



October 6, 2020

**OPPOSE THE CONFIRMATION OF AMY CONEY BARRETT  
TO THE SUPREME COURT OF THE UNITED STATES**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights – the nation’s oldest, largest, and most diverse civil and human rights coalition – and the 149 undersigned organizations, we write to express our strong opposition to the confirmation of Amy Coney Barrett to serve as an Associate Justice of the Supreme Court of the United States.

Justice Ruth Bader Ginsburg was a fearless champion of justice and the conscience of the Court. She was a pioneer for gender equality as a civil rights lawyer and jurist, and she left an indelible mark on our nation’s jurisprudence through her embodiment of the words etched on the building in which she served – equal justice under law. It is an insult to her legacy that President Trump is attempting to replace her with someone who will try to restrict civil and human rights in America.

Judge Barrett’s extreme record on the U.S. Court of Appeals for the Seventh Circuit, along with her ideologically driven writings and speeches, demonstrate that she is incapable of rendering equal justice under law. Her hostility to *Roe v. Wade* and to Supreme Court cases upholding the Affordable Care Act (“ACA”) will likely make her a decisive vote on the Court to reverse those landmark rulings, which would deprive millions of people access to essential health care services and abortion access. Her record also demonstrates a dangerous lack of deference to long-standing precedent. One legal commentator called Judge Barrett’s record on the bench “fundamentally cruel” and said that she “has either written or joined a remarkable number of opinions that harm unpopular and powerless individuals who rely on the judiciary to safeguard their rights.”<sup>1</sup>

It is outrageous that the Senate majority is attempting to rush through Judge Barrett’s nomination rather than addressing the many urgent challenges that are gripping our nation at this moment – from the devastating impact of the worst public health crisis in a hundred years, to the racial reckoning over police brutality and violence, to the need to safeguard our democracy by helping fund the election and U.S. Postal Service. It is shameful that at a time when more than 200,000 Americans have lost their lives to COVID-19 and the need for health care access is more acute than ever, the Senate has chosen to prioritize filling the Supreme Court vacancy with a nominee hostile to health care access over passing legislation to aid an ailing nation. It is particularly alarming that the Senate majority has recklessly decided to press forward with a hearing next week despite the fact that multiple members of the Senate Judiciary committee have just tested positive for COVID-19, and conducting a hearing could threaten the health and safety of Senators, staff, and other Senate workers.

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<sup>1</sup> <https://slate.com/news-and-politics/2020/09/amy-coney-barrett-ginsburg-scotus-future.html>.

Judge Barrett's confirmation to the Supreme Court would grant President Trump nearly unchecked power to continue the devastating assault on civil and human rights in America, and it would cement an ultraconservative supermajority that could jeopardize critical rights and freedoms for generations – the very rights and freedoms that Justice Ginsburg helped secure during her nearly three decades of service on the Court.

A third Trump Supreme Court justice would endanger health care access and the fate of the ACA – which has previously been upheld by a narrow 5-4 majority – and the critical health care protections it affords to millions of people, including an estimated 130 million Americans with pre-existing conditions such as the seven million Americans who have tested positive for COVID-19. If this crucial health care access is stripped away, it would have a particularly devastating impact on communities of color and people with disabilities. Indeed, the rate of Black people who are uninsured would dramatically increase 20 percent.<sup>2</sup> Additionally, an estimated 5.4 million Latinos,<sup>3</sup> 2 million Asian Americans, Native Hawaiians, and Pacific Islanders,<sup>4</sup> and 300,000 Native Americans could lose coverage.<sup>5</sup> Americans with disabilities would be particularly impacted, with the uninsured rate for people with disabilities rising by up to 42 percent if the ACA is struck down.<sup>6</sup>

President Trump has said he would appoint judges who would overturn the ACA,<sup>7</sup> and he has repeatedly done so.<sup>8</sup> Judge Barrett is no exception. The Court is set to decide the fate of the ACA and its protections for people with pre-existing conditions this term and will hear oral arguments in *California v. Texas* – the legal challenge to this vital law – on November 10, just one week after Election Day. President Trump and his Senate allies are rushing forward with this nomination to try to install Judge Barrett on the Court in time to put the nail in the coffin of the ACA, a feat they have tried but failed to accomplish through the legislative process.

President Trump has also threatened to nominate justices who would overturn *Roe v. Wade*,<sup>9</sup> so a third Trump Supreme Court justice would usher in an era in which some states would completely ban abortion access and endanger the safety of those who would still seek abortions. A third Trump justice would likely undermine long overdue progress that has been made in this nation on LGBTQ equality, and would deepen the Court's skepticism of voting rights and civil rights, affirmative action, workers' rights, immigrant justice, disability rights, gun safety, and environmental protection.

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<sup>2</sup> <https://www.cbpp.org/research/health/african-american-uninsured-rate-dropped-by-more-than-a-third-under-affordable-care>.

<sup>3</sup> [https://drive.google.com/file/d/1HU3SB4IC8nnvArfSHH-aQ68RID\\_Q7hz9/view](https://drive.google.com/file/d/1HU3SB4IC8nnvArfSHH-aQ68RID_Q7hz9/view).

<sup>4</sup> <https://www.communitycatalyst.org/resources/2020-covid/ACA-COVID-AAPI.pdf>.

<sup>5</sup> <https://www.communitycatalyst.org/resources/2020-covid/ACA-COVID-AIAN.pdf>.

<sup>6</sup> <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.2019.305056>.

<sup>7</sup> <https://twitter.com/realDonaldTrump/status/614472830969880576>.

<sup>8</sup> See e.g., <https://civilrights.org/resource/oppose-the-confirmation-of-chad-readler-to-the-u-s-court-of-appeals-for-the-sixth-circuit/>.

<sup>9</sup> <https://www.cnbc.com/2016/10/19/trump-ill-appoint-supreme-court-justices-to-overturn-roe-v-wade-abortion-case.html>.

