. Its contours could come up again and in fact do come up. They came up last term before the court. So I think what the Casey standard is, and that’s just, it’s a contentious issue, which is I know, one reason why it would be comforting to you to have an answer, but I can’t express views on cases, or pre-commit to approaching a case any particular way.

Senator Dianne Feinstein: ([03:20:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12014.67))  
Well, that makes it difficult for me, and I think for other women also on this committee, because this is a very important case and it affects a lot of people, millions and millions of women, and you could be a very important vote. And I had hoped, you would say, as a person, you’ve got a lovely family, you understand all the implications of family life, you should be very proud of that. I’m proud of you for that. But my position is a little different. You’re going on the biggest court of this land with a problem out there that all women see one way or another in their life, not all, but certainly married women do and others too. And so the question comes, what happens? And will this justice support a law that has substantial precedent now? Would you commit yourself on whether you would or would not?

Amy: ([03:21:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12085.14))  
Senator what I will commit is that I will obey all the rules of stare decisis. That if a question comes up before me about whether Casey or any other case should be overruled, that I will follow the law of stare decisis, applying it as the court has articulating it, applying all the factors, reliance, workability, being undermined by later facts and law, just all the standard factors. And I promise to do that for any issue that comes up, abortion or anything else, I’ll follow the law.

Senator Dianne Feinstein: ([03:21:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12118.13))  
Well, I think that’s expected. And well, I guess I’ve gone as far as I can. Let me go to another issue. This country is facing great gun violence. There’s been a surge in gun sales during the COVID-19 crisis, which has led to more lives being needlessly lost. According to the Gun Violence Archive, excuse me, an independent research organization, there were 60 mass shootings in May alone. These shootings killed 40 people, they hurt 250 more.

Senator Dianne Feinstein: ([03:22:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12157.57))  
Also, there’s been a troubling spike in gun sales. Americans bought approximately 2 million guns this past March. It’s the second highest month ever for gun sales. That figure does not take into account all the gun sales that could not be completed because the purchaser failed a background test, a check, excuse me, a number that has also skyrocketed. For example, this past March, the FBI’s background check system blocked 23,692 sales, more than double the 9,500 sales blocked in March of 2019. Do you agree that federal state and local governments have a compelling interest in preventing a rise in gun violence, particularly during a pandemic?

Amy: ([03:23:39](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12219.33))  
Well Senator of course, the constitutionality of any particular measure that was passed by state or local governments, or by this body, would be subject to the same judicial process that I described with Senator Graham. What I will say, because this is just descriptive of Heller, Heller leaves room for gun regulations. And that’s why there has been a lot of litigation in the lower courts, which makes me constrained not to comment on the limits of it, but Heller does not make a right absolute by it says so in the opinion.

Senator Dianne Feinstein: ([03:24:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12253.41))  
Well, let me ask one more question. In a recent descending opinion that you wrote, you said there was quote, no question, end quote, that quote, keeping guns out of the hands of those who are likely to misuse them, quote, is quote a very strong governmental interest. Do you stand by that statement?

Amy: ([03:24:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12276.29))  
So I don’t… Let’s see. I can’t remember precisely the words of Cantor, which is the case in which I descended.

Senator Dianne Feinstein: ([03:24:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12285.13))  
That’s correct. Cantor V Barr.

Amy: ([03:24:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12287.87))  
Cantor V Barr. What I said in that opinion I stand by, which is that the original meaning of the second amendment, and I went through a lot of detailed history, and that case does support the idea that governments are free to keep guns out of the hands of the dangerous. So for example, the mentally ill, others who would be likely to misuse guns.

Senator Dianne Feinstein: ([03:25:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12311.68))  
So where does that leave you on Roe? The chairman asked, I thought a very good question, for many people and particularly for women, this is a fundamental question. We all have our moral values. We have our religions. We live by that. I respect you and your family for doing just that. But this is a very real problem out there, and if you could be more specific in any way with respect to how you would view your place on the court with respect to controlling weapons in this country.

Amy: ([03:25:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12355.83))  
I think what I can say is that my opinion, and Cantor shows how I approach questions as a matter of judicial philosophy. I spent a lot of time in that opinion looking at the history of the second amendment, and looking at the Supreme Court’s cases. And so the way in which I would approach the review of gun regulation is in that same way, to look very carefully at the text, to look carefully at what the original meaning was, that that was the method that both the majority and descent and Heller took. So I promised that I would come to that with an open mind, applying the law as I can best determine it.

Senator Dianne Feinstein: ([03:26:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12394.67))  
Okay, let me move on. One of my constituents, Cristina Garcia, was able to obtain insurance coverage and have surgery that saved her eyesight only before the Affordable Care Act. Her experience is not unique. Senator Tammy Baldwin has a constituent, Jimmy Anderson, in her home state of Wisconsin and she asked that this story be shared.

Senator Dianne Feinstein: ([03:27:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12422.34))  
Jimmy is a 34 year old and member of the Wisconsin state legislature. In 2010, a drunk driver hit the family’s car as they were returning home from celebrating Jimmy’s 24th birthday. Jimmy’s mother, father, and little brother were killed in the accident. Jimmy was paralyzed from the waist down. His medical recovery was intense. As Jimmy has said, quote, doctors managed to patch me up with dozens of stitches and multiple surgeries and about a pound of steel on my spine, end quote. But soon after his insurance company told him he was nearing his lifetime maximums and he would have to pay for the rest of his health care expenses.

Senator Dianne Feinstein: ([03:27:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12472.88))  
As Jimmy explains, quote, with hundreds of thousands of dollars still left to go, I don’t know what I was going to do. I was scared. I was terrified. I was just a student. I didn’t have that kind of money. Fortunately, a few days later, the insurance company sent him another letter. This one informed him that the provisions of the ACA had kicked in which meant there were no longer lifetime maximums, and his care would be covered. In Jimmy’s own words, I was able to put my life back together and I credit the Affordable Care Act for that. Judge Barrett, how should the loss of ACA’s protection against lifetime coverage caps, caps that can be used to end coverage for life-saving care, factor into a court’s consideration of the validity of the ACA?

Amy: ([03:28:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12534.3))  
Senator, so far as I know the case next week, doesn’t present that issue. It’s not a challenge to pre-existing conditions, coverage, or to the lifetime maximum relief promote cap.

Senator Dianne Feinstein: ([03:29:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12552.19))  
Well, what is your view?

Amy: ([03:29:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12554.57))  
Of how it should factor in? Let’s see, I think that any issue that would arise under the Affordable Care Act, or any other statute, should be determined by the law, by looking at the text of the statute, by looking at precedent, the same way that it would for anyone. And if there were policy differences, or policy consequences, those are for this body. For the court, it’s really a question of adhering to the law and going where the law leads, and leaving the policy decisions up to you.

Senator Dianne Feinstein: ([03:29:49](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12589.09))  
For me, my vote depends a lot on these responses because these are life or death questions for people. It’s my understanding that you were critical of Justice Roberts for upholding the ACA.

Senator Dianne Feinstein: ([03:30:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12603.43))  
… critical of Justice Roberts for upholding the ACA, stating that he quote, “Pushed the Affordable Care Act beyond its plausible meaning to save the statute,” end quote. And in what way did the Chief Justice go beyond the ACA’s plausible meaning?

Amy: ([03:30:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12623.55))  
So I’ve written about this, and that description is consistent with the way the Chief Justice described in his own majority, that was King v. Burwell, where the court had to decide whether the phrase, “Established by a state,” also included exchanges that were established by the federal government, and the majority in that case, acknowledged that treating the phrase, “Established by a state,” as including exchanges established by the federal government, was not the most natural reading, but for other reasons, other policy reasons and canons of interpretation, they chose to adopt the less natural reading.

Senator Dianne Feinstein: ([03:31:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12663.32))  
You see, for me, the case coming up, California v. Texas, puts a whole new weight on your nomination, because the Affordable Care Act is now being so well accepted. I represent the largest state, as does Senator Harris, that we have, and there are just over 10 million people dependent on the activities under this act, and that they be sustained. And so, there is really great concern about what your view is. That case is coming up, can you give us at least your view?

Amy: ([03:31:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12715.37))  
Well, Senator, the issue in the case that’s coming up doesn’t involve… It’s not the same issue as the ones in NFIB versus v. Sebelius, or King v. Burwell. It’s a different issue, so.

Senator Dianne Feinstein: ([03:32:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12727.69))  
Well, then give us both.

Amy: ([03:32:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12733.61))  
Let’s see. So what I’ve said, which you quoted to me, was that I thought that the interpretation of the phrase, “Established by a state,” was stretched when the court held that it was established by the federal government. That’s not the issue in California v. Texas, the issue in California v. Texas is if, whether now that Congress has just completely zeroed out the mandate, whether it’s still a tax or a penalty, and even if so, is it constitutional, and then even, so is that fatal to the statute? There’s a doctrine called severability, which sounds like legalese, but what it means is, is it okay with the statute? Could you just pluck that part out and let the rest of the statute stand, or is that provision which has been zeroed out so critical to the statute, that the whole statute falls? So really, the issue in the case is this doctrine of severability, and that’s not something that I’ve ever talked about with respect to the Affordable Care Act. Honestly, I haven’t written anything about severability that I know of at all.

Senator Dianne Feinstein: ([03:33:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12804.98))  
So you have no thoughts on the subject?

Amy: ([03:33:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12807.65))  
Well, it’s a case that’s on the court’s docket, and the canons of judicial conduct would prohibit me from expressing a view.

Senator Dianne Feinstein: ([03:33:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12815.92))  
Okay, I’ll move on. On July 30th, 2020 President Trump made claims of voter fraud and suggested he wanted to delay the upcoming election. Does the Constitution give the President of the United States the authority to unilaterally delay a general election under any circumstances? Does federal law?

Amy: ([03:34:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12840.97))  
Well, Senator, if that question ever came before me, I would need to hear arguments from the litigants, and read briefs, and consult with my law clerks, and talk to my colleagues, and go through the opinion writing process. So, if I give off the cuff answers, then I would be basically a legal pundit, and I don’t think we want judges to be legal pundits. I think we went judges to approach cases thoughtfully and with an open mind.

Senator Dianne Feinstein: ([03:34:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12869.51))  
Okay, let me try something else. In 2017, in a case called EEOC v. AutoZone, the Seventh Circuit, your circuit, issued an opinion which permitted an employer to intentionally assign its employees to specific stores, due to their race. The dissent, in this opinion, argued the decision permitted employers to legally establish separate but equal facilities, and argued if upheld, this decision would be quote, “Contrary to the position that the Supreme Court has taken in analogous equal protection cases, as far back as Brown v. The Board of Education.” The case was appealed to the full panel of the Seventh, and you sided, as I understand it, with the majority, to deny a rehearing and let the opinion stand. Is that correct?

