

To: Interested Parties

From: Sean McElwee and Kyle Barry

Re: Bipartisan Majority of Maricopa County Voters Want Prosecutor Candidates to Not Criminalize Abortion

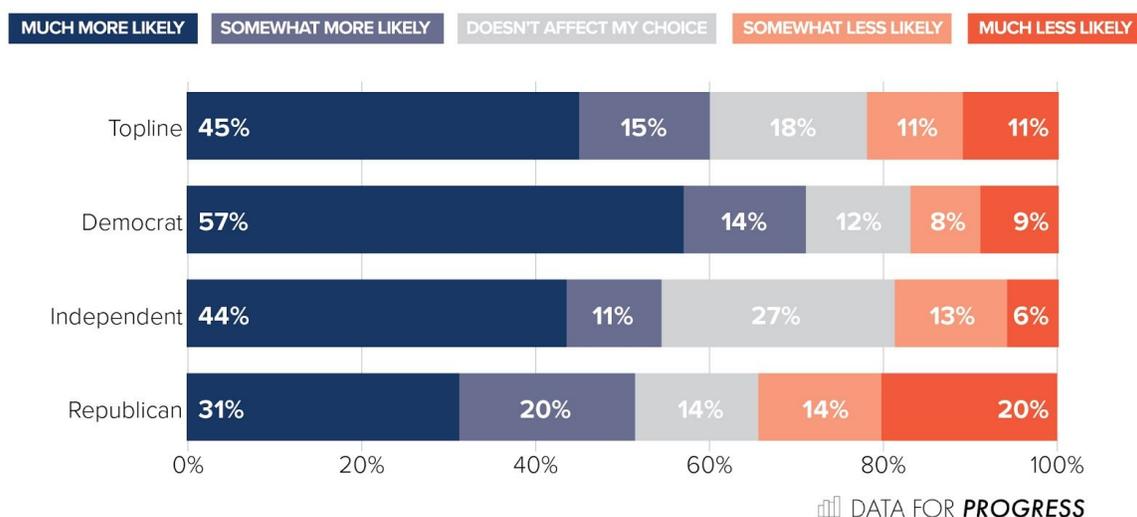
Date: 10/13/2020

A Data For Progress and The Justice Collaborative Institute poll shows a bipartisan majority of Maricopa County voters—including 71% of Democrats and 51% Republicans—are more likely to vote for a county attorney who pledges to not prosecute women for seeking an abortion if *Roe v. Wade* is overturned.

These results make clear that Maricopa County voters want assurance from the next elected prosecutor in Arizona’s most populous county that they will not criminalize abortion. This is an issue that divides Republican incumbent Allister Adel and Democratic Challenger Julie Gunnigle. Both candidates have responded to ACLU Smart Justice [questionnaires](#) that asked: “Will you commit to not prosecuting either a doctor performing or a patient seeking an abortion should either or both ever become illegal in Arizona?”

- Gunnigle [committed](#) that she “will not prosecute abortion in our state.”
- [Adel said](#) that, “As Maricopa County Attorney, I have an ethical and legal obligation to enforce the law, regardless of how I may feel personally about it.”

In November, there will be an election for Maricopa County Attorney. Would you be more or less likely to vote for a candidate who pledges to not prosecute women for seeking an abortions if *Roe v. Wade* is overturned.



The right to access safe and legal abortion care sits on a razor's edge.

The national context. Amy Coney Barrett's nomination to the Supreme Court poses a direct threat to *Roe v. Wade*, the landmark 1973 decision recognizing a constitutional right to abortion. And without *Roe*, prosecutors could start enforcing Arizona's [criminal laws banning abortion](#), still on the books, that punish providing or obtaining reproductive healthcare with criminal convictions and prison time.

In 2006, Barrett, then a law professor at Notre Dame Law School and now President Donald Trump's nominee to replace the late Justice Ruth Bader Ginsburg, [signed a letter](#) affirming that she "oppose[s] abortion on demand and support[s] the right to life from fertilization to a natural death." The letter was published in the South Bend Tribune and accompanied an ad calling for the "end to the barbaric legacy of *Roe v. Wade*."

Barrett's confirmation would create a 6-3 conservative majority on a court that is already hostile to abortion rights. As Ian Milhiser [wrote recently in Vox](#), "Any time the Roberts Court hears an abortion case ... the abortion right is at risk—because a majority of the Supreme Court is skeptical of whether that right should exist in the first place." Even if *Roe* is not overruled outright, the Court could dramatically narrow its scope, giving states more leeway to regulate and even criminalize abortion to the point that it would be unavailable to large swaths of the population, especially nonwhite women or those with low incomes.

The threat looms even without Barrett. This past term, a [slim 5-4 Supreme Court majority struck down a Louisiana law](#) that would have all but eliminated legal abortion in the state. Chief Justice Roberts joined the four liberal justices because he felt bound by the Court's prior decision, made just four years before, to strike down a nearly identical Texas law. Still, Milhiser writes, "Roberts spent much of his [concurring] [opinion](#) explaining why he disagrees with many of his Court's decisions protecting abortion, and even dropping hints about how anti-abortion advocates can help undermine abortion rights in the future." That doesn't bode well for Roberts protecting abortion rights in future cases.

The Arizona Context. This all portends dire consequences in Arizona, where conservative lawmakers have been restricting abortion access for years. In 2019, Meg O'Connor [reported](#) in the Phoenix New Times that, "Governor Doug Ducey has signed every anti-abortion bill that's been put before him, including a law requiring providers to ask women why they are getting an abortion. Next to Alabama, Arizona has some of the most restrictive abortion laws in the country, like a 24-hour waiting period for women seeking abortions, requiring them to make two trips."

Arizona also has criminal laws dating back to the 1960s [that ban abortion and restrict birth control](#). Those laws have been unenforced, but without *Roe*, or with a severely weakened version of *Roe*, Arizona women who seek abortions and the doctors who provide them could

face the threat of prosecution. These laws, combined with the acute danger that *Roe* will be overturned, have placed abortion front and center in the race for Maricopa County Attorney between Republican Allister Adel and Democrat Julie Gunnigle.

Methodology

From 10/2/2020 to 10/8/2020 Data for Progress conducted a survey of 386 likely voters in Maricopa County using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is +/- 5 percentage points.