Moreover, the rush to confirm Judge Barrett is central to the president's effort to stay in power at any cost. President Trump doubtlessly believes she would acquiesce to his attempts to destabilize our democratic process and the legitimacy of our elections. President Trump recently admitted that he wanted a ninth justice in place because he believes the Supreme Court will end up deciding the election winner, and he wants another loyalist on the Court to tip the scale in his favor.<sup>10</sup> He made this comment the day before he told a reporter that he would not agree to a peaceful transfer of power if he loses the election.<sup>11</sup> No justice confirmed under these circumstances would have legitimacy in a case bearing on the outcome of the presidential election, and, if confirmed, Judge Barrett would need to recuse herself in any election-related cases that came before the Supreme Court. It is troubling that she has not pledged to do so in response to a question about recusal on her Senate questionnaire.<sup>12</sup>

Because of the enormity of the stakes involved in filling the vacancy created by Justice Ginsburg's passing, President Trump and his Senate allies have engineered a sham confirmation process designed to add Judge Barrett to the Court as rapidly as possible and without adequate deliberation. They are pushing the fastest confirmation timetable in nearly half a century.<sup>13</sup> The average length of time between a Supreme Court nomination and the nominee's hearing has been approximately seven weeks. The Senate plans to hold a hearing for Judge Barrett barely *two weeks* after the announcement of her nomination, a dramatic departure from past timetables. In recent years, the average length of time between the creation of a Supreme Court vacancy and a nominee's hearing has been nearly four months. The time between Justice Ginsburg's passing and Judge Barrett's nomination hearing will be just over *three weeks*. This will ensure that Senate Democrats and the general public have insufficient time to assess the nominee's background and experience. The fast-tracked confirmation process for Judge Barrett is an illegitimate farce and a clear abdication of the Senate's constitutional advice-and-consent function.

Then there is the blatant double standard surrounding this nomination. In what will go down as one of the most infamous power grabs and acts of political hypocrisy in American history, Majority Leader McConnell plans to rush through the Barrett nomination, yet he refused to give a hearing and vote to President Obama's Supreme Court nominee in 2016, Judge Merrick Garland, upon the death of Justice Scalia. Even though Judge Garland was nominated eight months before the 2016 election, Majority Leader McConnell insisted that the next president should fill the vacancy. He declared: "Let's let the American people decide. The Senate will appropriately revisit the matter when it considers the qualifications of the nominee the next president nominates, whoever that might be."<sup>14</sup> Justice Ginsburg passed away just six weeks before the 2020 election – and millions of Americans across the country have already cast a ballot via early voting or through the mail – yet Majority Leader McConnell has rushed to set up a process to confirm President Trump's nominee as rapidly as possible. Senators must not acquiesce to this severe abuse of norms and violation of basic fairness.

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<sup>10</sup> <https://www.washingtonpost.com/opinions/2020/09/23/trump-is-counting-supreme-court-help-him-steal-election/>.

<sup>11</sup> <https://www.nytimes.com/2020/09/23/us/politics/trump-power-transfer-2020-election.html>.

<sup>12</sup> <https://apps.npr.org/documents/document.html?id=7220197-Amy-Coney-Barrett-Senate-Questionnaire>.

<sup>13</sup> <https://www.buzzfeednews.com/article/zoetillman/republicans-confirm-amy-coney-barrett-supreme-court-schedule>.

<sup>14</sup> <https://www.npr.org/2016/03/16/470664561/mcconnell-blocking-supreme-court-nomination-about-a-principle-not-a-person>.

The rush to confirm Judge Barrett will deeply tarnish the integrity and reputation of the Supreme Court. The legitimacy of the federal judiciary stems from the public's faith that its decision-making is fair and impartial. But as a group of former federal judges forcefully stated in a recent letter to Senate leaders: "Our nation is on the precipice of a national election and is in the grip of a global pandemic. Our citizenry is sharply polarized – a foreboding sign for the health of any democracy. The judicial confirmation process has increasingly become dangerously politicized. Injecting a Supreme Court confirmation fight into this noxious mix will unalterably change and diminish the public's faith in this vital institution."<sup>15</sup> Indeed, a majority of Americans by nearly a two-to-one margin believe that the winner of the upcoming presidential election should fill the current Supreme Court vacancy,<sup>16</sup> and rushing to fill it prematurely will undermine the legitimacy of the federal judiciary in the eyes of many. But from President Trump's punitive and reckless condemnations of judges who rule against him to his repeated efforts to pack the federal courts with right-wing extremists, it is abundantly clear that the president is utterly unconcerned about the independence and reputation of the third branch of government.

**Hostile to Health Care Access:** Judge Barrett has demonstrated that she will march in lock step with President Trump's cruel agenda to deprive millions of people of their access to health care. She has made her views of the ACA – the critical law that has made health care more accessible – clear in her legal writings. In a 2017 article, Judge Barrett opined that the ACA is unconstitutional. She wrote: "Chief Justice Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute. He construed the penalty imposed on those without health insurance as a tax, which permitted him to sustain the statute as a valid exercise of the taxing power; had he treated the payment as the statute did – as a penalty – he would have to invalidate the statute as lying beyond Congress's commerce power."<sup>17</sup> This analysis leaves little doubt about how Judge Barrett would rule in an ACA case.