Amy: ([03:35:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12931.61))  
That is correct, and I think I need to give a little context for what it means to vote to deny to rehear something en banc. Our court, just like the Supreme Court and the certiorari process, doesn’t take cases just because we think the panel got it wrong. There’s a lot of deference to panels, and Rule 35 of the Rules of Appellate Procedure constrains and limits the times in which we take the resources of the full court to rehear a case. So I was not on that panel, and I did not express a view on the merits. A vote to deny to hear something en banc is, like a vote, not to deny certiorari, not a vote that expresses a view on the merits.

Senator Dianne Feinstein: ([03:36:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12975.42))  
Okay.

Amy: ([03:36:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12975.67))  
It was a statutory case, it was not an equal protection case.

Senator Dianne Feinstein: ([03:36:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12978.81))  
Let me ask you a question, as a person.

Amy: ([03:36:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12983.94))  
Yes.

Senator Dianne Feinstein: ([03:36:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=12984.56))  
If an employer can transfer an employee based solely on his or her race, and that does not constitute a materially adverse employment action because it was purely lateral job transfer, please explain what factors must be present for a policy based on race, to violate Brown v. The Board’s prohibition of separate but equal.

Amy: ([03:36:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13012.37))  
Well, Senator, to my knowledge, Brown wasn’t at issue in the majority opinion, it turned on statutory language in Title VII. But again, I didn’t express a view on the merits, and so I can’t comment on whether I think that the panel majority got that right or got that wrong. You That’s an issue that may well come before me, even in the Seventh Circuit. Some may press for its overruling, and I may be on a panel that has to decide whether that precedent was wrong.

Senator Dianne Feinstein: ([03:37:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13041.3))  
Let me ask you as a person, do you have a general belief?

Amy: ([03:37:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13046.57))  
As a person, I have a general relief that racism is abhorrent.

Senator Dianne Feinstein: ([03:37:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13051))  
That racism is what?

Amy: ([03:37:32](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13052.71))  
Abhorrent.

Senator Dianne Feinstein: ([03:37:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13054.05))  
Well, I think we would all agree with that. So how should a lower court in the Seventh determine when race-based policies could constitute a materially adverse employment action?

Amy: ([03:37:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13074.87))  
Well, I’m not aware of cases presenting the exact same facts. Is that AutoZone?

Senator Dianne Feinstein: ([03:37:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13079.73))  
I’m just asking you for your view.

Amy: ([03:38:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13083.46))  
I know that the material adverse consequence was the standard at issue in that case. I have to confess that I would need to look at the statute and the precedent to… Well, even if I had a specific hypothetical in front of me, I couldn’t really say without looking at the statute and the precedent what factors are involved, because I wasn’t on that panel and haven’t decided a similar case.

Senator Dianne Feinstein: ([03:38:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13109.09))  
Okay. Let me go to another issue. The issue of LGBT equality is very personal for me. I spent two decades as a county supervisor and mayor of a city. I watched firsthand as the LGBT community fought for legal recognition of their lives, their relationships, their personal dignity. I was there before the loss, so I saw in San Francisco what was happening.

Senator Dianne Feinstein: ([03:39:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13141.29))  
I want to speak briefly about one couple, Del Martin and Phyllis Lyon, who I met in the 1970s. They were vibrant members of San Francisco’s community. I was President of the Board of Supervisors, they worked with me to pass a city-wide ordinance in 1978, that provided critical protection against discrimination in employment, housing, and public accommodations. At that time, this was one of the strongest protections for the gay community in the entire nation. We’ve come a long way since then, and I think we should never go back. In June of 2008, 58 years after they met, my two friends were finally able to marry, when the California Supreme Court ruled that same sex couples cannot be denied the fundamental right to marry. Del died two months later.

Senator Dianne Feinstein: ([03:39:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13199.56))  
Because of the federal Defense of Marriage Act, DOMA, Phyllis was denied social security survivor benefits, even though her spouse had paid into this basic safety net for her entire working life. Phyl had to rely on the help of friends and fellow activists. In 2013, as you probably know, because you know so much about this, US v. Windsor, the Supreme Court struck DOMA down. Two years later, in Obergefell v. Hodges, the Supreme Court recognized that the fundamental right to marry could not be denied to LGBT Americans. Both decisions were decided by a five to four margin. Justice Ginsburg was in the majority. Justice Scalia dissented in both cases.

Senator Dianne Feinstein: ([03:40:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13255.76))  
Now, you said in your acceptance speech for this nomination, that Justice Scalia’s philosophy is your philosophy. Do you agree with this particular point of Justice Scalia’s view, that the US Constitution does not afford gay people the fundamental right to marry?

Amy: ([03:41:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13276.7))  
Senator Feinstein, as I said to Senator Graham at the outset, if I were confirmed, you would be getting Justice Barrett, not Justice Scalia. So I don’t think that anybody should assume that just because Justice Scalia decided a decision a certain way, that I would too, but I’m not going to express a view on whether I agree or disagree with Justice Scalia, for the same reasons that I’ve been giving. Justice Ginsburg, with her characteristic pithiness, used this to describe how a nominee should comport herself at a hearing: “No hints, no previews, no forecasts.” That had been the practice of nominees before her, but everybody calls it the Ginsburg Rule because she stated it so concisely, and it’s been the practice of every nominee since. So I can’t, and I’m sorry to not be able to embrace or disavow Justice Scalia’s position, but I really can’t do that on any point of law.

Senator Dianne Feinstein: ([03:42:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13332.22))  
Well, that’s really too bad because it’s rather a fundamental point for large numbers of people, I think in this country. I understand you don’t want to answer these questions directly, but you identify yourself with a justice that, you, like him, would be a consistent vote to roll back hard-fought freedoms and protections for the LGBT community. And what I was hoping you would say is that this would be a point of difference where those freedoms would be respected, and you haven’t said that.

Amy: ([03:42:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13374.95))  
Senator, I have no agenda, and I do want to be clear that I have never discriminated on the basis of sexual preference and would not ever discriminate on the basis of sexual preference. Like racism, I think discrimination is abhorrent. On the questions of law, however, I just, because I’m a sitting judge and because you can’t answer questions without going through the judicial process, can’t give answers to those very specific questions.

Senator Dianne Feinstein: ([03:43:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13405.67))  
Okay. Thank you very much. Thanks, Mr. Chairman.

Senator Chuck Grassley: ([03:43:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13435.27))  
Judge, I welcome you again, and you can rest for a minute because I’ve got some things to say to my colleagues, but more importantly, so people around the country understand what’s going on here. First of all, for your family and friends, I’m sure they’re very proud and they ought to be. I think everybody recognizes your sharp intellect, a deep understanding of, and even great reverence for the Constitution. Your legal experience and public service are impressive. Your dedication to mentoring young students and women in the legal profession ought to be admired by everybody in all respects you’re exceptionally qualified-

Mr. Chairman: ([03:44:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13480.65))  
[inaudible 03:44:39], apologize. Senator Harris, is she available? Senator Harris, if you could… There you are. We see you. Can you say something? Can you hear me, Senator?

Senator Kamala Harris: ([03:44:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13499.4))  
Yes, I can.

Mr. Chairman: ([03:45:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13500.37))  
Okay, great. Okay. The floor is yours. Senator Harris.

Senator Kamala Harris: ([03:45:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13505.29))  
Thank you, Mr. Chairman. First, I want to extend greetings to Judge Barrett, and I look forward to our conversation this evening.

Amy: ([03:45:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13513.23))  
Thank you, Senator.

Senator Kamala Harris: ([03:45:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13514.54))  
Thank you. Before I begin, I wanted to take a moment to talk directly with the American people about where we are, and how we got here. So we are in the middle of a deadly pandemic that has hit our country harder than any other country in the world. More than 215,000 of our fellow Americans have died, and millions more, including the President, Republican members of this committee, and more than 100 front line workers here at the Capitol Complex have been infected. This pandemic has led to an historic economic crisis, causing millions of workers to lose their jobs without warning, and 12 million Americans have lost their employer-based health insurance.

Senator Kamala Harris: ([03:46:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13563.9))  
The Senate, I strongly believe, must be and needs to be laser-focused on you, the American people, and help you get through this pandemic. To do so, the Senate urgently needs to pass critical financial relief for those who are struggling because of this pandemic, and many are struggling. People need help. They need help to pay their rent or mortgage. Parents need help putting food on the table. The millions of American workers who have lost their jobs need help making it through the end of the month, and small businesses need help so they don’t have to close their doors for good. But sadly, Senate Republicans have rushed to hold this Supreme Court confirmation hearing, rather than help those who are suffering through a public health crisis not of their making. As I said yesterday, these priorities are not the American people’s priorities.

Senator Kamala Harris: ([03:47:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13631.2))  
Since President Obama signed the Affordable Care Act into law, Senate Republicans’ number one priority has been to tear it down. And remember, before the ACA, the Affordable Care Act, insurance companies held virtually unchecked power over our healthcare system. They could refuse to cover basic medical expenses like maternity care, like mammograms, like prescription drugs, or hospital stays. Worst of all, if you were sick, they could deny you coverage altogether, and there was nothing you could do about it. Over the last nine years, Republicans in Congress have tried 70 times, 70 times, to repeal or roll back the ACA in the United States Congress. In 2013, Senate Republicans were so desperate to stop its success that they shut down the entire government for weeks.

Senator Kamala Harris: ([03:48:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13691.14))  
After President Trump was elected, Washington Republicans spent nearly a year trying to repeal the ACA, but I will always remember the thousands of Americans from all over our country in all walks of life, who crowded into the halls of the United States Capitol to require that lawmakers see their faces and understand how they would be hurt, if there was a repeal of the Affordable Care Act. Brave activists in the disability community staged sit-ins on the Hill. Seniors protested to keep prescription drugs affordable. Mothers and fathers walked the halls with their children and strollers, to show Congress the face of those who depended on the law, and doctors and nurses protested to protect their patients’ access to the care they desperately need.

Senator Kamala Harris: ([03:49:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13751.6))  
Together, with many of my colleagues, I joined civil rights and community leaders to speak to the thousands of people who gathered outside the Capitol, as they pleaded, as they begged with lawmakers to do the right thing. All of these dedicated Americans demanding that their voices be heard, and they made a difference. They made a difference. History will remember that late night, thumbs down movement when the great, great John McCain denied Republicans the opportunity to repeal the Affordable Care Act. And now, following a decade of failure, Washington Republicans have realized that the Affordable Care Act is working too well and helping too many people, to repeal it without facing serious political consequences.

