

## Phillip Pendleton Barbour, Representative and Supreme Court Judge

Philip Barbour was the tenth Speaker of the US House of Representatives AND an Associate Justice of the Supreme Court. **He was the only person to hold both positions.**

### **From *Encyclopedia Virginia*:**

**“Early Years:** Barbour was born on May 25, 1783, in [Gordonsville] Orange County, the youngest of four sons and fifth of eight children of Thomas Barbour and Mary Pendleton Thomas Barbour. Barbour’s father served in the House of Burgesses from 1769 to 1776 and in the first four Revolutionary Conventions. His mother was closely related to two Caroline County men of note, Edmund Pendleton, after whom he was named, and John Taylor of Caroline, whose political principles he espoused all of his life. In spite of family financial reverses that prevented Philip Pendleton Barbour and his older brother James Barbour from completing their education, they were privileged young men by the standards of their day. Philip Pendleton Barbour studied under the local Episcopal minister, Charles O’Niel, and briefly at the College of William and Mary. After lack of money forced him to drop out of school he studied law with St. George Tucker.

“Barbour practiced law in Bardstown, Kentucky, for a short time, but in 1802 he moved back to Orange County and opened a law office in Gordonsville. On October 4, 1804, he married Frances Todd Johnson, the sister of James Barbour’s wife, Lucy Johnson Barbour, and also his own first cousin. They had two daughters and five sons. They gave family names to their first four children but named their last three baby boys unconventionally: Quintus, Sextus, and Septimus. {Note: Names are Latin for *fifth*, *sixth*, and *seventh*.}

**“In Congress:** Barbour was elected to the House of Delegates in 1812, only a few months after James Barbour became governor of Virginia. He served two years in the General Assembly and received appointments to two major committees, finance and courts of justice, perhaps because he was the brother of the popular governor. In the spring of 1814 he ran for the House of Representatives to succeed John Dawson, who had died in office. Barbour defeated John Mercer in the special election, defeated him again in the general election in April 1815, and ran unopposed for each of the next four terms, serving in all from September 19, 1814, until March 4, 1825.

“His decade in the House of Representatives roughly coincided with James Barbour’s service in the U.S. Senate, **but the brothers’ political views, which had earlier been much the same, diverged radically.** Unlike James Barbour, who embraced the postwar nationalism of Henry Clay, John C. Calhoun, and others, and who eventually served as secretary of war in the cabinet of John Quincy Adams, **Philip Pendleton Barbour adhered closely to the agrarian, strict construction, states’ rights philosophy of what came to be called the Old Republicans in**

**Virginia.** He joined Nathaniel Macon from North Carolina and fellow Virginians John Taylor of Caroline, John Randolph of Roanoke, and Judge Spencer Roane in **leading opposition to publicly funded internal improvements, the national bank, and the protective tariff.** During the debates on the Missouri Compromise, **Barbour denounced as unconstitutional every attempt to impose restrictions on the admission of Missouri as a slave state.**

“Barbour continued to practice law while in Congress, and in 1821 he was among those serving as counsels for the commonwealth when the important case of *Cohens v. Virginia* was argued before the U.S. Supreme Court. **Barbour followed his instructions from the state government to argue that the Supreme Court lacked jurisdiction, but Chief Justice John Marshall sweepingly rejected his arguments and asserted that the supremacy clause of the Constitution meant that all congressional statutes took precedence over any laws of a state and that the federal courts could review the rulings of state courts on questions of constitutionality.** The decision was a major defeat for strict constructionists such as Barbour. As in all of his political speeches, his argument in *Cohens v. Virginia* was a legalistic, forceful, logical call for a strict, almost **literal interpretation of the U.S. Constitution** that would **limit the powers of the national government but not those of the states.** Barbour’s admirers often complimented his powerful reasoning and uncompromising defense of states’ rights, but a Whig newspaper pithily summarized opponents’ opinions by calling him a “shallow metaphysical hair-splitter.”