Judge Barrett also expressed disagreement with the Court's 2015 ruling in *King v. Burwell*, which held that tax credits under the ACA were available for states that had either a federal health care exchange or a state exchange, in light of the context of the whole ACA statute. The dissent in the case read the ACA extremely narrowly and argued that the tax credit should only be available in states with a state exchange because one sentence in the law said "Exchange established by the State." The dissent's misguided reading of the ACA would have had the effect of ending health care access for millions of Americans. In a June 25, 2015 radio interview, Judge Barrett opined: "I think the dissent has the better of the legal argument," and "in terms of the analysis of the statute, seems to me I was kind of thinking the phrase 'established by a state' was clear."<sup>18</sup> She also asserted: "I think Justice Scalia's point is that purpose or intent can't overcome clear text and here it seems like that's what the majority opinion did."<sup>19</sup>

If confirmed to the Supreme Court, Judge Barrett is expected to be the deciding vote to strike down the constitutionality of the ACA, depriving millions of people with access to health care amidst the worst

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<sup>15</sup> [https://docs.pogo.org/letter/2020/Statement-on-filling-Supreme-Court-vacancy-9-22-2020.pdf?mtime=20200922090233&\\_ga=2.184228582.1937154321.1600784613-373971968.1600784613/](https://docs.pogo.org/letter/2020/Statement-on-filling-Supreme-Court-vacancy-9-22-2020.pdf?mtime=20200922090233&_ga=2.184228582.1937154321.1600784613-373971968.1600784613/).

<sup>16</sup> [https://www.washingtonpost.com/politics/poll-supreme-court-ginsburg-trump-biden/2020/09/25/0f634e6c-fe6a-11ea-8d05-9beaa91c71f\\_story.html](https://www.washingtonpost.com/politics/poll-supreme-court-ginsburg-trump-biden/2020/09/25/0f634e6c-fe6a-11ea-8d05-9beaa91c71f_story.html).

<sup>17</sup> [https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2330&context=law\\_faculty\\_scholarship](https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2330&context=law_faculty_scholarship).

<sup>18</sup> <https://www.wbur.org/onpoint/2015/06/25/scotus-obamacare-upheld-john-roberts-antonin-scalia>.

<sup>19</sup> *Id.*

public health crisis this nation has witnessed in over a hundred years. Invalidation of the ACA would not only remove critical health care protections for people with pre-existing conditions and people with disabilities, it would disproportionately harm people of color and potentially jeopardize access to a COVID-19 vaccine, the Medicaid expansion that has brought health care to tens of millions of people, critical nondiscrimination provisions (set forth in Section 1557), coverage for those under 26 who are currently on their parents' health care insurance plan, insurance coverage for substance abuse treatment including opioid addiction, and the removal of caps that insurance companies previously placed on expensive medical treatment.<sup>20</sup> This is what is at stake with the Barrett nomination.

**Opposes Reproductive Rights and Freedom:** In 2006, Judge Barrett signed her name to a two-page advertisement in a South Bend, Indiana newspaper calling for the end of the legal right to abortion – which, under her extremist views, includes some forms of birth control and fertility care.<sup>21</sup> It is also important to note that she did not disclose this document in her Senate Judiciary Committee questionnaire. In a 2013 speech entitled “*Roe* at 40: The Supreme Court, Abortion and the Culture Wars that Followed,” Judge Barrett explained that “Republicans are heavily invested in getting judges who will overturn *Roe*.”<sup>22</sup> She summarized the decision with extreme and misleading rhetoric often utilized by opponents of abortion rights, saying “The framework of *Roe* essentially permitted abortion on demand, and *Roe* recognizes no state interest in the life of a fetus.”<sup>23</sup> In a 2003 article, Judge Barrett suggested that *Roe v. Wade* was “an erroneous decision.”<sup>24</sup>

In addition, Judge Barrett has been a member of the “University Faculty for Life,” which is open to any faculty, administration, or staff member at the University of Notre Dame who “respects the sacred value of human life from its inception to natural death” and is “committed to the legal and societal recognition of the value of all human life.”<sup>25</sup> Judge Barrett’s commitment to creating a legal equivalency between a fetus and a human life is a clear threat to *Roe v. Wade*.

In 2012, Judge Barrett signed a letter entitled “Unacceptable” that protested the Obama administration’s good faith effort to create a compromise in carrying out the ACA’s requirement ensuring comprehensive birth control coverage.<sup>26</sup> This accommodation permitted eligible employers and schools to opt out of covering birth control but still ensure that the workers and students had access to seamless coverage of essential care. The letter uses extreme language, calling the Obama administration “morally obtuse,” and is laden with anti-science beliefs about birth control, including referring to certain methods as “abortion inducing drugs” and “embryo-destroying.”<sup>27</sup> As a signatory to this letter, Judge Barrett demonstrated that she is willing to eschew science in favor of her own personal biases and thinks employers can deny their workers birth control coverage.

Unsurprisingly, Judge Barrett’s hostility to reproductive freedom is reflected in her service on the bench. In *Planned Parenthood of Indiana & Kentucky v. Box*,<sup>28</sup> Judge Barrett voted to rehear a case involving an

<sup>20</sup> <https://www.nytimes.com/article/supreme-court-obamacare-case.html>.

<sup>21</sup> <https://www.theguardian.com/us-news/2020/oct/01/amy-coney-barrett-supreme-court-roe-v-wade>.

<sup>22</sup> <http://ndsmcobserver.com/2013/01/law-professor-reflects-on-landmark-case/>.

<sup>23</sup> *Id.*

<sup>24</sup> [https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1421&context=law\\_faculty\\_scholarship](https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1421&context=law_faculty_scholarship).

<sup>25</sup> <http://ufl.nd.edu/about-ufl/constitution/>.

<sup>26</sup> <https://s3.amazonaws.com/becketpdf/Unacceptable-4-11.pdf>.

<sup>27</sup> *Id.*

<sup>28</sup> 949 F.3d 997 (7th Cir. 2019).

Indiana abortion restriction that judges already deemed likely unconstitutional. The Indiana law put minors in dangerous situations by requiring them to notify their parents even if a judge already found the minor to be mature enough to make this decision without involving a parent. The district court in this case noted that “the requirement of providing parental notification before obtaining an abortion carries with it the threat of domestic abuse, intimidation, coercion, and actual physical obstruction.”<sup>29</sup> The Indiana law was in clear violation of longstanding Supreme Court precedent, and the three-judge Seventh Circuit panel that blocked the Indiana law found that it would likely impose “an undue burden for the unemancipated minors who seek to obtain an abortion without parental involvement via the judicial bypass.”<sup>30</sup> Yet Judge Barrett joined a dissent that questioned whether the plaintiffs could even challenge the law before it went into effect, arguing the “existing unsettled status of pre-enforcement challenges in the abortion context” deserved full court review.<sup>31</sup> Pre-enforcement challenges are well-established in abortion jurisprudence, as allowing abortion restrictions to take effect can devastate access, sometimes irreparably.