Senator Kamala Harris: ([03:50:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13809.54))  
But what are they doing? After suffering the backlash they provoked by targeting the law in Congress, they decided instead to circumvent voters, and try to strike down the Affordable Care Act through the courts. Right now, the Trump administration and Senate Republicans are urging the Supreme Court to strike down the entire Affordable Care Act and all of its patient protections. Republicans are scrambling to confirm this nominee as fast as possible, because they need one more Trump judge on the bench before November 10th, to win and strike down the entire Affordable Care Act. This is not hyperbole. This is not a hypothetical. This is happening. And here’s what you have to know. People are scared. People are scared of what will happen if the Affordable Care Act is destroyed in the middle of a pandemic. There are more than 100 million Americans with pre-existing conditions like asthma, and diabetes, heart disease, who know that they could be denied coverage, are charged more by insurance companies, if Donald Trump is successful in getting rid of the Affordable Care Act. And because of the coronavirus, more than seven million people have now a pre-existing condition that they didn’t have earlier this year. Those who depend on the ACA are afraid of their lives being turned upside down, if the court strikes it down. They know what could happen.

Senator Kamala Harris: ([03:51:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=13911.28))  
And Judge Barrett, I will share with you and the American people, a list. No protections for pre-existing conditions, higher costs for healthcare for women, and people over the age of 50. Young adults kicked off their parents’ insurance, more expensive prescription drugs for seniors, insurance companies refusing to cover mental health care, insurance companies refusing to cover maternity care. No free mammograms, cancer screenings, or birth control. Insurance companies reinstating annual and lifetime caps, and more than 20 million Americans losing insurance at the worst possible time, again, in the midst of a pandemic, including nearly two million Texans, 607,000 North Carolinians, 288,000 South Carolinians, 227,000 Iowans, and 4.2 million Californians. And the pain of losing these protections would disproportionately be felt among the nine million African American, Latino, Asian, and Native Americans who gained coverage under the Affordable Care Act. But this isn’t about statistics. This is about millions of real people living real lives, who deserve their government and its institutions to see them and to heed their call.

Senator Kamala Harris: ([03:53:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14005.69))  
And I know a Republican member of this committee said earlier today that the people who will lose healthcare are somehow not relevant to this hearing. I disagree. Helping these people is supposed to be why we are all here, why we all ran for office in the first place, and I’m here to fight for people like Felicia Perez, and this is her. Felicia is a writer, a public speaker, and former high school teacher from Southern California, who now teaches at the University of Nevada, Reno. She has multiple pre-existing conditions, including arthritis, asthma, and a rare autoimmune disorder that caused tumors that have wrapped around her optic nerve and part of her brain. Her life depends on periodic cancer-fighting infusions that cost $160,000 a year.

Senator Kamala Harris: ([03:54:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14064.16))  
Felicia is terrified. She knows that without the Affordable Care Act, she could not afford ongoing treatment, the treatment she needs to stay alive. And here’s exactly what she said, and I will quote, “My life is in the hands of people I do not know, who do not know me, who are essentially telling me I don’t matter, that my life doesn’t matter, that my health doesn’t matter, that the day-to-day quality of my life doesn’t matter, and that’s really hard.” Tragically, Felicia’s story is not unique. Her fears are shared by millions of Americans. The Affordable Care Act and its protections hinge on this Supreme Court and the outcome of this hearing.

Senator Kamala Harris: ([03:55:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14117.2))  
Before being elected, President Trump promised that every justice he put forward would quote, “Will do the right thing, unlike Bush’s appointee, John Roberts, on Obamacare,” unquote. Judge Barrett, 18 months later, you criticized the Chief Justice for upholding the Affordable Care Act, when you concluded quote, “Chief Justice Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute.” My question is, how many months after you published that article, did President Trump nominate you to be a judge on the Court of Appeals?

Amy: ([03:55:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14159.96))  
Senator Harris, I apologize. I don’t remember the timing of that article. I was nominated, I believe my nomination to the Court of Appeals was announced in May of 2017.

Senator Kamala Harris: ([03:56:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14173.72))  
That’s correct.

Amy: ([03:56:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14174.6))  
But I don’t remember when the article came out.

Senator Kamala Harris: ([03:56:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14177.28))  
The article was published in January of 2017, so that would’ve been five months later. Justice Ginsburg, whose seat you are seeking to fill, provided the critical fifth vote in a 5-4 decision that upheld the Affordable Care Act. So let’s lay this out for everyone who’s watching. As I have discussed previously, one, Republicans have spent a decade trying to destroy the Affordable Care Act. Two, Donald Trump promised to name a Supreme Court justice and Supreme Court justices who would tear down the Affordable Care Act. Three, President Trump is before the Supreme Court right now, arguing that it’d be struck in its entirety. Four, the Supreme Court could be just one vote away from overturning the Affordable Care Act and all of its protections, including for everyone who has a pre-existing condition, or may ever get a preexisting condition. In other words, the Affordable Care Act and all its protections hinge on this seat and the outcome of this hearing, and I believe it’s very important that the American people understand the issues at stake, and what’s at play.

Senator Kamala Harris: ([03:57:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14255.34))  
Judge Barrett, the day after President Trump announced your nomination to the Supreme Court, he tweeted quote, “Obamacare will be replaced with a much better and far cheaper alternative, if it is terminated in the Supreme Court,” end quote. But in reality, there is no alternative that protects the millions of Americans who depend on the Affordable Care Act every day. The horrifying truth is that President Trump and the Republicans in Congress are fighting to take healthcare away from the American people in the middle of a pandemic, as I have said. President Trump has said that he wants to protect the American people’s healthcare, but the reality is right now, he is asking the Supreme Court to take it away. Period.

Senator Kamala Harris: ([03:58:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14303.14))  
Senator Klobuchar, Judge Barrett, asked you earlier today, but did not receive an answer. Prior to your nomination, were you aware of President Trump’s statements committing to nominate judges who will straight down the Affordable Care Act? And I’d appreciate a yes or no answer, please.

Amy: ([03:58:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14322.49))  
Well, Senator Harris, I want to be very, very careful. I’m under oath. As I’m sitting here, I don’t recall seeing those statements, but let’s see, I don’t recall seeing or hearing those statements, but I don’t really know what context they were in, so I guess I can’t really definitively give you a yes or no answer. What I would like to say is I don’t recall hearing about or seeing such statements.

Senator Kamala Harris: ([03:59:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14346.67))  
Well, I imagine you were surrounded by a team of folks that helped prepare you for this nomination hearing.

Amy: ([03:59:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14353.71))  
I have had-

Senator Kamala Harris: ([03:59:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14354.06))  
Did they-

Amy: ([03:59:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14354.96))  
Yes.

Senator Kamala Harris: ([03:59:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14356.02))  
Let me finish, if you don’t mind.

Amy: ([03:59:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14357.04))  
Oh, I’m so sorry.

Senator Kamala Harris: ([03:59:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14358.4))  
Did they inform you of the president’s statements, and that this might be a question that was presented to you during the course of this hearing?

Amy: ([03:59:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14367.83))  
When I had my calls with senators, it came up, many of the Democratic senators wanted to know about the Affordable Care Act, and to satisfy themselves that I had not made any pre-commitments to the president about it.

Senator Kamala Harris: ([03:59:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14382.62))  
And so, you then became aware of the president’s statement, is that correct?

Amy: ([03:59:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14390.14))  
Let’s see. Senator Harris, in the context of these conversations, I honestly can’t remember whether senators framed the questions in the context of President Trump’s comments, perhaps so. I think from my perspective, the most important thing is to say that I have never made a commitment, I’ve never been asked to make a commitment, and I hope that the committee would trust in my integrity, not to even entertain such an idea, and that I wouldn’t violate my oath if I were confirmed and heard that case.

Senator Kamala Harris: ([04:00:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14416.97))  
So, just so I’m clear and then we can move on, are you saying that you are now, before I said it, aware or not aware that President Trump made these comments about who he would nominate to the United States Supreme Court?

Amy: ([04:00:32](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14432))  
All right, Senator Harris, what I was saying, I thought you initially framed the question as whether I was aware before this nomination process began, and my answer to that question-

Senator Kamala Harris: ([04:00:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14440.73))  
I am now asking you, were you aware before this hearing began, that he said that?

Amy: ([04:00:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14446.3))  
So you’re changing, you’re asking me now whether I was aware before the hearing began?

Senator Kamala Harris: ([04:00:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14450.33))  
As a follow-up question, I am. Yes.

Amy: ([04:00:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14453))  
And what I said was that when I had my calls with Democratic senators, this question came up and I don’t recall, but it may well have been that they referenced those comments in the course of those calls. Even if so, that wasn’t something that I heard or saw directly by reading it myself.

Senator Kamala Harris: ([04:01:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14472.49))  
Senator Leahy asked you earlier today, but I think it bears repeating. Do you think it is important for the American people to believe that Supreme Court justices are independent, and fair and impartial? And that is a yes or no answer, please.

Amy: ([04:01:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14486.58))  
Yes, Senator Harris.

Senator Kamala Harris: ([04:01:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14489.04))  
A number of my colleagues have asked you today whether you would recuse yourself from cases on the Affordable Care Act. You did not directly answer their questions, and instead you described a process by which that would work or happen. And so my question is, isn’t it true that at the end of that process, regardless of that process, that it would be you who ultimately would make the decision about whether or not you would recuse yourself?

Amy: ([04:01:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14515.9))  
That is true, and I can’t have you elicit a commitment from me about how I would make that decision in advance. That would be wrong.

Senator Kamala Harris: ([04:02:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14524.41))  
Right, and what I’ve asked you is that is it not correct that that is the process, but ultimately, it would be you, and you alone, that would make the decision about whether you would be recused? You’ve already [inaudible 04:02:16] on the constitutionality of the Affordable Care Act, and that position satisfied the president’s promise to only nominate judges who would tear down the Affordable Care Act, and Senate Republicans rushed this process so that you could rule on this very case. The reasonable question about your impartiality will undoubtedly, hang over this court’s ultimate decision in the Affordable Care Act case, if you refuse to recuse yourself. I strongly believe that.