“In December 1821 Barbour was elected Speaker of the House of Representatives, defeating incumbent John W. Taylor, of New York, who had become unpopular with southern members during the Missouri debates due to his opposition to slavery. Barbour served only one two-year term as Speaker because former Speaker Henry Clay was reelected to Congress the following year and in effect claimed the office.

“Barbour chose not to run for another term in Congress, and on February 7, 1825, the General Assembly elected him one of the judges of the General Court for the eastern district of Virginia. In 1827, however, he consented to run again for the House of Representatives, and he was elected without opposition and reelected for the last time in 1829. Barbour ran again for Speaker when he returned to Congress, but lost to Andrew Stephenson, of Virginia, leaving Barbour free to attack the Adams administration (of which his brother was an important member) unsparingly. Barbour supported Andrew Jackson for president in 1828 and was seriously considered for appointment to Jackson’s Cabinet, but he settled for an appointment as judge of the U.S. District Court for Eastern Virginia and on October 15, 1830, resigned from Congress. In spite of his ties with conservative southern Democrats, Barbour stood behind Jackson during the nullification crisis. In 1832 he seemed willing to let southern Democrats try to substitute him for Martin Van Buren for vice president on the Democratic Party ticket, but Barbour withdrew after it became clear that Van Buren would definitely be elected.

“In 1829 Barbour ran for a seat in the state constitutional convention. He and former president James Madison received the most votes in the counties of Louisa, Madison, Orange, and Spotsylvania and were two of the four men elected to represent that district in the convention

that met from October 5, 1829, through January 15, 1830. Barbour served on the Committee on the Executive Department, frequently acted as chairman of the convention during debates in committee of the whole, and on December 9 was chosen president pro tempore to preside during the absence of President James Monroe, who was ill. After Monroe resigned from the convention, Barbour was unanimously elected president on December 12, 1829. **From the beginning Barbour cast his lot with the conservative delegates from the eastern counties in opposition to most of the democratic reforms that the convention was considering. He favored retaining property qualifications for voting and supported allocating representation in the General Assembly on a mixed basis of white population and taxable property that continued the political dominance of the slaveholding counties in eastern Virginia.**

**“U.S. Supreme Court:** Barbour remained a judge of the federal district court for more than five years. In March 1836 Andrew Jackson appointed him to the Supreme Court. The Senate confirmed Barbour by a vote of 30 to 11, and he took his seat at the beginning of the January 1837 term. During service on the Supreme Court of only four years, not long enough to have much impact on its direction or compile a distinctive judicial record, **Barbour generally followed the lead of Chief Justice Roger B. Taney in redirecting the Court away from John Marshall’s judicial nationalism and broad interpretation of the Constitution.** The most important opinion Barbour wrote during his short tenure on the Court was *City of New York v. Miln*, decided in 1837, in which he held that **the constitutional grant of power to Congress to regulate foreign commerce was not exclusive and that state governments could also regulate aspects of commerce in order to protect public health and safety.** The decision complemented Taney’s more famous opinion handed down the same year in *Charles River Bridge v. Warren Bridge* that laid the constitutional basis for what came to be called the police powers of the states.

“Barbour died in his sleep during the night of February 24–25, 1841. A physician diagnosed heart disease and surmised that Barbour had probably died early in the morning of February 25. He was buried at what is now Congressional Cemetery.”<sup>1</sup>

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### **From *Biographical Directory of the United States Congress*:**

“BARBOUR, Philip Pendleton, (Brother of James Barbour and cousin of John Strode Barbour), a Representative from Virginia; born at “Frascati,” near Gordonsville, Orange County, Va., May 25, 1783; attended common and private schools; was graduated from the college of William and Mary, Williamsburg, Va., in 1799; studied law; was admitted to the bar in 1800 and commenced practice in Bardstown, Ky.; returned to Virginia in 1801 and practiced law in Gordonsville,

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<sup>1</sup>Lowery, Charles. "Barbour, Philip Pendleton (1783–1841)." *Encyclopedia Virginia*. Virginia Humanities, Accessed July 19, 2021, <https://encyclopediavirginia.org/entries/barbour-philip-pendleton-1783-1841/>