In another case, *Planned Parenthood of Indiana & Kentucky v. Commissioner of Indiana State Department of Health*,<sup>32</sup> Judge Barrett voted in dissent to rehear a case already deemed unconstitutional and joined a dissent that argued that a state should be able to restrict abortion when the reason for that choice is the fetus’s gender, race, sex, or fetal diagnosis (often known as “reason bans”), even though that provision was not being considered in the decision before the court. Using extreme and inflammatory language, the dissent described Indiana’s law as aiming to prevent “eugenics.”<sup>33</sup> But as one expert testified before Congress, these types of laws “perpetuate stereotypes about women of color” and are “a duplicitous attempt to address racial and gender discrimination, while actually intending to chip away at abortion rights.”<sup>34</sup> These sex-selective and race bans encourage racial profiling of people seeking abortion care based on deeply false and racist stereotypes. Sex-selective abortion bans are based on a false and racist stereotype that Asian-American women prefer sons. In reality, for Asian-Americans, the ratio of males to females at birth is standard when compared to the ratio of all births in the United States. In fact, foreign-born Chinese, Indian, and Korean Americans have more girls overall than white Americans.<sup>35</sup> Further, race bans are based on the absurd premise that women of color, particularly Black and Latina women, are being coerced into choosing to have abortions on the basis of the race of the fetus, and perpetuate the racist and oppressive notion that women of color cannot be trusted to make their own reproductive decisions. Additionally, the dissenting opinion also went out of its way to question the constitutionality of a different provision of the Indiana statute, which included a law that would charge doctors with a felony just for doing their job. Judges already deemed this provision unconstitutional, and the state of Indiana did not seek rehearing on that issue.

Additionally, abortion bans based on fetal diagnosis do not address discrimination or the needs of people with disabilities. Instead these bans take away an individual’s right to make deeply personal decisions

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<sup>29</sup> *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r, Ind. State Dep’t of Health*, 258 F.Supp.3d 929, 939 (S.D. Ind. 2017).

<sup>30</sup> *Planned Parenthood of Ind. & Ky., Inc. v. Adams*, 937 F.3d 973, 981 (7th Cir. 2019).

<sup>31</sup> 949 F.3d 997, 999 (7th Cir. 2019) (Kanne, J., dissenting).

<sup>32</sup> 917 F.3d 532 (7th Cir. 2018).

<sup>33</sup> *Id.* at 536. (Easterbrook, J., dissenting).

<sup>34</sup> <https://docs.house.gov/meetings/JU/JU10/20160414/104783/HHRG-114-JU10-Wstate-YeungM-20160414.pdf>.

<sup>35</sup> Brian Citro et al., *Replacing Myths with Facts: Sex Selective Abortion Laws in the United States*, (June 2014), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1004&context=ihr>.

and do little to address the needs of people with disabilities, which include access to health care, education, employment, and economic support as well as the ability to parent with dignity.

It is also important to reiterate that President Trump has said he would only nominate justices who would “automatically” overturn *Roe v. Wade*, and it is clear that Judge Barrett has passed his litmus test.<sup>36</sup> Senator Hawley has publicly stated that he will only support a nominee who believes *Roe v. Wade* is incorrectly decided,<sup>37</sup> and Senator Hawley said that Judge Barrett “clearly meets that threshold that I’ve talked about.”<sup>38</sup> In addition, groups that are extremely hostile to reproductive freedom have repeatedly praised Judge Barrett; for example, Marjorie Dannenfelser, president of the anti-choice group Susan B. Anthony List, stated about Judge Barrett’s place on the short list: “She’s my favorite. She’s our favorite. She’s the movement’s favorite because the movement knows her. And she’s been completely vetted. We know who she is, what she’s about.”<sup>39</sup>

It is clear based on her statements and judicial record that Judge Barrett is incapable of serving as a fair and neutral arbiter in reproductive rights cases, including those involving abortion, contraception, and perhaps even fertility care.

**LGBTQ Rights:** Judge Barrett’s public comments demonstrate opposition to constitutional protection for marriage equality. In a talk she gave in November 2016, she appeared to be critical of *Obergefell v. Hodges* – the landmark decision that established marriage equality for same-sex couples in America – and supportive of the dissent, which said marriage equality should be determined on a state-by-state basis. According to Judge Barrett, the *Obergefell* dissent “said that those who want same-sex marriage, you have every right to lobby in state legislatures to make that happen, but the dissent’s view was that it wasn’t for the court to decide. So I think *Obergefell*, and what we’re talking about for the future of the court, it’s really a who decides question.”<sup>40</sup> Later in the speech, when asked about the impact of the upcoming presidential election on the courts, Judge Barrett said: “It is a consequential moment, and the who decides question just as a personal matter is really important to me. And so I guess I worry a lot about the who decides question, about our decisions, and my voice kind of getting taken away depending on what happens....”<sup>41</sup> But no one can “decide” to deny people their fundamental human rights, because we have a Constitution that protects everyone. A justice who does not recognize this would put LGBTQ people at the mercy of those who have long targeted them for discrimination and could adopt what Justice Ginsburg called a “skim milk” approach to marriage for same-sex couples as challenges to the rights, benefits, and obligations of marriage wind through the courts.

At the same 2016 event, Judge Barrett opined that the sex discrimination provisions of Title IX should not extend to transgender people. Discussing a case that had come before the Supreme Court about whether a transgender student should be permitted to use the restroom that correlated with his gender identity, Judge

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<sup>36</sup> <https://www.theatlantic.com/politics/archive/2020/06/supreme-court-abortion-trump/613642/>.