Senator Kamala Harris: ([04:02:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14568.15))  
Supreme Court justices routinely consider the consequences of their decisions on people’s lives. Earlier this year, the Supreme Court ruled against President Trump in his effort to repeal DACA protections for DREAMers. Children, of course, who had arrived in the United States, many before they could talk or walk. Chief Justice Roberts wrote the opinion for a 5-4 majority that included the crucial vote of Justice Ruth Bader Ginsburg. The court rejected the Trump administration’s attempt to end protections for DREAMers. Chief Justice Roberts said, “The administration had not taken into consideration the fact that many DREAMers relied on those protections when they started their careers and businesses, when they served in the military of the United States, when they bought homes, and when they started families.” Senator Hirono asked you whether it is appropriate for Supreme Court Justice to consider real world impacts. But you’re a sitting judge now, so my question is, in deciding whether to uphold government action, do you currently consider the consequences of your rulings on people’s lives?

Amy: ([04:04:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14648.54))  
Well, Senator Harris, that’s part of the decision of every case.

Senator Kamala Harris: ([04:04:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14653.86))  
And so you do?

Amy: ([04:04:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14656.27))  
Every case has consequences on people’s lives, so of course I do in every case. That’s part of the judicial decision making process.

Senator Kamala Harris: ([04:04:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14663.75))  
And if you are actually voted on the United States Supreme Court, would you do that there as well?

Amy: ([04:04:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14671.6))  
Senator, considering how the resolution of a dispute will affect parties, will affect people, is part of the judicial decision making process, and I will continue engaging in that process to the best of my ability.

Senator Kamala Harris: ([04:04:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14685.91))  
So if the Affordable Care Act is struck down, more than a hundred million Americans with pre-existing conditions like heart disease, diabetes, and cancer, would pay more for insurance or be denied coverage entirely. More than 20 million Americans could lose their health coverage entirely…

Senator Kamala Harris: ([04:05:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14702.52))  
20 million Americans could lose their health coverage entirely, including nearly three million black Americans and over five million Latino Americans who received access to health insurance because of the Affordable Care Act, and insurers will once again be able to discriminate against the more than 50% of African-Americans and nearly 40% of Latinos with pre-existing conditions. Insurance will be able to deny coverage to more than one quarter of Native Americans with conditions like diabetes, heart disease, and cancer. All of this in the midst of a pandemic that is not going away anytime soon. A pandemic that when age is taken into account has been three times as deadly for black, Latino, Pacific Islander and Native Americans. A pandemic that has killed approximately one in 1000 black Americans, one in 1200 Native Americans, and one in 1500 Latino Americans. Would you consider the 135 million people who gained protections under the Affordable Care Act when deciding a case that challenges that law?

Amy: ([04:06:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14777.57))  
Senator Harris, if I were to be confirmed and conclude that I was able to sit on the case pursuant to the recusal statute, and then if I heard the case and decided the case, I would consider all the protections that Congress put in place. As I said earlier during this hearing, the question would be figuring out whether Congress, assuming that the mandate is unconstitutional now, whether that consistent with your intent, this is Congress’s law, would permit this act to stand or whether the flawed portion of it could just be excised out. That is a question not of what judges want. It’s not a question of the Supreme Court. It’s a question of what Congress wanted in the statute. That is the statute that you enacted and extended this healthcare coverage to millions of Americans.

Senator Kamala Harris: ([04:07:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14836.58))  
What weight would you give the fact that 135 million Americans with preexisting conditions are now depending on the protections of the Affordable Care Act? What weight would you give that?

Amy: ([04:07:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14845.92))  
Well, Senator Harris, as I mentioned to Senator Hirono, stare decisis takes reliance interests into account because as I’ve said before, stare decisis is about keeping stability in the law. So the law often takes into account reliance interests. I can’t really say sitting here how they would play in our weigh in this case, because that’s part of the legal calculus of the case. So I can’t really give you the kind of commitment or pre-commitment that you’re asking for me of how I would weigh factors or how I would structure my decision-making process.

Senator Kamala Harris: ([04:07:57](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14877.24))  
I would ask you to consider if you are confirmed on the court, a credible benefit of the Affordable Care Act and that a destruction of its protections will have a devastating impact on millions, hundreds of millions of Americans. Judge Barrett, you testified yesterday that Justice Ruth Bader Ginsburg opened the door from any women in law. I certainly believe and know that to be true as a personal matter. She was a trailblazer for women’s equality and gender equity. As a law student, as a teacher, as a civil rights lawyer, and as the second woman ever to sit on the United States Supreme Court, Justice Ginsburg broke many barriers for women across the country. We, I believe, all fondly remember her as a person who had patience, she had the will and the vision to make our country a more equal place, and a more just place.

Senator Kamala Harris: ([04:09:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14944.01))  
One of the things she fought for was a woman’s right to control her own body and to make decisions about her own body and healthcare and reproductive choices. The Constitution of the United States protects a woman’s right to choose whether or when to become a parent. And it protects a woman’s right to choose abortion. Women of color, immigrant women, women with low incomes, and women in rural areas, face significant barriers when attempting to access birth control, cancer screenings, and comprehensive reproductive healthcare. Moreover, anti-choice activists and politicians have been working for decades to pass laws and file lawsuits designed to overturn Roe and the precedents that followed. The threat to choice is real.

Senator Kamala Harris: ([04:09:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=14999.88))  
Just last year, the court heard a case that gave it an opportunity to revisit and overturn its abortion precedent. In a case called June Medical Services, the Supreme Court struck down a medically unnecessary restriction that would have closed all but one abortion clinic in Louisiana. Chief Justice Roberts agreed with the court’s four liberal members that the court was bound by its own precedent to strike down the Louisiana law, because it was virtually identical to a Texas law that the court ruled unconstitutional in 2016. As a result, women in the state were able to receive the full range of reproductive care.

Senator Kamala Harris: ([04:10:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15046.31))  
But Chief Justice Roberts wrote his own separate opinion in the case to make clear that in the future, he could not be counted on to uphold a woman’s right to choose. Justice Ginsburg provided the critical fifth vote to strike down the unconstitutional abortion restriction in June Medical Services. So we must be honest about the impact of her passing and the impact it will have on the court’s decisions in cases regarding women’s access to reproductive healthcare.

Senator Kamala Harris: ([04:11:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15081.14))  
Now, my Republican colleagues have said that there is a minimal chance that the Supreme Court will overturn Roe, but back in January, 39 Republican Senators, including 10 members of this very committee, signed their names to a Supreme Court brief that asked the court to quote, “Take up the issue of whether Roe should be reconsidered and if appropriate, overruled.” So let’s not make any mistake about it.

Senator Kamala Harris: ([04:11:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15112.71))  
Allowing President Trump to determine who fills the seat of Ruth Bader Ginsburg, a champion for women’s rights, and a critical vote in so many decisions that have sustained the right to choose poses a threat to safe and legal abortion in our country. After all, President Trump said that overturning Roe V. Wade will quote, “Happen automatically in my opinion, because I am putting pro-life justices on the court.” Judge Barrett, several times today, you have quoted Justice Ginsburg’s testimony about not making predictions in future cases. However, she was far more forthcoming at her confirmation hearing about the essential rights of women.

Senator Kamala Harris: ([04:12:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15167.69))  
In 1993, justice Ginsburg’s confirmation hearing shows that she testified that quote, “The decision whether or not to bear a child is central to a woman’s life, to her well-being and dignity. It is a decision she must make for herself. When government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choices.” Then Judge Ginsburg went on to say, quote, “It is essential to women’s equality with man that she be the decision maker, that her choice be controlling. If you impose restraints that impede her choice, you are disadvantaging her because of her sex.” Unquote.

Senator Kamala Harris: ([04:13:43](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15223.87))  
Now, Justice Ginsburg did not tell the committee how she would vote in any particular case, but she did freely discuss how she viewed a woman’s right to choose. But Judge Barrett, your record clearly shows you hold a different view. In 2006, you signed your name to an advertisement published in the South Bend Tribune. It described Roe v. Wade as quote, “an exercise of raw judicial power” and called for putting, quote, “an end to the barbaric legacy of Roe v. Wade.” You signed a similar ad in 2013 that described Roe as quote, “infamous” and expressed opposition to abortion. Also in 2013, you wrote an article about Supreme Court precedent in which you excluded Roe from a list of well settled cases that you said, quote, “No justice would overrule, even if she disagrees,” suggesting of course, that you believe Roe is susceptible to being overturned.

Senator Kamala Harris: ([04:14:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15290.91))  
On the 40th anniversary of Roe, you delivered a speech in which you say that the court’s recognition of the right to choose was quote, “Created through judicial fiat rather than grounded in the Constitution.” During your tenure on the Seventh Circuit Court of Appeals, you have been willing to reconsider abortion restrictions that other Republican appointed judges found unconstitutional.

Senator Kamala Harris: ([04:15:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15319.35))  
As the Senate considers filling the seat of Justice Ruth Bader Ginsburg, who was straightforward enough in her confirmation hearing to say that the right to choose is quote, “Essential to woman’s equality,” unquote, I would suggest that we not pretend that we don’t know how this nominee views a woman’s right to choose and make her own healthcare decisions. Mr. Chairman, I ask unanimous consent that the following three documents be entered into the record. A letter opposing Judge Barrett’s nomination from the NAACP, a statement opposing Judge Barrett’s nomination from the Planned Parenthood Federation of America and Planned Parenthood Action Fund, and a report opposing Judge Barrett’s nomination from the NAACP legal Defense and Educational Fund.

Speaker 2: ([04:16:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15374.82))  
Without objection.

Senator Kamala Harris: ([04:16:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15376.51))  
Thank you, Mr. Chairman.

Speaker 2: ([04:16:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15377.83))  
Thank you. Thank you very much, Senator Harris. Senator Kennedy.

John Kennedy: ([04:16:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15386.72))  
Mr. Chairman, I have a letter here in support of Judge Barrett signed about 281 graduates and former classmates of hers at the extraordinary St. Mary’s Dominican High School in New Orleans, and I’d like to offer that into the record.

Speaker 2: ([04:16:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15408.24))  
Without objection.

John Kennedy: ([04:16:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15412.18))  
You tired, judge?

Amy: ([04:16:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15415.43))  
I’m looking forward to the end of the hearing today, I must admit.

John Kennedy: ([04:16:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15418.98))  
Me too. I’m still going to ask you a question.

Amy: ([04:17:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15422.68))  
I was hoping you’d say you’re going to yield your time, Senator.

John Kennedy: ([04:17:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15424.95))  
No, ma’am. A lot of my colleagues and you as well have talked about the oath that you will take if you’re confirmed and sworn in as an associate justice of the United States Supreme Court. What’s in that oath, what’s it say?

Amy: ([04:17:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15444.96))  
Well, that oath requires a judge, I’ve taken the oath as a judge to do equal justice to all, without fear or favor, regardless of wealth, to fairly apply the law is what it boils down to. To not give preferential treatment or express bias, in plain terms.

