

## Judge Barrett Nomination Hearings: Takeaways for Racial Justice

Last week, the Senate Judiciary Committee held hearings on Judge Amy Coney Barrett's nomination to the United States Supreme Court. Kristen Clarke, President and Executive Director of the Lawyers' Committee for Civil Rights Under Law, [testified](#) before the Committee, raising concerns for Black Americans and other people of color about Judge Barrett's judicial philosophy, the upcoming election, voting rights, criminal justice, and workers' rights. Judge Barrett's nomination is unprecedented in that it is the first time the Senate has ever considered a nominee for the high court while a presidential election was already underway. Throughout the hearings, Barrett did nothing to assuage Americans and the Senate that she would be a fair and impartial judge on racial justice issues, as she refused to answer a series of questions regarding racism in the criminal justice system, workplace, voting, and systemically throughout the country. With the Senate Judiciary Committee set to vote on Judge Barrett's nomination on October 22nd and an expected Senate vote the week of October 25th, here are some major takeaways to keep in mind:

### **Judge Barrett failed to state whether or not she believes systemic racism exists in the United States.**

- When Senator Durbin [asked Judge Barrett](#) about her views on racism, she answered that racism persists in the U.S. However, she added that she could not opine on whether racism is “outright or systemic” calling them “highly contested policy questions.”
- Judge Barrett [repeatedly affirmed](#) that judges should take into account the real-world implications of their decisions; however, her lack of understanding about the systemic racism present in the criminal justice system shows otherwise. In response to a question by Senator Booker, Judge Barrett [admitted](#) that she has not read any books or law review articles about racial disparities present in the criminal justice system.

### **Judge Barrett repeatedly refused to admit voter discrimination still exists in the United States or that voter intimidation was prohibited under federal law.**

- Judge Barrett refused to answer Senator Klobuchar's question about whether or not she agreed that the Constitution gives Congress the power to protect the right to vote. Similarly, when asked if it is illegal to intimidate voters at the polls, as prohibited by [18 USC § 594](#), Judge Barrett said that it was not “appropriate” for her to comment.
- When asked by Senator Harris if she agreed with Chief Justice John Roberts' statement in [Shelby County v. Holder](#) that “voting discrimination still exists, no one doubts that,” Judge Barrett refused to comment on the statement, offering later during the exchange “I'm very happy to say that I think racial discrimination still exists in the United States.” Judge Barrett's refusal to acknowledge that voter discrimination exists is deeply troubling, especially as some states and municipalities [enact policies](#) designed to suppress turnout among voters of color, including [attempts to limit ballot drop-off locations](#) in Texas. This term, the Supreme Court will hear the consolidated cases [Brnovich v. DNC](#) and [Arizona](#)



[Republican Party v. DNC](#) that deal with Section 2 of the Voting Rights Act, which prohibits racial discrimination in voting.

- Senator Leahy even [presented](#) Judge Barrett with facts about voter disenfranchisement among voters of color, citing the long poll lines that voters of color experience at a higher rate than white voters, to which Judge Barrett answered that she “wasn’t aware of the statistics.”

### **Judge Barrett refused to answer whether the President should commit to the peaceful transfer of power and if the President has the authority to delay an election.**

- “To the extent this is a political controversy right now, as a judge I want to stay out of it,” [Barrett said in response](#) to Senator Booker’s question on the peaceful transfer of power. When further pressed on this, she argued that “one of the beauties of America from the beginning of the republic is that we have had peaceful transfers of power,” again declining to provide a direct answer.
- Senator Booker also asked if the president has the power to pardon himself, to which Judge Barrett answered that it was a “constitutional question,” that she, of course, could not answer. This answer comes just weeks after [Trump refused to commit to the peaceful transfer of power](#).
- Senator Feinstein asked Judge Barrett whether or not the Constitution gives the president of the United States the authority to delay the election. Judge Barrett declined to answer because she didn’t want to be a “legal pundit.” Trump has [hinted](#) at a potential attempt to delay the election with claims of widespread voter fraud, but the President does not have the power to delay an election. Judge Barrett’s inability to provide clear answers undermine the very foundation of our democracy.

### **The hearings made clear Barrett’s thoughts on workplace discrimination — and it doesn’t look good for people of color.**

- Senator Booker [asked](#) Judge Barrett about her opinion in the [Smith v. Illinois Department of Transportation](#), where she wrote that the “n-word is an egregious racial epithet,” but the plaintiff “can’t win simply by proving that the word was uttered.” Judge Barrett defended her opinion, saying that the use of the n-word was not enough to establish a hostile work environment claim in this case.

Judge Barrett’s utter refusal to provide straightforward answers during her nomination hearings shows a lack of regard for the Senate in fulfilling its constitutionally-mandated advice and consent role and for the American public. As the Senate vote approaches, here is something to keep in mind: **we still don’t have clear answers on issues central to our democracy and racial justice from the person nominated to the highest court in the United States.** On top of that, the nomination process is happening at an unprecedented time—while a presidential election is already underway, and while millions of Americans struggle with the COVID-19 pandemic’s health and economic impact. The Senate must oppose the nomination of Judge Barrett and halt this process until after the next president has been inaugurated.

To read the Lawyers’ Committee’s report on Judge Amy Coney Barrett, [click here](#).