<sup>37</sup> [https://www.washingtonpost.com/politics/courts\\_law/trump-supreme-court-barrett-lagoa-ginsburg/2020/09/21/5e8208c2-fc16-11ea-b555-4d71a9254f4b\\_story.html](https://www.washingtonpost.com/politics/courts_law/trump-supreme-court-barrett-lagoa-ginsburg/2020/09/21/5e8208c2-fc16-11ea-b555-4d71a9254f4b_story.html).

<sup>38</sup> *Id.*

<sup>39</sup> <https://www.nytimes.com/2020/09/23/podcasts/the-daily/supreme-court-trump-roe-v-wade.html?showTranscript=1>.

<sup>40</sup> <https://www.youtube.com/watch?v=7yjTEdZ81II> at 31:55.

<sup>41</sup> *Id.* at 53:25.

Barrett said “it does seem to strain the text of the statute to say that Title IX demands it.”<sup>42</sup> She said that if policymakers want to add gender identity to Title IX, they should amend the statute. Her position is in direct contradiction to the Supreme Court’s text-based interpretation of an analogous statute, Title VII, in *Bostock v. Clayton County*, where the Court ruled 6-3 that the prohibition of employment discrimination on the basis of “sex” should be read to include gender identity and sexual orientation.

**Rulings Against Employment Discrimination Victims:** Judge Barrett has issued troubling employment discrimination rulings in a few cases that have come before her. In *Equal Employment Opportunity Commission v. AutoZone*, Judge Barrett ruled against an African-American worker whose employer involuntarily transferred him to another store.<sup>43</sup> The EEOC claimed that AutoZone had an unlawful practice of segregating employees by race when it assigned African-American employees to stores in African-American neighborhoods and Latino employees to Latino neighborhoods. Judge Barrett denied a petition to rehear the case *en banc* after a three-judge panel ruled for the employer. Her disturbing position in this case permitted, in the words of the dissent, a “separate-but-equal arrangement.”<sup>44</sup> Citing *Brown v. Board of Education*, the dissent also noted the bedrock principle (carried over to our civil rights laws) that “separate is inherently unequal, because deliberate racial segregation by its very nature has an adverse effect on the people subjected to it.”<sup>45</sup> This was ostensibly of little concern to Judge Barrett.

In *Kleber v. CareFusion Corporation*, Judge Barrett joined a majority *en banc* panel that ruled that the Age Discrimination in Employment Act (“ADEA”) only protects current employees from discrimination due to disparate impact, not outside job applicants.<sup>46</sup> The plaintiff in this case alleged an ADEA violation when an employer listed a job opening as being available only to applicants with 3-7 years of experience, and the plaintiff exceeded that limit. Four judges on the conservative Seventh Circuit, including two Republican appointees, dissented from the majority opinion that Judge Barrett joined. In one of two dissenting opinions, the judges criticized the majority, concluding: “Wearing blinders that prevent sensible interpretation of ambiguous statutory language, the majority adopts the improbable view that the Act outlawed employment practices with disparate impacts on older workers, but excluded from that protection everyone not already working for the employer in question.”<sup>47</sup>

**Ruling Against Accountability for Sexual Assault:** Judge Barrett has made it more difficult for sexual assault and harassment survivors on college campuses to bring their perpetrators to justice. In *Doe v. Purdue University*, Judge Barrett wrote an opinion that allowed a male student – who was credibly accused of committing multiple sexual assaults and suspended from the university – to advance a Title IX lawsuit against the university alleging he was discriminated against because he was a man.<sup>48</sup> As one commentator has noted, “Judge Barrett’s ruling turned a sex discrimination statute on its head, using a law meant to prevent and address sexual assault to promote impunity for that very same behavior.”<sup>49</sup> Judge Barrett’s decision will discourage universities from disciplining male perpetrators of sexual violence since doing so may result in their being sued for sex discrimination. Her opinion suggested that

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<sup>42</sup> *Id.* at 41:40.

<sup>43</sup> 875 F.3d 860 (7th Cir. 2017).

<sup>44</sup> *Id.* at 861 (Wood, C.J., dissenting).

<sup>45</sup> *Id.*

<sup>46</sup> 914 F.3d 480 (7th Cir. 2019).

<sup>47</sup> *Id.* at 507 (Hamilton, J., dissenting).

<sup>48</sup> 928 F.3d 652 (7th Cir. 2019).

<sup>49</sup> <https://www.publicjustice.net/understanding-judge-barretts-opinion-in-doe-v-purdue/>.

the U.S. Department of Education’s Obama-era 2011 Title IX guidance calling on schools to take sexual harassment seriously resulted in discrimination against men – even though this guidance prohibited the unfair procedures the male student alleged he experienced. These questions may well make their way to the Supreme Court, as students held accountable by their schools for engaging in sexual harassment and sexual assault are continuing to bring challenges to schools’ ability to take these actions, emboldened by new Trump Administration rules seeking to weaken protections against sexual harassment in schools. It is a disgrace to Justice Ginsburg’s legacy to replace her with a judge who is willing to allow sex discrimination laws to be used as a sword rather than a shield.

**Rulings Against Criminal Justice:** Judge Barrett has regularly ruled for law enforcement and against defendants in criminal cases and people in prison, often in dissent, reflecting her extreme views. For example, Judge Barrett dissented in *United States v. Uriarte*, where the Seventh Circuit, sitting *en banc*, applied the reduced mandatory minimum sentencing requirements of the First Step Act, an important, bipartisan criminal justice reform measure passed by Congress and signed into law in 2018.<sup>50</sup> In a 9-3 opinion, the Seventh Circuit held that at the time of the enactment of the First Step Act, Hector Uriarte, a federal defendant, was convicted but not yet sentenced, and therefore eligible for the First Step Act’s reduced sentencing procedure. He had been previously sentenced to 50 years for drug and firearms offenses, but that sentence had been vacated. He was resentenced under the First Step Act to a term of 20 years, and the Trump administration challenged that new sentence. Judge Barrett authored the dissent, sided with the Trump administration, and concluded that the First Step Act did not apply to the defendant.