John Kennedy: ([04:17:45](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15465.41))  
It says you’ll administer the law in an impartial manner without regard to your personal feelings, doesn’t it?

Amy: ([04:17:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15471.36))  
Yes, it does. Senator.

John Kennedy: ([04:17:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15473.35))  
It says you will support and defend the Constitution, doesn’t it? Pretty serious oath, isn’t it?

Amy: ([04:18:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15483.22))  
It is.

John Kennedy: ([04:18:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15485.22))  
Are you going to take that oath and affirm it if you’re confirmed?

Amy: ([04:18:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15490.93))  
Yes.

John Kennedy: ([04:18:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15494.11))  
You’re not lying?

Amy: ([04:18:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15496.43))  
I’m not lying. I took that oath before I began as a judge on the Seventh Circuit, and I have not violated that oath, and I would take it again and oaths are serious to me.

John Kennedy: ([04:18:28](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15508.01))  
Well, now Senator Harris just called you a liar. She said that if you take that oath, you’d be lying. That you’ve already made up your mind on how you’re going to vote on some cases, particularly dealing with abortion and the Affordable Care Act. Let’s just cut to the chase. She said, you’re a liar. Are you a liar?

Amy: ([04:18:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15527.4))  
I am not liar, senator Kennedy.

John Kennedy: ([04:18:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15530.59))  
All right. I want you to tell me again, look me in the eye. You’re in front of God and country. If you take that oath, will you mean it?

Amy: ([04:18:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15538.04))  
I will mean it. If I take that oath, I will mean it.

John Kennedy: ([04:19:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15540.75))  
You swear to God?

Amy: ([04:19:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15541.93))  
I swear to God, and I have sworn at the Seventh Circuit and I meant it there too.

John Kennedy: ([04:19:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15547.25))  
You’ll never break that oath?

Amy: ([04:19:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15548.82))  
I will not break that oath.

John Kennedy: ([04:19:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15549.91))  
No matter what your personal feelings are?

Amy: ([04:19:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15551.72))  
No matter what my personal feeling-

John Kennedy: ([04:19:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15553.2))  
No matter what your religion is?

Amy: ([04:19:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15554.75))  
No matter what my religion is.

John Kennedy: ([04:19:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15557.19))  
So when Senator Harris and her colleagues say you’re a liar, they’re wrong.

Amy: ([04:19:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15563.1))  
They are.

John Kennedy: ([04:19:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15563.3))  
All right, let’s see. You’re 48 years old. You’re an honors graduate of Rhodes College, an extraordinary liberal arts school. You’re an honors graduate of Notre Dame Law School. You clerked for two distinguished federal judges. You’ve been a chair law professor. You’re a devout Christian. You’ve raised seven children. I don’t mean to wax too metaphysical here, but do you have personal values as a result of this?

Amy: ([04:20:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15609.45))  
I would hope that no one would consider me to be nominated for anything if I had no values.

John Kennedy: ([04:20:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15615.3))  
Do you have a personal opinions?

Amy: ([04:20:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15619.02))  
Of course, I have personal opinions.

John Kennedy: ([04:20:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15621.7))  
Do you have principals?

Amy: ([04:20:22](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15622.36))  
I have principles. I wouldn’t be fit for office if I didn’t.

John Kennedy: ([04:20:32](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15632.91))  
Let’s suppose that we had a nominee appear before us. It happens to be man in my hypothetical. He said I’ve been nominated for a federal judgeship, and I finished law school, but I hadn’t cracked them all books since law school, since civil procedure. I don’t have any opinions. I don’t have any principles. I don’t read newspapers. I don’t even read the news. Hadn’t read a book since law school. I’m like Blue Toe in Animal House. I’m just fat, drunk, and stupid. I think the Germans are the ones who bombed Pearl Harbor. I think climate change, I think, didn’t it cause the Cold War? But I’m your guy because I don’t have any value. I’m a blank slate. That’s what required is required, isn’t it? For me to be impartial? Do you think we ought to confirm that gentlemen?

Amy: ([04:21:56](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15716.22))  
Well, then Chief Justice Rehnquist wrote an opinion on this issue and addressing recusal, and he said basically that if someone reached middle years, which one is basically middle-aged, if one would be a justice on the Supreme Court and had a mind that was a blank slate and had no opinions, then one would question such a person’s fitness for office.

John Kennedy: ([04:22:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15740.53))  
Well, my colleagues seem to think you’re only qualified if you’re dumb, if you have a blank slate, if you’ve never thought about the world. You’ve thought about the world, haven’t you?

Amy: ([04:22:30](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15750.86))  
I indeed, have.

John Kennedy: ([04:22:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15751.1))  
Have you thought about a social problems facing our world?

Amy: ([04:22:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15754.3))  
I have thought about social problems facing our world.

John Kennedy: ([04:22:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15756.85))  
Economic problems.

Amy: ([04:22:38](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15758.25))  
Sure.

John Kennedy: ([04:22:39](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15759.42))  
I don’t want to know what your feelings are, but have you thought about the merits and or lack there of nuclear energy?

Amy: ([04:22:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15771.97))  
No, I really haven’t. [crosstalk 00:17:53].

John Kennedy: ([04:22:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15773.15))  
How about affirmative action? Have you thought about that.

Amy: ([04:22:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15775.66))  
Sure, yeah, I’ve [inaudible 04:22:58] about it.

John Kennedy: ([04:22:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15779.2))  
How about climate change? I mentioned climate change. Have you read about that?

Amy: ([04:23:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15782.51))  
I’ve read about climate change.

John Kennedy: ([04:23:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15784.14))  
And you have some opinions on climate change that you’ve thought about?

Amy: ([04:23:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15788.9))  
I’m certainly not a scientist.

John Kennedy: ([04:23:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15790.34))  
I’m not saying you are.

Amy: ([04:23:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15791.81))  
I mean, I’ve read things about climate change. I would not say that I have firm views on it.

John Kennedy: ([04:23:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15796.8))  
How about have you thought about the merits of a flat versus progressive income tax?

Amy: ([04:23:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15805.38))  
I have thought fleetingly about that. These aren’t things that I, I’m not a tax lawyer or a [crosstalk 04:23:34].

John Kennedy: ([04:23:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15813.7))  
I’m not trying to trap you.

Amy: ([04:23:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15817.06))  
Sure.

John Kennedy: ([04:23:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15822.83))  
How about Justice Kagan? I’ve always been impressed with her credentials. Graduated Princeton, did an mPhil at Oxford. I think she went to Harvard Law, was Dean of Harvard Law School.

Amy: ([04:23:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15835.13))  
She was.

John Kennedy: ([04:23:56](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15836.95))  
You think she’s thought about the world?

Amy: ([04:23:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15839.51))  
I’m sure she has, and I too am very impressed with Justice Kagan.

John Kennedy: ([04:24:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15843.72))  
Yeah, me too. You think she’s thought about climate change and has personal feelings?

Amy: ([04:24:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15848.51))  
I don’t know. I mean, probably, but I can’t really say what Justice Kagan has thought or not about.

John Kennedy: ([04:24:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15855.97))  
Okay. Now you have personal feelings about abortion, don’t you?

Amy: ([04:24:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15859.92))  
I do have personal feelings about abortion.

John Kennedy: ([04:24:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15863.69))  
Do you have personal feelings? Have you ever thought about how we deliver healthcare in this country?

Amy: ([04:24:28](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15868.1))  
I do. But Senator Kennedy, one of the things about the judicial role that I’ve repeatedly emphasized in the hearing today is that I’ve got personal views and personal feelings on a range of matters, just like every human does, and just like every judge or justice on the court does.

John Kennedy: ([04:24:43](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15883.5))  
Well, that’s what I’m getting at. Now my colleagues say, and Senator Harris said that even though you have a personal opinion about abortion, that you will violate your oath to put aside those personal feelings and fairly decided abortion cases. Is that true?

Amy: ([04:25:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15903))  
That I gathered was the thrust of what she was saying to me, yes.

John Kennedy: ([04:25:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15906.52))  
Is she right?

Amy: ([04:25:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15908.43))  
No, she’s not right.

John Kennedy: ([04:25:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15910.61))  
Let’s talk about the Affordable Care Act. California v. Texas. You’ve thought about the delivery of healthcare.

Amy: ([04:25:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15918.49))  
Yes.

John Kennedy: ([04:25:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15919.01))  
You got seven children.

Amy: ([04:25:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15921.28))  
Spent a lot of time [crosstalk 04:25:23].

John Kennedy: ([04:25:22](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15922.98))  
You’ve probably been in an emergency room.

Amy: ([04:25:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15923.93))  
Yes.

John Kennedy: ([04:25:26](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15926.52))  
You formed opinions about the delivery of healthcare. Should you recuse yourself?

Amy: ([04:25:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15934.55))  
Well, Senator Kennedy, any opinions that I have, everyone has opinions. Any opinions that I have are just not relevant to the resolution of a case.

John Kennedy: ([04:25:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15944.44))  
Right.

Amy: ([04:25:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15944.9))  
Affordable Care Act case or anything else. A lot of my opinions are not ones that are expert. For example, in scientific matters or taxing matters. I mean, I might have dinner table discussions, but I don’t purport to be an expert in any of those fields.

John Kennedy: ([04:25:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15958.36))  
Well, I’m going to hit this one another lick now, because this is serious.

Amy: ([04:26:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15961.98))  
Okay.

John Kennedy: ([04:26:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15962.42))  
Some of my colleagues and Senator Harris say you’re lying. Are you lying?

Amy: ([04:26:09](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15969.51))  
I’m not lying.

John Kennedy: ([04:26:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15970.96))  
Are you going to take that oath and abide by it?

Amy: ([04:26:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15973.64))  
Yes, sir.

John Kennedy: ([04:26:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15974.45))  
Will you ever break that up?

Amy: ([04:26:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15976.17))  
I will not break that oath, Senator Kennedy.

John Kennedy: ([04:26:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=15977.95))  
Okay. Now, one of my colleagues, I don’t remember which one said that because President Trump appointed you or nominated you, rather, that if there’s a case that happens to go before the United States Supreme Court, after you’re confirmed dealing with the upcoming election, they ask you to recuse yourself. Remember that question? You said you would go through the process.

Amy: ([04:26:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16006.59))  
Of determining recusal questions, yes.

John Kennedy: ([04:26:49](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16009.06))  
Right. But you didn’t commit to recusing yourself until you, in one way or the other. You said you’d go through the pain.

Amy: ([04:26:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16015.06))  
I said, I would go through the process. I committed to going through the process of determining whether to recuse. I did not commit to it [crosstalk 00:22:03].

