



October 23, 2020

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

Dear Senator,

We call on you to honor your oath of office and defend the lives and fundamental rights of all Americans by rejecting the nomination of Judge Amy Coney Barrett.

Senators and attorneys have a common duty; we both swear an oath to defend the United States Constitution. That oath, along with our deep commitment to preserving the rule of law and core tenets of our democracy, compels us to strongly urge you to vote against the confirmation of Judge Amy Coney Barrett to be an Associate Justice of the United States Supreme Court.

As 7,571 members of the legal profession—including 7,005 lawyers, 16 judges, 180 professors, and 370 law students—we have devoted our careers to a justice system committed to "Equal Justice Under Law." We have fought to protect critical constitutional rights and legal protections, including for our democracy, for women, persons of color, persons with disabilities, LGBTQ Americans, immigrants, workers, consumers, and clean air and water. The next Supreme Court Justice will rule on issues concerning the rights of our clients, the rule of law, and for the well-being of every American for decades. That is why we so strongly oppose Judge Barrett's confirmation. Examining her record, it seems clear that, if confirmed, she will vote to turn back the clock on scores of essential rights and protections in this country that are crucial to the lives of our clients and fellow Americans.

Amidst a global pandemic, the Senate should be prioritizing addressing the health and economic needs of the country, instead of rushing to confirm a nominee who has criticized the ruling upholding the Affordable Care Act and the health care protections we need now more than ever.

## 1) The Senate must not confirm Judge Barrett as part of an illegitimate, sham process.

The Constitution requires that the Senate give advice and consent on Supreme Court nominees. This is not a meaningless rule that the Senate can disregard without doing profound damage to our democracy. Congress and the American people need time to review a nominee's record and determine their fitness for a lifetime appointment to our nation's highest court.

At the outset, we are outraged that Senate leadership seems committed to an expedited, sham process to confirm Barrett. Americans have already started voting—you must respect their decision. If the Senate confirms any candidate under these circumstances, it will cause irreparable damage to the public's faith in the Supreme Court and the rule of law. This alone should be enough for any Senator to oppose any nomination, including Judge Barrett's, until the next Congressional term.

<sup>\*</sup> An earlier version of this letter was entered into the record. It is available at <a href="https://L4GG.org/oppose-barrett-1011">https://L4GG.org/oppose-barrett-1011</a>.

## 2) Judge Barrett's record also shows that the lives of millions of Americans are at stake.

At the time of drafting, over 228,000 Americans have died of the COVID-19 pandemic, with roughly 3,000 people dying—the number of people who died in the September 11, 2001 terrorist attacks—every four days.<sup>1</sup> Millions of Americans are out of work. Schools and businesses are closed. This is a national health and economic crisis that demands immediate action.

If the Senate instead chooses to confirm Judge Barrett, it will make matters worse. The Affordable Care Act protects 133 million Americans with pre-existing conditions including the seven million Americans who have tested positive for COVID-19, but Donald Trump has promised that any judge he nominates will overturn the ACA.<sup>2</sup> We are deeply troubled that Judge Barrett has repeatedly argued that the Supreme Court should have done just that.<sup>3</sup> This is an urgent concern; the Supreme Court will consider whether to take away health care from millions of Americans the week after the November election.<sup>4</sup>

To protect the lives of 133 million Americans during a pandemic, as well as the further erosion of the public's faith in the judiciary that would result in such a ruling, you must oppose Judge Barrett's nomination.

## 3) Judge Barrett's record shows that the fundamental rights of hundreds of millions of Americans are at stake.

Judge Barrett has an extreme ideology, and we have grave concerns that, if confirmed, she will erode critical rights and legal protections for millions of Americans.

For example, since *Roe v. Wade*, women in the United States have had the constitutional right to an abortion. But Donald Trump has made it clear that every judge he nominates will automatically overturn *Roe*.<sup>5</sup> Judge Barrett has repeatedly criticized *Roe*, and has made it clear she does not believe a Supreme Court justice should follow precedent<sup>6</sup> that is in conflict with her understanding of the Constitution. Her confirmation to the Supreme Court will be devastating to millions of women in this country.

<sup>&</sup>lt;sup>1</sup> COVID-19 Tracker & Interactive Charts, 1Point3Acres, <a href="https://coronavirus.1point3acres.com/">https://coronavirus.1point3acres.com/</a> (last accessed Oct. 23, 2020).

<sup>&</sup>lt;sup>2</sup> Donald Trump (@RealDonaldTrump), Twitter <a href="https://twitter.com/realdonaldtrump/status/614472830969880576">https://twitter.com/realdonaldtrump/status/614472830969880576</a>; Reed Ableson and Abby Goodnough, *If the Supreme Court Ends Obamacare Here's What It Would Mean*, N.Y. Times, <a href="https://www.nytimes.com/article/supreme-court-obamacare-case">https://www.nytimes.com/article/supreme-court-obamacare-case</a> html.