In *McCottrell v. White*, Judge Barrett wrote a dissent that sided with prison guards who fired buckshot from their shotguns, significantly injuring two inmates.<sup>51</sup> The majority reversed the district judge’s finding that the guards had fired “reasonable” warning shots and remanded the case. Judge Barrett dissented, denying the opportunity for the inmates to prove at trial that excessive force was used against them in violation of the Eighth Amendment. Criticizing Judge Barrett, the majority stated: “the dissent suggests that firing two shotguns loaded with buckshot into the ceiling of a crowded dining hall cannot be deemed to be malicious and sadistic or even characterized as an intentional application of force without a showing that a guard ‘intended to hit or harm someone with his application of force.’ That standard is met here.”<sup>52</sup> Judge Barrett’s dissent is troubling and raises questions about whether she would be fair to victims of law enforcement misconduct.

In *Schmidt v. Foster*, Judge Barrett again dissented in an important criminal justice case. The Seventh Circuit held that a state trial judge had denied a man his Sixth Amendment right to counsel after the judge ordered the defendant’s lawyer not to speak at a pretrial hearing while the man was questioned by the judge.<sup>53</sup> The hearing involved an important substantive issue: whether the defendant would be allowed to rely on the state-law defense of “adequate provocation” to mitigate the crime from first- to second-degree homicide. In determining that the defendant’s Sixth Amendment rights had been violated, the Seventh Circuit noted: “While trial judges have discretion to question witnesses directly, this inquisitorial procedure in which defense counsel is silenced is not compatible with the American judicial system.”<sup>54</sup>

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<sup>50</sup> *United States v. Uriarte*, No. 19-2092, 2020 WL 5525119 (7th Cir. Sept. 15, 2020).

<sup>51</sup> 933 F.3d 651 (7th Cir. 2019).

<sup>52</sup> *Id.* at 665.

<sup>53</sup> 891 F.3d 302 (7th Cir. 2018).

<sup>54</sup> *Id.* at 311.

The Seventh Circuit sitting *en banc* reversed this decision, but it acknowledged that the pretrial hearing was “constitutionally dubious” and noted that “we discourage the measure.”<sup>55</sup>

**Rulings Against Immigrant Justice:** Judge Barrett has issued disturbing rulings against immigrants.<sup>56</sup> In *Cook County v. Wolf*, she dissented from a ruling that struck down the Trump administration’s harsh “public charge” rule.<sup>57</sup> The Seventh Circuit majority concluded that the Trump administration’s rule violated the Administrative Procedure Act and would have prevented immigrants from receiving legal permanent residence status if they had availed themselves of certain public benefits, such as Medicaid or food stamps, to which they were legally entitled. The majority also concluded that the public charge rule penalized people with disabilities in violation of the federal Rehabilitation Act, noting that “the disabled are saddled with at least two heavily weighted negative factors directly as a result of their disability.”<sup>58</sup> Judge Barrett, however, disagreed with that conclusion and would have upheld the Trump administration’s public charge rule. In a particularly troubling part of her dissent, she dismissively declared: “Litigation is not the vehicle for resolving policy disputes.”<sup>59</sup>

In another case, *Alvarenga-Flores v. Sessions*, Judge Barrett rejected the claims of an immigrant who sought asylum and protections under the Convention Against Torture.<sup>60</sup> The immigrant feared that he would be killed if he were sent back to his home country of El Salvador after witnessing the murder of a friend and receiving threats from the gang members responsible. Judge Barrett, writing for the majority, focused on minor discrepancies in the plaintiff’s testimony and dismissed his case. Judge Durkin, who concurred in part and dissented in part, rejected Judge Barrett’s analysis and concluded that the plaintiff’s testimony was credible and that his claims should go forward.

And in *Yafai v. Pompeo*, Judge Barrett held that U.S. consular officials have unchecked authority to deny visa applications to those seeking entrance into the United States.<sup>61</sup> In this case, a consular officer in Yemen had denied the visa application of the wife of a U.S. citizen, based on unsubstantiated allegations of misconduct. Several judges dissented when the Seventh Circuit sitting *en banc* denied review of Judge Barrett’s panel decision, noting that Judge Barrett’s position was a “dangerous abdication of judicial responsibility” and concluding: “We have the responsibility to ensure that such decisions, when born of laziness, prejudice or bureaucratic inertia, do not stand.”<sup>62</sup>

**Ruling Against Gun Safety:** As our nation continues to grapple with the scourge of gun violence – which kills nearly 40,000 Americans every year – federal courts have become the arbiter of the constitutionality of gun safety measures as a result of aggressive litigation tactics of the gun lobby. Judge Barrett’s record indicates she would likely be a pivotal vote on the Court to support the gun lobby and strike down common-sense gun safety laws.

In *Kanter v. Barr*,<sup>63</sup> a Seventh Circuit panel featuring two appointees of President Reagan held that a law barring felons from possessing a firearm did not violate the Second Amendment. Indeed, the leading

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<sup>55</sup> 911 F.3d 469, 473 (7th Cir. 2018).

<sup>56</sup> <https://www.vox.com/21457360/amy-coney-barrett-immigration-record-trump-supreme-court>.

<sup>57</sup> 962 F.3d 208 (7th Cir. 2020).

<sup>58</sup> *Id.* at 228.

<sup>59</sup> *Id.* at 254 (Barrett, J., dissenting).

<sup>60</sup> 901 F.3d 922 (7th Cir. 2018).

<sup>61</sup> 924 F.3d 969 (7th Cir. 2019).

<sup>62</sup> *Id.* at 975, 979 (Wood, C.J., dissenting) (internal quotation and citation omitted).

<sup>63</sup> 919 F.3d 437 (7th Cir. 2019).