John Kennedy: ([04:27:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16022.33))  
Now, President Trump nominated Judge Kavanaugh, now Justice Kavanaugh on the Supreme Court. Did anybody ask him to recuse himself when the president’s tax returns were before the court?

Amy: ([04:27:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16033.52))  
I don’t know.

John Kennedy: ([04:27:15](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16035.1))  
Justice Gorsuch was nominated by President Trump and confirmed by the Senate. Did anybody ask him to recuse himself when President Trump’s tax returns were before the court?

Amy: ([04:27:28](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16048.44))  
I don’t know if any motions were filed.

John Kennedy: ([04:27:30](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16050.38))  
Do you know who Paula Jones?

Amy: ([04:27:32](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16052.3))  
I do.

John Kennedy: ([04:27:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16053.18))  
Okay. She sued the President of the United States, didn’t she?

Amy: ([04:27:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16055.89))  
She sued President Clinton.

John Kennedy: ([04:27:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16057.9))  
Yeah, Clinton v. Jones, famous case. President Clinton nominated Justice Ginsburg and justice Breyer to the United States Supreme Court. They heard that case. Did anybody ask that Justice Ginsburg recused herself because President Clinton nominated her?

Amy: ([04:27:59](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16079.44))  
I don’t know if any motions were [crosstalk 04:28:01].

John Kennedy: ([04:28:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16080.91))  
You think she should have?

Amy: ([04:28:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16082.72))  
Well, that’s not something I would opine on. I’m sure that she discharged her oath to consider the question.

John Kennedy: ([04:28:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16087.84))  
Did any of my colleagues asked that Justice Breyer recuse himself from hearing Clinton v. Jones because president Clinton had appointed him?

Amy: ([04:28:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16097.4))  
I don’t think that’s come up in-

John Kennedy: ([04:28:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16099.13))  
Yeah, I don’t think so either. All right, I’m going to finish this housekeeping because I’m going to talk about the law. I want to give you a chance to respond to something. Some butt head professor at Boston University says that because you and your husband have two children of color, that you’re a white communist. The implication is that you’re a racist, and that you use your two children as props. You use your children’s props?

Amy: ([04:29:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16140.15))  
Senator Kennedy, it was the risk of people saying things like that, which would be so hurtful to my family, that when I told Senator Graham this morning that my husband and I had to really weigh the cost of this, it was saying deeply offensive and hurtful things, things that are not only hurtful to me, but are hurtful to my children who are my children, who we love and who we brought home and made part of our family and accusations like that are cruel.

John Kennedy: ([04:29:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16169.58))  
Yeah, they are, aren’t they? How low can you can go? I didn’t want to ask that question when your kids were here. I’m sorry I have to go through that.

John Kennedy: ([04:29:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16184.55))  
Okay. Let’s talk about the law. Let’s suppose. I’m not going to ask you how you are going to rule on a case and you couldn’t answer anyway, you’d violate the judicial canons of ethics. I don’t know what would happen to you, but it’d probably be pretty bad. Because you’re a sitting judge, you’re on the Seventh Circuit. But let’s suppose that a litigant, let’s suppose Congress passed a statute making distinctions on the basis of wealth.

Amy: ([04:30:17](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16217.21))  
Okay.

John Kennedy: ([04:30:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16218.23))  
And somebody filed a lawsuit and said that their argument is that wealth is a suspect classification. How are you going to analyze a case like that? Tell me how you’d analyze. I just want to know how you think.

Amy: ([04:30:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16233.62))  
Sure. Well, someone argued that wealth was a suspect classification. I assume you’re saying that they’re probably making an equal protection claim.

John Kennedy: ([04:30:41](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16241.56))  
Yep.

Amy: ([04:30:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16242.17))  
So I would go to precedent would be the first source because the equal protection clause has a rich body of precedent under it that identifies suspect classes. For example, classes drawn on the basis of race are suspect and they get heightened scrutiny. So I would look through Supreme Court precedent to determine whether there was anything relevant to the question of whether wealth was a suspect class or not.

John Kennedy: ([04:31:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16268.59))  
Okay. You’re familiar with San Antonio School District v. Rodriguez?

Amy: ([04:31:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16276.67))  
My mind’s getting mushy this many hours into the hearing.

John Kennedy: ([04:31:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16279.39))  
I understand.

Amy: ([04:31:19](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16279.49))  
So you might need to refresh my memory.

John Kennedy: ([04:31:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16280.14))  
Let me put it another way. Wealth’s not a suspect classification, is it?

Amy: ([04:31:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16285.54))  
I am not aware of a case saying that wealth would be a suspect classification.

John Kennedy: ([04:31:29](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16289.5))  
Here’s what I don’t understand. I’ve always wondered about this. Okay, remember this is Congress passing the statute, not some state. So the litigant is not pursuing this under the 14th Amendment. He’s pursuing it under, or she under the Fifth Amendment and he’s making an equal protection argument, not substantive due process. That would be a fundamental right. Where does the Fifth Amendment mention equal protection?

Amy: ([04:32:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16321.74))  
Well, the Fifth Amendment has a due process clause.

John Kennedy: ([04:32:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16323.97))  
I know.

Amy: ([04:32:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16324))  
But-

John Kennedy: ([04:32:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16325.69))  
But the 14th Amendment has a due process clause and an equal protection clause, which applies to the states. But the Fifth Amendment to the Constitution has a due process causal, but it doesn’t say a word about equal protection.

Amy: ([04:32:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16341.12))  
That’s true. But the Supreme Court has interpreted it as applying the equal protection clause as well against the [crosstalk 04:32:29].

John Kennedy: ([04:32:27](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16347.96))  
How can they do that if the words aren’t there?

Amy: ([04:32:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16351.11))  
Well, there was a case, I believe the case in which the court addressed this was the one that addressed the constitutionality of segregation in the District of Columbia, which is governed by federal law. The court said the same principle applies, and so essentially the reasoning of Brown applied there.

John Kennedy: ([04:32:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16371.18))  
Okay. I remember that. All right, let’s talk about, Senator Graybill talked about it a little bit. I went back and took a look at Heller, and Scalia wrote, you know this better than I do. Scalia wrote the majority opinion. I think Stevens wrote the leading dissent, and it was interesting. They both took an originalist approach, and I went back and looked it up. Scalia relied on, and tell me what an originalist approach is again. I know there are different strains, but what’s your strain?

Amy: ([04:33:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16400.32))  
Sure, you take the Constitution. So in Heller, for example, what Justice Scalia did, and this is an example of originalism. He went back to the time of the ratification of the Second Amendment to figure out when that amendment was ratified, whether that right to bear arms was considered to be an individual, right, or one that was a civic right.

John Kennedy: ([04:33:41](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16421.41))  
Excuse me for interrupting, but considered by whom?

Amy: ([04:33:43](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16423.92))  
Considered by the people at the time, not in the minds of the framers, but by the people.

John Kennedy: ([04:33:49](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16429.72))  
Okay, I went back and look, I’m sorry. Do you-

Amy: ([04:33:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16431.16))  
No, no, no!

John Kennedy: ([04:33:51](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16431.94))  
I’ve had a little coffee. I’m kind of jacked up. I went back and looked it up. Scalia, he relied on to reach his opinion. He relied on founding era dictionaries, founding era treatises, English laws, American colonial laws, British and American historical documents, colonial era state constitutions, post enactment commentary, all on the Second Amendment.

John Kennedy: ([04:34:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16461.45))  
Then here comes Justice Stevens. He’s dissenting. He relied on, in his dissent, he relied on linguistic professors, an 18th century treatise on synonymous words, on a different editor of one of the same colonial era dictionaries on which Scalia ride. So they both went back and looked at history. Here’s my question. Since when did justices become historians? Let me put it another way. If this is the way we’re going to interpret the Constitution, by looking at history, why don’t we need you guys? Why don’t we just hire professional historians?

Amy: ([04:35:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16512.7))  
Well, so justices and judges interpret laws, and we interpret texts. If texts are unclear, you have to figure out what their meaning is, right? So with the Constitution, sometimes that does require delving into history. One point that I think is worth, Justice Scalia would make this point, that the alternative is, let’s say you have an amendment like the Second Amendment’s right to bear arms. If it’s not evident looking at it, whether it’s an individual right, or a collective right, for the sake of the militia, one approach would be to rely on the moral judgment of the justice to say whether they think it’s a good thing or a bad thing for the common good for people to have that individual right. Of course, judges aren’t moral philosophers either. So when you’re interpreting a text and you need to turn to something, what judges know is words and what judges know is law.

Amy: ([04:36:11](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16571))  
So having them go back and look at the history, those are familiar things to lawyers and they’re things that all justices consider. As I said earlier in the hearing, all justices do consider the history and the original meaning, and that’s been true since the beginning of the court itself throughout the 19th century, this idea of originalism isn’t new. So throughout the 19th century and all throughout the 20th, the court has resorted back and looked to see what the original meaning is. It’s just that I would say the difference between those who identify themselves as originalists and those who just consider it is the amount of weight that they give it. So all judges have to be skilled in doing it to a degree because everyone agrees that as a matter of law, the original meaning matters.

John Kennedy: ([04:36:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16618.38))  
Tell me what the Ninth Amendment means.

Amy: ([04:37:01](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16621.89))  
Well, the Ninth Amendment was once famously described by judge Bork as an ink blot. The Ninth Amendment has not been fleshed out in litigation. I don’t think it’s an ink blot, just to be clear. But it’s not one that there’s a whole lot of case law on.

John Kennedy: ([04:37:23](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16643.99))  
I want to talk to you a little bit about originalism or at least your strain of originalism and how it’s related to textualism and how it’s different from [proposivism 00:35:03]. Did I understand you correctly to say that an originalist believes that judges have to follow the original public meaning of the constitution?

Amy: ([04:37:54](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16674.74))  
Correct.

John Kennedy: ([04:37:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16675.3))  
The original public meaning?

Amy: ([04:37:58](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16678.17))  
Public meaning as distinguished from private intentions of those who drafted the document.

John Kennedy: ([04:38:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16683.28))  
Okay. Does this mean, when you say original public meaning, who’s meaning? The average person in the community at that time?

Amy: ([04:38:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16690.46))  
Well, we would say informed observers.

John Kennedy: ([04:38:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16693.46))  
I’m sorry?

Amy: ([04:38:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16694.16))  
I would say informed observers. So those who were familiar with the debates, which is why looking at the state ratifying conventions, debating the Constitution can be a fruitful source.

John Kennedy: ([04:38:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16705.91))  
I know it’s not okay tto do it exclusively, but is it okay to consider what the drafters thought?