<sup>&</sup>lt;sup>3</sup> Amy Barrett, *SCOTUS Upholds State Health Care Subsidies*, On Point, <a href="https://www.wbur.org/onpoint/2015/06/25/scotus-obamacare-upheld-john-roberts-antonin-scalia">https://www.wbur.org/onpoint/2015/06/25/scotus-obamacare-upheld-john-roberts-antonin-scalia</a>; Amy Coney Barrett, *Countering the Majoritarian Difficulty*, Constitutional Commentary, 4, <a href="http://scholarship.law.umn.edu/concomm/4">http://scholarship.law.umn.edu/concomm/4</a>.

<sup>&</sup>lt;sup>4</sup> John Commins, *SCOTUS Schedules ACA Oral Arugments for Nov. 10*, HealthLeaders, https://www.healthleadersmedia.com/strategy/scotus-schedules-aca-oral-arguments-nov-10.

<sup>&</sup>lt;sup>5</sup> Sarah McCammon, What Justice Kennedy's Retirement Means for Abortion Rights, NPR, https://www.npr.org/2018/06/28/624319208/what-justice-kennedy-s-retirement-means-for-abortion-rights.

<sup>&</sup>lt;sup>6</sup> Christian Myers, *Law professor reflects on landmark case*, The Observer, <a href="https://ndsmcobserver.com/2013/01/law-professor-reflects-on-landmark-case/">https://ndsmcobserver.com/2013/01/law-professor-reflects-on-landmark-case/</a>; Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 Tex. L. Rev. 1711, <a href="https://scholarship.law.nd.edu/law faculty scholarship/293">https://scholarship.law.nd.edu/law faculty scholarship/293</a>.

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Indeed, as a judge on the Seventh Circuit, Barrett has a consistent record of eroding civil rights, protections for workers, consumers, immigrants, and those in the criminal justice system.<sup>7</sup> She is on record disagreeing with a host of well-established rights, from marriage equality to *Miranda* rights.<sup>8</sup>

It is a bedrock concept of our legal system and our democracy that fundamental rights must not be subjected to the passing whims of politics. To protect the fundamental rights of all Americans and to protect the integrity of our legal system, you must oppose Judge Coney Barret's nomination.

Again, we call on you to preserve the rule of law and protect the lives and rights of your constituents by rejecting the nomination of Judge Amy Coney Barrett.

Justice Ginsburg once said, "Someday there will be great people, great elected representatives who will say, 'Enough of this nonsense. Let's be the kind of legislature the United States should have." In her memory, make that day today. Honor your oaths of office and fulfill your constitutionally mandated role of advice and consent. Protect the fundamental rights of your constituents, as well as their access to healthcare during a pandemic. Reject the nomination of Judge Amy Coney Barrett to be an Associate Justice of the United States Supreme Court.

If you have any questions about this letter, please contact Adam Fernandez, Vice President of Policy and Strategic Engagement, Lawyers for Good Government, at or Carlot Control of Control of Outreach, Alliance for Justice, at Carlot Control of Control of Outreach, Alliance for Justice, at Carlot Control of Outreach, Alliance for Data Carlot Carlot

Respectfully,

Traci Feit Love President Lawyers for Good Government Nan Aron President Alliance for Justice

<sup>&</sup>lt;sup>7</sup> Report on Amy Coney Barrett Nominee for Supreme Court of the United States, AFJ, https://www.afj.org/wp-content/uploads/2020/09/Barrett-Report-9.28.20.pdf.

<sup>&</sup>lt;sup>8</sup> Katelyn Burns, *How Amy Coney Barrett on the Supreme Court could affect LGBTQ rights*, Vox, <a href="https://www.vox.com/policy-and-politics/2020/9/26/21457343/amy-coney-barrett-supreme-court-lgbtq-rights">https://www.vox.com/policy-and-politics/2020/9/26/21457343/amy-coney-barrett-supreme-court-lgbtq-rights</a>; <a href="https://scholarship.law.nd.edu/law">https://scholarship.law.nd.edu/law</a> faculty scholarship/656/.

<sup>&</sup>lt;sup>9</sup> West Virginia v. Barnette, 319 U.S. 624, 638 (1943) ("The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.") available at

https://scholar.google.com/scholar\_case?case=8030119134463419441.

Ariane de Vogue, Ginsburg talks partisan rancor, Electoral College and kale, CNN, https://www.cnn.com/2017/02/07/politics/ruth-bader-ginsburg-electoral-college/index.html.

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