Supreme Court case on the Second Amendment, *District of Columbia v. Heller*, written by Justice Scalia, stated that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.”<sup>64</sup> Yet Judge Barrett dissented in *Kanter* and concluded that the bar on gun possession should only apply to violent felons. She accused the majority of treating the Second Amendment as a “second-class right” and asserted: “Absent evidence that he either belongs to a dangerous category or bears individual markers of risk, permanently disqualifying Kanter from possessing a gun violates the Second Amendment.”<sup>65</sup> In addition, Judge Barrett conducted a skewed historical analysis and concluded that it was appropriate to deny nonviolent felons the right to vote but not the right to bear arms. She wrote: “history does show that felons could be disqualified from exercising certain rights – like the rights to vote and serve on juries – because these rights belonged only to virtuous citizens.”<sup>66</sup> That is a troubling analysis.

Judge Barrett’s dissent in this case takes an extreme view of the Second Amendment and indicates she would be willing to strike down common-sense gun safety laws. Upon Judge Barrett’s nomination to the Supreme Court, the Giffords Law Center stated: “Judge Barrett holds Second Amendment views that are far more extreme than conservatives like Justice Antonin Scalia. Her willingness to disregard established precedent and strike down gun safety laws is too radical for this country and even past Republican administrations.”<sup>67</sup>

**Lacks Respect for Judicial Precedent:** Judge Barrett’s disregard for precedent can be seen not only in her dissents but also in the radical theories of judging she has advanced in her legal scholarship. As a lower court judge, she is bound by precedent – the bedrock principle of the rule of law – but if confirmed to the Supreme Court, she would be less constrained and would have a freer hand to reverse past decisions. In a 2013 law review article, Judge Barrett opined: “Does the Court act lawlessly – or at least questionably – when it overrules precedent? I tend to agree with those who say that a justice’s duty is to the Constitution and that it is thus more legitimate for her to enforce her best understanding of the Constitution rather than a precedent she thinks clearly in conflict with it.”<sup>68</sup>

In the same article, Judge Barrett connected her disregard for judicial precedent with her hostility to *Roe v. Wade*. She wrote that *Roe* could not be considered “on the superprecedent list because the public controversy about *Roe* has never abated.”<sup>69</sup> This type of comment is a dog whistle to the far right and a clear indication she would vote to overturn or otherwise eviscerate certain opinions, like *Roe*, with which she disagrees. According to Michael Gerhardt, a University of North Carolina law professor whose scholarship on stare decisis is cited extensively in Judge Barrett’s writings, her views on overturning precedent are “radical” and, if adopted by four other justices, “will produce chaos and instability in constitutional law.”<sup>70</sup>

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<sup>64</sup> 554 U.S. 570, 626 (2008).

<sup>65</sup> 919 F.3d at 451 (Barrett, J., dissenting).

<sup>66</sup> *Id.* at 462 (Barrett, J., dissenting).

<sup>67</sup> <https://giffords.org/press-release/2020/09/giffords-law-center-litigation-director-condemns-president-trumps-expected-nomination-of-amy-coney-barrett-for-a-lifetime-appointment-to-the-supreme-court/>.

<sup>68</sup> <http://texaslawreview.org/wp-content/uploads/2015/08/Barrett.pdf>.

<sup>69</sup> *Id.*

<sup>70</sup> [https://www.washingtonpost.com/opinions/the-bombshell-consequences-of-amy-coney-barrett/2020/09/25/3531ab9c-ff6f-11ea-8d05-9beaaa91c71f\\_story.html](https://www.washingtonpost.com/opinions/the-bombshell-consequences-of-amy-coney-barrett/2020/09/25/3531ab9c-ff6f-11ea-8d05-9beaaa91c71f_story.html).

**Ideological Affiliations:** Judge Barrett has been a member of the far-right Federalist Society and given dozens of speeches to this group, including 17 speeches in her less than three years as a judge. This out-of-the-mainstream organization represents a sliver of America’s legal profession – just four percent – yet all of the candidates President Trump considered for the Supreme Court nomination were on a list vetted and approved by the Federalist Society. As the *New York Times* explained in a 2018 editorial: “The Federalist Society claims to value the so-called strict construction of the Constitution, but this supposedly neutral mode of constitutional interpretation lines up suspiciously well with Republican policy preferences – say, gutting laws that protect voting rights, or opening the floodgates to unlimited political spending, or undermining women’s reproductive freedom, or destroying public-sector labor unions’ ability to stand up for the interests of workers.”<sup>71</sup>

In 2015 and 2016, Judge Barrett was paid \$4,200 for two speeches she gave to the far-right legal organization Alliance Defending Freedom (“ADF”),<sup>72</sup> which is so extreme that it has been designated as a “hate group” by the Southern Poverty Law Center,<sup>73</sup> and as “arguably the most extreme anti-LGBT legal organization in the United States” by Lambda Legal.<sup>74</sup> ADF has defended state-sanctioned sterilization of transgender people, and they have expressed support for the recriminalization of sexual acts between consenting LGBTQ adults.<sup>75</sup> The ADF website includes extreme statements like: “The abortion industry has been profiting from the deaths of infants for over 40 years,” and “Marriage ensures that more children are raised in a loving, stable home by both their mother and father—something that every child instinctively needs and deserves.”<sup>76</sup>

In sum, Judge Barrett is an ideological extremist who lacks the fair-mindedness necessary to serve a lifetime appointment at the highest level of the branch of government charged with making the ultimate decisions about our rights, freedoms, liberties, and the meaning of our laws and Constitution. She should not be confirmed to the highest court in the land. The stakes of this Supreme Court vacancy are incredibly high. A court with a 6-3 majority of right-wing justices could have an enormous impact on many of the rights and freedoms our nation holds so dear. In light of Judge Barrett’s hostility to the ACA’s promise of affordable health care, her confirmation is particularly galling amidst the ongoing public health crisis in which access to medical care is a life-or-death matter for millions of people. Yet the Senate majority has decided to prioritize Judge Barrett’s nomination over passing legislation that would help millions of people who are in dire health and economic straits as a result of the COVID-19 crisis. The cruelty of this decision is only matched by its hypocrisy, given that the Senate majority refused to allow President Obama to fill a Supreme Court vacancy that arose during the final year of his presidency. The rush to confirm Judge Barrett is designed to install her on the Court in time to strike down the ACA and affirm the concerted effort to undermine the legitimacy of our elections. The undersigned

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<sup>71</sup> <https://www.nytimes.com/2018/07/09/opinion/editorials/trump-kavanaugh-supreme-court-senate.html>.

