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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. Judge Barrett's record raises serious concerns, none of which the hearing on her nomination assuaged—to the contrary, her testimony raised new red flags. Votes on this issue will be included in NEA's Report Card for the 116th Congress.

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 woefully inadequate legislation.

Meanwhile, COVID-19 has continued to take an ever-increasing toll on our nation's physical and economic health. To date, more than 8 million Americans have contracted COVID-19 and nearly 220,000 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.

The ongoing elections are cause for serious concern of a different kind. During her confirmation hearing, Judge Barrett refused to acknowledge that voter discrimination exists or admit that voter intimidation is illegal. She would not say that a president should commit to a peaceful transfer of power, that a president cannot unilaterally change Election Day, or that a president cannot pardon himself. And she would not commit to recusing herself from disputes arising from the 2020 elections.

It is now just 15 days until Election Day. All across the nation, voting has begun—tens of millions have already voted—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 in the midst of a pandemic, 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*—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 with the Supreme Court's decision to uphold the law, criticized the opinion written by Chief Justice John Roberts, and described contraception-related provisions as an "assault on religious liberty." She maintains her attacks on the law had nothing to do with her nomination even though President Trump promised—publicly and repeatedly—to appoint only justices who will strike it down. At her confirmation hearing, Judge Barrett said, "I honestly can't remember if I knew about [that promise] before I was nominated or not." She also refused to say Medicare is constitutional.
- **Support limiting workers' tools to fight employment discrimination.** In [EEOC v. Autozone](#), Judge Barrett opposed rehearing a case about whether an employer's policy of segregating employees by race violated Title VII of the Civil Rights Act. In [Kleber v. Carefusion Corp.](#), she supported applying Age Discrimination in Employment Act regulations to current employees, but not job applicants. In [Wallace v. Grubhub Holdings, Inc.](#), she ruled that drivers who were illegally denied overtime pay could not sue.
- **Oppose holding students accountable for sexual harassment and misconduct.** In [Doe v. Purdue University](#), the school held a male student responsible for a sexual assault and disciplined him for it. Judge Barrett turned the issue on its head in a ruling that makes it easier for male students to claim they are victims of sex discrimination.
- **Support denying procedural protections for immigrants.** In [Yafai v. Pompeo](#), Judge Barrett ruled that courts cannot review the factual basis for an immigration official's decision to deny a visa application—even if the evidence doesn't support it. She cast the deciding vote in [Lopez Ramos v. Barr](#), refusing to halt the deportation of someone who had lived lawfully in the United States for 30 years. During her confirmation hearing, she would not say it is wrong for the government to separate children from their parents.
- **Support discrimination against individuals with disabilities, including students and immigrants.** In [P.F. BY A.F. v. Taylor](#), 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](#), she deemed the Department of Homeland Security's public charge rule reasonable even though it "inescapabl[y] . . . penalizes disabled persons."
- **Oppose common-sense protections against gun violence.** In [Kanter v. Barr](#), Judge Barrett argued that protecting the public from gun violence was "insufficient" grounds for barring felons

from owning guns. During her confirmation hearing, she maintained that the right to possess a gun is more expansive than the right to vote.

- **Oppose civil rights laws that protect LGBTQ individuals.** In a speech delivered at Jacksonville University's Public Policy Institute, Judge Barrett said that "marriage and family are founded on the indissoluble commitment of a man and a woman." She was a member of the Board of Trustees of Trinity Schools, Inc., which encourages LGBTQ youth to deny rather than embrace their sexual orientation or gender identity. She has received multiple payments from the Alliance Defending Freedom, a hate group that supports criminalizing sex acts between consenting LGBTQ adults. During her confirmation hearing, she apologized for describing sexual orientation as a "preference."
- **Oppose meaningful action on climate change.** The National Aeronautics and Space Administration (NASA) reports that "97 percent or more of actively publishing climate scientists agree: Climate-warming trends over the past century are extremely likely due to human activities." Judge Barrett does not accept the scientific consensus. "I would not say that I have firm views on it," she said during her confirmation hearing, describing climate change as "a matter of public policy ... that is politically controversial."

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.

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