Orange County; member of the State house of delegates 1812-1814; elected as a Republican to the Thirteenth Congress to fill the vacancy caused by the death of John Dawson; reelected as a Republican to the Fourteenth through the Seventeenth Congresses, reelected as a Crawford Republican to the Eighteenth Congress and served from September 19, 1814, to March 3, 1825; Speaker of the House of Representatives (Seventeenth Congress); was not a candidate for renomination in 1824; offered the professorship of law in the University of Virginia in 1825, but declined; appointed a judge of the general court of Virginia and served for two years, resigning in 1827; elected as a Jacksonian to the Twentieth and Twenty-first Congresses and served from March 4, 1827, until his resignation on October 15, 1830; chairman, Committee on the Judiciary (Twentieth Congress); president of the Virginia constitutional convention in 1829; appointed by President Jackson, June 1, 1830, judge of the United States Circuit Court for the Eastern District of Virginia, declining the chancellorship and the post of attorney general; refused nominations for judge of the court of appeals, for Governor, and for United States Senator; appointed Associate Justice of the United States Supreme Court and served from March 15, 1836, until his death in Washington, D.C., February 25, 1841; interment in Congressional Cemetery.

**8 US Congresses Served: 13th – 14th (1813 – 1817); 15th – 18th (1817 – 1825); 20th (1827 – 1829); and 21st 1829 – 1830)**

**House Years of Service: 1813 – 1817; 1817 – 1825;; 1827 – 1829; 1829 – 1830**

**3 Positions: Representative, Speaker Of The House, Supreme Court Justice**

**3 Political Parties: Republican; Crawford Republican; Jacksonian”<sup>2</sup>**

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**From the Federal Judicial Center:** The following 1911 portrait of the former Speaker by Kate Flourney Edwards was based on a portrait by G.P.A Healy completed during Philip Barbour’s tenure on the United States Supreme Court. The 1911 initiative was part of the House of Representatives’ initiative to commemorate each Speaker’s service, replacing fragile work on paper.”<sup>3</sup>

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<sup>2</sup> Author Unknown. “Barbour, Philip Pendleton, 1783-1841.” *Biographical Directory of the United States Congress*, Google, Accessed July 19, 2021, <https://bioguide.congress.gov/search/bio/B000131>

<sup>3</sup> Edwards, Kate Flourney. “Philip Pendleton Barbour.” *History, Art, and Archives, United States House of Representatives*, Google, Accessed July 19, 2021, <https://history.house.gov/Collection/Detail/29650?ret=True>



**“Barbour, Philip Pendleton**

Born: May 25, 1783, in Orange County, VA

Died: February 25, 1841, in Washington, DC

**Federal Judicial Service:**

Judge, U.S. District Court for the Eastern District of Virginia

Received a recess appointment from Andrew Jackson on October 8, 1830, to a seat vacated by George Hay; nominated to the same position by Andrew Jackson on December 14, 1830.

Confirmed by the Senate on December 16, 1830, and received commission on December 16, 1830. Service terminated on March 17, 1836, due to appointment to another judicial position.

Associate Justice, Supreme Court of the United States

Nominated by Andrew Jackson on December 28, 1835, to a seat vacated by Gabriel Duvall.

Confirmed by the Senate on March 15, 1836, and received commission on March 15, 1836.

Service terminated on February 25, 1841, due to death.

Allotment as Circuit Justice:

Fifth Circuit, March 22, 1836-February 25, 1841

**Education:**

Read law, 1800

**Professional Career:**

Private practice, Kentucky, 1800-1801

Private practice, Orange County, Virginia, 1802-1812

State delegate, Virginia, 1812-1814

U.S. representative from Virginia, 1815-1825, 1827-1830; speaker, 1821-1823

Judge, General Court of Virginia, 1825-1827”<sup>4</sup>

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<sup>4</sup> Author unknown.” Barbour, Philip Pendleton.” *Federal Judicial Center*, Google, Accessed July 19, 2021, <https://www.fjc.gov/history/judges/barbour-philip-pendleton>