<sup>72</sup> <https://fixthecourt.com/wp-content/uploads/2018/07/Barrett-nominee-financial-disclosure-2017.pdf>.

<sup>73</sup> <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>.

<sup>74</sup> [https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/27\\_lgbt\\_groups\\_oppose\\_confirmation\\_of\\_joan\\_larsen\\_and\\_amy\\_coney\\_barrett\\_.pdf](https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/27_lgbt_groups_oppose_confirmation_of_joan_larsen_and_amy_coney_barrett_.pdf).

<sup>75</sup> *Id.*

<sup>76</sup> <https://www.adflegal.org/issues/overview>.

organizations urge the Senate to oppose the confirmation of Judge Barrett and allow the president duly chosen in the 2020 general election to fill the existing Supreme Court vacancy.

Thank you for your consideration of our views.

Sincerely,

The Leadership Conference on Civil and Human Rights  
A Better Balance  
Advocates for Youth  
Alaskans Together for Equality  
Alliance for Justice  
Alliance for Youth Action  
American Atheists  
American Federation of Teachers  
American Humanist Association  
American-Arab Anti-Discrimination Committee (ADC)  
Americans for Democratic Action (ADA)  
Americans United for Separation of Church and State  
Asian Americans Advancing Justice - AAJC  
Asian Pacific American Labor Alliance, AFL-CIO  
Asian Pacific Policy and Planning Council  
Bazelon Center for Mental Health Law  
Bend the Arc: Jewish Action  
Caneiwalk  
Center for American Progress Action Fund  
Center for Law and Social Policy (CLASP)  
Center for Responsible Lending  
CenterLink: The Community of LGBT Centers  
Civil Liberties & Public Policy  
Clearinghouse on Women's Issues  
Coalition of Labor Union Women  
Committee for a Fair Judiciary (CFJ)  
Communications Workers of America (CWA)  
Community Catalyst  
Daily Kos  
Dallas Peace & Justice Center  
Demand Justice  
Demand Progress  
Demos  
Disability Rights Advocates  
End Citizens United / Let America Vote Action Fund  
Environmental Working Group

Equal Justice Society  
Equality Arizona  
Equality California  
Equality Federation  
Equality Maine  
Equality Montana  
Equality North Carolina  
Equality Texas  
Equality Utah  
Fair Wisconsin  
Faith Action Network - Washington State  
Family Equality  
Feminist Majority Foundation  
Fenway Institute  
For Our Future Action Fund  
FORGE, Inc.  
Forum for Equality  
Freedom Oklahoma  
Free Press Action  
Freedom From Religion Foundation  
FreeState Justice  
Garden State Equality Action Fund  
Gender Justice  
Georgia Equality  
GLMA: Health Professionals Advancing LGBTQ Equality  
GLSEN  
Housing Choice Partners  
Human Rights Campaign  
If/When/How: Lawyering for Reproductive Justice  
In Our Own Voice: National Black Women's Reproductive Justice Agenda  
Indivisible  
Japanese American Citizens League (JACL)  
Jewish Women International  
Jobs With Justice  
Juvenile Law Center  
Labor Council for Latin American Advancement  
Lambda Legal  
LatinoJustice PRLDEF  
Lawyers for Good Government  
The Leadership Conference Education Fund  
League of Conservation Voters  
Legal Aid at Work  
Massachusetts Transgender Political Coalition

Matthew Shepard Foundation  
MomsRising  
MomsRising Together  
Montana Gender Alliance  
Montana Human Rights Network  
Muslim Advocates  
NAACP  
NAACP Legal Defense and Educational Fund, Inc. (LDF)  
NARAL Pro-Choice America  
NARAL Pro-Choice Connecticut  
NARAL Pro-Choice Maryland  
NARAL Pro-Choice Missouri  
NARAL Pro-Choice North Carolina  
NARAL Pro-Choice Texas  
National Abortion Federation  
National Action Network  
National Association of Social Workers  
National Center for Transgender Equality  
National Coalition Against Domestic Violence  
National Council for Incarcerated and Formerly Incarcerated Women and Girls  
National Council of Jewish Women  
National Domestic Workers Alliance  
National Education Association  
National Employment Law Project  
National Equality Action Team (NEAT)  
National Homelessness Law Center  
National LGBTQ Task Force Action Fund  
National Network of Abortion Funds  
National Organization for Women  
National Partnership for New Americans  
National Partnership for Women & Families  
National Women's Health Network  
National Women's Law Center  
Oil Change International  
One Iowa Action  
Organization for Black Struggle  
Partnership for the Advancement of New Americans  
People For the American Way  
People's Action  
Physicians for Reproductive Health  
Population Connection Action Fund  
Population Institute  
Pride at Work

Progressive Turnout Project  
Protect Our Care  
RepresentUs New Mexico  
Reproaction  
SEIU  
SIECUS: Sex Ed for Social Change  
Silver State Equality-Nevada  
SiX Action  
Southeast Asia Resource Action Center  
SPLC Action Fund  
Stand Up America  
Step Forward Strategies  
The Taifa Group  
The Womxn Project  
TIME'S UP Now  
Transgender Legal Defense and Education Fund  
Treatment Action Group  
True North Research  
United Church of Christ, OC Inc.  
United State of Women  
United We Dream  
URGE: Unite for Reproductive & Gender Equity  
Violence Policy Center  
Voices for Progress  
We Testify  
Women's March  
Women's Health Center of West Virginia  
Women's Law Project