



1201 16th Street, NW | Washington, DC 20036 | Phone: (202) 833-4000

Rebecca S. Pringle
President

Princess R. Moss
Vice President

Noel Candelaria
Secretary-Treasurer

Kim A. Anderson
Executive Director

October 8, 2020

Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Senator:

On behalf of our 3 million members and the 50 million students they serve, we strongly urge you VOTE NO on the nomination of Amy Coney Barrett and wait until after Inauguration Day to confirm the next Supreme Court justice. In addition, we would like to submit these comments for the record of the hearings on Judge Barrett's nomination scheduled to start October 12.

Misplaced priorities

The rush to confirm the next Supreme Court justice has revealed a terrible truth: For the Senate majority, reopening our schools safely and alleviating suffering from COVID-19 do not merit action while filling the vacancy on the Court does. The House passed the HEROES Act, a robust relief and stimulus bill, on May 15, and an updated version on October 1. In contrast, the Senate majority hit the pause button for four months, then brought forward a woefully inadequate bill.

Meanwhile, COVID-19 has continued to take an ever-increasing toll on our nation's physical and economic health. To date, more than 7.5 million Americans have contracted COVID-19 and 210,000 have died from it. Millions of Americans have lost their jobs, including 835,000 educators. The unemployment rate is 7.9 percent and every day brings reports of new layoffs.

It is now just 26 days until Election Day. Voting has begun all across the nation and will continue through November 3. The majority of the American people say, by wide margins, that the winners of the ongoing elections should choose the successor to Justice Ruth Bader Ginsburg. We agree and urge the Senate to heed the people's voice.

Profound implications

The choice of the next Supreme Court justice will have profound implications for decades to come in health care, collective bargaining, public education, voting rights, LGBTQ rights, First Amendment protections, racial and social justice, and much more.

An immediate threat with enormous consequences is almost upon us. On November 10, the Supreme Court will hear a challenge to the Affordable Care Act that could overturn the entire law. If that happens, 21 million Americans will lose health coverage even as the coronavirus rages, premiums will skyrocket for the 133 million Americans with pre-existing conditions that now include COVID-19, lifetime caps on coverage will return, and children will be kicked off their parents' health plans before age 26.

Judge Barrett has expressed misgivings about the Affordable Care Act as well as other vital rights and protections, including [stare decisis](#)¹—the rule that the Supreme Court should follow its own prior decisions, even when a justice disagrees with them. Specifically, we are concerned that she would:

- **Support overturning the Affordable Care Act.** Judge Barrett [disagreed](#)² with the Supreme Court’s decision to uphold the law and criticized the opinion written by Chief Justice John Roberts. She attacked the Obama administration’s accommodation of religious institutions that objected to covering contraception, calling it an [“assault on religious liberty.”](#)³
- **Support limiting workers’ tools to fight employment discrimination.** In [EEOC v. Autozone](#),⁴ Judge Barrett opposed rehearing a case in which the court found an employer’s policy of segregating employees by race did not violate Title VII. In [Kleber v. Carefusion Corp.](#),⁵ she joined an opinion that said Age Discrimination in Employment Act regulations apply only to current employees, not job applicants. In [Wallace v. Grubhub Holdings, Inc.](#),⁶ she strengthened the power of mandatory arbitration clauses, ruling that drivers who had been illegally denied overtime pay could not sue.
- **Oppose holding students accountable for sexual harassment and misconduct.** In [Doe v. Purdue University](#),⁷ the school held the plaintiff responsible for a sexual assault and disciplined him for it. Judge Barrett eased and simplified the legal standard for male students claiming to be victims of sex discrimination, suggesting in her opinion that taking such misconduct seriously is evidence of sex discrimination.
- **Support denying procedural protections for immigrants.** Judge Barrett was the author of the opinion in [Yafai v. Pompeo](#),⁸ which held that held courts cannot review the factual basis for an immigration official’s decision to deny a visa application—even if that decision is not supported by the evidence and could be based on ethnic stereotyping. She cast the deciding vote in [Lopez Ramos v. Barr](#),⁹ refusing to stay the deportation of someone who had been a lawful permanent resident of the United States for 30 years.
- **Support discrimination against individuals with disabilities, including students and immigrants.** In [P.F. BY A.F. v. Taylor](#),¹⁰ Judge Barrett allowed Wisconsin to discriminate against students based on ability—children with learning disabilities were required to apply for placements separately and districts could exclude them based on their needs. In [Cook County v. Wolf](#),¹¹ Judge Barrett dissented when the court blocked the Department of Homeland Security’s public charge rule, declaring the rule reasonable even though it

¹ Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 Tex. L. Rev. 1711 (2013).