Amy: ([04:38:32](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16712.24))  
Sure. James Madison’s notes from the Constitutional Convention are a source that the court routinely looks to in trying to determine original meaning. It’s just that it’s not conclusive.

John Kennedy: ([04:38:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16722.61))  
What’s the dimension of time? At what point in time do you look at the original public meaning?

Amy: ([04:38:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16730.13))  
Well, I would say there’s some debate about that because you won’t necessarily have all the evidence you need, right, from 1791, which is when the Bill of Rights, as you know, was ratified. I think looking at the evidence from before that, so we see that in Heller, that Justice Scalia looked at how people understood that right all the time leading up to the ratification of the Second Amendment, because it cast light on the language people were speaking at the time and how they would have understood it. So you definitely can look some before.

John Kennedy: ([04:39:21](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16761.97))  
Okay. Excuse me for interrupting. My clock’s run. Okay. If you look at 10 years after the Constitution was adopted, is that okay? How about 20?

Amy: ([04:39:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16775.44))  
Well, I think all of that can be relevant evidence. I think the farther that you get away from the ratification of the document, then I think the dicier it gets, because we might say that, well, between 1791 and 1801 that people had roughly the same understanding, but of course as time passes, then attitudes can change. So I wouldn’t say that there’s a firm cut off, but I think it’s clearly the ca-

Amy: ([04:40:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16803.6))  
So I wouldn’t say that there’s a firm cutoff, but I think it’s clearly the case that the evidence that’s closer to the time is the most probative.

Senator Kennedy: ([04:40:08](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16808.73))  
Okay. What’s the difference between originalism and textualism?

Amy: ([04:40:14](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16814))  
Well, textualism is how we describe a method of interpreting statutes. So it actually in many respects is kind of like originalism applied to a statute. So it would say you take statutory texts for the clean water act or the makeup one, the Amy Barrett act passed today. You look at what the words would have meant to those who read the act at the time and informed observer of the debate.

Senator Kennedy: ([04:40:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16852.01))  
So you’re looking at the ordinary meaning of the words?

Amy: ([04:40:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16853.81))  
You’re looking at the ordinary meaning of the words.

Senator Kennedy: ([04:40:53](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16853.91))  
The plain meaning of the words.

Amy: ([04:40:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16855.19))  
The plain meaning of the words.

Senator Kennedy: ([04:40:57](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16857.54))  
What if they’re unclear?

Amy: ([04:41:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16860.85))  
Well, there are a series of canons of interpretation that judges employ to decipher language. They’re like linguistic tools. Like sometimes a list means the expression of some things implies the exclusion of others.

Senator Kennedy: ([04:41:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16873.68))  
I’m familiar with all those. You know them better than I do. But if the statute’s unclear, if there is no ordinary meaning, can you look at legislative history?

Amy: ([04:41:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16884.36))  
Generally, I think that legislative history is a less fruitful source because generally when people make arguments about legislative history, they tend to be less about what a word meant and how a statute would apply to a certain circumstance, which is a little bit different.

Senator Kennedy: ([04:41:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16900.91))  
But if it’s ambiguous, you can look at legislative history as a last resort?

Amy: ([04:41:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16906.38))  
You can look at legislative history to determine whether there was a particular understanding of a word or a phrase, but I think it would be in most cases in advisable to look at legislative history to make a determination, and certainly not to treat it as binding about how a statute would apply to a particular set of facts.

Senator Kennedy: ([04:42:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16927.33))  
How ambiguous, a lot of texts will say … If the statute’s ambiguous, if it’s unclear, then I can consider secondary sources. How ambiguous does it have to be? 51%? 65%? How do you know how ambiguous it has to be?

Amy: ([04:42:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16951.63))  
Well, it’s not a precise … It’s an art, not a science, I would say, Senator Kennedy. You exhaust all the canons of interpretation, and that includes even ones that are not the grammatical cannons, but are like the avoidance cannon. You run through all those and then you look at the structure of the statute. And I mean, I think deciding when something crosses the threshold and becoming ambiguous, so you can consider like the rule of Leonetti or the avoidance canon, that that’s a very difficult question. It’s part of the debate about the Chevron doctrine.

Senator Kennedy: ([04:43:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16986.6))  
Okay. You’re familiar with the term purposivist?

Amy: ([04:43:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16993.41))  
Yes.

Senator Kennedy: ([04:43:13](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=16993.44))  
Okay. I think, you correct me now, a purposivist says, look, I look at the statute. Even if it’s clear, I can still look at secondary sources and try to figure out what problem the legislative body was trying to solve.

Amy: ([04:43:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17014.77))  
That is so. Yes. A purposivist would say that to be faithful to Congress would be to be faithful to the purpose of the statute and that sometimes the text doesn’t align exactly with the purpose and that in that circumstance, the judge should go with the purpose rather than the text.

Senator Kennedy: ([04:43:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17028.49))  
Now, everybody’s a textualist now or an originalist. But really aren’t a lot of our textualists really purposivists? In other words, they go, well, I looked at that the language of the statute. It’s unclear. So I checked off the originalist or rather textualist box, and now I can just go and look at what problem Congress is trying to decide and do whatever the hell I want to do.

Amy: ([04:44:18](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17058.66))  
There has been some academic commentary definitely in the last five or 10 years saying that that’s become kind of the new strain of textualism. You might know the case, Holy Trinity?

Senator Kennedy: ([04:44:31](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17071.54))  
Yeah.

Amy: ([04:44:32](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17072.06))  
Yeah. Calling it the new …

Senator Kennedy: ([04:44:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17073.43))  
It’s been overruled though, hasn’t it?

Amy: ([04:44:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17075.74))  
Holy Trinity. You mean its approach to statutory interpretation and its endorsement?

Senator Kennedy: ([04:44:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17080.22))  
Yeah.

Amy: ([04:44:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17080.29))  
No, it’s never been overruled, but it’s fallen out of favor. But this idea of doing what you’re saying, stretching to find ambiguity in texts, the argument that some make is that it’s kind of a new form of Holy Trinity. Because rather than saying that the text is clear, but inconsistent with the purpose, the argument is that the purpose renders the text unclear.

Senator Kennedy: ([04:45:04](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17104.24))  
All right. Let me ask you a couple more. I want to talk about a state constitution. In Louisiana, we had a constitutional convention in 1973. We wrote a new state constitution and we recorded everything. We got, I think, 14 volumes of transcripts, committee reports, anything you could possibly want to know about the drafting of the 1974 Louisiana constitution. You’re an originalist. Are you telling me to just throw all that stuff out?

Amy: ([04:45:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17136.27))  
No, those things would be the equivalent of looking at James Madison’s notes from the constitutional convention or the state ratifying conventions. All those things shed light on what Louisianians were thinking when that constitution was drafted and ratified.

Senator Kennedy: ([04:45:52](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17152.18))  
Okay. Mr. Chairman, I want the record to reflect that I landed this plane with 26 seconds left.

Senator Graham: ([04:46:00](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17160.14))  
So noted. Thank you very much. Senator Kennedy. Senator Blackburn.

Senator Blackburn: ([04:46:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17165.01))  
Thank you, Mr. Chairman.

Senator Kennedy: ([04:46:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17166.47))  
Thank you, Judge.

Amy: ([04:46:06](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17166.6))  
Thank you, Senator.

Senator Blackburn: ([04:46:07](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17167.05))  
I have three letters to submit one from Penny Nance, the CEO of Concerned Women of America, on behalf of that organization, Amy Kramer, chairperson of Women for America, first on behalf of their organization. They’re both in support of Judge Barrett and then a letter from Tennessee secretary of state Tre Hargett, who is applauding her record on textualism and stands in support of her nomination.

Senator Graham: ([04:46:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17200.86))  
No objection.

Senator Blackburn: ([04:46:42](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17202.14))  
Judge Barrett, you have been a trooper. And so we’re going to do a little bit of loose end tying up and then get you on your way. And we appreciate the commitment that you’ve mad, and Jesse, I’ll tell you what, my hat is off to you. You have just been great to be here today and to stand right with her. I tell you, I wish my husband were here. We were talking a little bit earlier today about, when I called him, about how you have been right here hardly leaving the chair the entire time. And we appreciate that. My husband has said he’s someday going to write a book and he’s going to call it, I carried her purse because we couldn’t do what we do without supportive spouses.

Senator Blackburn: ([04:47:36](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17256.08))  
First thing I want to say, and Senator Ernst touched on this. Our colleagues across the aisle have spent a lot of time talking about COVID relief and the importance of that for healthcare and for people that are suffering. They have the opportunity. We can put our bill back on the floor. They each chose to vote no, every single one of them on additional PPP, unemployment insurance, money for testing and vaccines, getting schools open and liability protection so that businesses can open. So we would be very pleased to have that bill back on the floor and to pass it to get needed relief to the American people.

Senator Blackburn: ([04:48:22](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17302))  
The second thing I want to touch on, I think there’s been a little bit of confusion on with some of the comments that were made. It’s important to note that abortion is not mentioned in the US Constitution.

Amy: ([04:48:37](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17317.32))  
The word abortion does not appear in the US Constitution.

Senator Blackburn: ([04:48:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17320.76))  
Correct. And Roe vs. Wade is not an amendment to the constitution.

Amy: ([04:48:47](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17327.46))  
Roe vs. Wade interprets the 14th amendment of the constitution and locates the right to terminate a pregnancy in the liberty and the due process clause, the liberty.

Senator Blackburn: ([04:48:57](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17337.51))  
Correct. I think that from some of the comments from some of our colleagues, there has been confusion about that. The next thing is Senator Whitehouse kind of came at you saying you had never tried a case. And I think it is important to note that Justice Kagan had never tried a case. And we want to have that she’s been mentioned several times today. So as a point of clarification, we would want to mention this. One thing that we have heard a good bit about at this committee and some of our colleagues chose to mention this yesterday is that Republicans don’t nominate enough female judges.

Senator Blackburn: ([04:49:48](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17388.42))  
But when we nominate a highly qualified woman for a Supreme Court vacancy, what is the very first thing they do? They turn their attack machine on and then they start into the politics of personal destruction and they attack you for not fitting into the paradigm of the left because you’re pro-life, pro-family pro religion. And we have seen this happen with other judges that have come before us. Judge Naomi Rao, Wendy Vitter, they have been criticized. And if you don’t buy into this agenda of the left, if you’re female, then they act as if you’re not a real woman.

Senator Blackburn: ([04:50:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17446.95))  
And I will tell you, quite frankly, they do not believe that all women deserve to have the opportunity to have a seat at the table. It’s only certain women and we have seen their liberal narrative play out today. Senator Hirono really tuned up on this when she suggested that you of all people would not support women in the workplace. And I will tell you this as a woman who has worked in the private sector and then in public service. When comments like that are made, it discourages all women from trying to step forward and trying to take the skills that they have developed in one area of their life and then use it as an opportunity to serve their nation, to serve their community because they don’t want the liberal attack machine pointed at them.

Senator Blackburn: ([04:51:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17515.79))  
And I will tell you, quite frankly, it is so discouraging to me to see groups on the left say, we want diversity. But let that diversity come from a woman who is on the political right, and it’s like their heads explode. They do not want that as a part of the conversation. What they prefer to have is that very narrow, liberal viewpoint. And I look forward to the day when that will stop because all women deserve the opportunity to rise. I find it so interesting that they don’t want to say support women from the political right because we do not submit to the leftist agenda.

Senator Blackburn: ([04:52:56](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17576.91))  
We won’t submit to that. So then free thinkers end up being called bad women and traders to our gender and other disparaging comments that are out there. And you have endured some of these pretty extraordinary revelations today. Many of which have involved accusations that you’re part of some sort of back room conspiracy to rig the system against the American people and that your record as a judge is somehow frightening and it is going to cause a panic. But I have a feeling that this isn’t the first time you have heard such rhetoric or been subjected to such rhetoric by a group of your peers that have probably tried to hold you back because of your personal beliefs.

Senator Blackburn: ([04:53:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17635.33))  
I think that most of us that come from the political spectrum on the right have endured that. A professional organization that would have been nice to join, but because you’re pro life, you can’t. Opinion not wanted, participation not wanted because you’re pro religion, pro family. Opinion not wanted. Do not apply for admission. And this is the kind of wrong-headed perceptions that need to stop. It is not uncommon for women who practice their faith or who hold pro-life views to endure this, especially in a professional context. And that is what we have seen the left throw at you today.

Senator Blackburn: ([04:54:49](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17689.2))  
And I find it so interesting that they have tried to use this focus to evaluate your professionalism as a judge, doing to you exactly what they say they despise. Interesting take. I’d like to hear it a little bit more about the intellectual and personal discipline you mentioned during Senator Lee’s line of questioning. Let’s go back to that. You said that discipline is required for resisting the urge to exercise your own will when deciding how to rule on a case. So talk for just a second about that, why it’s important to stay true to your basic constitutional statutory framework rather than favoring the living constitution approach.

Amy: ([04:55:49](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17749.76))  
Well, Senator Blackburn, I think as I came up with Senator Lee and I know as Senator Sasse and Senator Hawley too, that judges are not policymakers. And we live in a pluralistic society where we have lots of different views on lots of different matters as Senator Kennedy was pointing out. And so in a pluralistic society, I may approach a particular problem, let’s say it’s a problem of constitutional law, and I may really feel like the result I want is one way, but I’m just one person. And there are surely other people in America, other people on the bench who would see the best resolution going a different way.

Amy: ([04:56:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17794.67))  
So who am I, or who is any judge, to say that their result like just this once or just this time, I’m going to reach the result that seems the best, even if it runs against the law that the people have ratified. And so it would be wrong because, I mean, I don’t think people, I think I said earlier, want to live under the law of Amy. I mean, we have the United States Constitution and that’s what judges should be faithful to. I see Senator Kennedy [inaudible 04:57:02].

Senator Blackburn: ([04:57:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17822.83))  
But I think probably the law of Amy prevails at the Barrett household over those children.

Amy: ([04:57:10](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17830.5))  
50/50.

Senator Blackburn: ([04:57:12](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17832.27))  
I used to tell my children and my son’s birthday is today and we were chatting earlier and we were laughing about how when I wanted them to do something that they didn’t necessarily want to do, I would remind them that I was the chief mama in charge. And so it was something that was going to happen. Let me touch just a second on Obamacare because they have, our friends across the aisle have seemed to express just a deep concern about a case that is coming up on November 10th, the severability clause and how this would take Obamacare down.

Senator Blackburn: ([04:57:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17875.02))  
Again, this goes into their fear-mongering and causing panic, and we know that. Because it’s not about the ACA case that is scheduled for November 10th, this is all about they’re concerned that a constitutionalist judge on the Supreme Court just might get in the way of their push to implement government-run healthcare, to do a socialized medicine plan or to do the green new deal or to do statehood for DC, their wishlist of items that they have. But we do for the record need to clean up the numbers that are around this.

Senator Blackburn: ([04:58:40](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17920.22))  
We’ve heard some wild numbers get thrown around today when it comes to the ACA. There are right now 8.3 million Americans enrolled in the ACA marketplace exchange, enrolled in Obamacare. And what they’re doing is blowing that number up and they have tacked on the entire individual market and added Medicaid and Medicare to get to their number that they are saying is 150 million Americans are going to lose their healthcare. What they’re not saying is there are 153 million Americans that are in the private health care marketplace. So if they got their way, every one of those individuals in that private healthcare marketplace would lose their health insurance.

Senator Blackburn: ([04:59:50](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=17990.69))  
So our goal is to make certain that all Americans have access to affordable healthcare. And I think it’s a bit disingenuous the way that 8.3 million is the number that comes to us from CMS and HHS. And then as I said, they’re blowing that up by adding in the entire individual market and Medicaid and Medicare and forgetting to mention that there are 153 Americans that have a private health insurance. My colleague from California would really like to have people believe that your sole mission in life is to overturn the ACA, and you have stated that you are not on a mission to overturn the ACA.

Amy: ([05:00:55](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18055.47))  
I am not, Senator Blackburn, and I have no mission and no agenda. Judges don’t have campaign promises.

Senator Blackburn: ([05:01:02](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18062.17))  
That’s a good thing. And they’ve made much about a letter that you signed opposing a contraceptive mandate and an article that you wrote criticizing an interpretation of the ACA as attacks. But I had a very interesting conversation today. I actually did a Facebook Live with one of your former students who had written an op-ed for Real Clear Politics. Chase?

Amy: ([05:01:33](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18093.06))  
Mm-hmm (affirmative).

Senator Blackburn: ([05:01:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18094.19))  
And Chase Giacomo said, one of the things he appreciated about you is that you made your students think. And I think that is a wonderful trait for a judge because what you did was to cause them to get into problem solving. And at a time when we live in a cancel culture, that is a very positive thing to have students do, to cause them to think. So we really appreciate that and I know that you’ve stated that you’re going to put aside personal opinions and abide by the constitution when it comes to addressing all of the cases that would come before you. Let’s move on. Senator Sasse went to the fourth amendment with you, and I want to touch on this pertaining to electronic searches and surveillance. And the fourth amendment is so important for safeguarding the privacy of our citizens and our data from unreasonable searches and seizures. And so many Americans are doing so much of their life online. And I think it is imperative that Americans have the ability to protect their virtual you, which is their presence online, their data, their transactional life. And now for so many people, it is the way they’re working.

Senator Blackburn: ([05:03:25](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18205.41))  
And as you said at the White House ceremony, the Barrett E- Academy of which you all co-principals, people are going to school online. And there was a case Carpenter vs US and outlined just how far the constitution protects searches of electronic evidence. It was a five, four decision and the court ruled that law enforcement must obtain a warrant in order to track a person cellular location information beyond seven days. Justice Thomas and Gorsuch both dissented and Justice Gorsuch objected that the majority’s reasonable expectation of privacy standard was not faithful to the fourth amendment text.

Senator Blackburn: ([05:04:20](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18260.15))  
Instead, Justice Gorsuch reasoned the fourth amendment protects only those searches included in the original text, searches of persons houses, places, and affects. Some critics of originalism complained that today’s laws should not be governed by the dead hand of the past. Can you explain to us how the fourth amendment can still govern the modern worlds searches and seizures and how will it continue? How will it continue to apply to emerging technologies that the founders never could have imagined?

Amy: ([05:05:03](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18303.13))  
Sure. So I think as a general matter, the fourth amendment protects against unreasonable searches and seizures, and it doesn’t mean that it protects only the kinds of searches and seizures that those who lived at the time of the adoption of the bill of rights could have anticipated. So surely they couldn’t have anticipated the internet or cell phones or airplanes for that matter. But one can reason from the kinds of privacy protections that were in place in 1791 when the fourth amendment was ratified to see if the search of modern technology now is analogous to it.

Amy: ([05:05:44](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18344.5))  
So one example is the Kylo case, Justice Scalia wrote that opinion and that’s a case where law enforcement had used an infrared detector to see if someone was growing, I think it was, marijuana on the inside and they could use the infrared to see if it lit up if people were using heat lights, essentially inside. And Justice Scalia said that, yes, that was a search, that the fourth amendment did apply and the police had to have a warrant. Even though that technology didn’t exist at the time, it was the same kind of invasion into the home.

Amy: ([05:06:16](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18376.47))  
And so it didn’t matter that infrared machines were not in the contemplation of the generation that ratified the fourth amendment.

Senator Blackburn: ([05:06:24](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18384.09))  
Okay. And then is there a difference between searching for data via a device that is in a person’s possession and searching for, say, data on the servers that are hosting?

Amy: ([05:06:46](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18406.21))  
Let’s see. So that would be a question I probably can’t answer. In addition to the fourth amendment, there would also be statutes that govern how much data one could mine. So that would be one of those legal hypothetical situations that I wouldn’t be able to answer in the context of the hearing.

Senator Blackburn: ([05:07:05](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18425.16))  
All right. Let’s end it at that so that you can get out of here. There are a couple of things that tomorrow we’re going to have time and we will talk about a couple of those other questions, campus free speech, executive overreach, a couple of other things we’d like to have on the record. But thank you very much for your patience and for your desire to serve.

Amy: ([05:07:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18454.25))  
Thank you, Senator Blackburn.

Senator Blackburn: ([05:07:34](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18454.7))  
Thank you, Mr. Chairman.

Senator Graham: ([05:07:35](https://www.rev.com/transcript-editor/shared/COwn2ISNbkeGTOq0FEbgciNdVdBb5u7ZNUIbBpIjb2uKmixsEFWtHinmBf2efT7s0jtvVaVyKZg_m8DiBbh3JJg8hJU?loadFrom=PastedDeeplink&ts=18455.85))  
Thanks, Senator Blackburn. I’d like to echo what Senator Blackburn said. You’ve been very patient, very poised, and I really appreciate the way you’ve handled yourself today. To the committee, I quite frankly think this has been good example of what can be in the judiciary committee. Challenging questions on things that matter to people in a way that you can leave the arena saying well, that worked pretty well. One more day, 20 minutes a piece. See you at nine 9:00.