² Amy Coney Barrett, *Countering the Majoritarian Difficulty*, 32 Const. Comm. 61 (2017).

³ *Unacceptable*, Becket Fund for Religious Liberty, (Feb. 15, 2012), <https://www.becketlaw.org/media/unacceptable/>.

⁴ 875 F.3d 850 (7th Cir. 2017).

⁵ 914 F.3d 480 (7th Cir. 2019).

⁶ 970 F.3d 798 (7th Cir. 2020).

⁷ 928 F.3d 652 (7th Cir. 2019).

⁸ 912 F.3d 1018 (7th Cir. 2019).

⁹ 771 Fed. Appx. 675 (7th Cir. 2019).

¹⁰ 914 F.3d 467 (2019).

¹¹ 962 F.3d 208, 234 (7th Cir. 2020) (Barrett, J. dissenting).

“inescapabl[y] . . . penalizes disabled persons” by making it more difficult for them to enter the United States or become permanent residents.

- **Oppose common-sense protections against gun violence.** In [Kanter v. Barr](#),¹² Judge Barrett dissented from a decision upholding a federal law that restricts access to guns for felons convicted of serious crimes. She argued that the government’s interest in protecting the public from gun violence was “insufficient” to justify the law.
- **Oppose civil rights laws that protect LGBTQ individuals.** Judge Barrett asserted that federal antidiscrimination law, such as Title IX, does not protect [LGBTQ students and workers](#)¹³ and that “marriage and family are founded on the indissoluble commitment of [a man and a woman](#).”¹⁴ From 2015 to 2017, she was a member of the Board of Trustees of Trinity Schools, Inc., whose [cultural statement](#) says same-sex marriages are not “normative” and encourages LGBTQ youth to deny rather than embrace their sexual orientation or gender identity.¹⁵ She has also received multiple payments from the [Alliance Defending Freedom](#), a hate group that supports recriminalizing sex acts between consenting LGBTQ adults in the United States and has defended state-sanctioned sterilization of transgender people abroad.¹⁶

Let the people decide

When Justice Antonin Scalia died in 2016, more than 30 members of the GOP, including the current Majority Leader and Judiciary Committee Chairman, declined to fill the vacancy—out of respect for the people’s voice, they said. They also claimed to create a new policy: not filling any Supreme Court vacancy during the last year of a president’s term. The presidential election was nine months away when that policy was created, not already in progress as it is now.

Just days before she died, Justice Ginsburg told her 27-year old granddaughter, “My most fervent wish is that I will not be replaced until a new president is installed.” We urge you to grant that wish to help fulfill the promise engraved above the entrance to the Supreme Court: equal justice under law.

The next Supreme Court justice—the successor to the valiant Ruth Bader Ginsburg—should be chosen and confirmed by the winners of the 2020 elections.

Sincerely,



Marc Egan
Director of Government Relations
National Education Association

¹² 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J. dissenting).

¹³ Jacksonville University, *Hesburgh Lecture 2016: Professor Amy Barrett at the JU Public Policy Institute*, Youtube (Nov. 3, 2016), https://www.youtube.com/watch?v=7yjTEdZ81II&ab_channel=JacksonvilleUniversity.

¹⁴ *Letter to Synod Fathers from Catholic Women*, Ethics and Public Policy Center, (Oct. 1, 2015), <https://eppc.org/synodletter/>.

¹⁵ *A Culture of Learning and a Culture of Christian Life*, Trinity School at Greenlawn, <https://trinitygreenlawn.org/culture/culture-of-learning/>.

¹⁶ *Alliance Defending Freedom*, Southern Poverty Law Center, <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>.